

JAMAICA

No. 1 - 2016

I assent,

[L.S.]

Sgd. P. L. Alley

Governor-General.

12th day of February 2016

AN ACT to Amend the Insurance Act.

[12th day of February 2016]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Insurance (Amendment) Act, 2016, and shall be read and construed as one with the Insurance Act (hereinafter referred to as the principal Act).

Short title
and
construction.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended in subsection (2)(b) by deleting—

- (a) the words “by an unregistered insurer or any person acting with the actual or apparent authority of the insurer or on his behalf”;
- (b) sub-paragraphs (vii) to (x) and substituting therefor the following—
 - “(vii) dissemination of information as to insurance coverage or rates;
 - (viii) forwarding of applications, delivery of policies or insurance contracts;
 - (ix) inspection of risks, fixing of rates or investigation or adjustment of claims or losses;
 - (x) transaction of matters subsequent to or arising out of the effecting of an insurance contract;”.

Amendment
of section 11
of principal
Act.

3. Section 11 of the principal Act is amended—

- (a) in subsection (3) by deleting paragraph (b) and substituting therefor the following—
 - “(b) afford the applicant an opportunity to make oral or written representations on the intended action.”;
- (b) by inserting, next after subsection (3), the following subsection—
 - “(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—
 - (a) of its decision; and
 - (b) in the case of a decision to refuse registration, of the applicant’s right under section 140 to appeal to the Appeal Tribunal.”.

4. Section 15 of the principal Act is amended by deleting subsection (2) and inserting next after subsection (1) the following subsections—

Amendment of section 15 of principal Act.

“ (2) Before taking any action under subsection (1), the Commission shall—

- (a) notify the insurance company in writing that the Commission intends to cancel the company’s registration in respect of all or any of the classes in relation to which the company is registered, giving the reasons therefor; and
- (b) afford the insurance company an opportunity to make oral or written representations on the intended action.

(2A) After affording the insurance company an opportunity to make representations under subsection (2)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and
- (b) in the case of a decision to cancel registration, of the applicant’s right under section 140 to appeal to the Appeal Tribunal.”

5. Section 23 of the principal Act is amended—

Amendment of section 23 of principal Act.

(a) in subsection (1)(c) by—

- (i) deleting the word “or” appearing at the end of sub-paragraph (i);
- (ii) inserting the word “or” next after the semi-colon appearing at the end of sub-paragraph (ii);
- (iii) inserting next after sub-paragraph (ii), the following sub-paragraph—

“(iii) facilities allowing time for the payment over of premiums to insurance companies by brokers within the prescribed period;”;

(b) by inserting, next after subsection (1), the following subsection—

“ (1A) Nothing in subsection (1)(c)(iii) applies to other credit arrangements among insurers and brokers.”.

Amendment
of section 26
of principal
Act.

6. Section 26 of the principal Act is amended by deleting subsection (1)(b) and substituting therefor the following—

“(b) within fourteen days after the date on which the documents referred to in paragraph (a) are submitted to the Commission, cause a copy of the audited financial statements to be published—

(i) if the insurer has a website—

(A) on the insurer’s website; and

(B) in a daily newspaper printed and circulated throughout Jamaica, in accordance with such abridged form as may be prescribed by the Commission; or

(ii) if the insurer does not have a website, in a daily newspaper printed and circulated throughout Jamaica; and.”.

Amendment
of section 29
of principal
Act.

7. Section 29 of the principal Act is amended by inserting next after the words “all records” the words “in respect of its operations,”, renumbering the section as section 29(1), and inserting the following as subsection (2)—

“(2) The records mentioned in subsection (1) shall be retained for a period of not less than seven years.”.

Insertion of
new section
29A into
principal
Act.

8. The principal Act is amended by inserting next after section 29 the following section—

“Risk management procedures. 29A. Every registered insurer shall establish and adhere to risk management procedures which accord with such standards as the Commission may prescribe.”.

9. Section 52 of the principal Act is amended in subsection (1) by deleting the figures “49” and substituting therefor the figures “47”.

Amendment of section 52 of principal Act.

