

Government Circular No.1991/0048



Financial Supervision Act 1988

LIFE ASSURANCE (COMPENSATION OF POLICYHOLDERS) REGULATIONS 1991¹

Coming into Operation: 1st February 1991

In exercise of the powers conferred on the Treasury by section 21 of the Financial Supervision Act 1988,¹ and of all other powers enabling it in that behalf, the following Regulations are hereby made: —

Editorial Note: This instrument, made under the Financial Supervision Act 1988, is continued by virtue of Article 2(2) of SD 366/08 (as amended by SD 590/08) made under section 53 of the Financial Services Act 2008.

PART 1 - INTRODUCTION

1 Citation and commencement

- (1) These Regulations may be cited as the Life Assurance (Compensation of Policyholders) Regulations 1991 and shall come into operation on the 1st February 1991.
- (2) The Scheme established by these Regulations is to be known for all purposes as the “Policyholders Compensation Scheme”, and in these Regulations is referred to as “the Scheme”.

2 Interpretation

- (1) In these Regulations —
 - “**the Act**” means the Financial Supervision Act 1988;
 - “**authorised insurer**” means an insurer authorised, or deemed to be authorised, under section 8 of the Insurance Act 2008 to carry on insurance business;²
 - “**the fund**” has the meaning given by regulation 4(1);
 - “**insolvency**” and “**insolvent**” shall be construed in accordance with paragraph (3);

¹ 1988 c.16

- “**insolvent insurer**” has the meaning given by regulation 9;
- “**long-term business**” means insurance business falling within Class 1 or 2 within the meaning given in regulation 2(2) of the Insurance Regulations 1986², and for the avoidance of doubt does not include insurance business within class 10 (reinsurance of contracts within classes 1 and 2);
- “**participant insurer**” has the meaning given in regulation 5;
- “**policyholder**” includes any person having any interest in any sum falling due under a protected contract;
- “**protected contract**” means a contract of insurance (whether or not evidenced by the issue of a policy) effected by a participant insurer —
- (a) after the commencement of these Regulations, the effecting or carrying out of which constituted the carrying on of long-term business; or
 - (b) between the 4th April 1988 and the commencement of these Regulations, if that contract was evidenced by a policy which was a Protected Policy under the Voluntary Scheme;
- “**the Scheme Manager**” has the meaning given by regulation 3;
- “**Voluntary Scheme**” means the Scheme set out in the Schedule.
- (2) For the purposes of these Regulations an insurer becomes insolvent —
 - (a) on the making of a winding-up order against it; or
 - (b) where it is deemed to be unable to pay its debts by virtue of section 13(7) of the Insurance Act 2008; or³
 - (c) in the case of an insurer to which regulation 5(2) applies, on the passing of a resolution in accordance with the Companies Acts 1931 to 1986 for the voluntary winding up of the company other than for the purpose of reconstruction or amalgamation with another insurer.

PART 2 - STRUCTURE OF THE SCHEME

3 The Scheme Manager

- (1) The Insurance Authority is charged with the administration of the Scheme in accordance with section 43 of the Insurance Act 2008, and in these Regulations is referred to as “the Scheme Manager”.⁴
- (2) The Scheme Manager shall, in respect of each financial year of the Scheme, and within 3 months after the end of that financial year, make and publish a report to the Treasury on the discharge of its functions as such and on the operation of the Scheme generally.

² G.C. No. 319/86

- (3) The report shall include a balance sheet and income and expenditure account for the Scheme.
- (4) The Scheme Manager shall cause records to be kept sufficient to show and explain the transactions of the Scheme, such as to —
 - (a) disclose with reasonable accuracy, at any time, the financial position of the Scheme at that time; and
 - (b) enable the Scheme Manager to make the reports required by this regulation.
- (5) Records required to be kept by this regulation shall be kept for a period of 10 years from the end of the financial year of the Scheme to which they relate.

4 The Compensation Fund

- (1) For the purpose of compensating policyholders, in cases where civil liabilities have been incurred by a participant insurer under a protected contract and the insurer is unable, or likely to be unable, to satisfy those liabilities, there shall be a fund, known as “the Policyholders’ Compensation Fund” (in these Regulations referred to as “the Fund”).
- (2) The Fund shall be held, managed and applied in accordance with these Regulations by the Scheme Manager, and shall consist of: —
 - (a) money obtained by levying contributions from participant insurers;
 - (b) money borrowed by the Scheme Manager for the purposes of the Scheme;
 - (c) money received as income from investments;
 - (d) money received under any policy of insurance taken out for the purposes of the Scheme; and
 - (e) any other money required by these Regulations to be credited to the Fund.
- (3) The money constituting the Fund shall be placed by the Scheme Manager in an account with a banking institution licensed under section 3 of the Act, and invested in such manner as the Scheme Manager may direct.
- (4) Income from money invested under paragraph (3) shall be credited to the Fund.
- (5) The Scheme Manager may borrow money for any purpose of the Scheme, in any way and on such terms as it thinks fit.
- (6) Without prejudice to its general power of financial management, the Scheme Manager may take out policies of insurance to cover the payment of compensation.
- (7) There shall be paid out of the Fund: —

