

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 48, Volume CXIII, dated 14th August, 2020

Printed by UPPC, Entebbe, by Order of the Government.

S T A T U T O R Y I N S T R U M E N T S

2020 No. 102.

THE INSURANCE (INDEX CONTRACTS) REGULATIONS, 2020

Regulation

1. Title
2. Interpretation
3. Meaning of “index insurance contract”
4. Meaning of “insurable interest”
5. Meaning of “basis risk”
6. Application for approval of index insurance product
7. Variation, suspension, and revocation of approval
8. Index insurance contracts to contain certain matters
9. Proof of insurable interest
10. Criteria for developing index insurance contracts
11. Prohibitions in relation to index insurance contracts
12. Periodic assessments
13. Reports required by Authority

SCHEDULE

FORM 1—Application for Approval of Text or Format of the Policy or the
Proposal Form for Index Insurance Product

FORM 2—Approval Certificate

STATUTORY INSTRUMENTS

2020 No. 102

The Insurance (Index Contracts) Regulations, 2020

(Under section 151 of the Insurance Act, 2017, Act 6 of 2017)

IN EXERCISE of the powers conferred upon the Minister, and in consultation with the Insurance Regulatory Authority of Uganda, these Regulations are made this 17th day of June, 2020.

1. Title

These Regulations may be cited as the Insurance (Index Contracts) Regulations, 2020.

2. Interpretation

In these Regulations, unless the context otherwise requires-

“Act” means the Insurance Act, 2017;

“Authority” means the Insurance Regulatory Authority of Uganda established by section 10 of the Act;

“index insurance contract” means an index insurance contract as defined in regulation 3;

“insured risk” in relation to an index contract, means the risk or risks stated in the index insurance contract as the risks for which the contract is designed to provide insurance cover; and

“licensed insurer” means a person who holds an insurers licence issued under section 35(1)(a) or (d) of the Act.

3. Meaning of “index insurance contract”

(1) An index insurance contract is an insurance contract—

(a) under which the liability of a licensed insurer to make a payment in respect of a stated insured risk is triggered by, and the amount of that payment is determined in accordance with, one or more indexes, rather than on an assessment of the policyholder’s actual loss; and

(b) where the payment is designed to provide a level of compensation, although not necessarily an indemnity, to the policyholder in respect of —

(i) losses, including consequential losses, that the policyholder is expected to suffer; or

(ii) costs, including mitigation costs, that the policyholder is expected to incur, as a result of the occurrence of the insured risk.

(2) Notwithstanding subregulation (1), the following are not considered index insurance contracts for the purposes of these Regulations—

(a) life insurance contracts or annuities;

(b) investment linked contracts under which the value of an investment is determined in whole or in part by reference to a financial index or an index of asset values.

4. Meaning of “insurable interest”

(1) A person has an insurable interest in an index insurance contract where, at the time the contract is entered into, there is a reasonable prospect that, in the event that the liability of the insurer is triggered—

(a) the person shall be adversely impacted by the insured risk; and

(b) the adverse impact shall be material in relation to that person.

(2) For the purposes of subregulation (1), “adverse impact” includes—

(a) damage to property;

(b) economic loss; or

(c) consequential loss.

5. Meaning of “basis risk”

(1) Basis risk, in relation to a policyholder in an index insurance contract, is the risk that—

- (a) the insured risk occurs, but the liability of the licensed insurer to make a payment to the policyholder is not triggered under the contract;
- (b) the liability of the licensed insurer to make a payment to the policyholder is triggered, but the insured risk is yet to occur;
- (c) the insured risk occurs and the liability of the licensed insurer to make a payment to the policyholder is triggered, but—
 - (i) the payment made to the policyholder under the contract is materially greater than the adverse impact of the insured risk on the policyholder; or
 - (ii) subject to subregulation (2), the payment made to the policyholder under the contract is materially less than the adverse impact of the insured risk on the policyholder.

(2) Where an index insurance contract permits the policyholder to select an insured value, basis risk under subregulation 1(c)(ii) may be measured in relation to the policyholder’s individual rate of loss as compared to the average rate of loss for other policyholders covered by the same index.

6. Application for approval of index insurance product

(1) A person proposing to sale or market index insurance products shall apply to the Authority for the approval of the text or format of the policy or the proposal form.

(2) An application shall be in Form I in the Schedule.

(3) The application shall be accompanied by the documents specified in Form I or such other information and documentation as the Authority may require.

(4) Upon receipt of an application, the Authority shall review the application to ensure that all the relevant documents are available to enable the processing of the application.

(5) The Authority may, before making a final determination on the application, require the licensed insurer to provide additional information and documentation and may require the licensed insurer to obtain and provide reports from actuaries and other specialists to support the application.

(6) After considering the application, the Authority may approve the text or format of the policy or the proposal form.

(7) The decision to approve the text or format of the policy or the proposal form shall be made within forty five days after receipt of the complete application.

