

**THE INSURANCE (POLICYHOLDERS' COMPENSATION FUND) (AMENDMENT) REGULATIONS, 2010**

IN EXERCISE of the powers conferred by section 179(11) of the Insurance Act, the Cabinet Secretary for the National Treasury, in consultation with the Board of Trustees of the Policyholders' Compensation Fund, makes the following Regulations-

The Insurance (Policyholders' Compensation Fund) (Amendment) Regulations, 2019.

**1. Citation**

These Regulations may be cited as the Insurance (Policyholders Compensation Fund) (Amendment) Regulations, 2019.

**2. Interpretation**

In these Regulations, unless where the context otherwise requires -

**"Board"** means the Board of Trustees of the Policyholders' Compensation Fund appointed under section 179(2) of the Act;

**"claim"** means any unpaid claim which arises as a consequence of an incident or event that involves a risk or peril insured by a Kenyan policy that was issued by an authorized insurance company that has become insolvent:

Provided that all claims attributable to or arising out of a single incident or event under a Kenyan policy or policies issued by the same insurance company shall be deemed to constitute a single claim.

**"contribution"** means the contribution paid under regulation 9;

**"Fund"** means the Policyholders' Compensation Fund established under regulation 3;

**"Kenyan policy"** means a contract, evidenced by a policy, whose performance by an insurer would constitute the carrying on, by the insurer, of insurance business of any class in the Republic of Kenya:

Provided that a Kenyan policy shall not include -

(a) a policy of re-insurance;

(b) a superannuation scheme;

(c) a life assurance policy issued prior to 1<sup>st</sup> January, 2005 with the exception of that whose policyholder opted to contribute and had their premiums adjusted accordingly. [The Insurance (Policyholders' Compensation Fund) (Amendment) Regulation, 2014]

**"Managing Trustee"** means the Managing Trustee of the Fund appointed under section 179(5A) of the Act;

**"Policyholder"** means the holder of a Kenyan policy.

### 3. **Establishment of the Policyholders' Compensation Fund.**

- (1) There is established a fund to be known as the Policyholders' Compensation Fund which, shall vest in and be managed and administered by the Board.
- (2) There shall be paid into the Fund -
  - a) monies appropriated by Parliament for the purposes of the Fund;
  - b) contributions of authorized insurance companies and their policyholders paid in accordance with the Act and these Regulations;
  - c) penalties payable under the Act and these Regulations;
  - d) monies borrowed for the purposes of the Fund;
  - e) monies received by the Board as grants or donations to the Fund; and
  - f) monies received by the Board as reimbursement.
- (3) The Board of Trustees may open separate accounts for general or long term insurance business as it may deem necessary.  
*[The Insurance (Policyholders' Compensation Fund) (Amendment) Regulation, 2014]*
- (4) There shall be paid out of the Fund such compensation and expenses as are authorized to be paid out under the Act and these Regulations.

### 4. **Tenure of office of Board members.**

- (1) A member of the Board other than an ex-officio member, shall hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment and shall be eligible for reappointment for one further term of three years.
- (2) The Minister may appoint members of the Board, other than an ex-officio member, on different dates so that the respective expiry dates of the members' terms may fall on different days.
- (3) A member of the Board, other than an ex-officio member, may –
  - (a) at any time resign from office by giving a notice, in writing, to the Minister;
  - (b) be removed from office by the Minister, if the member –
    - i) has been absent from three consecutive meetings of the Board;
    - ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

- iii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months, or to a fine exceeding ten thousand shillings;
- iv) is incapacitated by prolonged physical or mental illness; or
- v) is otherwise unable or unfit to discharge his functions.

#### **5. Validity of Board proceedings.**

- (1) The validity of any proceedings of the Board shall not be affected by any vacancy among the members or by any defect in the appointment of a member.
- (2) The quorum for the conduct of the business of the Board shall be three members, excluding the ex-officio members and the Secretary to the Board.

