

COMPULSORY INSURANCE FOR COMMERCIAL BUILDINGS – IMPLEMENTATION GUIDELINES.

1.0 INTRODUCTION

Sections 183 and 184 of the Insurance Act of 2006, Act 724, make provision for the compulsory insurance of commercial buildings - both under construction and completed.

Also compensation payment to 3rd party victims to whom the insured is legally liable.

Section 183(1) states: "A person shall not construct or cause to be constructed a commercial building without insuring with a registered insurer the liability in respect of construction risks caused by negligence or the negligence of servants, agents or consultants which may result in bodily injury or loss of life to or damage to property of any workman on the site or of any member of the public".

Section 183(2) states: "A person who contravenes subsection (1) commits an offence"

Section 184(1) states "Every commercial building shall be insured with an insurer against the hazards of Collapse, Fire, earthquake, storm and flood and an insurance policy issued for it".

184 (2) "The insurance policy shall cover the legal liabilities of an owner or occupier of premises in respect of loss of or damage to property, bodily injury or death suffered by any user of premises and third parties".

184 (3) "For the purposes of this section, "commercial building" means a privately owned building to which members of the public have ingress and egress for the purpose of obtaining educational or medical service, engaging in commercial activity for the purpose of recreation or transaction of business".

Sections 185–191 also make provision for the establishment of a **Fire Service Maintenance Fund**. The object of the Fire maintenance fund is to provide funds and equipment to state institutions assigned with fire fighting functions and other organisations as the National Insurance Commission may determine.

2.0 IMPLEMENTATION COMMITTEE

A seven member committee made up of representatives of NIC, GIA, GIBA and the Fire Service were charged with the responsibility to come out with appropriate strategies and a plan of action for the effective implementation of compulsory fire insurance and the setting up of the Fire Maintenance Fund as provided for in Sections 183 -191 of the Insurance Act 2006, Act 724.

3.0 GUIDELINES FOR IMPLEMENTATION

Based on the recommendations of the committee, the National Insurance Commission, in collaboration with the Ghana Insurers Association hereby issues these implementation guidelines for the implementation of the compulsory insurance provisions in Ghana.

3.1. SCOPE OF THE COMPULSORY INSURANCE COVER

Objectives of Compulsory Insurance Provisions: It will appear that the framers of the compulsory insurance provisions wanted to:

- offer continuity to commercial entities which suffer loss or damage from fire and related risks,
- ensure adequate compensation to third parties for damage to properties and for injuries or death
- provide complementary funding for fire fighting

The scope of cover therefore will include the under-listed risks:

- a. **FIRE AND ALLIED PERILS**
- b. **COLLAPSE OF BUILDINGS** as a compulsory additional peril.
- c. **MATERIAL DAMAGE** and **LEGAL LIABILITIES** to third parties.

3. 2. EXCLUSIONS

Where loss or damage occurs whilst the insured building is undergoing renovation works or is under construction unless the Company has been informed in writing and the appropriate endorsement passed on the policy.

4.0 REINSURANCE

The implication of the inclusion of risks that are outside current reinsurance arrangements and the difficulty this might pose to getting reinsurance cover especially from external reinsurers may become an issue.

It is recommended that companies seek the consent of their reinsurers on these provisions of the law.

5.0 LIABILITY TO THIRD PARTIES

Cover will also extend to:

- Personal injury to or death of third parties as a result of the above insured risks.
- Accidental damage to property not belonging to or in the charge of or under the control of the insured.
- The legal cost and expenses incurred by the insured with the consent of the Company and/of the legal cost and expenses recoverable from the insured by any claimant.

5.1 COVER FOR WORKMEN/AGENTS

Public Liability policies normally exclude own workmen/agents who are rather to be covered under the workmen's compensation policy.

These category of persons are however to be covered under the provisions of the law with fixed sums insured.

Compensation payable are not subject to Workmen's Compensation Law and insurers should advise their clients in advance

6.0 POLICY WORDING

Underwriting companies are to use their existing **FIRE POLICY WORDINGS** since these wordings provide for all the risks to be covered under the compulsory insurance i.e Fire and the allied perils of Flood, Earthquake and Storm etc.

Two (2) new compulsory risks of **COLLAPSE** and **THIRD PARTY LEGAL LIABILITY** have been introduced by the Act and will be taken care of by endorsements.

6.1 ENDORSEMENTS for **COLLAPSE** and **THIRD PARTY LEGAL LIABILITY**

Two standard endorsements have been designed for use in respect of:

- The risk of Collapse as a compulsory additional peril.
- Compulsory Legal liabilities to 3rd parties

in line with the provisions of the Act.

The standard endorsement wordings are attached as appendices 1 and 2.

6.2 PUBLIC LIABILITY COVER (Third (3rd) Party Legal Liability)

Minimum limits with option to buy additional cover:

- | | |
|----------------------------|---------------------------|
| a) Bodily Injury & Death | - GH¢ 10,000.00 per event |
| b) Property Damage | - GH¢ 10,000.00 per event |
| and an annual aggregate of | - GH¢ 20,000.00 |

7.0 RATING GUIDELINES

Due to the complexities and heterogeneity of the risks involved, a tariff is not recommended.

