



Legal update

momentum
corporate

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Changes to group insurance policies under the Insurance Act

The new Insurance Act promulgated with effect from 1 July 2018 brought about substantial changes to group insurance policies. Insurers who are licenced in terms of the Insurance Act may only underwrite business which falls within the classes, or subclasses of business set out in Schedule 2 of the Insurance Act for which they are specifically licensed.

The main changes impacting Momentum Corporate and canvassed in this Legal Update are the following-

- The type of entities that may qualify as a policyholder and be issued with a group insurance policy.
- Insurance benefits under a group policy must be paid to a beneficiary and must be held by the policyholder for the exclusive benefit of such beneficiary/ies.
- The difference between individual and group insurance policies.

Who will qualify as a policyholder

The term “Group” is defined as follows in the Insurance Act:

“group” in respect of the classes of insurance business, relates to an insurance policy entered into with-

- (a) *an autonomous association of persons united voluntarily to meet their common or shared economic and social needs and aspirations (other than obtaining insurance), which association is democratically-controlled;*
- (b) *an employer; or*
- (c) *a fund,*

where the association, employer or fund holds the insurance policy exclusively for the benefit of a beneficiary;

From this definition, three types of entities qualify as policyholders for the class of insurance business listed in Schedule 2 to the Insurance Act -

- (i) An autonomous association
- (ii) An employer or
- (iii) A fund

The requirements that must be met for an entity to qualify as an autonomous association include -

- i. it must be **autonomous**;
- ii. the association must be **united voluntarily** to meet common or shared economic **and** social needs **other than obtaining** insurance; and
- iii. the autonomous association must be **democratically controlled**.

Some examples of associations include professional bodies consisting of actuaries or accountants or lawyers, or voluntary associations. Briefly stated, an association comprises two or more persons who have similar or aligned interests, to work together for their mutual benefit. An association can be a club or organization, being a group of persons united by a common interest or goal.

The first two requirements mentioned above are self-explanatory and a factual assessment must be undertaken in each instance to determine whether these requirements are met.

With regards to the requirement that the association must be democratically controlled, this concept is less clear and unfortunately also not defined in the Insurance Act. Before issuing a policy to an association, an insurer will therefore have to satisfy itself that members must ultimately control the association. It does not require the members to be involved in the day-to-day running of the association's affairs or in every decision that is made. At a minimum, the members must appoint those persons who are responsible for the management of the association. An insurer will have to request, amongst others, any supporting documentation from the association such as its founding documents, its constitution, articles or memorandum of the association as the case may be, to assess whether the above requirements are met.

What does it mean to hold the policy for the exclusive benefit of the beneficiary?

The definition of "Group" requires that the autonomous association, employer or fund (i.e. the policyholder) must hold the insurance policy *exclusively for the benefit of a beneficiary*

Having considered the relevant provisions of the common law, Momentum regards this phrase to mean that the policyholder must hold the benefit *to the exclusive advantage of, or in the exclusive interest of the beneficiary, to the exclusion of any other person.*

A beneficiary is defined in the Insurance Act, for purposes of a group insurance policy, as the member of the autonomous association or fund or an employee of the employer, or a person nominated by the member / employee towards whom the insurer must meet the insurance obligations, **who may not be the autonomous association, fund or employer**. Additionally, it should be noted that the Insurance Act specifically requires that the insurance benefits must be paid to such beneficiary.

Differentiation between group and individual insurance policies

An individual policy is a policy that is entered into with a person (who will be the "*policyholder*" for purposes of the Insurance Act), underwritten on a group basis or individual risk rated basis.

"*Underwritten on a group basis*" refers to where the risks covered under an insurance policy are rated based on the characteristics of a group of people together, as opposed to that of the individual or individuals to whom the policy relates.

"*Individual*" policies by definition **specifically includes** policies which are entered into with:

- (i) a credit provider, where the insurer must meet the obligations in respect of the lives assured (debtors of the credit provider) to the credit provider; and
- (ii) an employer, where the insurer must meet the obligations in respect of the lives assured (employees or directors of the employers) to the employer;

"*Individual*" policies furthermore **specifically excludes**:

- (a) a "*group*" policy as explained above; or
- (b) a policy where the persons who are the lives assured are two or more persons without an insurable interest in each other.

The effect of the exclusions are that:

- any policy which qualifies under group will not qualify as an individual policy, and
- any construct in terms of which an insurer enters into a policy (master policy or group policy) with a policyholder in respect of lives assured, which lives assured do not have an insurable interest in each other, will not qualify as individual policies (save for the two limited instances referred to in the definition, namely where the policyholder is a credit provider, or where the policyholder is the employer).

In accordance with the above, policies issued to employers (where the employer is therefore the policyholder) for the payment of benefits upon the occurrence of a "*death event*" or a "*disability event*" can either qualify as a group policy or an individual policy. It follows that whether a policy issued to an employer will constitute a group or an individual policy, will depend on the following:

In the case of a group policy:

- (a) the policy is entered into with the employer, who is the policyholder;
- (b) the policy must be held by the employer for the exclusive benefit of the beneficiary; and
- (c) benefits may only be paid to the beneficiary.

In the case of an individual policy:

- (a) the policy is entered into with the employer, who is the policyholder;

- (b) the insurer must meet the insurance obligations towards the employer as beneficiary; and
- (c) the directors or employees are merely the lives assured.

Policies entered into with a fund (as the policyholder) can also be underwritten either as a group policy or as an individual policy.

The key distinction when comparing group death and Individual death policies is that in terms of the group death policy, the benefit is specifically payable to a beneficiary. In this regard, the practice of employers taking on the responsibility of paying insurance benefits to a deceased employee's family prior to the insurer paying the benefit and then requiring a refund from the insurer, will conflict with the requirements of the Insurance Act. Employers will have to revisit this practice to enable compliance with the Insurance Act.

In Summary

Only a policy entered into with an autonomous association, a fund or an employer (i.e. the policyholder) could potentially qualify as a group insurance policy for purposes of the Insurance Act subject to such policyholder holding the policy not for its (own) benefit, but for the exclusive benefit of the beneficiary. The beneficiary must furthermore be a member of the association or the fund, or an employee or the employer, or a person nominated by such member or employee, provided the person so nominated is not the autonomous association, fund or employer. Lastly, the sums of money (the insurance benefits) must be payable to the beneficiary.

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