(8) Where the Authority approves the text or format of the policy or the proposal form, the Authority shall issue an approval certificate in Form 2 in the Schedule.

(9) Where the Authority refuses to approve the text or format of the policy or the proposal form, the decision shall include the reasons for the refusal.

7. Variation, suspension, and revocation of approval

(1) The Authority may vary, suspend or revoke an approval where the Authority is satisfied that—

(a) the approval no longer satisfies the design criteria specified in these Regulations;

(b) the policy no longer meets the requirements specified in these Regulations;

(c) the insurer is marketing or selling the contract contrary to any requirements of the Act or these Regulations; or

(d) the policy is unfair to policyholders or prospective policyholders.

(2) Where the Authority varies, suspends or revokes approval, the Authority shall give reasons in writing for the variation, suspension or revocation.

(3) Where the Authority revokes suspends or revokes approval, the licensed insurer concerned shall cease to market or sell the policy with effect from the date on which it receives the notice of variation, suspension or revocation.

(4) The variation, suspension or revocation of approval does not invalidate or affect any index insurance contract sold prior to the date of variation, suspension or revocation.

8. Index insurance contracts to contain certain matters

(1) An index insurance contract—

(a) shall—

- (i) provide for the payment to the policyholder of a fixed sum of money referred to as the “the sum insured” which is determined in accordance with the value of one or more stated indexes;
- (ii) limit the liability of the licensed insurer to a specified maximum sum insured, above which a policyholder cannot purchase insurance cover;
- (iii) provide that the contract may only be purchased by persons who have an insurable interest in the specified insured risk and require the policyholder to acknowledge that he or she has an insurable interest, on the date that the contract is entered into;
- (iv) require the payment of the full premium at the time the contract is entered into or before the policy incepts, and in the case of subsidised premiums, the policy shall be issued and contract entered into, the moment the policy holder pays one hundred percent of his or her contribution;

- (v) prohibit cancellation of the contract by either party once the policy has incepted, except where the policyholder did not have an insurable interest at the time the contract was entered into;
 - (vi) provide at least one fall-back methodology for determining the liability of the licensed insurer, and payments payable to the policyholder, in the event that the primary index is not available; and
 - (vii) specify the process or mechanism for the resolution of any disputes under the contract; and
- (b) shall not—
- (i) require, or provide for, the assessment of actual loss of the policyholder; or
 - (ii) permit a grace period for payment of the premium beyond the inception of the policy.
- (2) An index insurance contract shall contain—
- (a) a statement that the contract is an index insurance contract approved by the Authority and that the contract is issued under, and in accordance with the Act and these Regulations;
 - (b) statement that the contract is intended to provide insurance cover in relation to one or more insured risks, which must be specified in the contract;
 - (c) a statement that payment under the contract is determined by the value of an index or indexes, which must be specified, and not on the basis of actual loss;
 - (d) a statement of the maximum sum that may be insured under the contract;

- (e) a statement that there is a risk that—
 - (i) no payment may be due to the policyholder under the contract, even though the insured event has occurred; or
 - (ii) in the event that the insured event occurs and the policyholder receives a payment under the contract, the payment may be less than the losses and costs sustained by the policyholder as a result of the occurrence of the insured risk;
- (f) a statement that—
 - (i) if the liability of the licensed insurer to make an insurance payment to the policyholder is triggered, the policyholder may be required to prove his or her insurable interest in the contract;
 - (ii) if the policyholder cannot prove an insurable interest, the policyholder shall not be entitled to receive any payment under the contract; and
 - (iii) the details of the consequences for the policyholder where the policyholder enters into an index insurance contract without an insurable interest in the contract;
- (g) a statement that the contract cannot be cancelled once it has incepted.

(3) Notwithstanding regulations (1) and (2), an insurer may, subject to the approval of the Authority—

- (a) issue a hybrid index insurance contract that provides for payment against one or more indexes and the provision of other benefits on the basis of actual loss;
- (b) issue an index insurance contract where the index triggers payment by the licensed insurer before the occurrence of the insured risk, where the payment is designed, at least in part, to compensate the policyholder for meeting the costs of preparing for, and mitigating the effect of, the insured risk.

- (4) An index insurance contract shall specify—
 - (a) the index or indexes which—
 - (i) shall trigger the liability of the licensed insurer under the contract; and
 - (ii) shall determine the amount of the payments to be made under the contract;
 - (b) the period that the contract shall be in force and the period in respect of which cover is provided;
 - (c) the details of the fall-back methodology that shall be used if the primary index is not available;
 - (d) the assessment or other estimation of adverse impact that may trigger payment; and
 - (e) any exclusions to which the contract is subject.
- (5) An index referred to in subregulation (4)(a) shall—
 - (a) be objective and transparent;
 - (b) be produced or verified by an independent third party and accessible to the licensed insurer and policyholders;
 - (c) state the source of the data used for each index,
 - (d) be supported by data that is sufficient and adequate to enable the licensed insurer to assess its insurance risk and;
 - (e) enable the liability of the insurer and the amount of the payment due under the contract to be determined in a timely manner.
- (6) An index insurance contract shall require the policyholder to make a claim in the event that the index triggers the liability of the licensed insurer to make a payment under the contract but may require the policyholder to prove his or her insurable interest before payment is made.