- (a) all such sums as are required by the Scheme Manager for the payment of compensation to policyholders;
- (b) money required for the arrangement and service of loans obtained by the Scheme Manager, or of other indebtedness incurred for the purposes of the Scheme;
- (c) premiums on policies of insurance; and
- (d) any necessary expenses (including legal, accountancy and actuarial services and other similar costs) incurred by the Scheme Manager which are attributable to –
 - (i) the insolvency of a participant;
 - (ii) any claim for compensation;
 - (iii) any levy;
 - (iv) a direction under regulation 5(4); or
 - (v) any incidental matter.

5 Participant insurers

- (1) Subject as follows, every authorised insurer is, for the purposes of the Scheme, a participant insurer, if the insurer is authorised to carry on long-term business.
- (2) A person is a participant insurer for the purposes of compensation on its insolvency in respect of liabilities incurred while it was a participant insurer.
- (3) A person is a participant insurer for the purposes of the levy of contributions in respect of the default of any other participant insurer which occurred while that person was a participant.
- (4) A participant insurer shall, if so directed by the Scheme Manager, provide such security as the Scheme Manager considers appropriate in respect of any present or future levy contributions which the participant insurer is, or may become, liable to pay under this Scheme and any money recovered under such a security shall be credited to the fund.

PART 3 - LEVIES BY SCHEME MANAGER ON PARTICIPANT INSURERS

6 Method and timing of levies

- (1) Where the Scheme Manager proposes to levy contributions it shall do so by notice in writing to the insurer, stating the amount of the contribution, the method by which it is calculated and the date or dates on which payment of the contribution is to be due.

- (2) Contributions under the Scheme are debts due to the Scheme Manager, to be paid into the Fund; and the Scheme Manager is under a duty to enforce payment of such debts, if need be by action at law.
- (3) Subject to the provision of this Part, levies of contributions may be made from to time for the purpose of financing the Fund.
- (4) The Scheme Manager may require levy contributions on the basis of estimates made by it and shall make the necessary adjustments as soon as practicable after such a levy is imposed.

7 Amount of levy contributions

- (1) Subject to paragraph (2), the amount of a levy contribution required to be paid by any insurer under this Scheme shall not exceed 2% of the long-term business liabilities arising under all protected contracts effected by the insurer calculated as at the date on which the insolvent insurer became insolvent.
- (2) For the purpose of calculating the long-term business liabilities under paragraph (1) –
 - (a) best actuarial practice shall be adopted; and
 - (b) contracts of inward or outward reinsurance shall not be taken into account.
- (3) Where an insurer is required to pay a levy contribution and has been the subject of one or more previous levies, each contribution subsequent to the first shall, in respect of that insurer, be reduced by the amount of the previous contributions to the extent that the previous contributions were made in respect of policies covered by this Scheme on the date referred to in paragraph (1).

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The Scheme Manager may not impose a levy for the purpose of financing expenditure of any description unless –

- (a) the expenditure in question has already been incurred by the Scheme Manager; or
- (b) it appears to the Scheme Manager that the expenditure will be incurred within 18 months of the imposition of the levy.

PART 4 - COMPENSATION OF UNPAID POLICYHOLDERS

9 Compensation claims

- (1) Where a participant insurer has become insolvent (in these Regulations referred to as “the insolvent insurer”) and a policyholder satisfies the Scheme Manager that the insurer is unable or likely to be unable to satisfy

a claim by him in respect of a civil liability incurred by the insurer under a protected contract, then, subject to the following regulations, the Scheme Manager shall pay to the policyholder out of the Fund a sum equal to 90% of the amount of any liability of the insurer under the contract.

- (2) The Scheme Manager may defer payment of any compensation claim, or reduce or extinguish the amounts payable as compensation in respect of a particular insolvency if the Fund is insufficient or likely to be insufficient to sustain the claims made.

10 Exceptions from entitlement to compensation

- (1) A policyholder's claim for compensation shall be rejected —
 - (a) if submitted more than 6 months after the policyholder became aware, or ought reasonably to have become aware, of the insolvency, unless the Scheme Manager considers that it ought in the circumstances to be allowed; or
 - (b) if submitted more than 18 months after the date of the insolvency.
- (2) Subject to regulation 1(2), no claim shall be entertained in respect of a participant insurer which became insolvent before the commencement of the Scheme.
- (3) No compensation is payable to persons who are controllers of the insolvent insurer.
- (4) The Scheme Manager may reject any claim made by a person who has any responsibility for, or has directly or indirectly profited from, the circumstances giving rise to the insurers' insolvency.
- (5) The Scheme Manager may reduce or reject a claim if the claimant is protected in respect of his loss or any part of it under any comparable scheme for the protection of policyholders, investors, or depositors.

