

Insurance (Industry Compensation Fund) Regulations 2015

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THE INSURANCE ACT

Regulations made by the Minister under sections 88 and 92 of the Insurance Act

PART I – PRELIMINARY

1. Short title

These regulations may be cited as **the Insurance (Industry Compensation Fund) Regulations 2015**.

2. Interpretation

In these regulations –

“Act” means the Insurance Act;

“bank” has the same meaning as in the Banking Act;

“Chairperson” means the Chairperson of the Managing Committee;

“Compensation Fund” means the Insurance Industry Compensation Fund established under regulation 3;

“financial statements” has the same meaning as in the Financial Reporting Act;

“Government securities” –

- (a) has the same meaning as in the Public Debt Management Act; and
- (b) includes any other securities issued by or on behalf of Government;

“hit and run sub-fund” means the sub-fund referred to in regulation 11;

“IASB” has the same meaning as in the Financial Reporting Act;

“IFRS” has the same meaning as in the Financial Reporting Act;

“Managing Committee” means the Committee referred to in regulation 4(1);

“motor vehicle” has the same meaning as in the Road Traffic Act;

“personal injury” includes –

- (a) an injury which results in death or permanent disability; and
- (b) other serious physical injuries;

“qualified person” –

(a) means a person who has qualifications and expertise which are relevant to any technical sub-committee to which he is appointed; and

(b) includes a claim professional or person with experience in consumer protection matters.

PART II – MANAGEMENT AND ADMINISTRATION OF COMPENSATION FUND

3. Establishment of Insurance Industry Compensation Fund

(1) There is established for the purpose of section 88 of the Act the Insurance Industry Compensation Fund.

(2) The Compensation Fund shall be organised into sub-funds, including the hit and run sub-fund.

4. Management of Compensation Fund

(1) (a) The Compensation Fund shall be managed and administered by a Managing Committee which shall consist of 5 members, including the Chairperson.

(b) The Chairperson and other members shall be appointed by the Minister on such terms and conditions as he may determine.

(2) Subject to paragraph (3), the Commission shall extend such administrative and secretarial assistance, as may be necessary, to enable the Managing Committee to properly discharge its functions under these regulations.

(3) The Commission may charge the Compensation Fund any fee, as the Commission may determine, for any assistance provided to the Compensation Fund.

(4) Any fee received by the Commission under paragraph (3) shall be credited to the General Fund established under section 82 of the Financial Services Act.

(5) The Managing Committee may exercise such powers and discharge such functions as may be exercised and discharged by the Compensation Fund.

(6) The Managing Committee may appoint such staff as may be necessary to assist it in the administration of the Compensation Fund and delegate to them such powers or authority as it may determine.

(7) The Managing Committee may cause any part of its business to be conducted on its behalf by such body or person, and under such arrangements or agreements, as it may determine.

(8) A written resolution signed by all the members or of any sub-committee of the Managing Committee shall be as valid and effectual as if it had been passed at a meeting of the Managing Committee or such sub-committee of the Managing Committee duly convened and constituted.

5. Proceedings of Managing Committee

(1) The Managing Committee shall meet as often as is necessary but at least once every 3 months.

(2) Subject to paragraph (1), the Managing Committee may regulate its meetings in such manner as it may determine.

(3) Where the Chairperson is absent from any meeting of the Managing Committee, the members present shall elect a person from among themselves to chair the meeting.

(4) The Chairperson shall preside any meeting of the Managing Committee and perform such other duties as the Committee may determine.

(5) At any meeting of the Managing Committee, 3 members shall constitute a quorum.

(6) A member who, in relation to any matter which he, or any organisation he represents, has, directly or indirectly, an interest or duty which conflicts, or may conflict, with the interests of a sub-fund, has a duty to declare the nature of his interest at the meeting of the Managing Committee.

