

CLIVE

# COMPENSATION BOOKLET

## Insurance Company Failure

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# MISSIONS OF THE GUARANTEE FUND FOR VICTIMS

## ► A MECHANISM TO PROTECT POLICYHOLDERS

In order to protect the victims of traffic or hunting accidents if an insurer is liquidated, the legislator has provided for the Guarantee Fund for Victims' intervention since its creation in 1951.

The missions of the Fund in the field of company failure have been changed several times, in particular by the Law of 1 August 2003, which extended the Guarantee Fund's jurisdiction to cover all compulsory non-life insurance.

Now, pursuant to Order No. 2017-1609 of 27 November 2017, its areas of intervention are refocused on two insurance risks, Civil Liability for Motor Vehicles as provided for in Article L211-1 of the Insurance Code and Decennial Liability cover as defined in Article L242-1 of the same Code.

At the same time, the scope of intervention was extended to all insurers in the single market legally providing policies on French soil under the Freedom to Provide Services (FPS), whereas previously the Fund's actions were limited solely to companies subject to the French Prudential Supervision and Resolution Authority (ACPR).

These new provisions apply to policies taken out or renewed on or after 1 July 2018.

## ► LICENSING, WITHDRAWAL OF LICENCES AND THE CONSEQUENCES

### Licensing

- In France, all insurance companies must be licensed by the ACPR (French Prudential Supervision and Resolution Authority).
- European Union companies wishing to operate in another EU Member State, in the form of a branch or under the freedom to provide services (FPS), must be licensed in the country where they have their registered office and declare their intention to the authorities of the State in which they wish to provide policies.

### Withdrawal of a licence : the consequences

- The ACPR has the authority to decide to withdraw the official licence issued in France from a company engaged in insurance operations.  
Withdrawal of the official licence results in the liquidation of the company.
- If a company is operating in France, through FPS or freedom of establishment, with its registered office in another European Union State and its licence is withdrawn by its licensing authority, this shall result in the liquidation of its operations in France.

# TRAFFIC ACCIDENT OR DECENNIAL LIABILITY

## ► ROLE OF THE GUARANTEE FUND FOR VICTIMS

The Fund is responsible for paying the compensation for which the defaulting insurer is responsible.

However, this payment for decennial liability risk provided for in Article L242-1 of the Insurance Code is capped at 90% of the compensation that would have been awarded to the policyholder by the defaulting insurer. Moreover, protection is granted only to natural persons outside their professional activity.

The Fund is applied to by the liquidator of the insurance company, who retains responsibility for managing the files.

## ► CONDITIONS FOR APPLICATION

(Application over time).

### **Headquarters of the failing company located in France :**

- in France, a company may not validly practise insurance activities unless it has obtained an official licence,
- withdrawal of the official licence by the ACPR results in the liquidation of the insurance company and signifies its insolvency,
- policies taken out by policyholders of the insurance company being liquidated cease to have effect on the fortieth day at noon as from the publication in the Official Journal of the withdrawal of the licence,
- claims taken over by the Guarantee Fund in respect of liquidation are therefore those occurring before noon on the fortieth day following publication in the Official Journal of the withdrawal of the licence.

### **Head office of the failing company located in a European Union Member State other than France :**

The Guarantee Fund for Victims may also pay civil liability claims for motorised land vehicles caused by insured persons of a company whose head office is located in another State of the European Union and whose licence was withdrawn by the authorities of that State.

- In this case, withdrawal of the licence by the State in question results in the withdrawal of the licence in France.
- The fortieth day rule is a mechanism specific to French regulations and only applies to insurers subject to French government supervision.
- Damages handled by the Guarantee Fund in respect of liquidation are those from before the date of termination of the policies as defined by the regulations of the home State of the company being liquidated and resulting in a first claim less than 5 years after the date of their occurrence.

## ► COMPENSATION FOR VICTIMS

### **Traffic accidents**

The Guarantee Fund for Victims handles, on behalf of the company being liquidated, the payment of damages, involving civil liability, suffered by third parties concerning :

- personal injury,
- damage to property, resulting from an accident incurred through the involvement of a motorised land vehicle and its trailers or semi-trailers.

It does not apply a reduction for property damage.

The Guarantee Fund for Victims reimburses the welfare agencies and third-party payers for the various benefits paid to their policyholders and beneficiaries.

The Guarantee Fund for Victims cannot intervene in the compensation of risks not covered by mandatory insurance, such as :

- theft,
- broken glass,
- fire.

### **Decennial liability**

The Guarantee Fund for Victims intervenes to cover the damages provided for in Article L242-1 of the Insurance Code under the conditions and limits of the policy taken out. This is repair work for damage of the nature for which builders are responsible within the meaning of Article 1792-1 of the Civil Code.

Assistance from the Fund is limited to this mandatory guarantee only. The Fund therefore does not intervene for ancillary guarantees such as :

- relocation costs
- loss of rent
- any miscellaneous financial loss and, in general, any ancillary cover that may have been taken out

The above list is not exhaustive.

This coverage is granted only to natural persons outside their professional activity.

As a reminder, under the terms of Article L421-9, the damages suffered by the following are excluded :

- Legal entities, such as insurance companies.
- Natural persons such as directors, managers, partners, and statutory auditors of the defaulting company or of companies in the same group, and persons who may have benefited from information about the failing company or from special advantages.

On the other hand, the following are eligible for assistance from the Guarantee Fund for Victims :

- Victims of an injury who are not in a contractual relationship with the insured.
- Victims of an injury who are in a contractual relationship with the insured but outside the scope of their professional activities.

## ► CONDITIONS FOR COMPENSATION

### **Place of the risk**

The risk or liability must be located in the territory of metropolitan France and its overseas departments.

### **Date of referral to the liquidator or to the Guarantee Fund for Victims**

- The policyholder's statement or the victim's claim must be made no later than five years from the date of termination of the contract.

### **Consequence of the limits on the Fund's intervention**

Where the Fund takes action for up to the 90% limit of the compensation that would have been awarded to the policyholder under the Decennial Liability cover, the remaining 10% must be entered as a liquidation liability.

### **Management is adapted in agreement with the liquidator**

The liquidator appointed by the ACPR or by the competent authority of the home State when the registered office of the company is located in the territory of a Member State of the European Union other than France :

- Refers requests for payment to the Guarantee Fund for Victims,
- Carries out investigations and formalities on request and on behalf of the Guarantee Fund.

### **The Guarantee Fund for Victims :**

- Examines the claims sent to it by the liquidator and checks the admissibility of the requests,
- Makes payments according to the procedures defined with the liquidator after having obtained, if necessary, a receipt legalised by the beneficiary

Note : The management of the claims falls within the competence and responsibility of the liquidator but may also be carried out by agreement directly by the Guarantee Fund for Victims or by service providers chosen by the liquidator, the operations being carried out under the supervision of the Guarantee Fund for Victims.

If you have any further questions, please contact :  
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