11 Disproportionate benefits

- (1) If it appears to the Scheme Manager, in the case of any protected contract of an insolvent insurer that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy, the Scheme Manager shall refer the policy to an independent actuary.
- (2) Where an actuary to whom a policy is referred under paragraph (1) makes to the Scheme Manager a report in writing —
 - (a) stating, with respect to any of the benefits provided for under the policy, that in his view the benefit or benefits in question are excessive; and
 - (b) recommending, accordingly, that for the purpose of these Regulations any liability of the insolvent insurer under the policy

or any future benefit under the policy should be treated as reduced or (as the case may be) disregarded,

the Scheme Manager may, in the light of the recommendation, pay less than the amount claimed.

PART 5 - CO-OPERATION WITH SCHEME MANAGER

12 Co-operation with Scheme Manager

- (1) A participant insurer shall co-operate with the Scheme Manager in making available all information, books and documents, and otherwise render all such assistance, as is necessary to assist the Scheme Manager to perform its functions under these Regulations.
- (2) The requirements imposed by paragraph (1) shall apply —
 - (a) in the case of a participant in relation to which a winding-up order has been made, to the liquidator; and
 - (b) in a case where the members of a participant have resolved that the participant should be wound up, to the liquidator; and
 - (c) in the case of a participant where a receiver has been appointed (whether or not by the court), to the receiver; and
 - (d) in the case of a participant which has made any voluntary arrangements, to the supervisor of those arrangements; and
 - (e) in any other case where an event occurs which appears to the Scheme Manager to correspond to any of the events referred to in sub-paragraphs (a) to (d), to the person corresponding to the liquidator, receiver or supervisor, as the case may be.

PART 6 - SUBROGATION

13 Rights of Scheme Manager against insolvent insurer

- (1) Where the Scheme Manager has paid or allowed a policyholder's claim for compensation, this regulation has effect for and in connection with the subrogation of the Scheme Manager to the policyholder in respect of the latter's rights against the insurer whose insolvency gave rise to the claim.
- (2) Notwithstanding any other provision in these Regulations, the Scheme Manager shall not pay or determine to pay compensation out of the Fund in respect of a liability unless the policy holder has agreed that —
 - (a) his existing rights in respect of that liability, or in respect of any part of that liability required by the Scheme Manager, shall vest in the Scheme Manager;

- (b) he will execute any document (including any declaration of trust), do any act or provide any assistance to the Scheme Manager to enable it to exercise those rights;
 - (c) he will pay to the Scheme Manager any amount which he receives in respect of those rights, after deduction of any amount which, under paragraph (4), the Scheme Manager would have been required to pay him; and
 - (d) where relevant, any prospect of his recovering in excess of the compensation sum payable under these Regulations will be in the hands of the Scheme Manager, who may compromise the claim.
- (3) Where the policyholder so agrees, the participant insurer's liability to the policyholder is extinguished or, as the case may be, reduced and there is hereby conferred on the Scheme Manager a right of recovery against the participant insurer, being a right otherwise identical to the policyholder's right in respect of the liability agreed to be vested in the Scheme Manager.
- (4) Any amount received by the Scheme Manager by virtue of this regulation shall be paid into the Fund, up to the amount of the compensation paid to the policyholder in respect of his liability, interest on it at 2 per cent over the London inter bank offered rate, and the costs of recovery. Any balance shall be paid to the policyholder.

14 Transitional

- (1) All rights to compensation under the Voluntary Scheme in respect of Protected Policies, as defined in that Scheme, which were issued between the 4th April 1988 and the commencement of these Regulations shall, notwithstanding any provision of these Regulations, be treated by the Scheme Manager as if they were rights to compensation under the Scheme established by these Regulations and compensation shall be payable accordingly.
- (2) The liabilities of the members of the Voluntary Scheme shall be treated as liabilities under this Scheme and the Scheme Manager may accordingly levy contributions and take such other actions in respect of those liabilities as is permitted by this Scheme.

MADE

17 JANUARY 1991

SCHEDULE

Regulation 1

TEXT OF THE VOLUNTARY SCHEME**“MANX LIFE COMPANIES VOLUNTARY POLICYHOLDERS PROTECTION
SCHEME**

This scheme is brought into being by the long term business members of the Manx Insurance Association to make provisions for indemnifying or otherwise assisting or protecting policyholders and others who are or who may be prejudiced in consequence of the inability of insurance companies authorised to carry on an insurance business under Section 6 of the Insurance Act 1986 to meet their long term business liabilities under policies issued or securities given by them, and also for the purpose of imposing levies on the insurance industry for that purpose. This scheme is a voluntary scheme and it is envisaged that it will operate until such time as the Financial Supervision Bill 1988 has been passed by Tynwald and an appointed day order has been made in respect of the provisions of Section 21 of such Bill and Regulations have been approved by Tynwald, bringing into effect a Statutory Scheme of compensation for such policyholders.