6. Members of Managing Committee

The office of a member of the Managing Committee shall be vacant where –

- (a) he resigns from his office by notice in writing to the Managing Committee;
- (b) in accordance with the Act or any other enactment, he ceases to hold the office by virtue of which he was appointed;
- (c) he has been convicted of a criminal offence and sentenced to imprisonment;
- (d) he has been absent, without permission of the Managing Committee, for more than 3 consecutive meetings;

(e) he is unable to hold office by reason of insanity;

(f) he is declared bankrupt.

7. Expenses of Compensation Fund

(1) The yearly expenses of the Compensation Fund shall not exceed 10 per cent of its yearly income or any such amount as the Minister may determine.

(2) The asset of any sub-fund may be used to meet the expenses of the Compensation Fund in such proportion as the Managing Committee may determine.

(3) For the purpose of paragraph (1) –
“expense” –

(a) includes any disbursement made by the Compensation Fund; but

(b) excludes payment of claims made under these regulations;

“income” includes contributions made to any sub-fund.

8. Subrogation rights

(1) The Compensation Fund may subrogate into the rights of any person compensated by it, up to the amount compensated, in order to recover from any person whose liability is extinguished or reduced by the payment of compensation.

(2) Any sum recovered pursuant to paragraph (1) shall be attributed to the sub-fund from which compensation was paid.

PART III – THE TECHNICAL SUBCOMMITTEE

9. Technical subcommittee

- (1) The Managing Committee may appoint such technical subcommittee as it may determine to assist it in the discharge of its functions, including the management of any sub-fund provided for under these regulations.
- (2) Every technical subcommittee may consider claims, matters of principle and technical difficulties, including, but not limited to, cases involving a meaningful degree of liability and identification.
- (3) Every technical subcommittee shall consist of the Chairperson and such other qualified persons as the Managing Committee may appoint.
- (4) The technical subcommittee shall consist of not less than 3 and not more than 7 members.
- (5) The Chairperson or such other member of a technical subcommittee as the Chairperson may appoint shall chair any meeting of the technical subcommittee.
- (6)
 - (a) Every technical subcommittee shall submit a report of its findings to the
Managing Committee.
 - (b) The decision of the Managing Committee shall be final.
- (7) Every technical subcommittee shall make recommendations to the Managing Committee which shall be responsible for making any decision on behalf of the Compensation Fund.
- (8) The Managing Committee may, at any time, terminate the appointment of any member of a technical subcommittee for misconduct, default or breach of trust in the discharge of his functions as member or for any other good or sufficient cause.
- (9) A technical subcommittee shall –
 - (a) meet as often as is necessary and at such time and place as the
Chairperson may determine;
 - (b) meet as and when required by the Managing Committee; and

- (c) subject to this regulation, regulate its meetings in such manner as it may determine.

PART IV – HIT AND RUN SUB-FUND

10. Interpretation

For the purposes of this Part –

“applicant” –

- (a) means a person who has suffered personal injury sustained in a hit and run road traffic accident; and
- (b) includes –
 - (i) his heirs where the person has died following a hit and run road traffic accident; and
 - (ii) such other person lawfully acting in his interest;

“hit and run road traffic accident” means a road traffic accident where the person who has caused the accident cannot be traced;

“insurance policy” means any insurance policy covering motor vehicles in Mauritius;

“insurer” means any insurer, other than a professional reinsurer, who provides any insurance policy covering motor vehicles in Mauritius.

11. Purpose of hit and run sub-fund

Subject to such limitations and restrictions as may be provided for under the Act and these regulations, there shall be a hit and run sub-fund which shall be used for the payment of compensation to persons suffering from personal injury sustained in a hit and run road traffic accident.

12. Moneys constituting hit and run sub-fund

The hit and run sub-fund shall comprise of -

- (a) contributions made by insurers in accordance with the First Schedule;
- (b) all interest, dividends and other income derived from money of the hit and run sub-fund;
- (c) any contribution made out of the Consolidated Fund;
- (d) all other money which may belong or accrue to the hit and run sub-fund; and
- (e) any interest or indemnity recovered pursuant to regulation 13(6).

