

Insurance (Third-Party Administrators) Regulations 2022

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THE INSURANCE ACT

Regulations made by the Minister under sections 78A and 129 of the Insurance Act

1. Short title

These regulations may be cited as the Insurance (Third-Party Administrators) Regulations 2022.

2. Interpretation

In these regulations –

"Act" means the Insurance Act;

"service agreement" means the agreement referred to in regulation 7 and entered into between an insurer and a third-party administrator,

"service provider" means a person with whom the third-party administrator or the insurer has entered into a contract for the provision of services to policyholders;

"third-party administrator" means a person who, with the authority of an insurer and not being an employee, an insurance agent or an insurance manager of the insurer, provides, under a service agreement, the services specified in the First Schedule to policyholders.

3. Application of regulations

(1) These regulations shall apply to services provided by third-party administrators to insurers.

(2) A third-party administrator shall not carry on the business of an insurer, an insurance agent, an insurance manager, an insurance broker or a claims professional.

4. Licensing of third-party administrators

(1) No person shall carry out or hold himself out as carrying out the business of third-party administration unless that person holds a licence issued by the Commission.

(2) No insurer or service provider shall deal with any person carrying out third-party administration unless that person holds a third-party administration licence from the Commission.

(3) An application for a licence to act as a third-party administrator shall be made in such form, manner and medium as the Commission may determine and be accompanied by such document and information as the Commission may require.

(4) Where the Commission is satisfied that an application ought to be granted, it shall, on payment of such fee as it may determine, issue a licence, authorising the applicant to carry on business as a third-party administrator.

(5) The Commission shall not grant a licence except where it is satisfied that -

- (a) the objectives of the business of the applicant are limited to the business specified in the application and operations arising directly from it and are consistent with the Act and these regulations;
- (b) the applicant has a minimum stated unimpaired capital of not less than 500,000 rupees or equivalent in a foreign currency;
- (c) the applicant is covered by a professional indemnity insurance policy of not less than 2 million rupees;
- (d) the applicant discloses such information as the Commission may request in relation to the proposed business, and to persons who will, upon commencement of the applicant's business, have any proprietary, financial or other interest in, or in connection with, the applicant;
- (e) the applicant has the financial resources, organisation and management capacities that are necessary to carry out the business which is the subject matter of the application;
- (f) the applicant, the substantial shareholders, controllers, and officers of the applicant are fit and proper persons to ensure the sound and prudent management of the business;
- (g) the applicant will, on being licensed, be able to comply with and fulfil all requirements under the Act and these regulations; and
- (h) the applicant meets such other requirements as may be specified.

(6) An applicant shall notify the Commission of any material change which may have occurred before or after a licence is granted, within 15 days of the date of such material change.

(7) For the purpose of determining an application, the Commission may consider -

- (a) any guidelines or international standards relating to the regulation of third-party administrators issued by an international body;
- (b) any regulation, FSC rule or guideline issued by the Commission; and

(c) any information obtained from a foreign regulator or enforcement agency.

(8) The Commission may, on granting a licence, impose such conditions, restrictions and limitations to the scope of business of the licensee as it may determine.

(9) Any person who, for the purpose of an application for a third-party administrator licence -

(a) makes a representation or statement which he knows to be false in a, material particular; or

(b) recklessly makes a representation or statement, which is false in a material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

5. Restrictions applicable to third-party administrators

(1) While performing the services set out in the First Schedule, the third-party administrator shall not -

(a) directly or indirectly, procure or solicit insurance business;

(b) underwrite any insurance business;

(c) reject or repudiate any claims except where expressly authorised by an insurer in the service agreement or any other guidelines issued by the insurer;

(d) impose on, charge or collect from policyholders or beneficiaries of insurance policies any additional amount other than what has been agreed with the insurer under the service agreement;

(e) impose on, charge or collect from service providers any additional amount other than what has been agreed with the insurer under the service agreement, except where such additional amount relates to the use of technological solutions provided by the third-party administrator;

(f) offer any service directly to the policyholder or to any other person unless such service is in accordance with the terms and conditions of the insurance policy and the service agreement entered into with the insurer.

(2) No third-party administrator shall hold shares in, operate or manage an insurer, an insurance broker, an insurance agent, an insurance manager or a service provider.

