GEORGETOWN, WEDNESDAY 11th APRIL, 2018

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WEDNESDAY 11th APRIL, 2018
The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.
A Bill

Intitled

An Act to amend the Insurance Act 2016.

A.D. 2018

Enacted by the Parliament of Guyana:-

1. This Act, which amends the Insurance Act 2016, may be cited as the Insurance (Amendment) Act 2018 and shall be deemed to have come into operation on the 16th day of April 2018.

2. The Principal Act is amended by the insertion immediately after section 262 of the following Parts as Part XX, Part XXI and Part XXII –

PART XX

CONTRACTS FOR LONG-TERM BUSINESS

263. (1) Subject to subsection (3) of section 264, an insurer shall not enter into a contract for the purpose of carrying on long-term insurance business unless the insurer –

(a) at the time the contract is entered into; or
(b) not later than seven days after the contract is entered into,

serves on the other party to the contract a notice containing the information specified in subsection (2).

(2) A notice mentioned in subsection (1) –
(a) shall specify the nature and type of the policy; and
(b) shall have annexed to it a form of notice of cancellation for use by the other party to the
contract.

(3) An insurer who contravenes this section commits an offence but contravention does not invalidate the contract.

264. (1) A person who has entered into a contract for long-term insurance with an insurer may serve notice of cancellation on the insurer —

(a) not later than ten days from the date on which he receives a notice mentioned in section 263; or

(b) not later than ten days from the expiration of the day on which he first became aware that the contract was entered into, whichever is the later.

(2) Subsection (1) does not apply where an insurer ought to have served a notice under section 263(1) and failed to do so but does so before cancellation of the contract.

(3) A notice of cancellation need not be in the form attached to the notice required to be served under section 263(1) and it is sufficient if the notice of cancellation indicates a desire to withdraw from the contract.

(4) Service of a notice of cancellation operates —

(a) as a rescission of a contract, if it is served after the contract has been entered into; and

(b) as a withdrawal of the offer in any other case.

(5) Where a contract has been rescinded or an offer has been withdrawn as a result of the service of a notice of
cancellation, any moneys paid by way of premium or otherwise, to the insurer for the purpose of receiving the moneys, are recoverable from the insurer as a debt in civil proceedings.

265. An insurer carrying on long-term insurance business shall not issue any policy under Type A of Schedule 2 unless the rate of premium chargeable under the policy is a rate which has been approved by its actuary as being suitable for the class of policy to which the policy belongs.

266. Subject to section 267, where a company issues a life policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.

267. (1) Where a company declines to accept the proof of age tendered in respect of a policy the policy-holder may apply to a Judge in chambers, by summons for an order directing the company to accept the proof tendered.

(2) The Judge in chambers may upon an application made to him under subsection (1), make such order in relation to the application as the Judge thinks just.

(3) Every order under this section shall be binding on the company and shall be complied with.
268. (1) The following have effect in instances where the age of a person has been misstated in respect of a policy-
(a) a policy is not avoided by reason only of a misstatement of the age of the person whose life is insured;
(b) where the true age as shown by the proof is greater than that on which the policy is based, the company may vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age;
(c) where the true age as shown by the proof is less than that on which the policy was based, the company shall-
   (i) vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
(ii) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay the policy-holder the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(2) A policy shall not be avoided by reason only if any incorrect statement (other than a statement as to the age of the person whose life is insured) made in any proposal or other document on the faith of which the policy was issued or reinstated by the company unless the statement-

(a) was fraudulently untrue; or

(b) being a statement material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the person whose life is insured, whichever is the earlier.

Minors.

269. (1) A minor who has attained the age of ten years but has not attained the age of sixteen years may, with the written consent of his parent or of a person standing in loco parentis to the minor –

(a) effect a policy upon his own life or upon another's life in which he has an insurable interest; or
(b) take an assignment of a policy.

(2) A minor who has attained the age of sixteen years may —

(a) effect a policy upon his own life or upon another's life in which he has an insurable interest; or

(b) take an assignment of a policy,

and, subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policy-holder in relation to a policy of which he is the holder as he would be if he were of full age.

(3) A minor who has attained the age of sixteen years may assign or mortgage a policy with the prior consent in writing of his parent or of a person standing in loco parentis to the minor.

270. (1) The provisions of this section and sections 271 to 279, inclusive, subject to anything to the contrary contained in these sections, apply in respect of policies.

(2) A policyholder may at the time the policy is taken out or at any time after that time designate his personal representative or a named person to be the beneficiary under his policy and may, subject to section 272, alter or revoke the designation by declaration in writing.

