

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

The new Insurance Act, 2021 (Act 1061) which came into force in January 2021 adopted most of the provisions in the repealed Insurance Act, 2006 (Act 724). However, there are significant changes and elaborations in the current Act. Some of these changes are as shown in the table below.

INSURANCE ACT, 2006 (ACT 724)

INSURANCE ACT, 2021 (ACT 1061)

ADMINISTRATIVE MATTERS

No guiding principles provided

Guiding principles of the Commission introduced. These principles provide among other things that the Commission shall have regard to International Insurance Standards and sound insurance management principles in carrying out its objectives.

No specific section which affirms the independence of the Commission

Introduction and emphasis of the independence of the Commission.

The representative of the Ministry of Finance on the Board should not be below the rank of Principal Economic Officer¹

The Ministry of Finance's representative on the Board must not be below the rank of a director.

The Board of the Commission included a practicing lawyer appointed by the Ghana Bar Association.

The appointed practicing lawyer must be 10 years or more at the Bar and must have relevant Insurance expertise to be nominated by the GBA.²

The President was to appoint one person without any gender restriction to the Board.

The President must appoint 2 persons and at least one of them should be a woman.

¹ Section 3 of the Insurance Act 2006, (Act 724)

² Section 6 of Insurance Act, 2021 (Act 1061)

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)	INSURANCE ACT, 2021 (ACT 1061)
It was mandatory to appoint a person with qualifications and experience in finance as part of the Board of the Commission.	It is no longer mandatory to appoint a person with qualifications and experience in finance although an appointee may have that qualification.
With the exception of the Commissioner, tenure for members of the Board was limited to three years. Members could not be appointed for more than two terms in succession. ³	Members of the Board are eligible for a 4-year term and one (1) term reappointment only ⁴ .
No resolutions of the Board could be made without a meeting.	Board members to pass a resolution outside a board meeting.
A member was required to make disclosure of interest, failure of which could warrant the revocation of the member's appointment.	In addition to revocation of a member's appointment, the Board shall recover any benefit derived by a member who fails to make a disclosure of interest. ⁵
The Commissioner should have been a person with qualification and expertise in the insurance industry. There was no limitation on the number of years of experience the person to be appointed is required to have.	Under the current Act, the Commissioner shall be a person with professional insurance qualification and at least 10 years post qualification experience in insurance matters ⁶ .
When appointing a Deputy Commissioner, there was no qualification/experience requirement attached to the position.	A person appointed as Deputy Commissioner must have a professional insurance qualification and at least five years' post qualification experience in insurance matters.
No statutory provision on Internal Audit Unit	Formalisation of Internal Audit Unit which is responsible for the internal audit of the Commission.

³ Section 6, Act 724

⁴ Section 9, Act 1061.

⁵ Section 13(3) of Insurance Act, 2021 (Act 1061)

⁶ Section 19 of Insurance Act, 2021 (Act 1061)

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

INSURANCE ACT, 2021 (ACT 1061)

LICENSING REGIME

Express provision for an applicant to be a limited liability company.⁷

No express provision for an applicant to be a limited liability company, but an incorporated company.⁸

Categories of license not specifically defined

Categories of licence specifically defined to be Insurance, reinsurance and innovative insurance licence.⁹

There was no specific provision stating the types of licences available to be issued, however some sections indicated the kind of licenses which may be issued.

Specific categories of licences to carry on insurance business have been introduced.

A licensee cannot act contrary to the particular licence it has been issued with.

Again, the section which forbids issuance of two or more different types of licenses to a person uses the permissive word '**may**'. Thus, the commission may or may not issue a licence of a type to a person with a licence of another type.

On the other hand, a person issued with one type of licence **shall** not be issued with another category of licence. For instance, a person issued with an insurance shall not be issued with a reinsurance licence.¹⁰

There was no time limit within which the Commissioner had to give notice of its decision on an application for licence.

The Commissioner shall give notice of its decision within 14 days of determining an application for a licence.¹¹

⁷ Section 21(1), Act 724

⁸ Section 42(1), Act 1061

⁹ Section 40(1), Act 1061

¹⁰ Section 40(3), Act 1061

¹¹ Section 44, Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)	INSURANCE ACT, 2021 (ACT 1061)
The Commissioner was required to publish a notice of the issue of the licence in the Gazette and any newspaper of mass circulation determined by the commission. There are no specific timelines for the publication. ¹²	The Commissioner shall within fourteen (14) days of giving notice to the applicant publish the notice of the issue of the licence in the Gazette and on the website of the Commission.
Under this Act, the Commissioner had the power to revoke a licence, vary conditions for a licence or impose new condition by giving 30 days written notice to the applicant. ¹³	Under the current Act, the Commissioner has the power to cancel a licence on grounds set out under the Act. A written notice of the cancellation shall be made to the applicant within 14 days . ¹⁴
No such mandatory requirement.	A licensed insurer is mandated to give written notice of commencement of business to the Commissioner within 14 days of commencing insurance business. ¹⁵
No such criteria exist	Failure to commence business within six (6) months after issuance is a ground for revocation. ¹⁶
Conditions for the grant or refusal of a licence does not include a criterion that the applicant should be a "Fit and Proper" person. ¹⁷	One of the requirements for the grant or refusal of a licence is for an applicant to meet the "Fit and Proper" criteria of the commission. ¹⁸ "Fit and Proper" has been defined to mean a person suitable to hold a specific position based on; <ul style="list-style-type: none">• Competency and capabilities• Honesty and integrity• Financial soundness• Educational and professional qualification.¹⁹

12 Section 28, Act 724

13 Sections 30, 31, 32 of Insurance Act, 2021 (Act 1061)

14 Section 49, Act 1061

15 Section 46(1), Act 1061

16 Section 48(1)(b), Act 1061

17 Sections 22,23, Act 724

18 Section 43(3), Act 1061

19 Section 259, Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

A foreign reinsurer not licensed by the Commission could not carry-on business of insurance in Ghana.

