



**GROUP INSURANCE  
CONSULTATION PAPER  
2018**

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**FINANCIAL SERVICES COMMISSION  
PROPOSED AMENDMENTS TO THE INSURANCE ACT TO FACILITATE GROUP INSURANCE:  
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## **1.0 INTRODUCTION**

- 1.01 The purpose of this paper is to outline recommendations to amend the Insurance Act to make provision for certain group insurance arrangements to be effectuated without the requirement for insurable interest as well as to introduce certain safeguards to protect members of the group.
- 2.01 The Financial Services Commission (FSC) invites comments from the Insurance Industry on the recommendations set out in this paper.

## **2.0 BACKGROUND**

- 2.1 Insurable interest is an essential element of a life insurance contract. This principle has its roots in the U.K. Life Assurance Act (1774) which made life insurance contracts void where the policyholder did not have an insurable interest in the life or death of the persons insured. The 1774 Act was primarily aimed at preventing persons from effecting insurance on the lives of others as a form of gambling in hopes of profiting from their deaths or misadventure. Legal treatise has recognized the application of this principle to other classes of insurance such as health.<sup>1</sup> Jamaica, having received the old United Kingdom (UK) laws, adopted the principle that insurable interest is required for there to be valid insurance contracts.
- 2.11 The issue of insurable interest however, became potentially problematic as new insurance products developed, in particular, group insurance products, whereby a single policy covered a group of individuals (the Insured). Typically, such products were structured to provide group insurance in cases where the master policyholder had an insurable interest in the life of the insured (e.g. employer/ employee relationship or certain associations and its members). In such cases, the presence of insurable interest was recognized in law. Generally, for such products, single master policies were issued on behalf of the members of the group and the employers or associations were named as the master policyholders. A master contract was issued to the master policyholder and insurance certificates were issued to the insured. The protections afforded by the requirement for insurable interest and the certificates evidencing the rights of the insured allayed the mischiefs that gave rise to the pre-1774 concerns.
- 2.12 However, in Jamaica, when the 1971 Insurance Act was being developed, its architects appeared to have recognized that there may emerge, situations in which the existence of insurable interest may be questioned in relation to certain group insurance arrangements. So, to avoid uncertainties in the law, and possible risks of the avoiding of contractual obligations by insurance companies, they placed in the 1971 Insurance Act a provision that prevented the invalidation of group insurance contracts where insurable interest did not exist. The 1971 Act was however, repealed, and the provision was not replicated in the 2001 Insurance Act which is currently in force. This lends itself to a plausible view that the current state of the law in Jamaica reverted to the common law position that insurable interest is required for group insurance contracts.

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<sup>1</sup> Halsbury's Law of Fourth Edition, Page 10.

## 2.2 **Regulatory Concerns**

2.21 There is no doubt that in the current economic environment, the insurance industry is pursuing innovations and expansion. Group arrangements facilitate such developments. However, with this comes the risk that new products may not satisfy the requirement for insurable interest or otherwise have sufficient protections for the insured.

2.22. Section 6 (1) (a) of the Financial Services Commission Act (FSC Act) provides that-

(1) **For the purpose of protecting customers of financial services**, the Commission shall-

(a) supervise and regulate prescribed financial institutions;

2.23 In carrying out its mandate, the FSC must use its best endeavors to guard against the entry by consumers into arrangements under which their rights may not be enforceable in law or adequately protected.

2.24 While the FSC acknowledges that group insurance could reduce administrative and distribution costs for insurance products which could, in turn, translate to lower premiums, it also observes that there is greater need for protection for insured persons under such policies.

2.25 As such, in a bid to facilitate the expansion of insurance coverage and innovation in the industry while carrying out its statutory mandate to protect policyholders, the FSC is seeking to have the recommendations set out in this paper for amendment to the Insurance Act brought into effect as a matter of priority for the FSC.

2.26 Apart from the old mischief, the specific concerns that the recommendations seek to address include the lack of privity of contract between the insured persons and the insurance company. This is so because the persons on whose lives the insurance is effected, do not enter directly into a contract of insurance with the insurance company. Stemming from this is another point of concern (particularly for the regulator) which relates to the arrangements which have increasingly become commonplace in Jamaica, whereby the master policyholder acts as an agent of the insurance company and not the insured.<sup>2</sup> The objective being in most cases, for the agent to bring in customers for the insurance companies. In such circumstances, the insured persons are left at the mercy of the insurance companies and their agents (the master policyholders) in the absence of adequate statutory or contractual safeguards and protections. It is likely however, that under a properly regulated group insurance regime, the foregoing concerns can be mitigated.

## 2.3 **Benefits to the Industry and Insureds**

2.31 As stated above, group insurance will likely reduce the cost of insurance and provide for greater inclusiveness. It will therefore, facilitate the introduction of micro-insurance products in Jamaica. With the potential benefits, it may be argued that there is no economic justification for the prohibition of group

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<sup>2</sup> *The Policy Holder often enters into arrangements with the insurance company in order to solicit a wide cross-section of clients. This is likely to occur in the context of micro-insurance.*

insurance products in circumstances where adequate protections are put in place for the ultimate consumers (the Insured).

