

A summary of the
life insurance policyholder protection measures
in Guernsey, the Isle of Man, Ireland, Luxembourg and UK
for professional advisers



This summary should be read in conjunction with AILO's publication
**"A guide to offshore bonds and policyholder protection for
professional advisers"**

Insurance policyholder protection measures

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Guernsey

The measures in place to protect policyholders of a Guernsey life companies are summarised below.

Prevention	
Solvency/reporting	<p>A Guernsey insurance company is required to have minimum paid-up capital of £250,000 and hold a sufficient solvency margin. In respect of unit linked business the minimum solvency margin is an overall minimum of £250,000. In practice, the GFSC requires companies to have higher levels of capital or to maintain a higher solvency margin depending upon the nature of the business. The Guernsey regulations do not have a specific category for capital redemption business.</p>
Segregation of assets	<p>A Guernsey life insurance company is required to deposit 90% of policyholder assets with an independent trustee and custodian(s) approved by the Guernsey Financial Services Commission (GFSC). This ensures that there is a legal separation of policyholder assets from the insurance company's shareholder assets and creditors. In practice, companies normally hold assets in trust at a level exceeding the minimum of 90% of liabilities.</p> <p>The trustee, which must be Guernsey-based and authorised by the GFSC, is responsible for safeguarding the life company's assets and may hold securities directly in its name or with an appointed nominee. The trustee is not responsible for the investment management of policyholder funds.</p> <p>The trustee appoints a custodian or custodians to hold its assets. These custodians must be 'fit and proper' and must be independent from the life company (unless agreed otherwise with the GFSC).</p> <p>The assets must be held in trust to meet the obligations of the company to the policyholders and generally for the benefit of the policyholders and are not available to meet any other obligations of the company, such as those towards general creditors.</p> <p>The trustee must report to the GFSC if 5% or more of the market value of the assets held are to be paid out within one calendar month and provide the GFSC with a certificate of assets held and full details of asset movements on at least a quarterly basis.</p>

Remedial	
Custodianship	See segregation of assets section above.
Winding-up provisions	<p>On the winding-up of a Guernsey life insurer:</p> <ul style="list-style-type: none"> • The company's long term business fund is only available for meeting the liabilities attributable to its long term fund (i.e. policyholders' liabilities) • Other assets of the company are available only for meeting the liabilities attributable to its other business. <p>Only in the case of an excess of assets over liabilities in either category may such an excess be used to meet the liabilities of the other category.</p>
Formal compensation	<p>There is no compensation scheme in Guernsey in the event of the insolvency of a life insurance company.</p> <p>Policyholders taking out an offshore bond in the UK from an FSA authorised Guernsey life company are believed to be covered by the UK Financial Services Compensation Scheme, provided that the policyholder was habitually UK resident when the bond was taken out and this occurred on or after the 1 December 2001 (please refer to the UK section of this guide for further details).</p>

The measures in place to protect policyholders of Irish life companies are summarised below.

Prevention	
Solvency/reporting	<p>An Irish insurance company is required to hold a sufficient solvency margin for unit linked business in accordance with the following requirements:</p> <ul style="list-style-type: none"> • 4% of technical provisions in the case where the insurance company bears an investment risk. • 1% of technical provisions in the case where the insurance company does not accept the investment risk but the allocation to cover expenses is fixed for a period of over 5 years. • If the insurance company bears no investment risk and the allocation to cover management expenses is not fixed for a period of over 5 years an amount equivalent to 0.25% of the last financial year's net administration expenses pertaining to the business shall be held. <p>In addition, an amount of at least 0.3% of the capital at risk is required to be held. In respect of capital redemption business a requirement of 4% of technical provision applies.</p> <p>A third of the minimum solvency margin composes the guarantee fund that must not be less than €3m. Half of the guarantee fund must be composed of the net assets of the company.</p>
Segregation of assets	<p>The life insurance company is required to maintain an account in respect of its life assurance business (the life assurance fund). The life insurer is required to be able to identify the assets and liabilities of the life assurance fund at any time. The assets of the life assurance fund may only be applied for the purposes of the life assurance business. They are not available for other purposes of the insurance company except in discharging liabilities attributable to the life assurance business unless an actuary certifies that there are excess assets in which case they may be released for other purposes.</p>

Remedial	
Custodianship	<p>There is no formal statutory requirement for an Irish life insurance company to place policyholder assets with a third party custodian, although for operational reasons it may be pragmatic for a life office to do so. In the event that a life insurance company gets into difficulty the IFSRA has a range of powers available to it and any action taken will depend upon the specific situation.</p>
Winding-up provisions	<p>On the winding-up of an insurance undertaking the technical provisions are 'ring-fenced' for the absolute benefit of the policyholders (although winding-up expenses may take priority).</p>
Formal compensation scheme	<p>There is no compensation scheme in Ireland in the event of the insolvency of a life insurance company.</p> <p>Policyholders taking out an offshore bond in the UK from an Irish life company are believed to be covered by the UK Financial Services Compensation Scheme, provided that the policyholder was habitually UK resident when the bond was taken out and this occurred on or after the 1 December 2001 (please refer to the UK section of this guide for further details).</p>

Isle of Man

The measures in place to protect policyholders of Isle of Man life companies are summarised below.

