



FINANCIAL SERVICES AUTHORITY
SAINT VINCENT & THE GRENADINES

GUIDANCE NOTE: NO. 3

**THE ESTABLISHMENT AND MAINTENANCE OF
INSURANCE FUNDS**

Issued: December 3, 2015

INTRODUCTION

1. The regulation and supervision of non-banking financial services in St. Vincent and the Grenadines, including insurance services, is exercised by the Financial Services Authority ('FSA' / 'Authority'), under the authority of the FSA Act, No. 33 of 2011.

The conduct of insurance business in St. Vincent & the Grenadines is regulated under the *Insurance Act*, Chapter 306 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009 ("the Act").

PURPOSE

2. These Guidelines set out the specific operational safeguards which are necessary for the establishment and maintenance of the Insurance Funds of insurers licensed to conduct business in St. Vincent and the Grenadines. The adoption of these Guidelines enhances transparency and facilitates effective and consistent operation of Insurance Funds.

3. When an insurance company becomes insolvent, policyholders face potential financial losses as their claims may not be fully met. In order to protect policyholders in this eventuality, the Insurance Act requires the establishment of an Insurance Fund¹ to compensate their policyholders for their assessed loss.

The primary objective of the Insurance Fund is to protect the interest of policyholders in the event of bankruptcy or liquidation of an insurance company. The funds are expected to serve as the final safety net for policyholders, when, in spite of all possible supervisory measures, bankruptcy occurs.

4. These Guidelines outline the:

- requirements for the establishment and maintenance of Insurance Funds;
- composition of an Insurance Fund, including procedures for withdrawal of assets from the Fund; and
- role and responsibility of the Trustee and the Insurer.

These Guidelines provide general guidance and explanation of the law and are not intended to replace or override any legislative provisions in respect of requirements to establish and maintain an Insurance Fund. They should be read in conjunction with the provisions of the Act, as well as written directives, notices, circulars and other guidelines that the Authority may issue from time to time.

SCOPE OF APPLICATION

5. These Guidelines apply to all insurers licensed under the Act.

¹ Section 29 of the Act

LEGAL PROVISIONS

6. Sections 29-34 of the Act set out the requirements and procedure for the establishment of Insurance Funds.

7. DEFINITIONS

- a) “assets in any member state of the Caribbean Community” means assets which - (a) originate, and are physically held in any of the member states of the Caribbean Community; (b) assets that are denominated in Eastern Caribbean dollars; or (c) where denominated in a foreign currency, are fully guaranteed by the Government of a Participating State.

ESTABLISHMENT AND MAINTENANCE OF INSURANCE FUNDS

8. Establishment of Insurance Funds

- a. A licensed insurer must establish an Insurance Fund for each class of business equal to its liability and contingency reserves, in respect of policies in the State in that class of business as established by the revenue account of the company, less the amounts held on deposit with the Authority.²
- b. An insurer must ensure that the assets of its long-term insurance fund and of its motor vehicle insurance fund are placed **in trust** within four months of the end of each financial year.

9. Restrictions on the use of Assets in an Insurance Fund

- a. The assets of the Insurance Fund cannot be applied directly or indirectly to any class of insurance business other than that in respect of which the Fund was established.
- b. Insurers carrying on long-term insurance business or motor vehicle insurance business in the State shall not declare a dividend at any time when the value of the assets of a long-term insurance fund or a motor vehicle insurance fund, as the case may be, is less than the liabilities attributable to that business.
- c. An insurer shall notify the FSA, in writing, of the maturity of an asset held in trust in the Insurance Fund and shall be obliged to replace the matured asset once its release results in a shortfall in the Fund.
- d. Where an asset in the Insurance Fund has matured, the proceeds of the matured asset shall remain in trust and shall form part of the insurer’s statutory fund until released by the FSA.
- e. Where an insurer wishes to replace any asset held in trust in the Insurance Fund, the insurer shall make an application, in writing, to the FSA and the FSA may authorise the release the asset.