13. Contribution to hit and run sub-fund

(1) Any insurer who conducts general insurance business in Mauritius shall contribute to the hit and run sub-fund in accordance with the rate specified in the First Schedule, based on insurance policies issued by the insurer.

(2) Every insurer shall pay the contribution referred to in paragraph (1) within 10 days from the end of each month during which any relevant insurance policy has been issued or renewed, in such manner as the Managing Committee may determine.

(3) Where an insurance policy of the type referred in paragraph (1) is underwritten for a period of more or less than one year, the payment of contribution shall be made in accordance with the rate specified in the First Schedule on a pro rata basis.

(4) Every insurer shall –

- (a) on request made by the Managing Committee, supply information which facilitates calculation of the insurer's contribution; and

- (b) on receipt of a written demand from the Managing Committee as to contribution, promptly meet the demand.

(5) Where an insurer fails to pay, on the due date, any amount payable by it under these regulations –

(a) it shall forthwith, on demand by the Managing Committee, pay interest on the overdue amount from the due date up to the date of actual payment at the rate of 4 per cent per annum above the Repo rate as determined by the Bank of Mauritius; and

(b) it shall indemnify the Compensation Fund against all costs, charges and expenses, including legal fees, incurred by the Compensation Fund in collecting the overdue amount, including any interest thereon.

(6) Any contribution due by an insurer, for any reason whatsoever, shall be recoverable by the Compensation Fund from the insurer as a debt through civil proceedings.

14. Cessation of contribution to hit and run sub-fund

(1) Every insurer shall cease to contribute to the hit and run sub-fund where –

(a) it goes into liquidation or provisional liquidation, whether compulsory or voluntary, except for the purposes of a *bona fide* reconstruction or amalgamation in which the new company assumes, or is capable of assuming, all the obligations of the insurer;

(b) it ceases to provide insurance policy, the date of which shall be determined as the date on which such insurer –

(i) gives notice in writing to the Managing Committee that it has ceased or intends to cease to carry on insurance business in the motor class, such notice being signed by a director of that insurer;
or

(ii) ceases to have authorisation to carry on insurance business in the motor class,

whichever is the earlier;

(c) an order is made against it by the Court, a resolution is passed for the administration of that insurer, documents are filed with the Court for the appointment of an administrator or a notice of intention to appoint an administrator is given by that insurer;

(d) a receiver or receiver manager is appointed in respect of the whole or a substantial part of its assets or undertaking; or

(e) where proceedings are initiated which may lead to that insurer being dissolved and its assets distributed among the insurer's creditors, shareholders and contributors.

(2) In the discharge of its functions, the Managing Committee may take account of any matter it considers to be relevant, including, subject to these regulations, any breach of these regulations which, in the opinion of the Managing Committee, the insurer has committed.

(3) Where an insurer ceases to contribute to the hit and run sub-fund, it shall remain fully liable in respect of all obligations incurred by it by virtue of its contribution to the hit and run sub-fund before its cessation.

(4) For the avoidance of doubt, where an incident arises prior to the cessation of contribution to the hit and run sub-fund, and that incident gives rise to an obligation of the insurer by virtue of its contribution, the insurer shall remain fully liable in respect of that obligation after cessation of the contribution, notwithstanding its being unaware of such incident or obligation prior to the cessation.

15. Asset of hit and run sub-fund

(1) The Managing Committee may use the assets of the hit and run sub-fund to –

(a) meet any claims with respect to the sub-fund;

(b) make any investment for the benefit of the sub-fund;

(c) meet any expense of the Compensation Fund in accordance with regulation 7.

(2) The Managing Committee shall only invest the assets of the hit and run sub-fund in –

(a) form of cash deposits in a bank;

(b) any type of Government securities; or

(c) any other form of investments as the Minister may approve.

(3) Where the Managing Committee considers to invest the assets of the hit and run sub-fund, it may seek assistance of any relevant investment professional.

16. Disclosure of number of policies written

Every insurer carrying insurance business of motor class shall furnish to the Compensation Fund a statement of its number of policies written for the required financial year in such form and manner as the Managing Committee may determine.