INTRODUCTION**1 DEFINITIONS**

In this Scheme —

“**the Act**” means the Insurance Act 1986;

“**Assessable Liabilities**” means the long term insurance liabilities of all protected policies of all Member Companies and excluded companies against which a levy can be raised as at the date of any triggering event as determined by the Scheme Manager and shall exclude all contracts of outward or inward reinsurance as at such date;

“**Authorised Insurer**” means an insurer authorised under Section 6 of the Insurance Act 1986 to carry on insurance business;

“**Insurance Regulations**” means the Insurance Regulations 1986;

“**Insolvent Insurer**” has the meaning given to it by Regulation 9(1) hereof;

“**Long-Term business**” has the meaning given to it by the Insurance Regulations 1986;

“**Long-Term Policy**” means any policy issued by a Member Company evidencing a contract the effecting of which constitutes Long-Term business but not being a contract of reinsurance;

“**Member Company**” means the companies listed in Schedule 1 of the Scheme who have executed the same whether such companies be the original

Member Companies which established the Scheme or whether they be companies admitted to membership of the Scheme at any future date pursuant to Clause 7 of the Agreement (and the Regulations) but shall not include any excluded company unless the context otherwise provides or demands;

“Policyholder” means the beneficial owner of a Protected Policy;

“Protected Policy” means a policy evidencing a contract the effecting of which constituted the carrying on of Long-Term business, not being a contract of reinsurance issued by a Member Company during the period of its membership of the Scheme;

“The Regulations” means the regulations contained in Schedule 2 hereof;

“The Scheme” means The Agreement and the Regulations collectively;

“The Scheme Manager” means The Isle of Man Insurance Authority;

“Statutory Scheme” means any scheme of Policyholder Protection implemented by Tynwald;

“Triggering Event” means either of the events specified in Regulations 4(1)(a) or 4(1)(b).

2 NAME

This Scheme consisting of the Agreement between the Member Companies and the Scheme Manager and the Regulations hereto shall be called “The Manx Life Companies Voluntary Policyholders Protection Scheme”.

3 COMMENCEMENT AND CESSATION

The Scheme shall be deemed to have come into operation on the 5th day of April 1988 and shall continue until the date appointed for the coming into operation of a Statutory Scheme.

4 MEMBERSHIP

The Scheme is established by the Member Companies listed in Schedule 1 to the Agreement. The Member Companies hereby agree jointly and severally to abide by the Regulations. The Scheme will bind the Scheme Manager and each Member Company and any successors to the business of any Member Company and any other Company admitted to membership of the Scheme as hereinafter provided.

5 SCHEME MANAGER

The Member Companies hereby appoint the Isle of Man Insurance Authority to be Scheme Manager and the Isle of Man Insurance Authority by its execution hereof hereby

accepts the office of Scheme Manager. The powers and duties of the Scheme Manager shall be as specified in the Regulations.

6 COSTS OF ESTABLISHING AND ADMINISTERING THE SCHEME

All costs incurred in establishing and administering the Scheme other than sums payable under Regulation 5(5) shall be borne equally by the Member Companies.

7 CONDITIONS PRECEDENTS OR MEMBERSHIP

It shall be a condition of membership of the Scheme that all Member Companies must be Authorised Insurers. Any Member Company who for whatever reason ceases to be so authorised shall be excluded from the Scheme in respect of business written subsequent to the date that such authorisation ceases. The obligations of a company so excluded to pay a levy shall however continue in respect of policies written by Member Companies between the date of admission and the date of exclusion of the excluded company. Any Insurance Company which commences Long Term Business in the Isle of Man and is licensed as a Authorised Insurer may apply to the Scheme Manager to become a Member Company. Upon such application being accepted by the Scheme Manager such company shall sign a copy of the Scheme and shall be immediately bound by its terms. The Scheme shall provide cover in respect of policies of insurance issued by Member Companies on or after the 5th day of April 1988 or the date of joining whichever shall be the latter and in the case of companies excluded from membership shall continue in force in respect of policies effected by that Company between the date of its admission to membership and the date of its exclusion from membership of the scheme.

8 LEVY

The Member Companies hereby agree to pay to the Scheme Manager such sums as are imposed by the Scheme Manager by way of levy in terms of paragraph 6 of the Regulations.

In respect of any Member Company which may be excluded from membership of the Scheme the Scheme Manager may raise levies against such excluded Member Company in respect of any obligation of the Scheme which arose during the period of its membership and may demand such security as the Scheme Manager shall deem appropriate to meet any potential levy or levies and such excluded Member Company shall have a continuing obligation to pay or provide the same notwithstanding cessation of membership of the Scheme. Any such levy imposed or security demanded shall be paid by the Member Company within one month of demand being received by it.

