

Insurance (Amendment) Regulations, 2017 (No. 19)

It is hereby notified that the Minister of Finance and Economic Development has, in terms of section 89 of the Insurance Act [Chapter 24:07], made the following regulations:

1. These regulations may be cited as the Insurance (Amendment) Regulations, 2017 (No. 19).

2. Section 2 (Interpretation) of the Insurance Regulations, 1989, published in Statutory Instrument 49 of 1989 (hereinafter called the principal regulations) is amended by the insertion of the following definitions

admissible assets means assets that are considered for the purposes of calculating the capital or solvency of an insurer;

capital means the amount of the insurer's total admissible assets in excess of the amount of its liabilities including contingent and prospective liabilities;

composite insurer means an insurer which is authorised to carry on life assurance business including funeral assurance as well as non-life insurance;

encumbered assets means assets that are owned by one party, but subject to a legal claim by another party;

independent actuary or valuator or professional means an actuary or valuator or professional who does not have any material conflict of interest;

related party means a person who is not independent, thus he or she

(a) has significant interest directly or indirectly in a class of shares of an insurer;

(b) is an entity in which a director or officer of the insurer or person that controls the insurer has a significant investment;

- (c) is an entity in which a close relative of a person described in (b) has a significant investment;
- (d) is an employee of the insurer or a company related to the insurer in question or his or her close relative; and
- (e) any other as may be determined by the Commission;

3. Section 3 of the principal regulations is repealed and the following is substituted

Minimum capital requirement for insurers

3. (1) The minimum unencumbered capital requirement for an insurer for registration or ongoing operations shall be the equivalent of

- (a) five million United States dollars in the case of an insurer which carries on life assurance business including funeral assurance;
- (b) two million five hundred thousand United States dollars in the case of an insurer which carries on non-life insurance business;
- (c) seven million five hundred thousand United States dollars in the case of an insurer which carries on insurance business referred to in both paragraphs (a) and (b);
- (d) five million United States dollars in the case of an insurer which carries on reinsurance or reinsurance business;
- (e) two million five hundred thousand United States dollars in the case of an insurer which carries on life assurance solely for the purpose of issuing funeral policies.

(2) In assessing the eligibility of the capital of an insurer for regulatory purposes, the Commission shall at all times have regard for the need to ensure that the capital fulfils the following roles

- (a) the capital must be adequate, unencumbered and in a form that allows cushioning of policyholders against unexpected losses timely; and
- (b) the capital must be commensurate with the level of risks assumed by the insurer, which risks include underwriting, credit, market and liquidity risks; and
- (c) the capital position of the insurer must be high enough to ensure confidence in the insurance industry by all stakeholders including facultative reinsurers and the public; and
- (d) the capital must be able to provide insurers with financial flexibility to take advantage of growth opportunities and be innovative by providing new products, new services or new distribution channels; and
- (e) the capital must enable the local insurer to retain most of the premium for its net premium account which facilitates the organic growth of the company, the industry and retention of premiums in the country.

(3) Every insurer shall be required to ensure that their capital has the following attributes on an ongoing basis

- (a) it must substantially be of a permanent nature such as ordinary share capital and share premium;
- (b) it must not impose mandatory fixed charges such as interest against earnings of the insurer;
- (c) it must not be in the form of borrowed funds;
- (d) it must be unencumbered;
- (e) the investment of that capital must predominantly be in the assets whose profile matches that of the insurer's liabilities; and
- (f) the capital of an insurer must not be concentrated in one asset class or counterparty or issuer;

and in this regard, the Commission may issue guidelines from time to time with which insurers should comply with.

Calculating capital for insurers

3A. (1) For the purposes of calculating capital for an insurer, admissible assets shall consist of all the insurer's assets, but excluding the following

- (a) operating assets such as motor vehicles, furniture and fittings, and information technology hardware;
- (b) intangible assets such as goodwill and information technology software;
- (c) guarantees given to the insurer and all other off-balance sheet items, other than guarantees given by a reinsurer in the course of reinsurance business;
- (d) encumbered assets including assets which are under legal disputes;
- (e) assets on which the insurer does not have a legal title;
- (f) unless exempted by the Commission, premium debtors
 - (i) aged more than ninety days from the date when the premiums were debited by non-life insurers; or
 - (ii) in the case of reinsurers, aged more than one hundred and twenty days;
- (g) unsecured loans or loans which, in the Commission's opinion, are inadequately secured;
- (h) exposures to related parties;
- (i) prepaid preliminary or prepaid organisational expenses such as deferred acquisition costs;
- (j) deferred tax assets;
- (k) any admissible assets which shall form an excess over the threshold for a given asset class, as may be stipulated by investment guidelines or asset allocations prescribed by the Commission from time to time;

(1) any other assets as may be determined by the Commission from time to time.

(2) Notwithstanding subsection (1), for the purposes of calculating capital for funeral assurers, assets that include but not limited to

(a) stocks of coffins;

(b) funeral hearses; and

(c) motor vehicles used for providing funeral services; shall be considered as admissible assets if the legal title of such assets is with the funeral assurer.