17. Payment of compensation from sub-fund only

For the avoidance of doubt, no fund or other property belonging to the Commission shall be available for the payment of any claim under these regulations.

18. Application for payment

(1) Every application for payment of compensation from the hit and run sub-fund shall be made to the Compensation Fund in such form and manner as the Managing Committee may determine.

(2) The Managing Committee, or any technical subcommittee assisting it, may request any further information or documents, including medical certificates, from an applicant.

19. Payment of compensation in respect of personal injury in road traffic accidents

(1) Subject to this regulation, the Managing Committee shall determine whether any compensation is to be paid out of the hit and run sub-fund.

(2) Payment of compensation in respect of personal injury in hit and run road traffic accidents to any person, caused by or arising out of the use of a motor vehicle, may be made out of funds set aside by the sub-fund for the payment of compensation relating to the injured person or his heirs where –

- (a) the police is unable to trace the person who caused the accident within a period of 6 months from the date of the accident;
- (b) the personal injury was caused in such circumstances that, on the balance of probabilities, the unidentified person would be liable to pay damages to the applicant in respect of such personal injury;
- (c) the liability of the unidentified person is one which is required to be covered by a third party insurance referred to in Part V of the Road Traffic Act;
- (d) the personal injury was not caused by the use of the vehicle by the unidentified person in a deliberate attempt to run down the deceased or injured person; and
- (e) the application for compensation is made in writing within 2 years from the date of the event giving rise to the personal injury.

(3) (a) Where an application for compensation is made under this regulation, the payment made by the sub-fund shall not exceed 350,000 rupees or any such amount, whichever is lesser, in respect of any single liability, irrespective of the amount claimed.

(b) Any payment of compensation shall be made in accordance with the Second Schedule.

(4) For the purpose of determining an application for granting compensation, the hit and run sub-fund shall have the power to require any applicant to provide such information and documents as it may determine.

- (5) No payment under this regulation shall be made unless –
- (a) the applicant has given all such assistance, including information required under paragraph (4), as to enable the hit and run sub-fund to carry any investigation it may consider necessary; and
 - (b) the applicant has assigned to the hit and run sub-fund any right to any payment in respect of the personal injury to which his application relates.
- (6) (a) The hit and run sub-fund shall, within 6 months from the date it has received the information required, determine the application for compensation under this regulation.
- (b) Where the hit and run sub-fund refuses to grant compensation, it shall, in writing, inform the applicant of the reasons for its refusal within a month from the determination referred to in subparagraph (a).
- (7) In determining the extent of personal injuries of a claimant, the Managing Committee may seek advice from such relevant body or person as it may determine.
- (8) The Managing Committee may, in determining whether a claim is valid or the quantum of compensation to be awarded, seek recommendation of any technical subcommittee, or any other institution or authority of medical professionals as it may determine.

PART V – ACCOUNTS AND AUDIT

20. Accounts of sub-fund

- (1) The Managing Committee shall keep proper accounting records that shall –
- (a) explain the transactions of the Compensation Fund, including but not limited to –
 - (i) the sums of money received and expended by each sub-fund; and

- (ii) the matters in respect of which such receipt and expenditure took place;
 - (b) at all times, enable the financial position of each sub-fund to be determined with reasonable accuracy; and
 - (c) shall enable financial statements to be prepared in accordance with internationally recognised accounting standard.
- (2) The financial year of the Compensation Fund shall be of a period of 12 months ending on the 31 December of each year.
- (3) The books and accounts shall be kept at the offices of Compensation Fund or such other place as the Managing Committee may determine and shall be open for inspection by any insurer contributing to any sub-fund.
- (4) The Compensation Fund shall keep separate accounts and records of all receipts and payments in respect of each sub-fund.
- (5) All books, accounts, reports and records of the Compensation Fund and any sub-fund shall be kept for a period of at least 7 years from the end of the financial year to which they relate.

