

Insurance Act 2005

Purpose

The Insurance Act 2005 (the “Act”), which repeals the Insurance Act 1987, will improve the soundness of the insurance market in Mauritius. The Act, which has been prepared after extensive consultation with the stakeholders and the industry at large, aims essentially to enhance the regulatory and supervisory framework for the insurance industry and to provide greater protection to policyholders and other beneficiaries. The Act provides for the application of the International Association of Insurance Supervisors’ (IAIS) standards and principles and focuses on specific regulatory issues relating to capital adequacy, solvency, corporate governance, early warning systems and the protection of policyholders.

Objects of the Act

In addition to establishing a framework for the regulation and supervision of the insurance industry, the objects of the Act are:

- a. to provide for the licensing of insurers and other insurance operators;
- b. to promote confidence in the insurance industry;
- c. to ensure fair treatment to policyholders;
- d. to reduce as far as reasonably possible the risk that the insurance business is used in furtherance of, or for a purpose connected with, a financial crime; and
- e. to ensure an orderly growth of the insurance industry in Mauritius.

Administration of the Act

The Act shall be administered by the Financial Services Commission. In discharging its functions under the Act, the Financial Services Commission will be required to strike an appropriate balance between the public policy aims of ensuring strong financial institutions and public protection on the one hand and competitiveness, entrepreneurial spirit and efficiency on the other.

Classification of insurance business

Insurance business under the Act is classified into two broad categories, namely Long Term Insurance Business and General Insurance Business. The different classes of insurance businesses falling under each category are set out in the First Schedule to the Act. It is important to point out that pending the enactment of any law regulating pension schemes, long term insurers shall be entitled to continue to conduct pension fund business.

Licensing of insurance business

The Act provides that no person shall carry on or hold himself out as carrying on insurance business except under the authority of a licence issued by the Financial Services Commission. The Act also provides for the integration of domestic insurance business and global insurance business which under the Act is known as external insurance business.

Composite insurers

The separation of long term and general insurance business is one of the fundamental requirements of IAIS standards and core principles. The purpose is to provide better consumer protection. General insurance business is exposed to rapid economic fluctuations and can be very risky. Policyholders of long term insurers must be protected from this type of exposure to risk. Part II of the Act achieves this by restricting an insurer, other than a reinsurer conducting exclusively reinsurance business, from carrying on both long term insurance business and general insurance business. The Act provides for transitional provisions that would allow existing composite insurers to continue carrying on both long term and general insurance business until 1 January 2011.

Fit and proper test

In accordance with international best practices, including IAIS requirements, insurers should ensure that their officers and controllers are fit and proper persons. As a result, to be entitled to a licence, an applicant, its substantial shareholders and officers must satisfy the fit and proper test and must have, *inter alia*, necessary financial resources and an organisation and management capacities that are adequate for conducting insurance business.

Capital and other requirements

The IAIS Core Principles require that an insurer shall maintain a minimum level of capital that reflects the size, complexity and business risks of the insurer. The Act strengthens the existing standards concerning both funding and capital requirements of insurers. These requirements are based on each insurer's own risk profile. This concept of risk based capital means that the insurer's appetite for underwriting risks as well as its own choice of business risk will automatically influence the capital requirement for that particular insurer.

The Act also deals in particular with the solvency requirements of licensed insurers. An insurer shall have to maintain its business in a financially sound condition generally by conducting its affairs so as to be in a position at all times to meet its liabilities and to keep the solvency margin required. The solvency margin will be specified in solvency rules to be made by the Financial Services Commission.

Control on shareholding of insurers

The Act also requires some degree of transparency on the shareholdings of an insurer. There are certain restrictions imposed on an insurer with regard to its shares and debentures. An insurer shall not except with the approval of the Commission issue or allot any of its shares in the name of any nominee. Moreover, no insurer shall, without the approval of the Commission, acquire or hold such number of shares in an insurer so as to make him a significant shareholder in that insurer. In short, a significant shareholder means a person who alone or with an associate holds shares that represent 20% or more of the stated capital or voting rights of an insurer or who may determine the appointment of 20% or more of the directors of an insurer. Under the transitional provisions of the Act, a significant shareholder of an existing insurer shall be deemed to have obtained the Commission's approval. Significant shareholders are also subject to the fit and proper test.

Corporate governance

The obligation for the directors and officers of an insurer to be fit and proper persons is to ensure that only competent and *bona fide* people who are likely to behave with integrity are engaged in insurance business in Mauritius. The Act sets out some additional duties for directors or members of the governing body of an insurer, including the duty to establish internal control systems, the duty to monitor compliance with the laws and to manage conflict of interests. Insurers will be required to set up sub-committees that shall include a corporate governance committee, an audit committee and a risk management committee and such other sub-committees as may be specified.