(3) Notwithstanding subsection (2), the capital of every funeral assurers must enable the insurer to pay cash *in lieu* of service should policyholders, in terms of section 58(3)(a) of the Act, opt not to receive the services.

(4) For the purpose of calculating capital for insurers, all admissible assets shall be treated as follows

(a) for cash and money market instruments, 100% of the fair value of these assets shall be considered;

(b) for government securities or prescribed assets, 100% of the fair value of the securities shall be considered;

(c) for term deposits, 100% of the fair value of such deposits shall be considered:

Provided that the Commission may prescribe discounts for term deposits in line with the credit rating of the insurer's counterparties with which the term deposits are held, and where deposits are held with banks under curatorship or liquidation such deposits shall not be considered for the purpose of calculating capital;

(d) a discount of 20% shall be applied on all quoted equities for insurers;

(e) non-marketability discount of 20% and illiquidity discounts of 30% shall be applied on the fair value of all investments in unquoted or private equity;

- (f) for properties, the forced sale value shall be considered;
- (g) receivables other than premium debtors shall only be considered if they are aged less than sixty days from due date;
- (h) assets not provided for under this subsection shall be governed by section 3(2) and (3), subject to any discounts or conditions that the Commission may impose from time to time.

(5) Valuation for private and unquoted equities and properties shall be conducted by qualified and independent professionals.

(6) The valuation reports for properties shall, at least, indicate the market value, replacement cost and the forced sale value, cost per square metre, availability of encumbrances and name of owners as shown on the title deed.

(7) Where the Commission is of the opinion that the assets are overvalued, the Commission may appoint an independent and qualified valuator to conduct another valuation of the assets of an insurer, and expenses for such a valuation exercise shall be borne by the insurer in question.

(8) Subsection 4(c) to (f) shall not apply to investment contracts without discretionary participation features.

(9) The liabilities of an insurer for each line of business shall, to the extent possible and using acceptable actuarial methods, at least provide liabilities determined to provide for

- (a) all claims reported but not yet fully paid, including legal and assessment fees associated with the said claims;
- (b) full value of all claims that are under litigation as well as legal and other costs associated with such claims;
- (c) all reserves or insurance contract liabilities which shall be actuarially determined, including

- (i) an estimation of all incurred but not reported claims;
- (ii) all incurred but not enough reported claims;
- (iii) liabilities in respect of future risk periods arising from contractual commitments which exists at the reporting date;
- (d) any additional shortfall that may be expected because future premiums for future risk periods are unknown, or expected to be inadequate;
- (e) future maintenance and claim settlement expenses, including the effects of inflation;
- (f) inflation with respect to the cost of claims;
- (g) reversals or write offs for any liability in respect of any premiums ceded to reinsurers and retrocessionaires;
- (h) any other factors as may be necessary.

(10) Reversals or write offs for any liabilities in respect of premiums ceded to reinsurers and retrocessionaires, can only be carried out within sixty days from the date of inception of the insurance policy in question, thereafter the reversals shall be subject to the insurer or reinsurer being liable to pay the reinsurer or retrocessionaire, as the case maybe, the premium for the period the said reinsurer or retrocessionaire was on risk, and such premium shall be calculated on a *pro-rata* basis.

(11) In applying subsection (4), due regard shall be given to the following categories of business for a life and funeral assurance company

- (a) long-term traditional insurance contracts which include whole life and term insurance, endowment insurance and annuity policies with significant life contingency risk;
- (b) investment contracts without discretionary participation feature which include unit linked funds, index linked funds, and market linked funds and any other such products that are not considered

to be insurance contracts and are accounted for as a financial liability;

- (c) insurance contracts and investment contracts with discretionary participation feature, which include long-term investment type insurance contracts with significant investment features and insurance risk.

(12) In determining the capital for categories of business referred to in subsection (11), the liabilities shall be calculated as follows

- (a) for insurance contracts without discretionary participation features, the value of liabilities shall be determined based on acceptable actuarial methods and the assets backing such liabilities shall be subjected to admissibility requirements referred to in terms of subsections (1) to (4); and
- (b) for investment contracts without discretionary participation features, the value of liabilities shall be the market value of the assets supporting that business plus any risk margin determined by an acceptable actuarial method; and
- (c) for insurance contracts with discretionary participation features, a distinction must be made between insurance contracts with discretionary participation from investment contracts with discretionary participation as follows
 - (i) the value of liabilities for insurance contracts with discretionary participation features shall be determined in accordance with acceptable actuarial methods and the assets backing such liabilities shall be subjected to admissibility requirements referred to in subsections (1) to (4);
 - (ii) the value of liabilities for investment contracts with discretionary participation features shall be taken to be the market value of the units notionally credited to the accumulation account

of the policies plus accrued interest subject to a guaranteed minimum amount, if any:

Provided that a bonus smoothing reserve shall be established using appropriate actuarial methods and the assets supporting this class of business shall not be invested in non-admissible assets;

- (d) for investment contracts with discretionary participation features, the insurer shall be required to account for the guaranteed element and discretionary participation feature separately or together as follows
 - (i) if recognised together, the whole amount must be classified as a liability and subject to a liability adequacy test;
 - (ii) if recognised separately, the guaranteed element must be classified as a liability and
 - A. the discretionary participation feature may be classified as a liability or a separate component of equity; or
 - B. if the issuer classifies part or all of the discretionary participation feature as a component of equity, the liability recognised for the whole contract must not be less than the liability that would be recognised to the guaranteed element.