21. Annual report

- (1) The Managing Committee shall, every year and not later than 3 months after the end of its financial year, cause to be prepared, in respect of that year, an annual report showing –
- (a) audited financial statements of the Compensation Fund, showing the financial position of each sub-fund;
 - (b) an income and receipt statement with respect to every sub-fund; and
 - (c) a report on the activities of the Compensation Fund, including the details referred to in paragraph (4).

(2) The audited financial statements shall be in compliance with the IFRS issued by IASB.

(3) (1) The annual report shall include –

- (a) a description of the activities undertaken by the Managing Committee;
- (b) details of claims made to every sub-fund;
- (c) details of claims settled by the Managing Committee;
- (d) details of outstanding claims;
- (e) the specification of the amount of the Compensation Fund at the beginning and end of the financial year;
- (f) any other information that the Managing Committee may determine.

(4) The Managing Committee shall, not later than 6 months after the close of every financial year, cause to be published the annual report in respect of the previous financial year.

(5) The Commission shall forward a copy of every annual report to the Minister.

(6) The Minister shall, at the earliest available opportunity, lay a copy of the annual report before the Assembly.

22. Audit

(1) The accounts of the Compensation Fund shall be examined at least once every year by a qualified auditor, appointed by the Minister.

(2) The correctness of the income and expenditure account and the financial statements shall be ascertained by a qualified auditor, appointed by the Minister.

(3) Any auditor appointed by the Minister under paragraphs (1) and (2) shall be qualified to act as an auditor under the Financial Reporting Act.

PART VI – MISCELLANEOUS

23. Restriction of compensation

Nothing in these regulations shall entitle any person to compensation for –

- (a) material damage to any vehicle or property; or
- (b) personal injury following a hit and run accident occurring before the coming into operation of these regulations.

24. Directives and guidelines to insurers

The Minister may issue insurance directives and guidelines to insurers for the purposes of these regulations.

25. Commencement

These regulations shall come into operation on 1 January 2016.

Made by the Minister on 15 December 2015.

FIRST SCHEDULE

[Regulations 12(a) and 13(1)]

CONTRIBUTIONS BY INSURER WITH RESPECT TO NUMBER OF VEHICLE INSURED

	Motor vehicle	Contribution per insurance policy underwritten for a period of one year (Rs)
1.	Motorcycles less than 100 cc	25
2.	Motorcycles	50
3.	Vehicles, other than those specified in items 1 and 2, which are less than 2,000 cc	100
4.	Vehicles, other than those specified in items 1, 2 and 3, which are above 2,000 cc	200

SECOND SCHEDULE

[Regulation 19]

COMPENSATION

Category	Physical injury	Maximum (Rs)
A	Out-patient	25,000
B	In-patient	50,000
C	Temporarily disabled	150,000
C1	Loss of use of both arms(100% of Category C)	150,000
C2	Loss of one arm at the shoulder (60% of Category C)	90,000
C3	Loss of one arm between the elbow and the shoulder (47% of Category C)	70,500
C4	Loss of one arm at the elbow or between the elbow and the wrist (40% of Category C)	60,000
C5	Loss of both hands(100% of Category C)	150,000
C6	Loss of one hand at the wrist(40% of Category C)	60,000
C7	Loss of all fingers and both thumbs(100% of Category C)	150,000
C8	Loss of 4 fingers and thumb of one hand(40% of Category C)	60,000
C9	Loss of 4 fingers (34% of Category C)	51,000
C10	Loss of both legs(100% of Category C)	150,000
C11	Loss of one leg at the hip(67% of Category C)	100,500
C12	Loss of one leg between the knee and the hip(47% of Category C)	70,500
C13	Loss of one leg below the knee(34% of Category C)	51,000
C14	Loss of sight of both eyes(100% of Category C)	150,000
C15	Loss of sight of one eye(27% of Category C)	40,500
C16	Loss of hearing from both ears(47% of Category C)	70,500
D	Permanently disabled	350,000

E	Death	350,000

Note -

No person shall be able to claim more than once from category D, E and no more than 2 categories at the same time.