10. Section 59 of the principal Act is amended by deleting the words—

Amendment of section 59 of principal Act.

(a) “in this Act to the contrary” and substituting therefor the words “to the contrary provided in this Act or any other law”; and

(b) “local policies” and substituting therefor the words “policyholders ahead of all other creditors, as concerns all policies”.

11. The principal Act is amended by inserting next after section 59 the following section—

Insertion of new section 59A into principal Act.

“Distribution on winding-up. 59A. Upon the winding-up of an insurance company the liabilities of the company in respect of its policyholders shall be discharged ahead of its liabilities to unsecured creditors, other than any matters falling within Category 1 or Category 2 of section 202 of the *Insolvency Act* (ranking of claims).”.

12. Section 61 of the principal Act is amended by deleting subsection (2).

Amendment of section 61 of principal Act.

13. Section 63 of the principal Act is amended—

Amendment of section 63 of principal Act.

(a) in subsection (2)(a) by deleting the figures “61,”;

(b) by deleting subsection (3) and inserting, next after subsection (2), the following subsections—

“ (3) Where the Commission is not satisfied, in respect of an applicant, as to one or more of the requirements set out in subsection (2), the Commission shall—

(a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and

(b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—

(a) of its decision; and

(b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.”.

Amendment
of section 66
of principal
Act.

14. Section 66 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

“ (1) Subject to subsection (2), the Commission may, if at any time it is satisfied that the circumstances specified in that subsection so warrant, give written notice to a registered association stating—

(a) that the Commission proposes to cancel the association's registration in respect of all or any of the classes of business in relation to which the association is registered, and giving the reasons therefor; and

(b) the right of appeal under section 140, and shall afford the association an opportunity to make oral or written representations on the proposed action.”.

Amendment
of section 73
of principal
Act.

15. Section 73 of the principal Act is amended by deleting subsection (3) and inserting, next after subsection (2), the following subsections—

“ (3) Where the Commission is not satisfied, in respect of an applicant, as to one or more of the requirements set out in subsection (2), the Commission shall —

(a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and

(b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and
- (b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.”.

16. Section 75 of the principal Act is amended in subsection (2)(d) by deleting the word “and” and substituting therefor the word “or”.

Amendment of section 75 of principal Act.

17. Section 76 of the principal Act is amended by deleting subsection (1)(b) and substituting therefor the following—

Amendment of section 76 of principal Act.

“(b) if satisfied that the provisions of subsection (2) apply to a person registered under this Part, notify that person in writing—

- (i) of its intention to cancel the registration, giving the reasons therefor;
- (ii) that the person may make written or oral representations on the intended action; and
- (iii) of the person's right to appeal under section 140 to the Appeal Tribunal.”.

18. Section 110 of the principal Act is amended in subsection (1)(b) by deleting the word “seven” and substituting therefor the word “fifteen”.

Amendment of section 110 of principal Act.

19. Section 115 of the principal Act is amended—

Amendment of section 115 of principal Act.

- (a) in subsection (3) by deleting the word “Upon” and substituting therefor the words “Subject to subsection (5), upon”;
- (b) in subsection (4) by deleting the numeral “(1)” and substituting therefor the numeral “(5)”;
- (c) by inserting, next after subsection (4), the following subsections—

“ (5) Where—

- (a) a claim has been duly made under paragraph (b) of subsection (2) but has not been determined during the one year period referred to in that paragraph; or

- (b) before the expiration of the year referred to in paragraph (b) of subsection (2) the claimant lodges with the Accountant-General a certificate to the effect that the claim is being considered by a court of competent jurisdiction, signed by a Judge or Resident Magistrate of the relevant court,

the monies in question shall not be paid over to the Accountant-General under subsection (3) unless the claim has been finally determined in a manner that allows the money to be paid over to the Accountant-General.

(6) Where subsection (3) takes effect as respects any sum, not later than fifteen years after the one year period referred to in that subsection, the Accountant-General shall pay that sum to any person who establishes a claim thereto to the satisfaction of the Accountant-General.”.

Repeal and replacement of section 120 of principal Act.

