

Financial Services Development Regulations 2001

GN No. 171 of 2001

THE FINANCIAL SERVICES DEVELOPMENT ACT 2001

Regulations made by the Minister under sections 20(5), 23(3), 24(2), 45 of the Financial Services Development Act 2001

1. Short title

These regulations may be cited as the **Financial Services Development Regulations 2001**.

2. Interpretation

In these regulations-

"Act" means the Financial Services Development Act 2001.

PART I-QUALIFIED GLOBAL (INSURANCE) BUSINESS

3. Interpretation of Part I

In this part-

"captive insurance business" means insurance business where the insured is a related corporation of the insurer;

"general insurance business" means insurance business other than long term insurance business;

"insurance business"-

(a) means the business of undertaking liability by way of insurance, including reinsurance-

(i) to protect persons against loss or liability in respect of risks to which the persons may be exposed; or

(ii) to pay a sum of money or other thing of value upon the happening of an event; and

(b) includes captive insurance business;

"insurer" means a company holding a Category I Global Business Licence conducting insurance business;

"long term insurance business" means insurance business of any or substantially any one of the following classes-

(a) life assurance business;

(b) pension business;

(c) permanent health insurance business;

"policy holder" in relation to an insurance policy, means the person who is entitled to enforce any benefit provided for in the policy;

"reinsurance" means a contract whereby an insurer insures the risk insured by him, or part of that risk, with another insurer;

"related company" has the same meaning as in the Companies Act 2001.

4. Classification of insurance business

(1) Insurance business carried on by insurers shall be classified as-

- (a) long term insurance business; or
- (b) general insurance business.

(2) The classes of insurance business are defined in accordance with the First Schedule.

(3) The undertaking of liability under a contract whose principal object is life assurance business shall be taken to constitute the carrying on of that business, and no other, notwithstanding that the contract contains subsidiary provision giving cover for accident or disability benefits, or both.

(4) The reinsurance of risks under a contract of insurance shall be treated as insurance business of the class to which the contract would have belonged if it had been entered into by the reinsurer.

5. Stated capital of insurer

No insurer shall carry on insurance business unless its stated capital is not less than the amount set out in the second column of the Second Schedule in respect of the corresponding class of insurance business specified in the first column of that Schedule.

6. Transfer or amalgamation of insurance business

No insurer shall transfer or amalgamate any of its insurance business without the approval of the Commission.

7. Margin of solvency

(1) Every insurer shall-

- (a) have and maintain the margin of solvency determined in accordance with this regulation; and
- (b) shall furnish to the Commission at the end of its financial year a certificate of solvency in the form set out in the Third Schedule in accordance with the class of insurance business carried on by the insurer.

(2) Where the margin of solvency of an insurer is less than that required under paragraph (1), the insurer shall-

- (a) make good the deficiency without delay;
- (b) not assume any new risks unless the deficiency is made good.

- (3) Any risks assumed in contravention of paragraph (2) shall be null and void.
- (4) No insurer shall declare, distribute or pay any dividend-
- (a) where its margin of solvency is less than that required under paragraph (1);
 - (b) where the effect of such declaration, distribution or payment would be to reduce its margin of solvency to less than that required under paragraph (1).
- (5) The minimum margin of solvency of an insurer shall be determined-
- (a) in the case of an insurer carrying on general insurance and reinsurance business, the value of its admitted assets shall exceed the amount of its admitted liabilities by not less than US \$ 200,000 or 15 per cent of the premium income, net of reinsurance premiums in the preceding financial year, whichever is the higher;
 - (b) In the case of an insurer carrying on captive insurance business, the value of its admitted assets shall exceed the amount of its admitted liabilities by not less than US \$ 100,000 or 15 per cent of the premium income net of reinsurance premiums, in the preceding financial year, whichever is the higher;
 - (c) In the case of an insurer carrying a long term insurance business, the amount of its admitted liabilities in respect of policies issued shall not exceed the amount of its long term insurance fund, as certified by the insurer's actuary.
- (6) For the purpose of calculating the margin of solvency under paragraph (5)-
- (a) "admitted assets of an insurer" means any property, security, item or interest owned by it but shall not include-
 - (i) an asset that is mortgaged or charged for the benefit of a person other than the insurer, to the extent that it is so mortgaged or charged;
 - (ii) a loan to, debenture of, or share in any related company;
 - (iii) an unpaid premium that has become due to the insurer more than one year previously;
 - (iv) an intangible asset;
 - (v) operational assets, including supplies, furniture, motor vehicles, office equipment and computers in excess of their written-down values;