(3) A designation in "favour of heirs", "next of kin", "estate" or similar designation shall be deemed to be a designation of the personal representative of the policy-holder.
271. (1) Subject to subsections (4), (5) and (6) a policy-holder may, in writing, by declaration filed with the insurer at the time the policy is taken out designate irrevocably a named person to be beneficiary under the policy and, in such a case —

(a) the policy-holder subject to section 281, may not during the life-time of the named beneficiary alter or revoke the designation without the consent of the beneficiary; and

(b) the moneys payable under the policy are not subject to the control of the policy-holder or the creditors of the policyholder and do not form part of his estate.

(2) Notwithstanding subsection (1)(a), consent of the beneficiary is not required where the beneficiary is a former spouse and the marriage ended in divorce or, as the case may be, the common law union has come to an end.

(3) Where the insured purports to designate a beneficiary irrevocably in a declaration that has not been filed with the insurer as required by subsection (1) or in a will, the designation has the same effect as if the insured had not purported to make the designation irrevocable.

(4) An irrevocable designation may only be made by a policy-holder in favour of a spouse, a common law spouse or to a child, including a child, born out of wedlock.

(5) A designation shall not be regarded as
irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and signed by the policy-holder and there is sufficient evidence that it was explained to the policy-holder that the designation was irrevocable.

272. A designation by a will does not affect a designation made under a policy.

273. (1) A policy-holder may, in writing, by contract or by declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by declaration in writing.

(2) A payment by an insurer to a trustee for a named beneficiary discharges the insurer from payments to the beneficiary to the extent of the payment.

274. (1) Where under section 270, by a contract, or a declaration, filed with the insurer, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy predeceases the policy-holder and no provision is made in the contract or agreement or declaration for the disposition of moneys payable under the policy in the event of the beneficiary predeceasing the policy-holder then, without limiting or affecting the application of section 271, the moneys payable under the policy shall vest in the following persons in the following order —

(a) in the surviving beneficiary, if any;
(b) in the surviving beneficiaries in equal shares, if
there is more than one surviving beneficiary;
(c) in the policy-holder or his personal representatives,
if there are no surviving beneficiaries.

(2) Where two or more beneficiaries are
designated otherwise than alternatively, and no provision is
made as to the quantum of their respective shares of the
moneys payable under the policy, then, they are entitled to
the moneys in equal shares.

275. A beneficiary may for his own benefit and a trustee
appointed pursuant to section 273 may, in accordance with
the terms of the contract or declaration, as the case may be,
enforce payment of moneys payable under a policy even
though there is no privity of contract, but the insurer may
invoke against the beneficiary or trustee any defence against
the policy-holder or his personal representative.

276. (1) Where a beneficiary has been designated, the
insurance money, from the time of the happening of the
event upon which the insurance money becomes payable,
does not form part of the estate of the insured and is not
subject to the claims of the creditors of the insured.

(2) While a designation in favour of a spouse, a
common law spouse or child of a policy holder or any of
them, is in effect, the rights and interests of the policy-holder
in the insurance money and in the contract are exempt from
execution or seizure.
277. (1) Where a beneficiary is not designated irrevocably, the policy-holder may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided in the contract or in this Part or as may be agreed upon with the insurer.

(2) Where a beneficiary is designated irrevocably the policy-holder may not assign the policy, use the policy as a security, surrender it or otherwise deal with it without the consent in writing of the designated beneficiary.

278. (1) Notwithstanding the designation of an irrevocable beneficiary, the policy-holder is entitled, while living, to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Unless the policy-holder otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

279. (1) An assignee of a contact who gives notice in writing of the assignment to the head office of the insurer has priority of interest as against —

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably as provided in section 271 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.
(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Where a contract is assigned absolutely, the assignee has all the rights and interests given to the policy-holder by the contract and by this Part and shall be deemed to be the policy-holder.

(4) A provision in a contract to the effect that the rights or interests of the policy-holder, or, in the case of group insurance, the group life insured, are not assignable is valid.

280. (1) Nothing in any term or condition of a life policy in any law relating to insurance shall operate to exempt an insurance company from liability under the policy or to reduce the liability of the company under the policy on the ground of any manner relating to the state of health of the person whose life is insured, other than the ground of the proposer’s having, when making the proposal or after the making of the proposal and before the making of the contract

(a) made an untrue statement of his knowledge and belief as regards the matter; or
(b) failed to disclose to the company something known or believed by him as regards that matter.

(2) An insurer may petition the Bank for a waiver of subsection (1) in situations where subsection (1) may
place too onerous a burden on the insurer.

PART XXI
PROTECTION OF POLICIES

281. (1) The property and interest of any person in a policy effected upon his own life is not liable to be applied or made available in payment of his debts by any judgment, order or process of any Court.