20. Section 120 of the principal Act is repealed and the following substituted therefor—

“ Notice of *pro rata* condition of average.

120.—(1) With respect to contracts of insurance entered into after the date of commencement of the Insurance (Amendment) Act, 2016, the Commission may, with the approval of the Minister, make regulations prescribing the form and manner in which—

- (a) notice of the *pro rata* condition of average in an insurance policy is to be given to policyholders; and
- (b) information is to be given to the public in respect of such condition.

(2) Where the provisions prescribed by regulations made under subsection (1) are not complied with in respect of a policyholder, the *pro rata* condition of average contained in the insurance policy concerned shall be deemed to be void and of no legal effect.”.

21. Section 144 of the principal Act is amended—

Amendment of section 144 of principal Act.

- (a) in subsection (1), by deleting the full-stop appearing at the end of paragraph (m), substituting therefor a semicolon, and inserting next after the following paragraphs—

“(n) standards for risk management procedures to be established and adhered to by insurers;

(o) in respect of any right under this Act to make oral or written representations to the Commission, the time within which those representations shall be made.”;

- (b) in subsection (3), by deleting the words “one million dollars” and substituting therefor the words “three million dollars”.

22. Section 145 of the principal Act is amended by renumbering the section as section 145(1) and inserting the following as subsection (2)—

Amendment of section 145 of principal Act.

“(2) By order published in the *Gazette* the Minister may, on the recommendation of the Commission, direct that, subject to such conditions (if any) as the Commission recommends, such of the provisions of this Act as may be specified in the order shall not apply in relation to any specified insurance company or specified class of insurance company or any other specified body or person, or specified class of body or person.”.

23. The principal Act is amended by inserting, next after section 148, the following section—

Insertion of new section 149 of principal Act.

“Amendment of monetary penalties by order. 149. The Minister may, by order published in the *Gazette* and subject to affirmative resolution, amend any monetary penalty imposed by or under this Act.”.

24. The Insurance Regulations, 2001, are amended—

Amendment of Insurance Regulations, 2001.

- (a) in regulation 126, by deleting paragraphs (4) and (5) and inserting next after paragraph (3) the following paragraphs—

“(4) In the case of a contract of insurance which contains a *pro rata* condition of average clause, the following notice requirements shall apply—

- (a) if the contract is first entered into after the date of commencement of the Insurance

(Amendment) Act, 2016, the contract shall bear on its face a notice conspicuously sized and placed, stating that the policy is subject to a *pro rata* condition of average;

- (b) on the first occasion on which the contract is renewed after the date of commencement of the Insurance (Amendment) Act, 2016, the renewal endorsement shall include a notice stating that the policy is subject to a *pro rata* condition of average; and
- (c) where a notice has been issued under subparagraph (a) or (b) in respect of the contract, no further notice is required under this paragraph unless there is a change of any of the policyholders who are a party to the contract, in which case notice shall be given by providing the new policyholder with a copy of the contract of insurance bearing on its face a notice, conspicuously sized and placed, stating that the policy is subject to a *pro rata* condition of average,

and a notice under this paragraph shall be deemed to have been served on a policyholder if—

- (i) posted by registered post to an address provided by the policyholder, and such service shall be deemed to have been effected on the day after such posting;
- (ii) delivered by facsimile transmission to a number provided by the policyholder;
- (iii) delivered by electronic mail to an electronic mailing address provided by the policyholder;
- (iv) delivered by hand to the policyholder; or

- (v) delivered to the policyholder's insurance broker by any method stated in paragraphs (i) to (iv).”.

(5) Every insurer who carries on, in Jamaica, any property insurance business or any other class of general insurance business shall—

- (a) at least once in every calendar quarter, cause to be published in a daily newspaper in circulation in Jamaica a notice explaining the nature and effect of the *pro rata* condition of average, in the form set out in the Twenty-Third Schedule or such other form as may be approved by the Commission; and
- (b) cause to be published on the insurer's website (if any) on a page accessible to the public, a notice in the form referred to in sub-paragraph (a).