² As required by section 22 of the Act.

- f. An insurer must obtain the approval of the FSA before depositing any assets into the Insurance Fund.
- g. An insurer is permitted to exchange at fair market value, assets representing each Insurance Fund for other assets belonging to the insurer.

10. Creating a Trust

The Trust which is required to be created by section 29 of the Act may be created in two (2) ways:

- a) **A formal Trust Deed:** Both the Trust Deed and the Trustee must be submitted to the Authority for approval, before the trust is created.
- b) **An arrangement with a Bank or Financial Institution in the State:** Upon request, the Authority may permit the assets required to be placed in trust to be held by a bank in the State or a financial institution approved by the Authority, but it must be held **to the order of or on behalf of the Authority**. When this is done, the assets shall be deemed to be placed in trust and the bank or financial institution shall be deemed to be a Trustee. The Insurer and the bank or financial institution must ensure that its arrangements with each other are in compliance with the provisions of the Act.

11. Maintaining Particulars of the Insurance Fund

- a) Appropriate records, which clearly identify the assets representing each Insurance Fund, must be maintained where a company is transacting more than one class of insurance business.
- b) Within four months of the expiration of each financial year, an insurance company must furnish to the Authority a statement as per Form Q7 and B7 of the quarterly and annual reporting forms respectively, showing particulars of:
 - (i) The liabilities in respect of each fund; and
 - (ii) The assets comprising each fund.

12. Investments of Assets of the Insurance Fund

- a) The assets of an insurance fund shall be permitted to be invested only in the following securities³:
 - (i) Bonds and Debentures;
 - (ii) Ordinary and Preference Shares;
 - (iii) Mortgages;
 - (iv) Real Estate; and
 - (v) Deposit Certificates.

³see Schedule 4 of the Act

b) An insurer shall invest the assets of its Insurance Fund subject to limitations or restrictions as follows:

- (i) An insurer shall invest an amount not more than fifty percent, (50%) or such lower amount that the FSA approves, of each of its Insurance Fund requirements in assets in any one member state of the Caribbean Community (“CARICOM”).
- (ii) The total amount of investment in any one country or corporation outside of CARICOM shall be limited to twenty percent (20%) of a fund.
- (iii) An insurer shall not invest in bonds and debentures on which payment of principal and interest is in default.
- (iv) An insurer shall not invest in bonds and debentures and other evidence of indebtedness of or guaranteed by any other country outside of St. Vincent and the Grenadines and CARICOM with a credit rating of less than BBB+ or equivalent.

An insurer shall not invest in bonds and debentures and other evidence of indebtedness of or guaranteed by a corporation incorporated outside of CARICOM and traded on a recognized stock exchange with a credit rating of less than BBB+ or equivalent.

- (v) An insurer shall not invest more than thirty percent of a fund in ordinary shares.
- (vi) An insurer shall not purchase more than thirty percent of the ordinary shares in a corporation where those shares are to be included in the Insurance Fund.
- (vii) An insurer shall not invest in fully-paid ordinary shares or preference shares of a company incorporated outside of CARICOM and traded on a recognized stock exchange with a credit rating of less than BBB+ or equivalent.
- (viii) The total amount of investment in real estate must not exceed twenty percent of a long term Insurance Fund.
- (ix) At the discretion of the FSA, a general insurer may invest in real estate up to a maximum of twenty percent of the Insurance Fund.
- (x) No single mortgage included as an asset of an Insurance Fund shall exceed ten percent of the total assets of the insurer.
- (xi) A long term insurer shall not purchase the shares of a company carrying on long term insurance business if that investment is to be included in its Insurance Fund.

