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FRIDAY 28TH SEPTEMBER, 2018

THE OFFICIAL GAZETTE 28TH SEPTEMBER, 2018
LEGAL SUPPLEMENT — A



ACT NO. 11 OF 2018

INSURANCE (AMENDMENT) ACT 2018

I assent.



David Granger,
President.

2018.09.28

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement.
2. Insertion of new Parts XX, XXI and XXII in the Principal. Act.

An Act to amend the Insurance Act 2016.

A.D.2018 Enacted by the Parliament of Guyana:-

Short title and commencement.
No.17 of 2016.

1. This Act, which amends the Insurance Act 2016, may be cited as the Insurance (Amendment) Act 2018 and shall be deemed to have come into operation on the 16th day of April 2018.

Insertion of new Parts XX, XXI and XXII in the Principal Act.

2. The Principal Act is amended by the insertion immediately after section 262 of the following Parts as Part XX, Part XXI and Part XXII –

“

PART XX

CONTRACTS FOR LONG-TERM BUSINESS

Contract for long-term insurance.

263. (1) Subject to subsection (3) of section 264, an insurer shall not enter into a contract for the purpose of carrying on long-term insurance business unless the insurer –

- (a) at the time the contract is entered into; or
- (b) not later than seven days after the contract is entered into,

serves on the other party to the contract a notice containing the information specified in subsection (2).

(2) A notice mentioned in subsection (1) –

- (a) shall specify the nature and type of the policy; and
- (b) shall have annexed to it a form of notice of cancellation for use by the other party to the contract.

(3) An insurer who contravenes this section commits

an offence but contravention does not invalidate the contract.

Notice of
cancellation.

264. (1) A person who has entered into a contract for long-term insurance with an insurer may serve notice of cancellation on the insurer —

- (a) not later than ten days from the date on which he receives a notice mentioned in section 263; or
- (b) not later than ten days from the expiration of the day on which he first became aware that the contract was entered into,

whichever is the later.

(2) Subsection (1) does not apply where an insurer ought to have served a notice under section 263(1) and failed to do so but does so before cancellation of the contract.

(3) A notice of cancellation need not be in the form attached to the notice required to be served under section 263(1) and it is sufficient if the notice of cancellation indicates a desire to withdraw from the contract.

(4) Service of a notice of cancellation operates —

- (a) as a rescission of a contract, if it is served after the contract has been entered into; and
- (b) as a withdrawal of the offer in any other case.

(5) Where a contract has been rescinded or an offer has been withdrawn as a result of the service of a notice of cancellation, any moneys paid by way of premium or otherwise, to the insurer for the purpose of receiving the moneys, are recoverable from the insurer as a debt in civil

proceedings.

Long-term rates.

Type A
Schedule 2.

265. An insurer carrying on long-term insurance business shall not issue any policy under Type A of Schedule 2 unless the rate of premium chargeable under the policy is a rate which has been approved by its actuary as being suitable for the class of policy to which the policy belongs.

Notice
regarding proof
of age.

266. Subject to section 267, where a company issues a life policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.

Procedure where
company declines
to accept proof.

267. (1) Where a company declines to accept the proof of age tendered in respect of a policy the policy-holder may apply to a Judge in chambers, by summons for an order directing the company to accept the proof tendered.

(2) The Judge in chambers may upon an application made to him under subsection (1), make such order in relation to the application as the Judge thinks just.

(3) Every order under this section shall be binding on the company and shall be complied with.

Misstatement of
age and non-
avoidance of
policy.

268. (1) The following have effect in instances where the age of a person has been misstated in respect of a policy-

- (a) a policy is not avoided by reason only of a misstatement of the age of the person whose life is insured;
- (b) where the true age as shown by the proof is greater than that on which the policy is based, the company may vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age;
- (c) where the true age as shown by the proof is less than that on which the policy was based, the company shall-
 - (i) vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
 - (ii) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if

the policy had been based on the true age and repay the policy-holder the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(2) A policy shall not be avoided by reason only if any incorrect statement (other than a statement as to the age of the person whose life is insured) made in any proposal or other document on the faith of which the policy was issued or reinstated by the company unless the statement-

- (a) was fraudulently untrue; or
- (b) being a statement material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the person whose life is insured, whichever is the earlier.