(3) No officer of a third-party administrator shall -

(a) hold shares in; and

(b) be an officer of an insurance broker or a service provider.

(4) No insurance broker, insurance agent or service provider shall hold shares in a third-party administrator.

(5) An insurer may hold shares in a third-party administrator unless -

(a) the third-party administrator exclusively services that insurer; or

(b) the third-party administrator discloses its shareholding structure to all insurers with whom it proposes to enter into a service agreement and retains a copy of such disclosure.

6. Non-exclusivity of contract

(1) A third-party administrator may provide services to more than one insurer provided that separate records and fiduciary bank accounts are kept for each insurer.

(2) An insurer may enlist the services of more than one third-party administrator.

(3) Subject to paragraph (4), a third-party administrator may enlist the services of more than one service provider.

(4) Where a third-party administrator contracts with more than one service provider, the policyholder shall be given the choice of its preferred service provider.

7. Service agreements

(1) Third-party administrators and insurers shall enter into written service agreements which shall include -

(a) the scope of the services to be provided by the third-party administrator to policyholders on behalf of the insurer;

(b) the rights and obligations of the insurer and the third-party administrator;

(c) the procedures and controls governing the work mechanism between the insurer and the third-party administrator; and

(d) the matters set out in the Second Schedule.

(2) The third-party administrator shall provide the Commission with a signed copy of the service agreement within 30 days of its signature.

(3) The third-party administrator shall, within 15 days of an amendment to a service agreement, inform the Commission and provide it with a copy of the amended service agreement.

8. Governance

A third-party administrator shall, at all times -

- (a) ensure that its governance structure provides for effective oversight of its activities, taking into consideration the nature, scale and complexity of its business;
- (b) have adequate internal controls and adopt strategies, policies, processes and procedures in accordance with the principles of sound corporate governance and risk management; and
- (c) be managed by a board of directors. consisting of at least one independent non-executive director.

9. Staffing and competencies

(1) A third-party administrator shall have at least one full-time designated officer who, understands the duties of a third-party administrator and who shall be responsible for the day to day administration of the affairs of the third-party administrator.

(2) A designated officer under paragraph (1) shall have at least 5 years' experience in the insurance business or the business of a third-party administrator and shall hold -

- (a) a relevant bachelor's degree; or
- (b) a professional qualification in insurance equivalent to at least a diploma.

(3) The third-party administrator shall submit to the Commission a declaration attesting that a designated officer under paragraph (1) -

- (a) meets the requirements under paragraph (2); and
- (b) is of good character.

(4) A third-party administrator shall employ adequate staff that is fit and proper and has the appropriate competence, experience and proficiency to properly perform the functions of the third-party administrator.

(5) A third-party administrator shall ensure that its staff is provided with appropriate training for their respective duties and responsibilities.

(6) A third-party administrator offering services related to health insurance shall enlist the services of at least one qualified and licensed medical practitioner who shall be available at any time the third-party administrator requires his services.

10. Minimum operational requirements

(1) A third-party administrator shall -

- (a) have adequate resources, infrastructure and equipment to effectively discharge its functions;
- (b) have adequate information technology systems, processes and sufficient technological capabilities to administer the database of policyholder of the insurer;
- (c) ensure that its information technology systems are resilient and not prone to failure and tampering;
- (d) have proper procedures and controls to ensure the strict confidentiality and security of the insurers' and policyholders' data, information and documents; and
- (e) have the required procedures and measures to face any emergency situations, events, breakdown or technical failure in its electronic system so as to enable continuation and efficient operation of its activities.

(2) A third-party administrator shall appoint an external independent third party to undertake an audit of its information technology systems -

- (a) at a frequency which shall be not less every 3 years from the date of its licence; and
- (b) following any material change to the system.

11. Rules of conduct and ethics

(1) A third-party administrator shall conduct its business in a sound and ethical manner and shall adhere to such code of business conduct as the Commission may issue.