- (vi) prepaid expenses and deferred charges;
 - (vii) amounts owed and due by reinsurers for more than 6 months;
- (b) "admitted liabilities", subject to subparagraph (c) means-
- (i) in the case of an insurer carrying on long term insurance business, liabilities, shown in the financial statements and the valuation liabilities as certified by the insurer's actuary;
 - (ii) in the case of an insurer carrying on general insurance business, liabilities shown as current, contingent or prospective liabilities in the account of the insurer in respect of policies issued;
- (c) "admitted liabilities" shall not include -
- (i) a liability in respect of stated capital or a reserve in lieu of capital approved by the Commission;
 - (ii) a liability in respect of such matters as the Commission may by notice in writing direct.
- (7) An insurer shall make adequate provision in his accounts for liabilities in respect of unexpired risks, outstanding and incurred claims, including provisions for claims incurred but not reported, computed in accordance with internationally approved methods.
- (8) An insurer who carries on long term insurance business and another class of insurance business shall maintain and keep separate the relevant margin applicable to each class.

8. Investigation by insurer's actuary

- (1) An insurer carrying on long term insurance business shall, not less than once every 3 years, cause an investigation into its financial position to be made by its actuary.
- (2) AN investigation under paragraph (1) shall include-
 - (a) a valuation of the liabilities of the insurer attributable to the insurer's long term insurance business;
 - (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business, and where any rights of any long term insurance policy-holders to participate in profits relate to particular parts of a fund, a determination of any excess of assets over liabilities, in respect of each of those parts.
- (3) A copy of the report of the actuary shall be submitted to the

Commission within 6 months after the period to which the investigation relates.

- (4) The actuary's report shall include-
 - (a) a statement of the valuation basis used;
 - (b) a statement showing the extent to which account has been taken of the nature and term of the assets available to meet the liabilities valued;
 - (c) the actuary's opinion on the value of the assets mentioned in subparagraph (b);
 - (d) a list of the assets so mentioned and their values, saying any equities held separately; and
 - (e) a consolidated revenue account for the period covered by the report.
- (5) The basis of valuation adopted shall be such as to place a proper value upon the liabilities having regard to the mortality experience among the persons whose lives have been insured by the insurer, to the average rate of interest from investments and the expenses of management, including commission, and shall be such as to ensure that no policy is treated as an asset.
- (6) Where, after an investigation, it is established that there is a surplus which the actuary has recommended as available for distribution, the insurer shall not transfer or otherwise apply assets representing, any part of that surplus unless the insurer has allocated to policy-holders of participating policies at least 90 per cent of that surplus.

9. Long term insurance fund

- (1) Every insurer carrying on long term insurance business shall have and maintain a long term insurance fund.
- (2) An insurer shall pay all monies received in respect of any class of long term insurance business carried on by it into an appropriately named sub-fund of the long term insurance.
- (3) The long term insurance fund of an insurer shall not be liable or chargeable for or in respect of any contract or transaction of the insurer other than that of the long term insurance business carried on by the insurer and shall not be applied directly or indirectly for any other purpose.

PART II- REGISTERED AGENT

10. Appointment of registered agent

- (i) A company which intends to apply for a Category 2 Global Business Licence shall, by a resolution of its directors appoint a registered agent in Mauritius.

- (2) Every registered agent shall, within 14 days of his appointment apply to the Commission for a Registered Agent Licence.
- (3) An application under paragraph (2) shall -
 - (a) contain such information and particulars as may be acquired therein and shall be made in such form and in such manner as may be approved by the Commission.
 - (b) be dealt with in the same manner, as is provided for under section 20(3) and (4) of the Act.
- (4) Where an application for a Registered Agent Licence is approved by the Commission, the Chief Executive shall, after payment by the applicant of the annual fee specified in item 4 of Part II of the Fourth Schedule, issue the Registered Agent Licence on behalf of the Commission subject to such terms and conditions as the Board may impose.
- (5) Where the annual fee in respect of a Registered Agent Licence is now paid within one month after the date when payment becomes due the Commission may, in writing, notify the holder of the licence that the licence has lapsed.

11. Change of registered agent

- (1) A company holding a Category 2 Global Business Licence may, by a resolution of its directors, change its registered agent.
- (2) The company shall, within 7 days of the resolution changing its registered agent, give written notice simultaneously to the Commission and to the Registrar of the change and of the name and address of the new registered agent.

12. Resignation of registered agent

- (1) Where a registered agent proposes to resign as registered agent in respect of a company holding a Category 2 Global Business Licence and is unable to agree with the company on his replacement, he shall give notice in writing at least 60 days before his resignation-
 - (a) to the director or officer of the company at his last known address;
 - (b) where he has no notice or knowledge of any change in the name and address of any director or officer of the company from the one on his records, to the person from whom he last received instructions concerning the company;
- (2)(a) A copy of the letter of resignation shall be submitted forthwith simultaneously to the Commission and to the Registrar.
- (b) The resignation of the registered agent shall take effect on the sixtieth day after submission of the letter of resignation to the Commission and to the Registrar.