The minimum recommended rates for fire and allied perils is 0.20%

7.1 RECOMMENDED RATES FOR ADDITIONAL COMPULSORY RISKS

- Collapse of building – Minimum of 0.025% - 0.075%
- Civil works associated with renovation/reconstruction - 0.125%

- Public Liability = 0.5% for the standard limits as specified above. Companies may use their discretion in rating additional covers as per company's own rating structure.

7.2 FIRE MAINTENANCE FUND/LEVY

A levy of 1% on premiums payable by policyholders/insured's on all commercial properties as provided for by the law will go into the Fire Maintenance Fund.

8.0 COMPULSORY FIRE INSURANCE CERTIFICATE

A specially designed Certificate with security features will be printed by the NIC. These certificates shall be issued to insureds as evidence of compliance with the relevant provisions of the law. Such certificate must be displayed conspicuously at the insured premises to be inspected by enforcement agencies.

8.1 INSURANCE CERTIFICATE FOR MULTIPLE LOCATIONS.

Where one policy covers buildings at multiple locations, Compulsory Fire Certificates should be purchased for the various locations. Provision is therefore made on the certificate for the specific location of each building to be indicated by the underwriter.

9.0 WHO INSURES A COMMERCIAL BUILDING UNDER MULTIPLE TENANCY.

The law permits either owners or occupiers to insure. However, it is mainly the responsibility of the landlord/owner to insure the main building and the common areas. This will mean tenants may have to take a stand alone PL cover in respect of the areas they occupy.

9.1 THE CERTIFICATE FOR THE STAND ALONE PL POLICY.

Consideration was given to the printing of a separate certificate for the stand alone PL policy but considering the cost implications and the fact that the tender process by NIC for the printing of certificates had been completed, it is recommended that the same certificate be used. The policy number will reflect the fact that it is a standalone PL policy.

Companies can also make stamps that could be used to stamp such certificates to boldly reflect the fact that they are for standalone policies.

9.2. HARMONISING THE 3RD PARTY LIABILITY ENDORSEMENT WORDING WITH PUBLIC EXISTING PL POLICY WORDINGS

It has been noted that some public liability policy wordings on the market exempt cover for "loss of" property which is provided for by the new endorsement as required under Section 184(2).

It is recommended that in line with the provisions of the law, all PL policies provide cover for "loss of third party property (ies)" in their policy wordings to avoid confusion.

10.0. TREATMENT OF PROVISIONS OF THE LAW UNDER CAR POLICIES

There is the need to clarify how insurance of properties under construction which by their size and complexities have to be insured by CAR policies will comply with the provisions of the law. This is particularly so when CAR policies exempt cover for negligence.

A separate endorsement is being designed for use by all underwriting companies.

11.0 ENFORCEMENT

The crucial role of enforcement in the successful implementation of the compulsory fire provisions cannot be overemphasised. There will be a strong collaboration between the Fire Service, the Police, NIC, GIA and other relevant agencies to ensure effective monitoring of compliance and swift prosecution of defaulters.

11.1 REPRESENTATION ON THE FUND MANAGEMENT COMMITTEE

The GIA will have a representation on the Committee to manage the Fire Maintenance Fund.

11.2 DATE OF IMPLEMENTATION/PUBLIC SENSITIZATION

The effect date of implementation/enforcement is **1st August 2011**. There shall be a period of public sensitization implementation/enforcement both in the media and by way of seminars and workshops for industry players, enforcement/collaborating agencies and other identifiable stakeholder groups especially on the demand side.

A detailed sensitization programme has been drawn for this purpose.

12.0 PREMIUM COMPUTATION

12. 1. FOR EXISTING BUILDING

- a. Quote the basic fire premium as per company's underwriting guideline.
- b. Add premium for the compulsory additional risks of:
 - Collapse of building
 - Public Liability

Total Premium

Less: Discounts

Net Premium

Add 1% Levy

Add Certificate Cost - **GH¢1.50** per certificate

PREMIUM PAYABLE

12.2 BUILDING UNDER CONSTRUCTION

- a. Quote the basic fire premium as per company's underwriting guideline.
- b. Discount by 25%
- b. Add premium for the compulsory additional risks of:
 - Collapse of building
 - Add risks associated with construction and renovation
 - Public Liability

Total Premium

Less: Discounts

Net Premium

Add 1% Levy

Add Certificate Cost - **GH¢1.50** per certificate

PREMIUM PAYABLE

NOTE: For major construction projects, companies must make sure cover is provided under CAR or the relevant Engineering policies

13.0 MONTHLY UNDERWRITING RETURNS

Underwriters are required to submit monthly/quarterly returns to both the NIC and GIA. The format is as per the attached and **marked appendix ----- (to be provided later)**

14.0 THE REINSTATEMENT PROVISION

Companies are advised that the reinstatement provisions in the fire policy apply to these extensions.

Policyholders should be advised to reinstate the sum insured for own damage and/or Public Liability cover limits.

15.0 CONCLUSION

These guidelines have been put together by GIA for compliance by all its members. All Underwriters are therefore advised not to undermine nor compromise the integrity of these guidelines.

SIGNED:

GIA PRESIDENT

COMMISSIONER