Minors.

269. (1) A minor who has attained the age of ten years but has not attained the age of sixteen years may, with the written consent of his parent or of a person standing *in loco parentis* to the minor –

- (a) effect a policy upon his own life or upon another's life in which he has an insurable interest; or
- (b) take an assignment of a policy.

(2) A minor who has attained the age of sixteen

years may —

- (a) effect a policy upon his own life or upon another's life in which he has an insurable interest; or
- (b) take an assignment of a policy,

and, subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policy-holder in relation to a policy of which he is the holder as he would be if he were of full age.

(3) A minor who has attained the age of sixteen years may assign or mortgage a policy with the prior consent in writing of his parent or of a person standing *in loco parentis* to the minor.

Designation of beneficiaries generally.

270. (1) The provisions of this section and sections 271 to 279, inclusive, subject to anything to the contrary contained in these sections, apply in respect of policies.

(2) A policyholder may at the time the policy is taken out or at any time after that time designate his personal representative or a named person to be the beneficiary under his policy and may, subject to section 272, alter or revoke the designation by declaration in writing.

(3) A designation in "favour of heirs", "next of kin", "estate" or similar designation shall be deemed to be a designation of the personal representative of the policyholder.

Irrevocable designation of beneficiaries.

271. (1) Subject to subsections (4), (5) and (6) a policyholder may, in writing, by declaration filed with the

insurer at the time the policy is taken out, designate irrevocably a named person to be beneficiary under the policy and, in such a case —

- (a) the policy-holder subject to section 281, may not during the life-time of the named beneficiary alter or revoke the designation without the consent of the beneficiary; and
- (b) the moneys payable under the policy are not subject to the control of the policy-holder or the creditors of the policyholder and do not form part of his estate.

(2) Notwithstanding subsection (1)(a), consent of the beneficiary is not required where the beneficiary is a former spouse and the marriage ended in divorce or, as the case may be, the common law union has come to an end.

(3) Where the insured purports to designate a beneficiary irrevocably in a declaration that has not been filed with the insurer as required by subsection (1) or in a will, the designation has the same effect as if the insured had not purported to make the designation irrevocable.

(4) An irrevocable designation may only be made by a policy-holder in favour of a spouse, a common law spouse or to a child.

(5) A designation shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and signed by

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the policy-holder and there is sufficient evidence that it was explained to the policy-holder that the designation was irrevocable.

Designation of beneficiaries of wills.

272. A designation by a will does not affect a designation made under a policy.

Trusts for beneficiaries.

273. (1) A policy-holder may, in writing, by contract or by declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by declaration in writing.

(2) A payment by an insurer to a trustee for a named beneficiary discharges the insurer from payments to the beneficiary to the extent of the payment.

Beneficiaries predeceasing policy-holder.

274. (1) Where under section 270, by a contract, or a declaration, filed with the insurer, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy predeceases the policy-holder and no provision is made in the contract or agreement or declaration for the disposition of moneys payable under the policy in the event of the beneficiary predeceasing the policy-holder then, without limiting or affecting the application of section 271, the moneys payable under the policy shall vest in the following persons in the following order —

- (a) in the surviving beneficiary, if any;
- (b) in the surviving beneficiaries in equal shares, if there is more than one surviving beneficiary;
- (c) in the policy-holder or his personal representatives, if there are no surviving beneficiaries.

(2) Where two or more beneficiaries are designated otherwise than alternatively, and no provision is made as to the quantum of their respective shares of the moneys payable under the policy, then, they are entitled to the moneys in equal shares.

Enforcement by
beneficiary trustee.

275. A beneficiary may for his own benefit and a trustee appointed pursuant to section 273 may, in accordance with the terms of the contract or declaration, as the case may be, enforce payment of moneys payable under a policy even though there is no privity of contract, but the insurer may invoke against the beneficiary or trustee any defence against the policy-holder or his personal representative.

Status of insurance
moneys where there
is a designated
beneficiary.

276. (1) Where a beneficiary has been designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, does not form part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While a designation in favour of a spouse, a common law spouse or child of a policy holder or any of them, is in effect, the rights and interests of the policy-holder in the insurance money and in the contract are exempt from execution or seizure.

