Questions and Answers in respect of the protection afforded to the policyholders of a long term business contract of insurance issued by an Isle of Man authorised insurer.

These “Questions and Answers” are intended to provide a general overview in relation to some issues which may be of relevance in the current circumstances – they are not a substitute for specific professional advice.

Q: I have a long term business contract of insurance issued by an Isle of Man authorised insurer, what protection do I have?

A: The protection offered to policyholders of an authorised insurer of long term business is layered and can be categorised as follows:

**Layer 1:** The ring fencing of assets under sections 19 and 20 of the Insurance Act 2008 (as amended) (“The 2008 Act”).

**Layer 2:** The requirement, under section 12 of the 2008 Act, for a company to hold surplus assets as a margin of solvency.

**Layer 3:** If an authorised insurer of long term business becomes insolvent – the liquidator shall, unless the court otherwise orders, carry on the long term business of the company with a view to it being transferred as a going concern to another body corporate.

**Layer 4:** In the event that each of the above layers of protection fails, and in cases where civil liabilities have been incurred by an authorised insurer under a protected contract as defined in the Life Assurance (Compensation of Policyholders) Regulations 1991, and the insurer is unable, or likely to be unable to satisfy those liabilities, then recourse may be had to the policyholder protection fund established under those Regulations.

Q: I have a long term business contract of insurance issued by an Isle of Man authorised insurer, what protection do I have under sections 19 and 20 of the 2008 Act?

A: An authorised insurer of long term business is required under these sections of the 2008 Act to keep its accounts in respect of the long term business separate from any accounts kept in respect of any other business and all receipts (including money received in premiums) must be held within a special fund which is often referred to as the long term business fund. The assets of the long term business fund are used to meet the future policy claims, or liabilities, of the long term policies issued together with those liabilities which have already fallen due for payment.
Q: How are the liabilities calculated?

A: The determination of the amount of long term liabilities (other than long term liabilities which have already fallen due for payment) shall be made by the actuary appointed under the 2008 Act (the “Appointed Actuary”) on actuarial principles, having due regard to the fair treatment of policyholders and in accordance with the Insurance (Valuation of Long Term Liabilities) Regulations 2007.

Q: For what purposes can the assets of the long term business fund be used?

A: Under section 20 of the 2008 Act, the assets of the long term business fund shall be applicable only for the purposes of long term business. Assets can only be transferred out of the long term business fund if they exceed the certified value of the liabilities and then only with the authority of a resolution of the directors of the company and the written consent of the actuary of the company. Each year the Appointed Actuary certifies within the financial statements of the company that in his or her opinion as at the balance sheet date the aggregate amount of liabilities in respect of long term business does not exceed the amount stated in the balance sheet as representing the long term business fund.

Q: What is a margin of solvency?

A: As noted above, the assets attributable to long term business must be held within a special fund which is often referred to as the long term business fund. The 2008 Act also requires Isle of Man authorised insurers to maintain a margin of solvency within the company. This acts as a ‘buffer’ fund against unforeseen circumstances. The minimum margin of solvency is laid down in the Insurance Regulations 1986 (Part 1 of Schedule 7).

Q: Is a company automatically wound up if the margin of solvency falls below that required by the Regulations?

A: If the buffer provided by the minimum margin of solvency falls below the minimum specified within the Regulations, then section 13(1) of the 2008 Act provides that the insurer shall submit to the Supervisor a short term financial scheme for his consideration. The purpose of such a scheme is to demonstrate to the Supervisor the remedial action proposed by the executive management of the company to bring the level of solvency back above that required by the Regulations.

Q: What happens if the scheme is not accepted by the Supervisor?

If the Supervisor considers the scheme to be inadequate he can require it to be modified. Once accepted, the authorised insurer shall give effect to the scheme. If an authorised insurer is unable or fails to submit a scheme which is acceptable to the Supervisor, the insurer shall be deemed for the purposes of section 162 or 307 of the Companies Act 1931 (as the context requires), to be unable to pay its debts.
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Q: What happens if the company enters into insolvency?

A: If an Isle of Man authorised insurer is deemed for the purposes of section 162 or 307 of the Companies Acts 1931 (as the context requires) to be unable to pay its debts then the winding up of the company is undertaken in accordance with Schedule 3 of the 2008 Act. The liquidator shall, unless the court otherwise orders, carry on the long term business of the company with a view to it being transferred as a going concern to another body corporate, whether an existing body corporate or a body corporate formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

Q: What if the long term business is not transferred as a going concern and the long term business fund has insufficient assets to meet the liabilities?

A: In the event of a company authorised to conduct long term business being unable to meet its liabilities to its policyholders there is in place on the Isle of Man a statutory protection scheme (referred to above) which protects affected policyholders whose policies were effected on or after 1 February 1991.

- Policyholders of long term business protected contracts of insurance issued by Isle of Man authorised insurers are protected irrespective of where they reside.
- In the event that a company is unable to meet its liabilities, the policyholder of a protected contract will be protected by the policyholders compensation fund.
- The compensation offers up to 90% of the amount of any liability of the authorised insurer under the contract.

Q: My contract was effected before 1 February 1991 does this mean I’m not covered?

A: Not necessarily. Certain companies were members of a similar voluntary scheme in the Isle of Man whose conditions are also laid out in the Life Assurance (Compensation of Policyholders) Regulations 1991. To be sure if your contract qualifies you will need to contact your insurance provider.

Q: My policy links to individual assets, what happens if the institution writing / backing those assets fails?

A: You should refer to the terms and conditions of your individual contract to determine who bears the risk of asset failure or contact your insurance provider or independent financial advisor to help you determine this. The policyholder compensation scheme would not ordinarily cover investment losses within a contract.
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Q: Which companies are regulated by the IPA?

A: Companies carrying out insurance business in or from the Isle of Man are required to be authorised under the 2008 Act, unless otherwise exempt.

A list of authorised insurers can be found here.

Q: What is ‘long term business’?

A: Regulation 3 of the Insurance Regulations 1986 defines long term business as contracts of insurance of the following descriptions, namely life, annuity, marriage, birth, linked long-term, permanent health, tontines and capital redemption being contracts that are expressed to be in effect for a period of not less than 5 years or without limit of time, and either not expressed to be terminable by the insurer before the expiration of 5 years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned.

Q: What if my contract has other benefits which are not long term?

A: Where the principal object of a contract of insurance is long-term business, but that contract contains related or subsidiary insurance provisions which are not long-term business, the contract shall be treated as long-term business.

Q: What if my contract has a term of less than 5 years?

A: All contracts that would fall within the definition of long-term business but for the term being less than 5 years shall be treated as falling within that definition if the insurer concerned gives written notice to the Supervisor that it intends to treat all contracts within that description as long-term business. To be certain if your contract qualifies as long term in these circumstances you should contact the insurance company who issued the policy.

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