9 PROVISION OF INFORMATION

The Member Companies hereby agree to provide to the Scheme Manager all such information as the Scheme Manager shall from time to time request and in the case of any Member Company being excluded then such obligation to provide information shall

continue in respect of policies issued by such company between the date of their admission to membership and the date of their exclusion from membership of the Scheme.

10 AMENDMENT

The Scheme may only be amended by the unanimous agreement of the Member Companies as at the date of the proposed alteration and with the concurrence of the Scheme Manager. Any proposed amendment shall be signed by a representative of each Member Company and shall be submitted to the Scheme Manager for approval. The Scheme Manager shall within 14 days after the date upon which the amendment is submitted decide whether to agree to the amendment. If the amendment is agreed the Scheme Manager shall so signify agreement by signing the amendment and thereupon the Scheme shall become effective and thenceforth the Scheme shall be read together with the amendment and the Scheme shall be interpreted as so amended. Any amendment rejected by the Scheme Manager shall be null and void and of no effect. The decision of the Scheme Manager whether to accept or reject an amendment shall be final.

11 DISPUTES AND ARBITRATION

Where a dispute arises in the interpretation of the Scheme or in relation to any other matter related to the Scheme then in the case of a conflict between the Agreement and the Regulations the Regulations shall prevail. Any dispute as to the interpretation of the Scheme shall be referred to an independent firm of consulting actuaries by the Scheme Manager which firm shall act as arbitrator in such dispute and the said arbitrator's decision shall be final.

12 POWER AND DUTIES OF SCHEME MANAGER

The Scheme Manager shall have the following specific responsibilities and powers insofar as it is able.

- (1) To ensure compliance of all Member Companies with the Scheme and to take all necessary action both within the Scheme and within the Insurance Regulations as amended to enforce compliance by Member Companies with the Scheme.
- (2) To examine all applications from potential Member Companies to join the Scheme and to adjudicate thereon.
- (3) To monitor returns from Member Companies in relation to potential raising of a levy against Member Companies.
- (4) In the case of a Triggering Event occurring to advertise for and use its best endeavours to contact Protected Policyholders and thereafter to examine all claims by Policyholders upon the Fund under the Scheme and to take all necessary action including implementing any Scheme which would

secure the continuance of policyholder benefits to Page 20 minimise the levy which may be charged against Member Companies.

- (5) To collect any levy or levies from Member Companies and to arrange for the onward transmission of such payments from the Fund to claimant Policyholders.
- (6) To keep Member Companies reasonably advised as to the progress of any claim or claims upon the Scheme and to provide Member Companies with such other information as it shall think fit.
- (7) To take such necessary action including the employment of external consultants to give both technical advice and assistance as the Scheme Manager thinks fit.

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The Member Companies hereby indemnify the Scheme Manager its members servants agents or employees for any liability arising from any action suit or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred on the Scheme Manager by the Scheme.

SCHEDULE 1

(Company) C.M.I. Insurance Company Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	G. Moore, Director 5/4/88
(Company) Hansard International Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	G. Beevers, Director 5 April 1988
(Company) Equity & Law International	(Representative) (Date of Joining) (Date of Exclusion)	J.J.M. Hewlett, Director 5 th April 1988
(Company) N.E.L. Britannia International Associates Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	C.M. Henerty 5 th April 1988
(Company) C.C.L. Assurance International Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	David F.J. Cooil 5 th April 1988
(Company) Royal Life Insurance International Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	R. Gough 5 th April 1988
(Company) Albany International Assurance Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	Alan Morgan-Moodie 5 th April 1988
(Company) I.O.M. Assurance	(Representative) (Date of Joining) (Date of Exclusion)	R.N.S. Bigland April 5 th 1988
(Company) Eagle Star (International Life) Ltd.	(Representative) (Date of Joining) (Date of Exclusion)	I.B. Owen 5 th April 1988
(Company)	(Representative) (Date of Joining) (Date of Exclusion)	

DUNCAN NEIL
(Scheme Manager)

Chairman of Insurance Authority

SCHEDULE 2
REGULATIONS

PART I

1 CITATION COMMENCEMENT AND CESSATION

These Regulations may be cited as the Manx Life Companies Voluntary Policyholders Protection Regulations 1988 and shall be deemed to have come into operation on the 5th April 1988 and shall continue until the date appointed for the coming into operation of a Statutory Scheme which adopts the rights and liabilities under this Scheme or which states it replaces this Scheme.

PART II

2 THE SCHEME MANAGER

The Isle of Man Insurance Authority is charged with the administration of the Scheme in accordance with paragraph 5 of the Agreement.

