

LEGAL NOTICE NO. 312 OF 2021

INSURANCE ACT, 2005
(Act No. 7 of 2005)

THE POLICY HOLDER PROTECTION RULES, 2021
(Under Section 72)

In the exercise of the powers conferred by section 72 of the Insurance Act, 2005 the Registrar of Insurance and Retirement Funds issues the following Rules-

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PART I PRELIMINARY PROVISIONS

Citation and Commencement

1. (1) These Rules may be cited as the Policy holder Protection Rules, 2021.
- (2) These Rules shall come into force on the date of publication in the Gazette.

Purpose and Objective of these Rules

2. (1) The purpose of these Rules is to regulate the process of entering into, execution and enforcement of insurance policies to ensure that the policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interest of an insurer and policyholder parties entering into an insurance policy.
- (2) The objective of these Rules is to ensure that a policy holder is provided with sufficient information to make an informed decision about an insurance product, before purchase is made and after purchase of such product.

Application

3. (1) The Rules shall apply to-
 - (a) all insurance policies proposed or entered into;
 - (b) all transactions and communications that occur on or after the effective date in respect of policies in force on the effective date of such policy; and,
 - (c) an insurer, an insurance agent, an insurance broker or intermediary involved in the solicitation, sale or administration of insurance policies underwritten by the insurer, to the extent relevant to the nature of their involvement.

(2) The provisions of sub-rule (1) shall not apply to an insurance policy on a cooling-off period

(3) The provisions of these Rules shall not be construed as affecting a duty of a person to comply with any applicable provision of the Insurance Act, 2005.

Basic Principles

4. (1) A person who conducts an insurance business shall-

- (a) always act in the public interest and in accordance with the objectives and procedures set out in the Insurance Act, 2005, Insurance Directives and Insurance Regulations prescribed from time to time;
- (b) exercise powers and discharge duties for a proper purpose, consistent with that person's responsibilities, and with the degree of care and diligence that a reasonable person would exercise in similar circumstances; and,
- (c) discharge duties impartially so as to ensure fair and honest access to insurance services by a policyholder.

(2) An insurer, insurance agent, insurance broker or intermediary shall provide a prospective policyholder or a policyholder with sufficient information to make an informed decision about a proposed or existing insurance policy.

PART II GENERAL INFORMATION IN POLICIES

General Criteria for Information

5. (1) All communications and dealings on insurance products or policies made by an insurer, insurance agent, insurance broker or intermediary with a policyholder shall be in precise, clear and straightforward language.

(2) Any written information on insurance products given by an insurer, insurance agent, insurance broker or intermediary to a policyholder, including marketing materials, policy contracts and certificates, forms and statements, shall be in one or both of the official languages of Eswatini.

(3) Any written information on insurance products or policies given by an insurer, insurance agent, insurance broker or intermediary to a policyholder shall be presented in a clear and readable print size, spacing and format.

(4) All amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to in marketing materials, policy contracts, certificates, forms or statements shall be stated in specific monetary terms or the basis of their calculation shall be clearly and accurately described in such marketing materials, policy contracts, certificates, forms or statements.

Conflict of Interest

6. (1) The existence of any circumstance which may give rise to an actual or potential conflict of interest in relation to the selling and administration of insurance products shall be disclosed

to the policyholder by an insurer, insurance agent, insurance broker or intermediary.

(2) All reasonable steps shall be taken by an insurer, insurance agent, insurance broker or intermediary to ensure the fair treatment of a policyholder.

Information to be provided at or before the delivery of a Policy

7. (1) An insurer, insurance agent, insurance broker or intermediary shall provide a prospective policyholder or policy holder with the following information at or before the delivery of an insurance policy-

- (a) the business or trade name and registration certificate number of the insurer;
- (b) contact details and physical address of the insurer;
- (c) the name, class and type of the policy;
- (d) a general explanation of the policy, including any information that may reasonably be required to enable the policyholder to make an informed decision;
- (e) the nature and extent of benefits provided by the policy, including any guaranteed minimum benefits or other guarantees;
- (f) any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits may not be paid;
- (g) the nature and extent of the monetary obligations assumed by the policyholder which includes-
 - (i) any anticipated or contractual escalations,
 - (ii) increases or additions;
 - (iii) the manner of compliance therewith; and
 - (iv) the consequences of non-compliance;
- (h) any charges and fees to be levied against the policy, including the amount and frequency thereof;
- (i) any restrictions on or penalties for early termination or withdrawal from the policy;
- (j) any material investment or other risks associated with the policy;
- (k) where the policy has an investment component, the net amount that shall be invested for the benefit of the policyholder and the extent to which funds may be accessible by the policyholder;
- (l) the cooling-off period and the procedure for exercise thereof;
- (m) the procedure for making claims under the relevant policy;

- (n) the procedure for lodging a complaint with an insurer or the Ombudsman of Financial Services appointed in terms of section 74 of the Financial Services Regulatory Authority Act, 2010; and,
- (o) any commissions, considerations, fees, charges or brokerages which may be payable to an insurer, insurance agent, insurance broker or intermediary by a policyholder in respect of a policy.