Prevention	
Solvency/reporting	<p>The solvency margin requirements are:</p> <ul style="list-style-type: none"> • Class 1 (linked long-term): 0.25% value of liabilities • Class 2 (long-term, other than linked): 1% value of liabilities <p>subject to a minimum of £500,000, although in practice the regulator will require additional working capital to be available.</p> <p>The Isle of Man regulations do not have a specific category for capital redemption business. The current requirement is 0.25% of the value of liabilities.</p>
Segregation of assets	<p>The life insurance company is required to maintain and account for separately the assets attributable to the long-term business fund (LTBF) (or policyholders' funds). It is a requirement that the insurer can identify, at any time, the assets and the liabilities of the LTBF. The assets of the LTBF can only be available for the purpose of long term business, unless an actuary certifies that there are excess assets in which case the excess may be released for other purposes.</p>
Remedial	
Custodianship	<p>There is no formal requirement for an Isle of Man insurer to place policyholder assets with a custodian, although in practice for operational reasons it is often pragmatic for the life office to do so. The regulator may, however, under the legislation instruct an insurer to maintain assets on the Island and/or transfer assets to a custody bank specified by the regulator. No assets may subsequently be removed from the custody bank without the prior consent of the regulator. Such requirements may be imposed whenever the regulator considers it appropriate</p>
Winding-up provisions	<p>Upon the winding-up of an Isle of Man life insurer:</p> <ul style="list-style-type: none"> • The company's long term business fund may only be available for meeting the liabilities attributable to its long term fund (i.e. liabilities towards policyholders) • Other assets of the company are available only to meet the liabilities attributable to its other business. <p>Only in the case of an excess of assets over liabilities in either category may such an excess be used to meet the liabilities of the other category.</p>
Formal compensation scheme	<p>The Policyholders' Compensation Scheme becomes active if a life insurance company becomes insolvent and applies to all policies with Isle of Man life assurance companies governed by the Insurance Act 1986 and issued after the commencement of the regulations or previously covered by the preceding Voluntary Scheme.</p>

Isle of Man

Remedial continued

The scheme applies to all insurers authorised under the Insurance Act 1986 to carry out long-term business and applies to business falling within classes 1 and 2 of the Manx insurance regulations.

In the event of a life company being unable to meet its liabilities to its policyholders, i.e. it becomes insolvent, up to 90% of the liability to the protected policyholder will be met. The Isle of Man scheme provides protection to policyholders no matter where they reside.

Prior to the commencement of the regulations on 1 February 1991 a Voluntary Scheme existed from 4 April 1988. Protection is provided to policies issued after commencement of the regulations and also to policies previously protected by the Voluntary Scheme.

The compensation fund is not a 'standing fund'; the compensation arrangements are only activated once a default occurs and are funded by a levy on the other life assurance companies. The levy on other life assurance companies will not exceed 2% of the long term liabilities arising under all protected contracts, calculated at the date the insolvent insurer became insolvent.

In addition, any monies due to the policyholder from the insolvent insurance company which are subsequently recovered go to the Insurance and Pensions Authority as the Scheme Manager (i.e. the policyholder waives their rights to such payments direct from the insurer). The total funds available to the Scheme Manager to meet claims are the residual assets of the insurer plus the levy from the other scheme members.

Policyholders taking out an offshore bond in the UK from an FSA authorised Isle of Man life company are believed to be covered by the UK Financial Services Compensation Scheme, provided that the policyholder was habitually UK resident when the bond was taken out and this occurred on or after the 1 December 2001 (please refer to the UK section of this guide for further details).

The following exclusions and exceptions apply:

A policyholder's claim for compensation shall be rejected:

- If submitted more than 6 months after the policyholder became aware, or 'ought to have become aware', of the insolvency, unless the Scheme Manager determines to allow the claim.
- If submitted more than 18 months after the date of insolvency.

No compensation will be payable to persons who are controllers of the insolvent company. In addition, a claim from any person who has any responsibility for, or may have profited from, the circumstances giving rise to the insurer's insolvency may be rejected.