(2) A third-party administrator shall -

- (a) perform its functions with professionally, fairly and good faith in accordance with the service agreements and contracts concluded with the insurer and the service providers;
- (b) ensure, with the collaboration of the insurer, that a proper and prompt service is provided to policyholders at all times;
- (c) ensure that its employees and representatives clearly describe the third-party administrator, the insurer or the service providers when dealing with a third-party or policyholder and explain the nature of the services the third-party administrator is authorised to provide;

- (d) explicitly disclose to the policy holder the remuneration which it is entitled to receive from the insurer for the services rendered on behalf of the insurer;
- (e) inform the insurer of the service providers enlisted on its behalf;
- (f) refrain from doing any act that would, directly or indirectly, influence the decision of a policyholder in dealing with an insurer at the expense of other insurers or in ending a business relationship with an insurer;
- (g) inform the insurer when contracting or terminating a contract with any service provider or before amending an agreement concluded with a service provider;
- (h) maintain the confidentiality of all data and information obtained in the course of its functions;
- (i) refrain from using promotion or advertisement for the business and services provided on behalf of an insurer without the written consent of that insurer and ensuring that the information contained in the promotion or advertisement is correct, accurate, clear and reflects the nature of business that the insurer performs;
- (j) pursue accuracy, objectivity and impartiality in the settlement of claims and deal with insurers and service providers without bias;
- (k) maintain the level of services offered to an insured or a beneficiary throughout the policy period of validity in accordance with the provisions of the service agreement concluded with the insurer.

12. Separate accounts for funds received

(1) A third-party administrator shall not receive, hold, or in any other manner deal with, or be allowed by an insurer to receive, hold and deal with, funds payable under an insurance policy other than in accordance with the service agreement and the regulatory framework for third-party administrators.

(2) A third-party administrator who receives funds payable under an insurance policy in accordance with the service agreement with an insurer shall remit the funds, less any commission and other deductions to which it is entitled, to the insurer within such period as may be agreed in advance with the insurer.

(3) A third-party administrator shall hold in a fiduciary capacity -

- (a) all insurance charges, premiums, collateral and loss reimbursements collected, by the third-party administrator on behalf of an insurer;

- (b) the return of premiums or collateral received from an insurer; and
- (c) any funds held by the third-party administrator for the payment of claims.

(4) A third-party administrator shall ensure that funds in its possession that accrue to a person be forthwith remitted to that person or deposited promptly in a fiduciary bank account maintained for that purpose.

(5) A fiduciary bank account under paragraph (4) shall be separate from any bank account which a third-party administrator opens and maintains for keeping its own funds.

(6) Where a third-party administrator has concluded service agreements with more than one insurer, it shall open and maintain separate fiduciary bank accounts for each insurer.

(7) Where funds deposited in a fiduciary bank account are in respect of more than one policy, the third-party administrator shall keep records of the deposits and withdrawals from the account on behalf of each policyholder.

(8) A third-party administrator shall not retain any interest or other income which may accrue from the funds held in a fiduciary bank account maintained in accordance with this regulation.

(9) Interest or other income referred to in paragraph (8) shall be paid to the insurer in accordance with the terms of the service agreement.

13. Handling of funds by third-party administrators

(1) Any payment made to a third-party administrator by or on behalf of a policyholder shall be deemed to have been received by the insurer.

(2) Any payment or return to a policyholder by a third-party administrator shall not be effective until received by the policyholder.

(3) Payments from a fiduciary bank account maintained for the purpose of these regulations shall be made in the manner specified in the service agreement and solely for the following purposes -

- (a) payment of valid claims;
- (b) payment of expenses associated with claims-handling, including payments to service providers approved by the insurer;
- (c) payment to the third-party administrator of its earned commissions, fees, or charges;
- (d) remittance to the insurer or transfer to a successor third-party administrator as directed by the insurer for the purpose of paying claims and associated expenses; and

- (e) return of funds held as collateral or prepayment to the person entitled to these funds upon a determination by the insurer that these funds are no longer necessary to secure or facilitate the payment of claims and associated expenses.

14. Maintaining of books and records

(1) Third-party administrators shall maintain proper books and records of all transactions effected on behalf of an insurer in accordance with the service agreement.

(2) The books and records referred to in paragraph (1) and any information contained therein shall be made available to the insurer, the Commission and such person as the Commission may appoint for the purpose of investigating or inspecting the third-party administrator.

15. Submission of reports

(1) A third-party administrator shall submit to the Commission its audited financial statements not later than 3 months after the expiry of each balance sheet date.