3 MEMBER COMPANIES

- (1) Subject as follows, every Authorised Insurer who has applied for membership of the Scheme and who has been accepted by the Scheme Manager and who has executed a copy of the Scheme shall be a Member Company as herein previously defined.
- (2) The Scheme Manager shall provide compensation to Policyholders of a Member Company which is deemed to be insolvent in terms of Regulation 4 hereof in respect of policies issued by such Member Company between the date of its admission to and exclusion from membership.
- (3) The obligation of a Member Company for contributions levied shall continue notwithstanding that it has ceased to be a Member Company.

4 EXERCISE OF FUNCTIONS BY SCHEME MANAGER

- (1) Subject to the provisions of this Regulation the functions of the Scheme Manager under Regulation 5 to 15 below are exercisable where in the case of any Authorised Insurer: —
 - (a) a resolution has been passed in accordance with the provisions of the Companies Act 1931 to 1986 for the voluntary winding up of the company otherwise than merely for the purpose of

- reconstruction of the company or of amalgamation with other insurance company; or
- (b) without any such resolution having been passed beforehand an Order had been made for the winding up of the company by the Court under such Acts.
- (2) Regulations 5 to 13 shall not apply in a case falling within the regulation 4(1)(a) above whether or not an Order for the winding up of the company by or subject to the supervision of the Court has been made since the resolution there mentioned was passed unless the resolution was passed after the 4th day of April 1988.
- (3) Regulations 5 to 13 shall not apply in the case falling within the Regulation 4(1)(b) above unless the Page 25 Petition for the winding up of the company by the Court was presented after the 4th day of April 1988.
- (4) References in this Scheme to a company in liquidation are references to an Authorised Insurer in whose case: —
- (a) a resolution has been passed as mentioned in regulation 4(1)(a) above after 4th April 1988; or
- (b) an Order has been made as mentioned in regulation 4(1)(b) above on a Petition presented after that date.
- (5) References in this Scheme in relation to a company in liquidation, to the beginning of the liquidation, are references: —
- (a) in a case falling within regulation 4(1)(a) above the passing of a resolution; and
- (b) in a case falling within regulation 4(1)(b) above to the making of the Order.
- (6) Where the powers of the Scheme Manager under regulations 5 to 15 hereof became exercisable in terms of this regulation in respect of a Member Company or an excluded Member Company such company shall be deemed insolvent.

5 THE COMPENSATION FUND

- (1) For the purpose of compensating Policyholders, in cases where civil liabilities have been incurred by an Authorised Insurer under a protected policy and a triggering event has occurred and the insurer is unable, or likely to be unable to satisfy those liabilities, there shall be established a fund, to be called “the Policyholders Protection Fund” (in these Regulations referred to as “the Fund”).
- (2) The Fund shall be held, managed and applied in accordance with these Regulations by the Scheme Manager, and shall consist of: —
- (a) money obtained by levying contributions from Member Companies;

- (b) any other money required by these Regulations to be credited to the Fund.
- (3) The money constituting the Fund shall be placed by the Scheme Manager in an account with such bank as the Scheme Manager shall from time to time decide and invested in such manner as the Scheme Manager may direct.
- (4) Income from money invested under paragraph 5(3) shall be credited to the Fund.
- (5) There shall be paid out of the Fund: —
 - (a) all such sums as are required by the Scheme Manager for the payment of compensation to Policyholders, and
 - (b) any necessary expenses incurred by the Scheme Manager in the administration of the claims under the Scheme.
- (6) Upon cessation of the Scheme as defined in Regulation 1 or at any time if there shall be a surplus in the fund the Scheme Manager shall distribute such surplus to the Member Companies and excluded Member Companies (if any) in proportion to their contributions by way of levy.

6 METHOD AND TIMING OF LEVIES

- (1) Where the Scheme Manager imposes a levy it shall do so by notice in writing to the Member Companies stating the amount of the contribution, the method by which it is calculated and the date or dates on which payment of the contribution is to be due.
- (2) The levy shall be calculated in respect of each Member Company by reference to its assessable Long Term liabilities on the date of the relevant Triggering Event.
- (3) Any sum due to the Scheme Manager in respect of any levy imposed under the Scheme shall be recoverable in any court of competent jurisdiction.
- (4) Subject to the provisions of this Part, levies of contributions may be made from time to time for the purpose of financing the Fund.

7 AMOUNT OF LEVIES

The maximum levy or levies which may be imposed by the Scheme Manager on a Member Company shall be 2% of the assessable liabilities of such Member Company less the amount of any levy or levies previously paid by such Member Company in respect of policies then covered by the Scheme.

8 LIMITATION OF IMPOSITION OF LEVY

The Scheme Manager may not impose a levy for the purpose of financing expenditure unless —

- (a) the expenditure in question has already been incurred by the Scheme Manager in administering and processing any claim or making any payment of compensation hereunder; or
- (b) it appears to the Scheme Manager that such expenditure will be incurred within 18 months of the imposition of the levy.