(6) A notice published in accordance with sub-paragraph (5)(a) by an insurer individually or together with one or more other insurers, shall be sufficient to fulfil the obligations of that insurer under paragraph (5)(a).

(7) Paragraph (4) does not apply to—

- (a) a contract of marine insurance as defined by section 5 of the *Marine Insurance Act*; or
- (b) a contract of reinsurance.

(8) An insurer who contravenes paragraph (5) commits an offence and shall be liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one million dollars.”;

- (b) by deleting the Twenty-Third Schedule and substituting therefor the following—

“ TWENTY-THIRD SCHEDULE (Regulation 126
(5))

*Notice Explaining the Nature and the Effect of the
Pro Rata Condition of Average (Average Clause)*

The following policy types issued by us contain a
pro rata condition of average (average clause):

(List Policy Types)

Where a policy contains an average clause, this should be indicated clearly on the cover of the policy, otherwise the average clause will be void and of no legal effect. If your policy contains an average clause, it means that under certain circumstances, if the value of the property covered under the policy is, at the time of any loss or damage from an insured peril, greater than the sum for which the property is insured, you will only be entitled to recover under the policy such proportion of the loss as the sum insured under the policy bears in relation to the value of the property, less any deductible not covered by the policy. You are said to be under-insured because the sum insured at the time of the loss is less than the value of the insured property and so a part of the insured loss will not be covered under the policy. In this case, you are considered as being your own insurer for the part of your loss which is not covered under the policy.

For example, should you have a property which has a value of \$10,000,000 and you insure it for \$7,000,000 and you suffer a loss from an insured peril, there are three possible scenarios depending on the size of the loss. The formula that is applied in each case is set out below:

$$\frac{\text{Sum Insured}}{\text{Value}} \times \frac{\text{Amount of the loss}}{1} = \frac{\text{Amount Recoverable}}{1}$$

Example 1: Where loss is less than value and sum insured:

Assuming the loss is \$5,000,000

$$\frac{\$7,000,000}{\$10,000,000} \times \frac{\$5,000,000}{1} = \frac{\$3,500,000}{1}$$

You will be paid \$3,500,000 or 70% of your loss less any deductible stated in the policy.

Example 2: Where loss is less than the value but greater than sum insured:

Assuming the loss is \$8,000,000

$$\frac{\$7,000,000}{\$10,000,000} \times \frac{\$8,000,000}{1} = \frac{\$5,600,000}{1}$$

You will be paid \$5,600,000 or 70% of your loss less any deductible stated in the policy.

Example 3: Where loss is equal to value:

Should you have a total loss, that is, \$10,000,000 then you will only receive the amount you insured the property for, that is, \$7,000,000 less any deductibles stated in the policy.

Under other circumstances where you under-insure, you may be entitled to the full amount of the insured loss if the sum insured is equal to or more than a specific percentage of the value, as stated in the policy. This will depend on the terms of your policy.

Please review the terms of your policy carefully, and check on the adequacy of the sum for which the property is insured or to be insured. This will enable you to identify whether you are or will be under-insured in a manner which will cause the *pro rata* condition of average detailed in your policy to be applied. You may check with your insurer, agent or broker for further clarification on the terms of your policy and the nature and effect of the *pro rata* condition of average contained therein.”.

Amendment
of *Financial
Services
Commission
Act.*

25. The *Financial Services Commission Act* is amended—

- (a) in section 21(1) by inserting next after the words “relevant Act” the words “or regulations made thereunder”;
- (b) in the Fourth Schedule by inserting next after item (53) under the heading “THE INSURANCE ACT” the following—

“ (54) Regulation 126(8) Failure to publish
of the *Insurance* prescribed notice of
Regulations, 2001 *pro rata* condition of
average \$100,000.00.”.

Passed in the House of Representatives this 10th day of November, 2015 with five (5) amendments.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 15th day of January, 2016 with one (1) amendment.

ANGELA BROWN-BURKE
Deputy President.

On the 19th day of January, 2016 the House of Representatives agreed to the amendment made by the Senate.

MICHAEL A. PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgd. Heather E. Cootce
Clerk to the Houses of Parliament.