If the benefits provided under a particular policy appear to be excessive compared to the premiums paid/payable and the other terms of the policy, the Scheme Manager may refer the policy to an independent actuary for assessment. If the independent actuary considers the benefits to be excessive, the compensation may be reduced.

Insurance policyholder protection measures

Luxembourg

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The measures in place to protect policyholders of Luxembourg life companies are summarised below.

Prevention	
Solvency/reporting	<p>A Luxembourg insurance company is required to hold a sufficient solvency margin. In respect of unit linked business the minimum solvency margin is:</p> <ul style="list-style-type: none"> • 4% of mathematical reserve in the case where the insurance company accepts the investment risk. • 1% of mathematical reserve in the case where the insurance company does not bear the investment risk and the amount assigned to cover management expenses stipulated in the contract is fixed for more than 5 years. • 0.25% of mathematical reserve in the case where the insurance company does not bear the investment risk and the amount assigned to cover management expenses stipulated in the contract relates to a period of less than 5 years. Such amount is subject to a minimum of 25% of the general expenses related to the policies concerned. <p>In addition, at least 0.3% of the capital at risk is required to be held.</p> <p>In respect of capital redemption business the EU requirement of 4% of mathematical reserve applies.</p> <p>A third of the minimum solvency margin composes the guarantee fund that must not be less than €3.2m. Half of the guarantee fund must be composed of the net assets of the company.</p>
Segregation of assets	<p>A Luxembourg insurance company is bound to deposit all policyholder assets with an independent custodian bank approved by the CAA. This ensures that there is a legal separation of policyholder assets from the insurance company's shareholder assets and creditors. Furthermore, the custodian bank is required to 'ring-fence' the policyholders' assets.</p> <p>In the event of default or insolvency on the part of the insurance company, the CAA may freeze the accounts held with the custodian bank in order to protect policyholders' rights.</p>
Remedial	
Custodianship	See segregation of assets section above.
Winding-up provisions	<p>The holder of a Luxembourg policy is a preferential creditor in the event of the default or insolvency on the part of the insurer.</p> <p>Obligations under insurance policies have first call on the assets making up the technical provisions of the insurance company. If such assets are insufficient then the assets of the insurance company itself would be used to cover insurance commitments.</p>
Formal compensation scheme	<p>There is no compensation scheme in Luxembourg in the event of the insolvency of a life insurance company.</p> <p>Policyholders taking out an offshore bond in the UK from a Luxembourg life company are believed to be covered by the UK Financial Services Compensation Scheme, provided that the policyholder was habitually UK resident when the bond was taken out and this occurred on or after the 1 December 2001 (please refer to the UK section of this guide for further details).</p>

The measures in place to protect policyholders of UK life companies are summarised below.

Prevention	
Solvency/reporting	<p>A UK insurance company is required to hold a sufficient solvency margin in accordance with the following requirements:</p> <ul style="list-style-type: none"> • 4% of the mathematical reserve in the case where the insurance company bears an investment risk. • 1% of the mathematical reserves in the case where the insurance company does not accept the investment risk but the allocation in the relevant policy to cover expenses is fixed for a period over 5 years. • If the insurance company bears no investment risk and the allocation to cover expenses is not fixed for a period of over 5 years an amount equivalent to 25% of the prior financial year's net administrative expenses pertaining to such business shall be held. <p>In addition, an amount of at least 0.3% of the capital at risk is required to be held.</p> <p>In respect of capital redemption business (class VI), a requirement of 4% of the mathematical reserve applies.</p> <p>In addition, the insurer must satisfy the minimum guarantee fund requirement of €3m.</p>
Segregation of assets	<p>A UK insurer carrying out long-term business must, at all times, maintain accounting and other records as necessary to identify the assets allocated to the long-term fund as well as the liabilities attributable to such business. As well as identifying the assets attributable, the insurer may only apply those assets for the purposes of its long-term business. Assets may not be transferred out of an insurer's long-term fund unless they represent an established surplus.</p>
Remedial	
Custodianship	<p>There is no formal requirement for a life insurer, in respect of life insurance policyholder assets, to place such assets with a third party custodian.</p>
Winding-up provisions	<p>The UK has implemented the EU Directive (2001/17/EC) with regards to the winding-up of 'insurance undertakings' through 'The Insurers (Reorganisation and Winding Up) Regulations 2004' (and previously the equivalent 2003 regulations). In the event of a winding-up of an insurance company only the liabilities to the employees of the insurance company rank ahead of the company's liabilities to the policyholders. All other liabilities of the insurer rank after the policyholder liabilities.</p> <p>In the event that a life insurer does get into difficulty, the FSA would not necessarily intervene or place specific requirements on the life insurance firm.</p>