PART III

9 COMPENSATION CLAIMS

- (1) Where a Member Company is deemed to be insolvent in terms of Regulation 4 and a Policyholder satisfies the Scheme Manager that the insolvent insurer is unable or likely to be unable to satisfy a claim by him in respect of a civil liability incurred by the insurer under a protected policy, then, subject to the following Regulations, it shall be the duty of the Scheme Manager to endeavour to secure payment to the Policyholder of a sum equal to 90% of the amount of the assessable liability of the insolvent insurer under the policy as soon as may be reasonably practicable after the commencement of the liquidation.
- (2) The Scheme Manager may defer reduce or extinguish the amounts payable as compensation in respect of a particular insolvency if the Fund is insufficient or likely to be insufficient to sustain the claims made.

10 EXCEPTIONS FROM ENTITLEMENT TO COMPENSATION

- (1) No claim shall be entertained in respect of an insolvency occurring before the 5th April 1988.
- (2) No compensation is payable to persons who are controllers of the insolvent insurer as defined by section 34 of the Act.
- (3) The Scheme Manager may reject any claim made by a person who has any responsibility for, or has directly or indirectly profited from, the circumstances giving rise to the insurer's insolvency.
- (4) The Scheme Manager may reduce or reject a claim if the claimant is adequately protected in respect of his loss under any comparable scheme for the protection of policyholders investors or depositors.
- (5) All claims on the Scheme by protected policyholders must be made within 12 months of the relevant Triggering Event. The Scheme Manager shall not make any payment of compensation to any Policyholder protected or otherwise who does not comply with this regulation.

11 DISPROPORTIONATE BENEFITS

- (1) If it appears to the Scheme Manager, in the case of any long term policy of an insolvent insurer that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy, the Scheme Manager shall refer the policy to an independent actuary.
- (2) Where an actuary to whom a policy is referred under paragraph (1) makes to the Scheme Manager a report in writing
 - (a) stating, with respect to any of the benefits provided for under the policy, that in his view the benefit or benefits in question are excessive; and
 - (b) recommending, accordingly, that for the purpose of these Regulations any liability of the insolvent insurer under the policy or any future benefit under the policy should be treated as reduced or (as the case may be) disregarded, the Scheme Manager may, in the light of the recommendation, pay less than the amount claimed.

PART IV - SUBROGATION**12 RIGHTS OF SCHEME MANAGER AGAINST INSOLVENT INSURER**

- (1) Where the Scheme Manager has paid or allowed a Policyholder's claim for compensation, this regulation has effect for and in connection with the subrogation of the Scheme Manager to the Policyholder in respect of the latter's rights against the Member Company whose insolvency gave rise to the claim and before the payment of any sum or the making of any arrangement for continuity of cover by the Scheme Manager for or on behalf of a Protected Policyholder the Scheme Manager may require that the Protected Policyholder executes an Assignment of his rights against the insolvent insurer.
- (2) The insolvent insurer's liabilities to the policyholder as subsisting immediately before the date on which the insolvency occurred, are deemed to have been liabilities to the Scheme Manager incurred immediately before that date.
- (3) The Scheme Manager may in the insolvency claim entitlement to any priority and to the benefit of any security, which could have been claimed by the Policyholder.
- (4) Any money recovered by the Scheme Manager in the insolvency shall be paid into the Compensation Fund, up to the amount of the compensation payment made to the Policyholder. Any balance shall be paid to the Policyholder.

13 FURTHER POWERS OF SCHEME MANAGER

- (1) Subject to regulation 13(2) below in this regulation “Future Benefit” in relation to any long-term policy of an insolvent insurer means any benefit provided for under the policy which has not fallen due to be paid by the insolvent insurer before the Triggering Event.
- (2) Any bonus provided for under a policy shall not by virtue of regulation 13(1) be treated as a Future Benefit within the meaning of this regulation unless it was declared before the Triggering Event.
- (3) Subject to regulation 14 and 15 below and to the following provisions of this regulation it shall be the duty of the Scheme Manager as soon as reasonably practicable after the beginning of the liquidation to make arrangements in pursuance of regulation 13(5) for securing continuity of insurance for every Policyholder of an insolvent insurer who is a protected policyholder.
- (4) Subject to regulation 13(6) the duty of the Scheme Manager under regulation 13(3) above to secure continuity of insurance for any Policyholder extends only to securing that the Policyholder will receive 90% of any Future Benefit under his Policy subject to and in accordance with terms corresponding so far as appears to the Scheme Manager to be reasonable in the circumstances to the terms which would have applied under the policy.
- (5) For the purpose of securing continuity of insurance for any Policyholders of an insolvent insurer in accordance with regulation 13(3) above the Scheme Manager may take such measures as to it appears to be appropriate: —
 - (a) for securing or facilitating the transfer of the Long-Term business of the insolvent insurer or of any part of that business to another Member Company; or
 - (b) for securing the issue by another Member Company to the Policyholder in question of policies in substitution for their existing policies.
- (6) Where a long-term policy of an insolvent insurer contains terms relating to matters of other than Future Benefits under the policy the duty of the Scheme Manager under regulation 13(3) above to secure continuity of insurance for the Policyholder in question extends also to securing that the policy after any transfer of business in which it is included or (as the case may be) any policy issued in substitution for the policy in question contains terms relating to those matters which correspond so far as appears to the Scheme Manager to be reasonable in the circumstances to the terms first mentioned above.
- (7) During any period while the Scheme Manager is seeking to make arrangements for securing continuity of insurance for any Policyholders of an insolvent insurer in accordance with regulation 13(3) above it shall