9. Proof of insurable interest

(1) Subject to subregulation (2), a licensed insurer is not required to investigate whether a prospective policyholder has an insurable interest in an index insurance contract.

(2) A licensed insurer shall not—

- (a) sell an index insurance contract to a person that the licensed insurer knows, or has reasonable grounds for knowing, does not have an insurable interest in the contract; or
- (b) make a payment to a person insured under an index insurance contract if there are reasonable grounds for believing that the person did not have an insurable interest when the liability of the licensed insurer under the index insurance contract was triggered.

(3) A licensed insurer shall provide every prospective policyholder with an explanation of what constitutes insurable interest and guidance as to how, in relation to the particular contract, a prospective policyholder can determine whether they have an insurable interest.

10. Criteria for developing index insurance contracts

(1) A licensed insurer shall have regard to the following criteria in developing an index insurance contract—

- (a) the desirability of minimising basis risk;
- (b) the need to minimise the risk of adverse selection against the licensed insurer by policyholders;
- (c) the desirability of ensuring that the insurance contract is fair to policyholders and provides value to the persons for whom it is developed;
- (d) the need to set a maximum sum insured that is not manifestly excessive, taking account of the types and magnitude of the losses and costs likely to be sustained or incurred by policyholders, in the event an insured risk occurs;

- (e) the need to ensure that any exclusions are appropriate, given the nature of an index insurance contract; and
- (f) the principle that insurance is more efficient as a risk transfer mechanism for covering infrequently occurring, but high impact risks than for covering frequently occurring low impact risks.

(2) An insurer shall make, and retain, a written record of the assessment that it has undertaken against the development criteria specified in these Regulations, detailing the basis on which the licensed insurer has made the determination that the contract meets the criteria and how the criteria are met.

11. Prohibitions in relation to index insurance contracts

(1) A licensed insurer shall not market an index insurance product or enter into an index insurance contract unless the text or format of the policy or the proposal form has been approved by the Authority.

(2) A licensed insurer shall not, without the written approval of the Authority, make any amendment to the text or format of the policy or the proposal format.

(3) A licensed insurer shall not use in, or in relation to, an insurance contract the word “index”, “parametric” or any word, term, phrase or abbreviation which suggests, or is likely to suggest, that the contract is an index insurance contract, unless that insurance contract is an approved index insurance contract.

12. Periodic assessments

- (1) A licensed insurer shall—
 - (a) undertake periodic assessments of any approved index insurance product that the licensed insurer sells or markets against the development criteria specified in these Regulations; and

(b) shall make a written record of each periodic assessment undertaken.

(2) A periodic assessment shall be undertaken at least once every two years or such period of time the Authority may specify.

(3) An insurer shall provide the Authority with a copy of every periodic assessment undertaken.

13. Reports required by Authority

The Authority may require a licensed insurer to submit such reports relating to its index insurance contracts as the Authority may consider necessary.

SCHEDULE

Regulation 6(2)

FORM 1

Application for Approval of Text or Format of the Policy or the Proposal Form for Index Insurance Product

General Information	
1.	Company Name
2.	Product Name
3.	Product status
	New
	Revamped / Redesigned
4.	Risks the product covers
5.	Product target market
6.	Product Marketing strategy
7.	Date of submission of this Application to the Authority
Additional / Support Documents Submitted	
9	Indicate additional / Support documents attached to this application (<i>tick were applicable</i>)
	Proposal form sought to be approved
	The policy document
	Key Features Statement
	The Premium rating structure clearly showing expenses and commissions for both reinsurance and others payable to intermediaries.
	Written record of compliance with the development and design criteria for index insurance contract
	The Marketing / Product brochure.
	The Actuarial Report on the index insurance contract
	Service Level Agreement between intermediary and insurer where there is significant collaboration in product design, pricing and marketing of an index insurance product
	The Reinsurance agreement/statement.

Statement of Compliance and sign off by the Chief Executive Officer of the applicant

9. I, affirm that this product has been internally reviewed by the Company, and is in compliance with the Authority's guidance on insurance products, the Insurance Act and the Regulations thereunder.

Name

Signature Date

FORM 2

Approval Certificate

The Insurance Regulatory Authority of Uganda pursuant to its powers under section 65 of the Insurance Act 2017, and the Regulations made thereunder hereby approves the the text or format of the policy or the proposal form:

Product :
Company:
Category of Business:
Date of approval:

This approval is subject to the following conditions and shall remain valid from the date of issue unless varied, suspended or revoked.

CONDITIONS

- 1.....
- 2.....
- 3.....

.....
Chief Executive Officer

MATIA KASAIJA (M.P)
Minister of Finance, Planning and Economic Development.