Assignment of
policy where there is
a designated
beneficiary.

277. (1) Where a beneficiary is not designated irrevocably, the policy-holder may assign, exercise rights under or in respect of, surrender or otherwise deal with the

contract as provided in the contract or in this Part or as may be agreed upon with the insurer.

(2) Where a beneficiary is designated irrevocably the policy-holder may not assign the policy, use the policy as a security, surrender it or otherwise deal with it without the consent in writing of the designated beneficiary.

Entitlement to dividends and bonuses.

278. (1) Notwithstanding the designation of an irrevocable beneficiary, the policy-holder is entitled, while living, to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Unless the policy-holder otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

Effect of assignment of policies on beneficiaries.

279. (1) An assignee of a contract who gives notice in writing of the assignment to the head office of the insurer has priority of interest as against —

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably as provided in section 271 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests

of the assignee.

(3) Where a contract is assigned absolutely, the assignee has all the rights and interests given to the policy-holder by the contract and by this Part and shall be deemed to be the policy-holder.

(4) A provision in a contract to the effect that the rights or interests of the policy-holder, or, in the case of group insurance, the group life insured, are not assignable is valid.

Provisions relating to state of health of insured.

280. (1) Nothing in any term or condition of a life policy in any law relating to insurance shall operate to exempt an insurance company from liability under the policy or to reduce the liability of the company under the policy on the ground of any manner relating to the state of health of the person whose life is insured, other than the ground of the proposer's having, when making the proposal or after the making of the proposal and before the making of the contract

- (a) made an untrue statement of his knowledge and belief as regards the matter; or
- (b) failed to disclose to the company something known or believed by him as regards that matter.

(2) An insurer may petition the Bank for a waiver of subsection (1) in situations where subsection (1) may place too onerous a burden on the insurer.

PART XXI

PROTECTION OF POLICIES

Application of
debts.

281. (1) The property and interest of any person in a policy effected upon his own life is not liable to be applied or made available in payment of his debts by any judgment, order or process of any Court.

(2) In the event of a person who has effected a policy on his own life dying, the moneys payable upon his death under or in respect of such policy shall not be applied or made available in payment of his debts by any judgment, order or process of any Court or by retainer by an executor or administrator or in any other manner whatsoever, except by virtue of a contract or charge made by the person whose life is insured or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

Pro-rata condition
of average.

282. (1) Where a contract of insurance contains a *pro rata* condition of average, the condition is of no effect unless, before the contract is entered into or before the policy-holder can cancel the policy without penalty, the insured in writing on a form approved by the Bank informs the policy-holder of the nature and effect of the condition.

(2) With respect to residential properties, the condition of average shall be effective only in cases where

the insured value of the property is a certain percentage less than the fair value of the property. The Bank shall determine the minimum percentage level, the difference in percentage between the fair value and the insured value, in which the condition of average can apply.

PART XXII
PAID-UP POLICIES, SURRENDER VALUES
AND NON-FORFEITURE

Paid-up policy. 283. (1) A policy-holder who desires to discontinue further premium payments on a policy on which not less than three years of premiums have been paid shall, if the policy has a cash surrender value, on application to the company be entitled to receive, instead of that policy, a paid-up policy.

(2) The paid-up policy shall be payable upon the happening of the contingency upon the happening of which the amount insured under the original policy would have been payable.

Surrender value. 284. Notwithstanding the terms of a particular policy, the owner of a policy that has been in force for at least three years is, on application to the company, entitled to surrender the policy and to receive not less than the cash surrender value of the policy less the amount of any debt owing to the company under, or secured by, the policy.

Non-forfeiture. 285. The Bank may, on application by a company, if in his opinion the payment in cash of surrender values as required by section 284 would be prejudicial to the financial

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stability of the company or to the interests of the policy-holders of that company, suspend or vary, for such period and subject to such conditions as the Bank thinks fit, the obligation of the company to pay those surrender values.”.

Passed by the National Assembly on the 12th July, 2018.



S.E. Isaacs,

Clerk of the National Assembly.

(BILL No. 3/2018)