Early warning signals

The Act places some degree of regulatory responsibility on professionals such as auditors and actuaries. Auditors and actuaries must report to the Commission, an insurer's non-compliance with the legislation of which they become aware. They have to ensure that the business is managed according to international actuarial and accounting standards and that the interests of the policyholders and other beneficiaries are safeguarded. These measures together with new statutory returns constitute "early warning" signals. A review of the information flows by way of statutory returns, actuaries' and auditors' reports to the Financial Services Commission and on-site inspections are all envisaged under the Act. The objective is to identify signals as early as possible concerning adverse changes in an insurer's economic health.

Transfer & amalgamation

Part VI of the Act deals with transfer and amalgamation of insurers and their businesses. No transaction to which an insurer is a party and which constitutes a transfer of an insurer's business or an amalgamation of an insurer's business to the business of another insurer shall have effect unless the Commission's approval is obtained.

Winding up of insurers & creditors' protection

A robust supervision can significantly reduce the number of insurers that would otherwise fail, risk can only be managed not eliminated. Part VII of the Act deals with the insolvency and winding up of an insurer, either voluntarily or by the Court. The Act also provides for rules in respect of application of the company's funds on winding up and on distribution of assets. Rights of policyholders and creditors in case of winding up are addressed under the Act

Licensing of service providers

All insurance managers, agents and brokers must be licensed and all insurance salespersons have to be registered with Commission. All insurance managers, agents and brokers are subject to regulation and supervision by the Financial Services Commission and will be required to comply with several obligations.

Protection of policyholders

Part IX of the Act contains provisions relating to the protection of policyholders. Insurers or their insurance agents will be required to provide policyholders a summary of the salient features of the policy. Whenever a policy relating to the protection of creditors is entered into, the person who is required to make that policy should be given freedom to make his own choice as to the insurer with whom he wants to deal and as to whether he wishes to enter into a new policy or use an existing policy or use a combination of both options. This provision shall, of course, not apply to a loan granted to a policyholder by a long term insurer against a security of a long term insurance policy.

The Act also requires insurers who have issued policies with profit to issue to policyholders an annual statement including a report on the performance of the investments made. The Commission is empowered to declare a particular insurance business practice as undesirable business practice and take necessary action to have such undesirable practices discontinued.

Compensation Fund

The Act sets out some specific provisions with regard to the setting up of a compensation fund for the insurance industry that will be known as the Insurance Industry Compensation Fund. The Act sets out the provisions regarding the contribution to and management of the Compensation Fund respectively.

Inspection & investigation

Under the Financial Services Development Act 2001, the Commission is endowed with appropriate powers to carry out an investigation of the affairs of its licensees and registered persons. This Act further consolidates these provisions in Part X. The Commission is empowered to carry out on-site inspections and investigations on the premises of the insurer. While on-site inspections are routine exercises to check compliance, an investigation may be conducted where there is a breach or suspected breach of the law or rules. The Commission may apply to a Judge in Chambers for an order to freeze the assets of an insurer or any of its substantial shareholder where it has reasonable grounds to suspect that a licensee has committed an offence under this Act or has been involved in a financial crime.

Administrator and Conservator

Part XI of the Act provides for the appointment of an Administrator and a Conservator. An administrator would be appointed where the licence of an insurer has been suspended or revoked. A Conservator would be appointed whenever the Commission has reasonable ground to believe that the insurer is not in a financial sound condition or is not complying with other prudential requirements of the Act or where the interests of policyholders so require it.

Termination of licence

Part XII of the Act deals with the termination of licence of an insurer. Under this Part an insurer may surrender its licence after giving the required notice to the Commission. The licence of a licensee may be revoked by the Commission after having gone through the due process set out under Part XIII of the Act.

Sanctions and due process

Part XIII of the Act sets out the sanctions applicable to insurers who are in non-compliance and also the due process mechanism which an insurer may avail of where the insurer is dissatisfied with a decision of the Commission.

Transitional provisions

The Act makes provision for existing insurers or reinsurers registered under the Insurance Act 1987 or holding a Category 1 Global Business Licence to be deemed to be licensed under the Act, for a transitional period ending on 1 January 2011. Similar provisions apply to existing insurance agents, brokers, salesmen and captive management companies although the transitional period in their case ends on 1 January 2007. To alleviate the financial burden that might be entailed by the separation of insurance business of an existing composite insurer, the related transfer of property and assets shall be exempted from duty under the Registration Duty Act.

Proclamation

The Insurance Act shall come into operation on a date to be fixed by proclamation and different parts of the Act may be proclaimed on different dates.