#### **6. Disclosure of interest.**

- (1) A member of the Board who has any direct or indirect interest in any matter before the Board for consideration, shall disclose the nature of his interest at a meeting of the Board, have the disclosure recorded in the minutes of the meeting and shall not participate in any deliberation or decision of the Board relating to that matter.
- (2) Where a member of the Board discloses that he is a member or a policyholder of a specified insurance company and is to be regarded as interested in any matter relating to the insurance company, the disclosure shall, for the purposes of paragraph (1), be sufficient disclosure of his interest in any such matter after the date of disclosure.
- (3) A member may not attend, in person, a meeting of the Board in order to make a disclosure which he is required to make under this regulation if the member ensures that the disclosure is made by a notice, in writing, that shall be read and be considered at the meeting.

#### **7. Delegation by the Board.**

The Board may authorise, in writing, a member or a committee of the Board to perform, on its behalf, any of its functions specified in the authorisation.

#### **8. Use of the seal of Board.**

- (1) The fixing of the common seal of the Board on any document shall be authenticated by the signatures of either the Chairman of the Board or the Managing Trustee, in addition to the signature of one other member of the Board authorised by the Board, through a resolution of the Board, to act for that purpose:

Provided that in the absence of both the Chairman and the Managing Trustee, the Board may, by resolution, authorise any two members of the Board to fix the seal and authenticate the fixing of the seal.

- (2) A document purporting to be duly executed under the seal of the Board shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

## 9. Contributions.

- (1) All insurers and their policyholders shall, in respect of each Kenyan policy, pay a contribution to the Board to finance the payment of compensation and to defray the expenditure involved in or relating to the performance of the functions of the Board.
- (2) An insurer or a policyholder shall pay the contribution under paragraph (1), as the case may be, in such manner as the Board may, in consultation with the Minister, determine from time to time and declare by notice in the Gazette.
- (3) Every insurer and every policyholder shall contribute an equal sum of one-quarter per cent (0.25%), respectively, of the premium payable by the policyholder in respect of the relevant policy issued to him by the authorised insurance company.
- (4) Every insurer shall collect from its policyholder the contribution payable by the policyholder at the commencement of a policy issued to the policyholder and remit the contribution together with its own contribution to the Board, within thirty days of the issue or renewal of the policy.
- (5) Every insurer shall submit to the Board, in the prescribed form—
  - (a) a monthly return showing the total contributions payable to the Board for that month; and
  - (b) an annual return signed by its auditor showing the total annual contribution payable to the Board, within three months of the end of the financial year of the Board.
- (6) An insurer who does not submit monthly or annual returns as required under paragraph (5), shall be liable to pay a penalty charge of a sum equal to two and a half percent (2 ½%) per month until the day return is filed.
- (7) The Board may, through legal proceedings, recover from an authorised insurance company or its directors all sums due to it under this regulation.

## 10. Directions to the Board.

The Minister may, from time to time, give directions to the Board, in writing, relating to the performance of any of its functions under the Act and these Regulations, and the Board shall perform its functions in accordance with the directions given by the Minister under this regulation.

## 11. Insolvency of an insurance company.

- ~~(1) The Board shall not provide compensation to a policyholder under the Act and these Regulations unless the authorised insurance company that issued the Kenyan policy or policies has become insolvent.~~
- ~~(2) For purposes of these Regulations, an authorised insurance company shall be considered to be insolvent if—~~
- ~~(a) it is wound up by the Court under section 219 of the Companies Act;~~
  - ~~(b) it does not meet the solvency requirements prescribed in section 41 of the Act;~~
  - ~~(c) in the case of an insurance company carrying on general business, where a resolution for voluntary winding up is made in a meeting of creditors under section 286 of the Companies Act; or~~
  - ~~(d) it is wound up by the court at the instance of the Commissioner of Insurance under section 123 of the Act.~~
- ~~(3) Notwithstanding paragraph (1), the Board shall not provide compensation under this regulation—~~
- ~~(a) where the petition for the winding up of the insurance company by the court was presented before the 1st January, 2005; or~~
  - ~~(b) whether or not the Court has made an order for the winding up of the company after the resolution was passed, if the resolution was passed before the 1st January, 2005.~~

Regulation 11 deleted through the The Insurance (Policyholders Compensation Fund) (Amendment) Regulations, 2019. Reference Legal Notice No. 91/2019

## 12. Duty of the Board to determine and pay compensation

- (1) The Board shall, in consultation with the Minister, determine from time to time, the amount payable as compensation for different types or classes of insurance policies and pay such compensation to the policyholder as soon as is reasonably practicable after a claim is made.
- (2) The Board shall publish, by notice in the Gazette, the amount payable as compensation determined under paragraph (1) and the date the amount payable as compensation shall come into force, which shall not in any case, be earlier than the date of publication in the notice.