be the duty of the Scheme Manager subject to regulations 14 and 15 and regulation 13(10) to secure the 90% of any Future Benefit under a long-term policy which would have fallen due to be paid to any of those Policyholders during that period is paid to the Policyholder in question as soon as reasonably practicable after the time when the benefit in question will have fallen due under the policy (but subject to and in accordance with any other terms which would have applied under the policy).

- (8) Arrangements made by the Scheme Manager in pursuance of regulation 13(5) above shall not be required to cover any Future Benefit under policy in so far as any sums have been paid to the policyholder in pursuance of regulation 13(7) above by reference to that benefit.
- (9) Where it appears to the Scheme Manager that it is not reasonably practicable to secure continuity of insurance Page 34 for any policyholder of an insolvent insurer in accordance with regulation 13(3) above it shall be the duty of the Scheme Manager to endeavour subject to sections 14 and 15 below to pay to the Policyholder a sum equal to 90% of the value attributed to his policy for the purposes of any claim in respect of his policy in the winding up of the company as soon as reasonably practicable after such claim is admitted.
- (10) Any duty of the Scheme Manager under regulation 13(3) or 13(7) above to take any measures for assisting a Policyholder of an insolvent insurer shall be subject to compliance on his part with any conditions imposed by the Scheme Manager with respect to the payment in any case or in any class or description of case of sums which would have fallen due from Policyholders of an insolvent insurer by way of premiums under long-term policies if the company had not become an insolvent insurer.

14 PAYMENT TO PERSONS OTHER THAN THE POLICYHOLDER

- (1) Where it appears to the Scheme Manager in the case of any policy of an insolvent insurer: —
 - (a) that payment in respect of any sums falling due under the policy could have been made in accordance with the policy to a person other than the Policyholder; or
 - (b) that any sums paid under the policy would have been subject to any trust charge or other agreement binding on the policyholder; the Scheme Manager may secure the payment of any sum payable to the Policyholder in accordance with any provisions of regulations 5 to 12 or in accordance with regulation 13(7) above or pay any sum so payable in accordance with regulation 13(9) (in whole or in part) to that other person or (as the case may be) to the person appearing to the Scheme Manager to be entitled under the trust charge or agreement in question instead of to the Policyholder and any payment made by virtue of this regulation to a person other than the Policyholder shall be treated for the purposes of the

provision in question as a payment to the Policyholder and may be made on such conditions with respect to the total or partial Assignment to the Scheme Manager of any rights of the recipient against the Policyholder or any other person or otherwise that the Scheme Manager thinks fit.

- (2) The Scheme Manager may secure the payment of any sum payable to a Policyholder in accordance with the provisions of regulations 5 to 12 or in accordance with regulation 13(7) or payable under regulation 13 to a person entitled to the benefit of a Judgment and of any sum they are authorised to secure for a person other than the Policyholder by virtue of regulation 14(1) by either or both of the following methods that is to say: —
- (a) by making payments in respect of the sum in question or
 - (b) by securing by any measures appearing appropriate that such payments are made by another person.

15 POWERS OF SCHEME MANAGER WHERE POLICY DOCUMENTS NOT ISSUED

- (1) Where it appears to the Scheme Manager: —
- (a) that a person is a person insured under a contract of insurance with an authorised insurance company which is not evidenced by any policy; and
 - (b) that if a policy evidenced in the contract had been issued the person in question would have been eligible as a Policyholder in respect of that policy for the assistance of the Scheme Manager under any provision of regulations 5 to 13 above the Scheme Manager may take such measures for the assistance or protection of the Policyholder in question as they would in their view have been required or authorised to take under the relevant provision if such policy had been issued and the person in question had been a Policyholder.”

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

² Definition of “authorised insurer” amended by Insurance Act 2008 Sch 8.

³ Subpara (b) amended by Insurance Act 2008 Sch 8.

⁴ Para (1) amended by Insurance Act 2008 Sch 8.