(13) The assets supporting the class of business referred to in subsection (11)(b) and subsection 12(c) (ii) shall not be invested in non-admissible assets referred to in subsection (1).

(14) In determining the capital adequacy requirement the insurer must take into account the policyholder's reasonable expectation, by ensuring that the valuation method, capital adequacy calculations at best are not contrary to any representations made to the policyholder including in marketing literature.

(15) All the reserves for an insurer that shall be in such an insurer's annual audited financial statements shall be

- (a) certified by an independent and qualified actuary; or
- (b) where the actuarial valuation has not been conducted by an independent actuary, peer reviewed and co-signed by an independent actuary.

4. Section 5 of the principal regulations is repealed and the following is substituted

Minimum capital for insurance brokers

5. (1) Every registered insurance broker shall hold capital of not less than one hundred thousand United States dollars.

(2) For purposes of calculating capital for insurance brokers, section 3A (1) to (4) shall apply *mutatis mutandis* to insurance brokers.

(3) Every registered insurance broker shall effect and maintain a professional indemnity insurance with a limit of liability of not less than

- (ii) two hundred thousand United States dollars; or
 - (iii) fifty *per centum* of such broker's net brokerage income in his or her preceding year;
- whichever is greater.

Self-assessment by insurance companies and brokers

5A. (1) Every insurer or insurance broker shall conduct self-assessments on an ongoing basis to ensure compliance with minimum capital requirements.

(2) Where an insurer or insurance broker, as the case may be, fails to comply with the set out minimum capital requirements, such insurer or insurance broker shall immediately

- (a) notify the Commission, in writing, within thirty days from the date when the insurer or insurance broker becomes aware or the insurer or insurance broker ought to have been aware of the non-compliance; and

- (b) submit a recapitalisation plan to the Commission for approval within such thirty days, detailing how the insurer will regularise its capital position and the time frames within which such regularisation will be conducted.

(3) Where

- (a) the recapitalisation plan is not submitted; or
- (b) the recapitalisation plan submitted to the Commission is not approved; or
- (c) the insurer or reinsurer fails to implement the plan within the specified period;

the Commission may take any or all of the following actions

- (i) impose additional reporting requirements and increase monitoring activities;
- (ii) refuse or delay granting of approval to requests by the insurer in question including requests to launch any new products;
- (iii) disqualify, remove or suspend any person, including a director or senior manager from management of or participation in the affairs of the insurer, and where necessary direct the insurer to appoint another person;
- (iv) declaring a disqualified, removed or suspended person, as not being fit and proper to be appointed in any other position in the insurance industry;
- (v) prohibit the declaration or payment of dividends or any other payments as the Commission may deem necessary;
- (vi) prohibit disposal or transfer of any assets of an insurer or reinsurer;
- (vii) take custody of any document from the insurer or reinsurer such as a title deed or share certificate;

- (viii) impose mandatory reinsurance on all the business written by the insurer in question;
- (ix) stop the insurer or reinsurer from writing new business including renewal of existing policies, and publish a notice to stakeholders to the effect that such insurer or reinsurer has been prohibited from under writing new business;
- (x) transfer insurance business to other sound insurance companies;
- (xi) cancel the registration of the insurer in terms of section 22 of the Act; or
- (xii) take other action as the Commission may deem necessary.

(4) Where the Commission rejects to approve a recapitalisation plan, it shall provide the reasons for doing so within fourteen days from the date of the receipt of such notice of rejection.

Repudiation of claims

5B. Notwithstanding any provision in the professional indemnity policy, no insurer shall repudiate a claim

- (a) on grounds of failure by an insurance broker to remit premiums to the insurer when the policyholder had a valid insurance policy;
- (b) on account of not having received premiums where a policy has been issued on credit and a loss occurs before the policy has been cancelled;
- (c) where, after lapse of a policy, the insurer fails to communicate such lapse, in writing, to the policyholder and continues to collect premiums, except where the insurer, within fourteen days after receipt of such premiums, refunds the premiums collected after the lapse of the policy.

5. Section 16 B Security required for discharge or professional functions by multiple agents Fof the principal regulations is amended by the deletion of seventy-five thousand United States dollars wherever it appears and the substitution of eighty thousand United States dollars

6. The Insurance (Amendment) Regulations, 2013 (No.16), published in Statutory Instrument 21 of 2013, is repealed.