It is notified for the general information of the public that, pursuant to the provisions of section 179 of the Insurance Act and regulation 12 of the Insurance (Policyholders Compensation Fund) Regulations, 2010, the Board of Trustees of the Policyholders Compensation Fund gives notice that the amount payable as compensation on any one claim for all classes of insurance shall be capped at Kenya Shillings Two Hundred and Fifty Thousand (KShs. 250,000) until further notice. – Managing Trustee

Dated the 5th January, 2017.

[The Kenya Gazette Vol.CXIX – No.15, 3rd February, 2017. Gazette Notice No. 960 (MR/2580562)]

### **13. Eligibility for compensation.**

- (1) A policyholder shall not be eligible for compensation by the Board, in accordance with the provisions of the Act and of the Regulations, unless the policy of insurance held by the policyholder, at the material time, was a Kenyan policy.
- (2) A policyholder of a Kenyan policy who has been prejudiced as a consequence of the inability, due to insolvency, of the insurer issuing the Kenyan policy to meet any liability arising under the policy shall be entitled to make a claim for compensation to the Board.

### **14. Making a claim.**

- (1) A policyholder who is eligible for compensation may make a claim for compensation in the prescribed form and shall submit the form to the Managing Trustee.
- (2) A claim form submitted under paragraph (1) shall be accompanied by such other documents in support of the claim as the Board may require.
- (3) In making a claim for compensation a policyholder shall –
  - (a) observe utmost good faith by making a full and honest disclosure, to the Board, of all material facts relating to his claim; and
  - (b) provide any other information, whether on oath or otherwise, as may be required by the Board.
- (4) The Board may reject a claim and decline to pay any compensation of a policyholder who fails to comply with paragraphs (1), (2) or (3).

### **15. Time limit for making a claim.**

A policyholder who does not make a claim for compensation within two years of the insolvency of an authorised insurance company shall not be entitled to claim any compensation from the Board.

### **16. Conditions of compensation.**

- (1) The right of any policyholder to compensation under these Regulations shall be subject to compliance of the policyholder with any conditions, relating to the total or partial assignment of the policyholders rights under or in respect of the relevant Kenyan policy, imposed by the Board, including –
  - (a) any rights a policyholder may have in respect of any payments made by the policyholder to the insolvent insurance company as premiums, under the policy, after the insolvency; or
  - (b) any rights a policyholder may have against any other person in respect of any event giving rise to any liability of the company under the relevant policy.

- (2) Any payment made by any person, other than the Board, to the policyholder being a payment which is related to any liability of an insolvent company to the policyholder, may, if the Board so decides, be considered as payment, in whole or in part, of the compensation payable to the policyholder under the Act and these Regulations.

**17. Limitations to compensation.**

- (1) The Board shall not pay any amount as compensation to a policyholder who holds any Kenyan policy, on the insolvency of the insurance company which has issued the policy, if the liability of the company to the policyholder is duplicated by the liability of any other authorised insurance company which is not, for the purposes of these Regulations, insolvent.
- (2) For purposes of paragraph (1), the liability of an authorised insurance company towards a policyholder is duplicated by the liability of another authorised insurance company if the other company also has the liability, under the terms of any other Kenyan policy which on the date of the insolvency of the first company, to pay the policyholder in respect of the matter to which the liability of the first company relates.
- (3) The Board shall not pay any compensation to a policyholder where the Commissioner of Insurance has, pursuant to section 67C (2) of the Act, appointed a manager to assume the management, control and conduct of the affairs and business of an authorised insurance company which becomes insolvent thereafter, unless the claim relates to the liability of the said company arising out of an incident or event occurring before the date of appointment of the manager.