THE BANK
OF
GUYANA

CONSUMER GUIDE TO THE INSURANCE ACT, NO. 17 OF 2016 AND REGULATIONS NO. 1 OF 2018

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1.0 INTRODUCTION

Insurance consumers in Guyana will benefit as a result of a number of specific provisions in the new Insurance Act and Regulations. The Insurance Act 2016 covers two main areas: solvency and market conduct.

1.1 Solvency Regulation

Solvency regulation has the objective of making sure that licensed insurers do in fact have sufficient financial resources to satisfy all of the insurance obligations they have taken on. Their financial positions are monitored and risk levels are assessed by the Bank of Guyana. Where risk levels are beginning to become overly significant in relation to financial resources, the Act, through its various provisions, requires an insurer to either increase its financial capability, or to reduce its risk to a level which is appropriate to its financial strength.

1.2 Market Conduct Regulation

Insurance market conduct regulation is focused not on financial strength but rather on the treatment of consumers in relation to the insurance contractual provisions that are applicable to them. The market conduct provisions of the new Act and Regulations will take account of the fact that insurance is a unique product, being both critically important from a consumer perspective, and at the same time being subject to complex policy terms.

The new Act therefore includes a number of key provisions requiring insurers to have in place processes and procedures, some of which must be

approved by their boards of directors, which are intended to ensure that policyholders are receiving fair treatment.

2.0 THE COMPLAINT RESOLUTION PROCESS

One of the most important areas designed to strengthen the position of consumers is a complaint handling process that is detailed in the law:

a. Every insurer must appoint an internal ombudsman to investigate and rule on complaints submitted by policyholders.

b. The internal ombudsman cannot have a conflict of interest when investigating complaints. For example, it would not be acceptable for an insurer to appoint the head of its claims department as its ombudsman because a significant proportion of complaints will involve that very department.

c. The insurer must clearly indicate the contact details for its ombudsman on its website and in any enquiries from members of the public.

d. A consumer who is of the view that a claim has been unfairly declined, or that the amount of the claim payment was less than the amount to which they are fairly entitled, or that in any other respect the provisions of their insurance contract have been unfairly dealt with, they may submit the details of their complaint to the insurer's ombudsman for investigation.

e. An insurer has a maximum of six weeks to investigate a complaint. When the internal ombudsman has made a decision as to the validity

of the complaint, the complainant must be notified as to the response by way of a letter, referred to in the Act as a "final position letter". If the insurer is of the view that the complaint is not valid, the final position letter must clearly set out company's reasons for arriving at that position.

f. Along with a final position letter, the insurer must advise a complainant that they are entitled to submit a copy of the correspondence between themselves and the insurer, plus a copy of the final position letter, to the Insurance Supervision Department at the Bank of Guyana for review. The insurer also has to provide the claimant with the name and address of the person at the Bank to whom the material could be sent.

g. The experience in many countries is that the market conduct and fairness provisions in the law, the requirement for a formal, time-bound review by the insurer, and the requirement for a final position letter to each complainant, will result in a large proportion of claims being resolved at the insurer level.

h. Complaints that are continued and submitted to the Bank will be independently and objectively reviewed by the Bank, with particular attention to the "treating customers fairly" provisions of the Insurance Act.

i. If Bank personnel conclude that a complaint has not been fairly resolved, the insurer will be so advised. The Act makes it clear, however, that the Bank cannot compel an insurer to pay a specific

claim. A binding determination is only able to be prescribed by a court of law.

j. There is one final, potential step for an aggrieved complainant and that is to a hearing with an Arbitration Board provided for under the Act. However, a Board hearing does not have to be convened by the Bank if it is of the view that the complaint is not a valid one – for example, if the Bank has not supported the validity of the claim after its investigation.

k. A positive Arbitration Board finding would put a complainant in a strong position to go back to the insurer for redress, or to go to court. As with the Bank review result, however, an Arbitration Board cannot compel an insurer to pay a claim that the insurer believes should be resisted. In the final event, only a court can require an insurer to pay a claim which it considers to be invalid under the terms of the contract.

3.0 CONSUMER PROTECTION ENHANCEMENTS

In addition to the complaint resolution process, the new Act includes a number of other provisions to enhance the position of consumers. Some of these are:

a. The Board of Directors of every insurer must approve policies and procedures intended to ensure that policyholders are fairly treated in accordance with the contractual arrangements applicable to them and that the provisions of the Act are fully complied with.

b. Boards of directors must also approve procedures with respect to the fair treatment of customers, including the disclosure of information, prompt assessment and payment of legitimate claims and the handling of customer complaints as set out above.

c. Insurers are also responsible for making sure that intermediaries from whom they wish to accept business, have been screened for suitability prior to entering into contracts. Insurers must also reasonably monitor the conduct of their intermediaries' activities on an on-going basis.

d. Life insurance premium cheques through intermediaries must be made payable to the life insurer. If a life insurance premium is paid in cash it must be transferred to the insurer within five days of receipt.

e. In the case of general insurance the tradition is that premiums are paid to brokers, for remittance to the insurer. However, the law stipulates that premiums received by brokers are funds held in trust by the broker for the insurer. That is to say, the premiums do not belong to the broker, they belong to the insurance company. Every broker must maintain one or more trust accounts, completely separate from their personal accounts, which are used solely for temporarily holding premium funds in transit to the insurer or otherwise being dealt with in accordance with the broker/insurer contract.

f. When business has been placed through a broker, the broker must provide a receipt to the policyholder within 5 days, indicating the name of the insurer.

g. If a policyholder has a receipt for coverage, the insurer will be on the risk, whether or not the premium has been remitted to the insurer by the broker.

h. All intermediaries are subject to additional legal provisions and regulations designed to require ethical, professional behaviour and fair treatment of consumers.