### 3.0 DISCUSSION

In light of the foregoing, the following recommendations are being made to provide some measure of protection for insured persons under a group insurance policy, especially under contracts where there exists, no apparent insurable interest.

#### ***Insurable interests are not required for group insurance contracts***

- 3.1 **The first recommendation is for the reintroduction of the stipulations in the 1971 Act that where the conditions in the Act are satisfied a group insurance contract will not be void for want of insurable interest.**

#### Insurable Interest

This recommendation represents a desire to return to the 1971 position. However, there will be conditions that are to be attached to this dispensation ( set out later on in this paper) that are geared towards protecting the interests of the insured and protecting persons from the age old concern of wagering.

#### ***Access to Policy Documentation by the Insured and Disclosure Requirements***

- 3.11 Certificate of Insurance

As group insurance contracts are between the insurers and the policyholders (not the insureds), premiums paid by the insureds are usually collected by the policyholder of the group, for payment to the insurer. The policyholder<sup>3</sup> of the group shall be required to collect benefit payments for onward payment to the insured persons or their beneficiaries. These activities may give rise to the possibility of collusion between the agent/policyholder and the insurer, fraud and other indiscretions at the expense of the insured. A Certificate of Insurance issued to the persons insured under a group insurance policy will serve as legal evidence of the interest of the insured and their beneficiaries arising from the group insurance contract. This will make clear, the insured person's rights and cause of action in the event of fraud or other nefarious acts by the service providers and/or their agents. It will also ensure that payments are made directly to the insured or their beneficiaries thereby protecting them from abuse.

This approach is not new. The Insurance Code of Utah (United States of America)<sup>4</sup> states that:

“A policyholder in a group insurance policy does not need an insurable interest if a certificate holder or a person other than the group policyholder who is specified by the certificate holder is the recipient of the proceeds of the group insurance policy”.

<sup>3</sup> Owners of the group

<sup>4</sup> Article 31A-21-104 Section 21-104 of the Utah Insurance Code, which bars a person from knowingly procuring an insurance policy without an insurable interest, but also states that an insurance policy is not invalid if procured in violation of the statute. <https://www.orrick.com/Insights/2017/03/Utah-Federal-Court-Holds-That-Incontestability-Statute-Bars-Insurer-From-Avoiding-Death-Claim>

Additionally, the Monetary Authority of Singapore requires that insurers issuing group policy, (specifically those for which the policyholders have no insurable interest in the insureds), ensure that:

- a. the Certificate of Insurance state premium amounts, benefits provided, key restrictions/exclusions and coverage amount; and
- b. the Certificate of Insurance is sent directly to the insured. Other communications regarding the policy status or terms and conditions should be handled in the same way.

**It is proposed that the stipulation in the Utah Code for the certificate to be issued to the insured or their named beneficiaries as well as the requirement in Singapore for the insurance proceeds to be paid directly to the insured or their beneficiaries, be adopted in Jamaica.**

3.12 Furnishing of Other Relevant Documentation to the Insured Pertaining to the Policy

The FSC proposes that the Act be amended to give **insureds the right to access information pertaining to the group insurance policy under which they are covered, as well as to impose a corresponding obligation/duty on the insurer to provide a copy (ies) of the relevant documents to an insured (upon request)**. The objectives of this proposal are to ensure that the insured persons are kept informed and updated of the status of his/her policy so as to minimise the risk of the policyholder of the group not purchasing from the insurer the amount of coverage for which it has deducted/received payment. This will also enable an insured person, his/her beneficiary or a claimant to support a claim.

Similar requirements exist under the insurance regulatory regime in Alberta, Canada.

The Insurance Act of Alberta provides:

“an insurer

- a. on request, must furnish to a group life insured or claimant under the contract a copy of
  - (i) the group life insured’s application, and
  - (ii) any written statement or other record, not otherwise part of the application, provided to the insurer as evidence of the insurability of the group life insured under the contract;
- b. on request and reasonable notice, must permit a group life insured or claimant under the contract examine, and must furnish to that person, a copy of the policy of group insurance.”<sup>5</sup>

However, such access is does not extend to personal information except on the insured, and in the case of claimant’s extends only to information relevant to the claim.

***Recommendation: It is therefore recommended that a provision be included in the Insurance Act to import the above provisions from Alberta.***

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<sup>5</sup> Section 642 (5). <http://www.qp.alberta.ca/documents/Acts/i03.pdf>

### 3.13 Other Disclosure Requirements

In addition to the matters at paragraph 3.13 above, the FSC recommends that at the point of arranging group insurance the policyholder must disclose to the insured persons–

- a) the name of the insurer,
- b) the relationship between the policyholder/owner and the insurer,
- c) the policy conditions; and
- d) the premiums charged by the insurer.