Cooling-off Period

8. (1) A policyholder shall be given a cooling-off period to review the terms and conditions of the insurance policy.

(2) A policyholder may cancel any insurance transaction, excluding any policy or variation which only lasts for thirty (30) days or less, by written cancellation notice sent to the insurer, provided that-

- (a) no benefit has been paid or claimed or an event insured against has not yet occurred; and,
- (b) such notice is sent within a period of thirty (30) days of receipt of the policy schedule or a reasonable date on which it can be deemed that the policyholder received the policy schedule,

(3) All premiums or monies paid by the policyholder to the insurer up to the date of receipt of the cancellation notice or received at any date after the cancellation, in respect of the cancelled or varied policy, shall be refunded to the policyholder, subject to the deduction of the cost of any risk cover actually enjoyed and any market loss where the market value of the investments made has decreased in the intervening period due to prevailing market conditions.

(4) An insurer shall ensure that it complies with the request for cancellation received after the thirty (30) days notice period but not later than sixty (60) days after the effective date, where the policyholder can prove that a cancellation notice not received by the insurer was completed in good faith and communicated to the insurer within the thirty (30) days notice period.

(5) Where a policy cannot be cancelled, or is by virtue of its terms and nature not capable of being cancelled, such fact shall be disclosed to the policyholder before the entering into of any insurance transaction in respect of the policy.

**PART III
PROHIBITIONS**

Prohibition of inducements

9. An insurer, insurance agent, insurance broker or intermediary shall not induce a policyholder or a prospective policyholder in any way to enter into a contract of insurance or to make alterations or additions to or cancel a policy.

Prohibition of Coercion

10. (1) A policyholder who is party to a contract in terms of which money is loaned, goods are leased or credit is granted, is required to provide security by means of an insurance policy to

secure the debt incurred by him, then that person shall be entitled to-

- (a) either enter into and cede a new policy contract to secure the debt or to cede and existing policy to secure the debt; or
- (b) choose the insurer and intermediary with whom he shall conclude a contract of insurance for purposes of securing the debt.

(2) A policyholder who is a party to a contract referred to in sub-rule (1) shall be informed of his rights and obligations provided in the contract in writing.

Incomplete or Unsigned Forms

11. (1) A policyholder or prospective policyholder shall not be required or permitted to sign a blank or partially-completed form for the purpose of applying for a policy or effecting a transaction in respect of a policy, if another person shall subsequently be required or permitted to fill in other required detail in the form.

(2) An insurer shall not conclude any transaction where such signing of a blank or partially completed form or providing of details have occurred.

PART IV MISCELLANEOUS

Debit Orders

12. (1) An insurer shall ensure that a debit order for the payment of premiums to the insurer has been drawn solely in favour of the insurer and has been signed by the premium payer.

(2) An insurer shall not unilaterally terminate a debit order for the payment of premiums without informing the premium payer in writing of the intention to terminate the debit order at least thirty (30) days before the effective date of such envisaged termination.

Premiums received in cash

13. Any person who receives payment of premiums in bank notes or coins shall issue a written receipt for the payment and the receipt shall contain in print or stamp the name of the institution that is receiving the payment.

Confidentiality and Non-Disclosure

14. (1) Appropriate safeguards shall be implemented to protect sensitive information and ensure that fiduciary relationships are preserved.

(2) Confidential information may be divulged with the express permission of the person concerned.

(3) If disclosure is required by law or by order of court care must be taken not to divulge more information than is required.

(4) Any requests for additional information shall require the authorization of the relevant person or a subpoena; and such requests shall be properly documented.

(5) Disclosure may be justified for the purpose of defending against any allegation of incompetence or misconduct, or in legal proceedings related to a policy, but only to the extent it is necessary for defence purposes.

Grace Period

15. (1) All policies shall provide a period of grace for the payment of premiums of not less than (thirty) 30 days after the relevant due date.

(2) The policy shall specify the consequences of late payment of premiums, including the treatment of claims incurred during the grace period.

Void Provisions

16. Any provision of a policy shall be considered void if it provides expressly or by implication that-

- (a) the insurer is absolved for the responsibility of the actions, omissions or representation of his agents, employees or representatives.
- (b) an agent, employee or representative of the insurer had acted on behalf of the policyholder
- (c) the fulfilment of the insurer's obligation under the contract is dependent upon the fulfilment of the obligation of another person under a reinsurance contract.
- (d) the policyholder waves any of his rights under the Insurance Act, 2005.
- (e) a claim will only be paid on condition that the policyholder undergoes a polygraph, lie detector, truth verification, or any other similar test or procedure, which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer, and which is conducted under the control of the insurer or such other person;
- (f) an inducement of any nature is provided for a policyholder to voluntarily agree to undergo a test or procedure, as described in paragraph (e), where the policyholder submits a claim under the policy;
- (g) in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration; or
- (h) a claim might be rejected because a premium was not paid on the due date, if payment was made during the period of grace referred to in Rule 8 (1), whether or not the payment was made prior to the event giving rise to the claim.

