

Proposed Transitional Microinsurance Framework

Explanatory Note

Introduction

1. Although microinsurance is becoming more widely offered in Ghana, the term “microinsurance” is not currently defined and there are no specific provisions relating to the regulation of microinsurance. The National Insurance Commission (the Commission) wishes to encourage the development of insurance products for the low-income sector and considers that an appropriate regulatory framework can help to achieve this objective.
2. Taking advantage of the opportunity presented by the proposal to develop a new legislative and regulatory regime for the insurance sector, the Commission has consulted widely with the insurance sector on the introduction of a proposed new microinsurance regime, that would be brought in once the proposed new Insurance Act is enacted and the proposed Insurance Regulations and Insurance Code are in force. The purpose of the new regime will be to both encourage the development of microinsurance and to ensure that policyholders are adequately protected.
3. Although the draft Insurance Bill has been submitted to Cabinet for consideration, it is unlikely that the Act will be finalised and placed before Parliament until later this year. Given the benefits of microinsurance, the Commission has decided that, as far as possible, the proposed microinsurance regime should be brought into force as soon as possible under the current Insurance Act (Act 724), rather than waiting until the new Act is in place.
4. The Commission has concluded that it can utilise its powers under Act 724 to issue Market Conduct Rules that will apply solely to microinsurance. Although it will not be possible to introduce the proposed new regime in full at this time, the new Rules (the Market Conduct (Microinsurance) Rules) will assist a smooth transition to the new regime, which the Commission anticipates will be in place next year.
5. The purpose of this Note is to provide some information concerning the transitional framework and to indicate likely areas of change when the new Insurance Act is brought into force. In this Note, the term “transitional framework” is used to describe the microinsurance provisions that will be brought in under the Market Conduct (Microinsurance) Rules and the term “new-Act regime” is used to describe the microinsurance regime that will be brought in under the proposed new Insurance Act, Insurance Regulations and Insurance Code.

Design Considerations

6. The new-Act regime has been designed around the following key principles:
 - There should be a clear and legally certain definition of microinsurance.
 - Microinsurance products should be insurance products that are designed for the low-income sector.

- As far as possible, the regulatory framework should include measures that encourage insurers to design and sell microinsurance products, i.e., there should be appropriate incentives.
- Regulation of microinsurance should be proportionate.
- Given that microinsurance is targeted at the low-income sector, there should be some additional protection built into the framework to protect microinsurance policyholders.
- The regime should be sufficiently flexible to accommodate change as the sector develops.

The Definition of Microinsurance

7. If special regulatory provisions are to apply to microinsurance, it is essential that the term “microinsurance” is defined. Although there is a general understanding of the microinsurance concept, i.e., that microinsurance is insurance intended for lower income people and households, countries worldwide have struggled with a definition that is appropriate and that has legal certainty. If the legal definition is vague or uncertain, it can result in unintentional breaches of the Act, Regulations or Code, which can have serious consequences particularly for insurers and insurance intermediaries. Although definitions of microinsurance vary from country to country, almost all definitions incorporate qualitative criteria, quantitative criteria or both qualitative and quantitative criteria.
8. Quantitative criteria may include, for example:
 - A maximum premium, which may be a fixed sum or a variable amount, linked to GDP or average or minimum wage; and
 - A maximum insurance payment or sum insured.

However, the criteria all have problems. In particular, they are arbitrary. In the case of premium size, a single premium is not appropriate for all policies. Furthermore, not all insurance products for which a small premium is charged are necessarily microinsurance.

9. Qualitative Criteria may include, for example, that the insurance:
 - Is affordable;
 - Is accessible by the low-income population; and
 - has the objective of protecting the social economic living conditions of the low-income population against specific risks.

Although qualitative criteria are better able to capture the concept of microinsurance, they are rather vague and too difficult to assess for a legal definition.

Legal certainty is very difficult to achieve with qualitative criteria. Even quantitative criteria may be difficult to assess, particularly if linked to GDP, average wage, minimum wage or other criteria that can change.

10. The new-Act regime takes a ground-breaking approach. Instead of using criteria, whether quantitative or qualitative, to define microinsurance, insurers will be given the power to designate an insurance product as microinsurance. It is this designation that will determine whether an insurance contract is microinsurance.
11. It has not been possible to include this definition in the transitional framework as it is based on the premise that microinsurance contracts will not be subject to approval by the Commission. However, section 45 of Act 724 specifically provides that every new form of insurance product

must be approved by the Commission. Any new microinsurance product issued under the transitional framework will therefore need to be approved by the Commission.