(2) In the event of a person who has effected a policy on his own life dying, the moneys payable upon his death under or in respect of such policy shall not be applied or made available in payment of his debts by any judgment, order or process of any Court or by retainer by an executor or administrator or in any other manner whatsoever, except by virtue of a contract or charge made by the person whose life is insured or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

282. (1) Where a contract of insurance contains a pro rata condition of average, the condition is of no effect unless, before the contract is entered into or before the policy-holder can cancel the policy without penalty, the insured in writing on a form approved by the Bank informs the policy-holder of the nature and effect of the condition.
(2) With respect to residential properties, the condition of average shall be effective only in cases where the insured value of the property is a certain percentage less than the fair value of the property. The Bank shall determine the minimum percentage level, the difference in percentage between the fair value and the insured value, in which the condition of average can apply.

PART XXII

PAID-UP POLICIES, SURRENDER VALUES
AND NON-FORFEITURE

283. (1) A policy-holder who desires to discontinue further premium payments on a policy on which not less than three years of premiums have been paid shall, if the policy has a cash surrender value, on application to the company be entitled to receive, instead of that policy, a paid-up policy.

(2) The paid-up policy shall be payable upon the happening of the contingency upon the happening of which the amount insured under the original policy would have been payable.

284. Notwithstanding the terms of a particular policy, the owner of a policy that has been in force for at least three years is, on application to the company, entitled to surrender the policy and to receive not less than the cash surrender value of the policy less the amount of any debt owing to the company under, or secured by, the policy.
285. The Bank may, on application by a company, if in his opinion the payment in cash of surrender values as required by section 284 would be prejudicial to the financial stability of the company or to the interests of the policy-holders of that company, suspend or vary, for such period and subject to such conditions as the Bank thinks fit, the obligation of the company to pay those surrender values."
EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 2016, by the insertion of new Parts XX, XXI and XXII which address the areas of contracts for long-term business, protection of policies, and paid up policies, surrender values and non-forfeiture, respectively.

Part XX provides for various areas related to contracts for long-term insurance business. It provides that an insurer shall not enter into a contract for the purpose of long-term insurance business unless, at the time the contract is entered into or not later than seven days after the contract is entered into, the insurer serves on the other party to the contract a notice specifying the nature and type of policy and annexes a form of notice of cancellation for use by the other party to the contract. The Bill makes it an offence for an insurer to contravene this provision, however, this contravention does not invalidate the contract. In addition, the Bill provides for the manner in which a person may serve a notice of cancellation on the insurer.

Part XX also provides that an insurer shall not issue any policy under Type A of Schedule 2 to the Act unless the rate of premium chargeable under the policy is approved by its actuary. Clauses 266-268 of Part XX provide for matters related to proof of age in respect of policies including the procedure to be adhered to should a company decline proof of age tendered in respect of a policy and also the effects of a misstatement of age and non-avoidance of a policy due to such misstatement.

Clause 269 provides for the circumstances under which a minor may effect a policy upon his own life or that of another or take an assignment of a policy. It provides that a minor who has attained the age of ten years but has not attained the age of sixteen years may effect a policy or take an assignment of a policy with the written consent of his parent or a person standing in loco parentis to the minor. The Bill also addresses the circumstances under which a minor who has attained the age of sixteen years may do so.

Clauses 270-279 of Part XX provide for issues related to the beneficiaries. These provisions allow a named beneficiary to enforce payment of a life policy effected for his benefit. The Bill makes provision for the irrevocable designation of beneficiaries and provides that an irrevocable designation may only be made in favour of a child, spouse or common law spouse. The designation can be changed only if the named beneficiary dies or, in the case of a spouse, if the marriage comes to an end. The Bill further provides that a designation of a beneficiary by a will does not affect a designation made under the policy.

Part XXI seeks to provide for the protection of policies, in particular the application of policies to debts. The Bill provides that the property and interest, of any person in a policy effected upon his own life, is not liable to be applied or made available in payment of his debts by any process of any Court. Part XXI also provides that a pro rata condition of average in an insurance contract is of no effect unless the insurer informs the policy-holder of the nature and effect of the condition before the contract is entered into or before the policy-holder can cancel the policy without penalty.
Part XXII provides for paid-up policies, surrender values and non-forfeiture. Clause 283 of Part XXII provides for the circumstances under which a policy-holder who desires to discontinue further premium payments on a policy is entitled to a paid-up policy and the manner in which the policy shall become payable.

Clause 284, which addresses surrender value, provides that the owner of a policy which has been in force for at least three years is, on application to the company, entitled to surrender the policy and receive not less than the cash surrender value of the policy less the amount of any debt owing under the policy. Clause 285 provides that the Bank may, on application by a company, suspend or vary the obligation of the company to pay the surrender values where in the opinion of the Bank, it may be prejudicial to the financial stability of the company or the interests of the policy holder.

The provisions of these Parts were already in the law and are being re-inserted in the Act.

HON. WINSTON JORDAN, M.P.
MINISTER OF FINANCE