(3) Where-

- (a) before the expiry of the notice by the registered agent under paragraph (1), the company fails to inform the Commission and the Registrar of any change of name and address of his registered agent.
- (b) The Registrar has reasonable cause to believe that a company holding a Category 2 Global Business Licence does not have, or is likely to find itself without a registered agent.

The Registrar shall cause to be published in the Gazette a notice that the company is to be removed from the register unless the company notifies him within 30 days from the publication of the notice of the name and address of its registered agent.

(4) The Registrar shall-

- (a) in accordance with the Companies Act 2001, remove from the register any company holding a Category Global Business Licence which fails to comply with a notice under paragraph (3); and
- (b) cause to be published in the Gazette a notice to that effect.

PART III - MISCELLANEOUS

13. Fees payable to Commission

(1) There shall be paid to the Commission-

- (a) at the time an application for a Category I Global Business Licence or a Category 2 Global Business Licence is made, a processing fee specified in Part I of the Fourth Schedule;
- (b) for the purposes of sections 20(5) and 24(2) of the Act and regulations 10(4), in respect of the licence specified in the first column of Part II of the Fourth Schedule, the annual fee corresponding to the licence, is specified in the second column of that Schedule;

(2) The annual fee under paragraph (1)(b) shall become due for payment at the time the licence is just issued and in respect of every subsequent year, not later than 15 days before the expiry date of the licence.

14. Repeal

The following regulations are repealed-

- (a) The Mauritius Offshore Business Activities (Companies) Regulations 1995;
- (b) The Mauritius Offshore Business Activities (Fees) Regulations 1992.

15. Commencement

These regulations shall come into operation on 1 December 2001.

Made by the Minister on 29 November 2001.

FIRST SCHEDULE
(regulation 4(2))

Definition of classes of insurance business

"life assurance business" means the business of undertaking liability under the contracts upon human life or contract to pay annuities on human life, but excludes permanent health insurance business and personal accident insurance business;

"pension business" means the business of effecting and carrying on of-

- (a) contracts to manage pension funds or the investment of pension funds;
- (b) contracts of the kind mentioned in paragraph (a) that are combined with contract of insurance covering either conservation of capital or payment of a minimum interest; or
- (c) contracts on a group basis to provide pensions during the life-time of employees as from their retirement and to their dependants should they die in service or on pension;

"permanent health insurance business" means the business of undertaking liability under contracts to provide specified benefits against risks of persons incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract;

"accident insurance business" means the business of undertaking liability under contracts, otherwise than incidentally on a contract whose principal object is some other class of insurance business to pay a certain state or certain sums of money to, or provide any other benefit for particular person in the event of an accident or sickness causing the death or injury or disability of a particular person.

SECOND SCHEDULE

(regulation 5)

Minimum stated capital

Class of Insurance Business

Amount

General Insurance Business	US \$ 200,000 or equivalent in another currency
Long Term Insurance Business	US \$ 250,000 or equivalent in another currency
Reinsurance Business	US \$ 300,000 or equivalent in another currency
Captive Insurance Business	US \$ 100,000 or equivalent in another currency

THIRD SCHEDULE
(regulation 7)

FORM A

Certificate as to solvency of an insurer who carries on long term insurance business

I hereby certify that to the best of my knowledge and belief that the admitted liabilities as at in respects of policies issued under each class of long term insurance business by do not exceed the amount of the respective insurance funds.

Date.....

.....
Actuary of Insurer name and signature

FORM B

Certificate as to solvency of an insurer who carries on general insurance business

We hereby certify that to the best of our knowledge and belief, the value of the admitted assets as at..... in respect of all classes of general insurance business carried on by exceeds the amount of the admitted liabilities in respect of those classes of insurance business by the prescribed amount.

.....
Chairman name and signature

.....
Director name and Signature

.....
Insurance Manager
(as applicable)

.....
Auditor name and Signature

Name and Signature

Date:

FOURTH SCHEDULE

(regulations 10(4) and 13)

PART I - Processing fee

Processing	Fee (US \$)
1. Category I Global Business Licence	500
2. Category 2 Global Business licence	Nil
3. Nominee Shareholding Company Licence	250

PART II - Annual fee

Licence	Fee (US \$)
1. Category I Global Business Licence	1500
2. Category 2 Global Business Licence	135
3. Management licence	1500
4. Registered Agent Licence	1500
5. Nominee Shareholding Company Licence	250