(2) The third-party administrator shall furnish to the Commission such statements and returns relating to its business in such form and at such intervals as may be specified and provide such other document and information as the Commission may require from time to time.

16. Responsibilities of insurer

(1) An insurer that engages the services of a third-party administrator shall retain responsibility for

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- (a) the benefits, premium rates, collateral and reimbursement procedures, underwriting criteria and claims payment procedures applicable to the insurance policy and for securing reinsurance if any;
- (b) the acts of the third-party administrator performed in accordance with the service agreement.

(2) An insurer shall -

- (a) maintain at its principal place of business and display in a conspicuous place to which the public has access, a list of all its third-party administrators and provide the Commission, on demand, with a copy of the list;

- (b) conduct a risk assessment and due diligence check on the competency of the third-party administrator before entering into a service agreement with such third-party administrator;
- (c) ensure that the third-party administrator is competent in terms of skills, infrastructure and systems to fulfil its obligations under the service agreement;
- (d) at all times, ensure that its third-party administrators are in good standing in terms of fees and reporting obligations;
- (e) notify forthwith the Commission of any violation by its third-party administrator of the Act, these regulations or such other regulations, FSC rules or guidelines as may be issued by the Commission;
- (f) notify the Commission of any termination of a service agreement within 15 days of the date of such termination, and the reasons for the termination.

(3) Notwithstanding any obligation under a contract relating to confidentiality, no disclosure to the Commission made by an insurer, acting in good faith, shall give rise to any criminal or civil action against that insurer.

17. Complaints handling

In the course of the conduct of its business, the third-party administrator shall keep an effective complaints handling process and shall inform policyholders of their right to complain to the complaints coordinator of the insurer concerned and to the Ombudsperson for Financial Services.

18. Transitional provisions

(1) Any person who, before the coming into operation of these regulations, was carrying out or holding himself out as carrying out third-party administration in Mauritius shall, within 12 months of the coming into operation of these regulations, apply to the Commission for a third-party administration licence and shall comply with the requirements of the Act and these regulations.

(2) Any person who fails to apply for a licence within the time specified in paragraph (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

19. Commencement

These regulations shall come into operation on 26 November 2022.

Made by the Minister on 11 November 2022.

FIRST SCHEDULE

[Regulation 2]

SERVICES PROVIDED RYA THIRD-PARTY ADMINISTRATOR

1. Administer insurance programs underwritten by insurers, including customer service support
2. Handle policy-related issues, including policy administration and premium collection
3. Maintain and administer a database of policyholders
4. Service and settle claims arising from an insurance policy in accordance with the underlying terms and conditions of the respective policy and within the framework of guidelines issued by the insurer
5. Pay insurance claims on behalf of the insurer
6. Establish a network of service providers and conclude agreements with the said service providers on behalf of the insurer
7. Facilitate the carrying out of pre-insurance examinations in connection with the underwriting of insurance policies
8. Provide consultancy services including on claims handling processes, reports on the analysis of claim expenses and provide recommendations for the effective underwriting of policies
9. Any other services as the Commission may approve

SECOND SCHEDULE

[Regulation 7]

ELEMENTS TO BE INCLUDED IN THE SERVICE AGREEMENT

- 1.** A description of the nature of services mutually agreed upon to be provided by the third-party administrator
- 2.** Duration of the agreement and situations requiring the termination thereof
- 3.** Method of calculating the fees of the third-party administrator which shall not be linked to the product, the claims experience or the reduction of claim costs or loss ratios
- 4.** The right of the insurer to have access to the books and records related to the transactions performed on behalf of the insurer and how to obtain copies thereof
- 5.** Claim settlement and terms of payment of claims, where relevant
- 6.** Minimum turnaround time envisaged for rendering the services under the service agreement
- 7.** Where applicable, an authorisation from the insurer for the third-party administrator to sign agreements with service providers on behalf of the insurer and a statement of the rights and obligations of each party to the contract concluded on behalf of the insurer with service providers
- 8.** The controls and procedures governing the management of funds
- 9.** The information and reports to be periodically prepared by the third-party administrator for the insurer
- 10.** The files, books and records that shall be kept by the third-party administrator
- 11.** The procedure to be followed in the event of termination of the agreement including transfer of records
- 12.** Dispute resolution mechanism