12. Under the transitional framework, therefore, the certainty comes from the approval process. Once an insurance contract has been approved by the Commission as a microinsurance contract, the contract is considered for all purposes of the Market Conduct (Microinsurance) Rules as microinsurance. The Commission may revoke its approval at any time if it considers that the contract no longer satisfies the criteria for microinsurance. In that case, the insurance contract ceases to be regarded as microinsurance from the date of the revocation or such later date as may be specified in the revocation notice. A revocation does not affect the status of the contract as microinsurance before that time.

Designation of Microinsurance Contracts and Criteria for Designation

13. However, in order to ease transition to the new-Act regime, the initial responsibility for designating an insurance contract as microinsurance remains with the insurer. An application to the Commission for approval must be accompanied by a written record that sets out the basis on which it designated the contract as microinsurance.
14. The insurer must make the determination of whether an insurance product is microinsurance on the basis of certain qualitative criteria specified in the Insurance Code. Therefore, instead of being part of the definition, the criteria are used by the insurer to make its own determination. Of course, an insurer is not obliged to designate an insurance product as microinsurance, even if it would satisfy the criteria.
15. The approach taken in the transitional framework is designed to capture the qualitative criteria, whilst achieving legal certainty through the approval process.
16. The Market Conduct (Microinsurance) Rules provide that an insurer cannot designate an insurance contract as microinsurance unless it considers that it satisfies the following criteria:
 - the insurance contract is designed and developed with the intention of meeting the needs of, and being marketed and sold to the low-income sector, or a segment of the low-income sector;
 - the premiums are affordable for those low-income persons for whom it was designed and developed; and
 - the contract is accessible to those low-income persons for whom it was designed and developed.
17. This is intended to leave as much flexibility as possible for insurers.

Incentives to Encourage Microinsurance

18. The new-Act regime will include the following incentives:
 - A microinsurance product will not have to be approved by the Commission. Instead, the insurer will be required to file the product, but may start using it after a period of 4 weeks, unless the Commission objects.
 - It is intended that microinsurance policies will be able to be sold by certain categories of unlicensed insurance agent. The Commission will determine the categories of permitted unlicensed agent before the new-Act regime comes into force.
 - Insurers will be able to rate microinsurance products on a community basis, as opposed to an individual basis.

19. It will not be possible to introduce the first two incentives in the transitional framework as they would require amendments to be made to the current Insurance Act. However, the transitional framework will permit insurers to rate microinsurance on a community basis.
20. Perhaps the most important incentive is a practical one. The Commission has designed a microinsurance logo that will have to be prominently placed on every microinsurance contract. This will identify the contract as microinsurance and will therefore provide certain “branding” benefits.

Additional Requirements Applicable to Microinsurance

21. The Commission considers that, in order to protect microinsurance policyholders, the transitional framework will need to include the following requirements in relation to microinsurance products:
 - When designing and developing a microinsurance product, an insurer must have regard to whether the product is likely to provide value to the persons for whom it is designed.
 - A microinsurance contract must:
 - ▶ be written in clear and straightforward language, with minimal use of legal and technical language;
 - ▶ be readily understood by low-income persons; and
 - ▶ contain no or few exceptions.
 - Microinsurance claims must be dealt with expeditiously. Claims must be determined within 7 days of receipt and payments made within 10 days of receipt of the claim.
22. An insurer will also be required by the transitional framework to prepare a simple Policy Summary for each microinsurance product that it sells. The Policy Summary is intended to present in a simple and straightforward document the key benefits and costs of the product, the obligations imposed on the policyholder and important information such as how claims should be made.

Treatment of Existing Microinsurance Contracts

23. The transitional framework will apply to new microinsurance contracts immediately. However, the Commission accepts that it would be unreasonable to immediately impose the new requirements and obligations on insurers in respect of microinsurance products which they are already selling and marketing.
24. In the circumstances, where an insurer has already had a microinsurance product approved by the Commission, it will be able to continue selling and marketing the product, until 1st September 2013. If the insurer wishes to continue to sell and market the contract after that date, it will need to have applied to the Commission for approval of the product as microinsurance under the Market Conduct (Microinsurance) Rules. This will require it to have carried out an assessment of the product under the new criteria, to have incorporated the microinsurance logo in the policy document and to have prepared a Policy Summary. Provided an application has been made, the insurer will be able to continue selling the product until the Commission has determined the application. If the application is granted, the microinsurance product is approved under the transitional framework and will be regarded as microinsurance

under the new-Act regime. If the application is refused, the insurer will no longer be able to continue selling the product.

Summary

25. In summary, the Commission hopes that the transitional framework and later the new-Act regime will achieve a balance between proportionate regulation and appropriate incentives.
26. As both the transitional framework and the greater part of the new-Act regime will be contained in documents issued by the Commission, it will be possible for the provisions to be amended much more expeditiously than if the regime was included in the Act or the Regulations. This will provide the flexibility needed to adapt the regimes as necessary in the future.