Policy Loans

17. (1) If a long-term insurance policy provides for policy loans, an insurer must disclose the following information to the policyholder on entering into a policy loan agreement-

- (a) the interest rate of the loan at the time of entering into the contract;
- (b) whether the interest rate on the loan might fluctuate; and

(c) any arrangement for repayment of the loan.

(2) If a policy loan is outstanding, an insurer must disclose the following information to the policyholder-

- (a) any changes to the interest rate applicable to the policy loan;
- (b) at least once annually, the outstanding amount of the policy loan and accrued interest, and the interest rate currently applicable to the loan;
- (c) at least thirty (30) days in advance of the relevant date, notice that the loan is about to equal the value of the policy and how this will affect the policy; and
- (d) notice that the policy has been terminated as a result of the policy loan equalling the value of the policy.

Cession

18. (1) An insurer shall not endorse or record a cession of a policy unless the insurer receives notification from the cessionary, in order for an insurer to endorse and record a cession, the cession shall provide-

- (a) full details of the cessionary;
- (b) the reason for the cession; and
- (c) the term of the cession.

(2) An insurer shall, on receipt of notification of a cession on the policy, advise the policyholder on-

- (a) The name of the cessionary;
- (b) The fact that the cession is endorsed and recorded in the insurer's records; and
- (c) The nature of the cession, i.e., whether it is outright cession or a cession securing a debt.

Notice to cessionary

19. An insurer shall give notice to a cessionary-

- (a) that the insurer intends to unilaterally terminate a debit order for the payment of premiums, at least thirty (30) days before the effective date of such envisaged termination;
- (b) that the premium payer has terminated a debit order;
- (c) at least thirty (30) days in advance of the relevant date, that the loan is about to equal the surrender value of the policy; and how this will affect the policy;
- (d) that the policy has been terminated as a result of the policy loan equalling the value of the policy; and

- (e) that it intends to unilaterally cancel the policy, at least thirty (30) days before the cancellation date.

Rejection of a claim

20. (1) An insurer shall ensure that where a decision has been made as to the rejection of a claim under a policy, or as regards the quantum of a claim which is in dispute, the policyholder concerned shall be informed in writing the reasons for the decision and that the policyholder may within a period of not less than ninety (90) days after the date of the decision make representations to the insurer in respect of such decision.

(2) The ninety (90) days referred to in sub-rule (1), may not be included in any time-barring period contained in the policy for the institution of legal action.

(3) Any exceptions to the ninety (90) days shall be permitted if specifically provided for in the policy, and the Registrar is informed of the existence of such provision.

(4) If a claim is rejected or a quantum is disputed on behalf of an insurer, by a person other than the insurer, such other person shall provide the rejection notice.

(5) The rejection notice shall contain the name and contact details of the insurer, and state that any recourse or enquiries shall be directed to that insurer.

Misrepresentation

21. (1) A policy contract shall not be invalidated on account of the policyholder or his agent having supplied the insurer or his agent with information that is proved to be false except if the false information was such a nature that it has resulted in the assessment of the risk under the policy being materially affected at the time of its issue, renewal or endorsement.

(2) Where the age of a life assured has been misrepresented to an insurer or an agent, the policy benefits shall be adjusted so that the policy benefits are equal to those that would have been provided under the policy being based on the correct age for the premium.

Unilateral Cancellation by an Insurer

22. An insurer shall not unilaterally cancel any policy without giving notice to the policyholder at least thirty (30) days prior to the cancellation date, either-

- (a) directly to the policyholder;
- (b) by satisfying the insurer that such notice has been given to the policyholder by an intermediary; or
- (c) if neither of these is possible, by publication of such notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that relevant policyholder resides.

Voidable policy

23. (1) An insurance policy issued in contravention of these Rules shall be deemed voidable.

(2) A policyholder may lodge a complaint with the Ombudsman of the Financial Services for a policy issued in contravention of these Rules.

Reports

24. (1) An insurer shall submit to the Registrar a report in respect of all complaints received quarterly within (thirty) 30 days after the expiry of each quarter.

(2) The report shall give the details of each complaint received and the steps taken to resolve the complaint.

(3) The report shall include the complaints that were not resolved and the reasons for not resolving the complaints.

Record Keeping

25. (1) The insurer shall have appropriate procedures and systems in place to store and retrieve transactional and other documentation relating to the policyholder and to keep such documentation secure and safe from destruction.

(2) The records may be kept in an appropriate recorded or electronic format, which shall be readily accessible and reducible to printed format.

(3) The disclosure records and documentation pertaining to a policyholder shall be kept for a period of at least five (5) years after the termination of the relevant policy.

(4) The records shall be available for inspection upon request by the Registrar, and copies of the records may be furnished to a policyholder upon request by the policyholder.

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THE REGISTRAR OF INSURANCE**