As soon as monies are paid over to the insurance company and behalf of the insured , they should be entitled to receive evidence of premiums paid over to the insurer, upon request.

The objective is to ensure that the insured is kept informed and updated of the status of his/her policy so as to minimize the risk of the policyholder/owner of the group not purchasing from the insurer the amount of coverage for which it has deducted/received payment.

**Recommendation: Amend the Insurance Act to impose an obligation on policyholders of group insurance to disclose to the insured the matters listed in 3.1 (a) to (d) above. There should also be an obligation for policyholder to provide the insured evidence of premiums paid over the insurer upon request.**

### 3.2 ***Recognised Group Insurance Relationships: genuine commonality of purpose***

- 3.21 As a further safeguard it is also being proposed that the Insurance Act be amended to mandate that a group insurance may only be effected through groups established for reasons other than the mere desire to solicit customers or purchase insurance. The relationship between the policyholder and the insured must be genuine and not artificial and there should be a demonstrated commonality of purpose. As such, the need to prove insurable interest may be dispensed with where there is a “recognized group”. A recognized group being, one which demonstrates to the satisfaction of the FSC genuine and objective commonality of purpose; the objective being to prohibit the formation of artificial groups.

***Recommendation: That the Insurance Act be amended to mandate that a group insurance may only be effected through groups established for reasons other than the desire to purchase insurance or solicit insurance customers.***

### 3.3 ***Prohibition of Benefit Payments by Insurer to Policyholder***

- 3.31 Under a group contract, the policyholder is deemed to be an agent of the insurer so that premiums paid by the insured to the policyholder/owner are deemed to be payment to the insurer. Where the policyholder is the agent of the insurer, benefit payments made by the insurer to the policyholder are not deemed to be payments to the insured. This poses a risk to the insured. Therefore, it is proposed that the Act prohibits payments of insurance proceeds by the insurer to the policyholder on behalf of the insured. Benefits payments should be in the “name” of the insured. This prohibition should apply even where there is written consent of the insured or his/her beneficiary to the contrary.

- 3.32 Additionally, there will not be an option to pay benefits to any other person, even with the written consent of the insured or his/her beneficiary. This is because, it is widely believed that in cases of group policies where the policyholders have no insurable interest in the insured, the group policyholder could have an incentive to influence an insured persons or his/her beneficiary into giving such consent.

**Recommendation: It is therefore recommended that a provision be included in the Insurance Act to stipulate that the payment of insurance proceeds by the insurer to the policyholder for and/or on behalf of insureds or beneficiaries is prohibited.**

3.4 **Regulation making powers for group insurance**

- 3.41 It is proposed that the Act be amended to give to the FSC the power to develop Regulations and where appropriate, Guidelines, for the monitoring and supervision of group insurance. A breach of the requirements in the regulations would give rise to regulatory and/or criminal sanctions.

3.5 **Existing Provisions in Current Legislation**

- 3.51 Section 106 of the Insurance Act will be preserved, as it provides that –  
“A life insured under a group policy may, in his own name enforce a right given him under a contract, subject to any defence available to the insurer against him or against the insured “

This provision secures for insured persons and their beneficiaries, a cause of action against the insurer in the absence of privity of contract.

3.6 **Consequential Amendments**

- 3.61 It is acknowledged that regulation 142 (7) of the Insurance Regulations prohibits an insurer from “offering more than one group policy of insurance through any person unless such person is licensed; but exempts employer and employee relationships, or enrolments.” The FSC proposes an amendment to regulation 142(7) to allow the exemption to extend to recognized group insurance relationships, thereby allowing issuance of more than one group policies through a person without running afoul of the Insurance Act, particularly section 70 (1). This proposed amendment is also critical to the facilitation of microinsurance.

**Recommendation: Amend regulation 142 (7) of the Insurance Regulations to allow insurers to issue more than one group policy through policyholders of recognized groups as well as employer employee relationships, or any such enrolments.**

**RECOMMENDATIONS FOR AMENDMENTS TO BE MADE TO THE INSURANCE ACT (THE ACT)**

1. **the reintroduction of the stipulations that where the conditions in the Act are satisfied a group insurance contract will not be void for want of insurable interest**
2. **A provision be included in the Insurance Act to allow insureds and claimants access to information set out in paragraphs 3.12 and 3.13 above.**

3. *The Insurance Act should be amended to mandate that a group insurance may only be effected by recognized groups wherein the policyholder and insured persons have genuine objective relationships and commonality of purpose other than the mere solicitation of customers or the desire to purchase insurance.*
4. *Payment of benefit to policyholder by the insurer be prohibited.*
5. *The FSC should be conferred with the powers to make regulations generally, governing the provision of group insurance in Jamaica.*

The FSC invites comments and suggestions from interested parties regarding the content of this document. The deadline for submission of these comments is January 31, 2019. Please direct your comments to:

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