13. Duties of the Trustee

The Trustee shall:

- (a) take and maintain custody and possession of the documents of title to the assets of the Insurance Fund on behalf of and to the order of the Authority;
- (b) hold the Insurance Fund and at all times keep the assets thereof distinct and distinguishable in the books of account kept by the Trustee and separate from the assets of any other person;
- (c) maintain and keep the aforesaid documents of title at all times in its principal office in St. Vincent & the Grenadines;
- (d) report any breaches of the provisions of the Act by the Appointer/Insurance Company with respect to the Insurance Fund, to the Authority to the extent that such breaches become known to the Trustee;
- (e) provide a list of assets held in trust which make up the Insurance Fund within one month after the end of each quarter or at any time required by the Authority;
- (f) not deal with the assets of the Insurance Fund or any part thereof without the prior general or specific approval of the Authority.
- (g) facilitate the Appointer/ Insurance Company in adding assets to the Insurance Fund, or in exchanging or removing any asset thereof where the Authority has approved such addition, exchange or removal, including but not limited to the provision by the Trustee of signed confirmations detailing assets added to and assets removed from the Insurance Fund.
- (h) ensure that confirmation is received directly from the Eastern Caribbean Central Securities Registry or other Stock Exchange for bonds/securities that are traded electronically and held in trust for the satisfaction of the Insurance Fund requirement; and
- (i) do all such acts, take all such proceedings and exercise all such rights and privileges, although not specifically mentioned herein, as may be necessary for the carrying out by the Trustee of its obligations under the Trust Deed.

14. Restrictions on Trustee

- a) Where the value of the assets in an Insurance Fund exceeds the amount of the liabilities attributable to the classes of insurance business referred to in paragraph 9 (b), the Trustee, may, with the approval of the Authority, release the assets held in excess of the requirement of the fund⁴ to the Insurer.

⁴section 30 of the Act

- b) Where pursuant to paragraph 13 (e), a list of assets has been submitted to the Authority pursuant to section 32(2) of the Act, and thereafter it is discovered that the value of the assets in the list no longer represents the total sum stated in the said list then in any proceedings before a court of law or other judicial or quasi judicial body, it shall be conclusively presumed that the Trustee has dealt with the assets without the prior general specific approval of the Authority or without an express written approval given by the Authority to dispose of or deal with the assets⁵.
- c) Where a Trustee has or is deemed to have dealt with assets without the prior general or specific approval of the Authority or without an express written approval of the Authority as referred to in paragraph 13 (f) and there is a deficiency in the total value of the assets as contained in the list submitted pursuant to paragraph 13 (e), the Authority shall in writing direct the Trustee to make good the deficiency⁶ within a time specified.
- d) A Trustee who fails to comply with the directions given to him, by the Authority to make good the deficiency within the period stated shall be liable to pay a penalty of five hundred thousand dollars for every day or part thereof during which the failure continues.
- e) The penalty imposed under paragraph 14 (d) shall constitute a charge, in favour of the Authority, upon all the property of the Trustee and may be sued for and recovered in the Court by the supervisor or the Attorney General.
- f) A Trustee who contravenes paragraph 13 (f) shall be under the same liability as if the appropriate policy-holder had been the beneficiary of the Trust.

15. Duty of the Insurer/Appointer

The Insurer shall:

- (a) ensure that it provides the Trustee with timely and correct information in relation to the value of assets that constitute the Insurance Fund on at least an annual basis;
- (b) not deal with the Insurance Fund or any part thereof without the prior general or specific approval of the Authority; and
- (c) immediately make good any deficiency that may arise in the Fund from time to time.

⁵ subsection (2a) of Act No. 27 of 2013 (An Act to Amend the Insurance Act, Cap 306)

⁶ subsection (2b) of Act No. 27 of 2013 (An Act to Amend the Insurance Act, Cap 306)

SPECIFIC REQUIREMENT RELATED TO ASSETS

16. Title of documents and Restrictions on Assets

An asset for the satisfaction of an Insurance Fund of a licensed insurer must be held in its corporate name to the order of or on behalf of the Authority, and all documents evidencing its title or right to an asset must be in its corporate name.

COMMENCEMENT

This Guidance Note shall come into effect this **3rd day of December, 2015.**

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