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	<p>The FSA would assess each situation on a case-by-case basis, assess the risk the failure of the firm poses to financial stability in the UK and any action will be based upon the statutory objective of maintaining market confidence. Overall, therefore, the likely action of the FSA is not definitive and could, in theory, be non-existent if the firm is so small that its failure has little or no impact on overall market confidence.</p>
<p>Formal compensation scheme</p>	<p>The Financial Services Compensation Scheme (FSCS) applies to all policies issued after 1 December 2001 by UK insurers and, in some instances, issued by EEA, Isle of Man and Channel Island insurers to policyholders habitually resident in the UK when the bond is taken out.</p> <p>Prior to this date the rules as set out under the UK's Policyholders Protection Act 1975 (PPA75) applied. Policies that were covered by PPA75 are now covered by the FSCS.</p> <p>With effect from 25 July 2008, the FSCS was extended to cover all policies issued by branches of UK insurers in the EEA, Channel Islands and Isle of Man after 1 December 2001 to policyholders resident in these jurisdictions. The requirement for the policyholder to be habitually resident in the UK when the bond is taken out still applies to policies not written through a branch of the UK insurer.</p> <p>The FSCS was established as a consequence of the Financial Services and Markets Act 2000 (FSMA) and the scheme has to comply with the rules laid out by the FSA and contained in the COMP sourcebook in the FSA Handbook. The FSCS is the UK's statutory fund of 'last resort' and covers customers of firms authorised by the FSA – this includes, for example, insurance companies and deposit takers, although different rules apply according to the type of firm.</p> <p>The FSCS was established mainly to assist private individuals, although some smaller businesses are covered. Larger businesses are generally excluded (with some exceptions).</p> <p>Policyholders are covered if they are insured by an authorised insurance firm under contracts of insurance issued in the UK, or in some cases in the EEA, Gibraltar, Channel Islands or the Isle of Man.</p> <p>The rules relating to the UK's formal compensation scheme are such that the UK's scheme not only covers contracts issued by UK life insurance companies but also, in certain circumstances, to contracts issued by life insurance companies established in the EEA, Channel Islands and Isle of Man. Whether a particular contract of insurance is covered depends upon where the insurer is established and where the risk is situated according to the following:</p> <ul style="list-style-type: none"> • insurer established in the UK in respect of a risk situated in the EEA, Channel Islands or the Isle of Man • insurer established in the EEA in respect of a risk situated in the UK • insurer established in the Channel Islands or the Isle of Man in respect of a risk situated in the UK, Channel Islands or the Isle of Man

Remedial continued

Where a risk is situated is determined by, in respect of an individual, the habitual residence of the individual. If the risk is not an individual, it should be situated where the establishment to which the risk relates is situated.

Policyholder protection is triggered if an authorised insurer is unable to, or likely to be unable to, meet claims made against it, e.g. it is in such serious financial difficulties that it may not be able to fulfil its contracts of insurance or if it has been placed in liquidation or administration.

In the first instance, the FSCS must attempt to transfer the policyholder's policy to another insurer. Only if this is not possible will compensation become payable. The FSCS is very clear that the payment of compensation is a 'last resort'. The maximum level of compensation which may be paid is unlimited and the amount of compensation is calculated as 100% of the first £2,000 plus 90% of the remainder of the claim.

In order for a claim to be paid the claimant must assign their claim against the insurer to the FSCS.

The scheme is funded by levies made on participating firms. Two levies are made:

- A management levy to cover the costs of the FSCS
- Compensation levies to cover the costs of any compensation paid less any recoveries made from firms 'in default' plus any claims expected to be paid over the next 12 months.

The following exclusions and exceptions apply:

The FSCS does not apply to claims against an insurance company if it became insolvent prior to 1 December 2001 (the date on which the FSCS became operational); different rules will apply to such claims, although the FSCS will handle the claim.

The COMP sourcebook specifically excludes certain policyholders from benefiting from the protection provided by the FSCS; these excluded policyholders include:

- Directors and managers of the firm in default and their close relatives
- Corporate bodies within the same group as the firm in default
- Persons holding more than 5% of the capital of the firm in default
- The auditors of the firm in default
- The appointed actuary of the firm in default
- Persons who contributed to the firm's default
- Large companies and partnerships

If the FSCS considers, following an actuary's written recommendation, that the benefits under a particular policy are excessive, the liability under the relevant policy may be reduced or disregarded.



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Association of International Life Offices Secretariat
PO Box 1747
L-1017 Luxembourg
Grand Duchy of Luxembourg
Telephone +352 44 26 59
Fax +352 44 26 74

www.ailo.org

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