INSURANCE ACT, 2021 (ACT 1061)

Foreign reinsurers who do not have a license from the Commission can open contact offices in Ghana subject to the approval of the Commission.²⁰

LIQUIDATION AND STATUTORY MANAGEMENT OF INSURANCE COMPANIES.

Judicial management order under this Act was made for the appointment of a judicial manager to manage an insurance business or part of an insurance business in the interest of policy holders.²¹

The provisions on Judicial management are not repeated in the current Act, rather *section 99* speaks of statutory management and the appointment of a Statutory manager by the Commissioner to manage an insurance business on grounds set out in the Act.

An insurer shall not be wound by private liquidation, any resolution to that effect is void.²²

An insurer requires prior written approval from the Commission to wound up by private liquidation.

Any resolution requires prior written approval from the Commission.²³

Official winding up commences by a special resolution²⁴

Official winding up commences by a petition to the Court.²⁵ Any special Resolution to wind up and appoint a Liquidator shall be void.

Liquidation of insurance companies was regulated by the repealed Bodies Corporate (Official Liquidations) Act 1963 (Act 180) with modifications in respect of insurers and companies carrying on unlicensed business.²⁶

The Provisions in the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) relating to official liquidation of companies is applicable with necessary modification in respect of intermediary and companies carrying on unlicensed insurance intermediary business.²⁷

20 Section 47, Act 1061

21 Sections 99 to 110, Act 724.

22 Section 91, Act 724

23 Section 91, Act 1061

24 Section 93, Act 724

25 Section 93(1), Act 1061

26 Section 92, Act 724

27 Section 147, Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

The Commission may pursuant to Act 180, present an application or petition to the Court for official liquidation of an insurer or a company that is carrying on or has carried on, unlicensed insurance business.

INSURANCE ACT, 2021 (ACT 1061)

The Commission may pursuant to Act 1015, present a petition to the Court for official liquidation of an insurer or a company that is carrying on or has carried on, unlicensed insurance business.

COMPULSORY INSURANCE FUNDS

The repealed Act established three management Funds:

1. Motor Compensation Fund
2. Client Rescue Fund
3. Fire Service Maintenance Fund

The management funds have been increased from three to five different management Funds as follows:

1. Fire Control Fund
2. Motor Compensation Fund
3. Client Rescue Fund
4. Insurance Education Fund
5. Agricultural Insurance Fund

COMPULSORY INSURANCE

There was no such provision in the repealed Act, however, under the Motor Vehicle (Third Party Insurance) Act 1958, although an insurer could undertake to pay a maximum amount in a contract of insurance, there was a duty of the insurer to satisfy judgment debts of its insured.

- A contract of insurance that undertakes a liability in which the amount or maximum amount to be recovered is not stated at the time the contract was entered into is void.²⁸
- This is applicable despite anything to the contrary in the Motor Vehicle (Third Party Insurance) Act 1958. ²⁹
- Thus, liability is limited to the amount stated in the contract of insurance at the time it was entered.

28 Section 255(1), Act 1061

29 Section 255(2), Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

- Insurance of Commercial buildings under construction was required to be insured against risk caused by negligence of servants, agents and consultants which results in bodily injury or loss of life or property.³⁰
- All commercial buildings were required to be insured against risk of collapse, fire, earthquake ³¹etc
- Failure to comply amounted to an offence with no specific penalty.

- There was no requirement to undertake professional indemnity insurance

- There was no requirement to undertake Public Liability Insurance

INSURANCE ACT, 2021 (ACT 1061)

- There is the requirement to undertake insurance for commercial buildings.
- This requirement to undertake Insurance of Commercial Buildings is stated to be an offence punishable by either a fine or imprisonment or both as provided for under the first schedule

There is the requirement to undertake Professional Indemnity Insurance, failure to comply amounts to offence punishable either by a fine or imprisonment or to both.

Class of persons involved are:

Accountants, Lawyers, medical doctors, insurance practitioners etc.³²

There is the requirement to undertake Public Liability Insurance. Class of properties covered by the Public Liability insurance includes: Office space, Banks, shopping malls, factories, hospitals etc

30 Section 183, Act 724

31 Section 184, Act 724

32 Second schedule, Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

- There was no specific provision on marine insurance

Under the repealed Act, a person aggrieved by a decision of the Commission could appeal the decision at High Court within sixty (60) days after the date of the decision.³⁴

The Motor Compensation Fund was to be used to compensate persons who suffer injury or death through a motor accident and who are unable to obtain compensation from insurance companies.³⁶

INSURANCE ACT, 2021 (ACT 1061)

There is a specific provision on marine insurance for persons who import goods into the country. Failure to comply amounts to an offence punishable by either a fine or imprisonment term or to both.

Also, a person cannot place marine cargo with an unlicensed insurer without prior written approval of the Commission.³³

The time limit for appealing a decision of the Commission at the High Court has been reduced to thirty days after the date of the decision.³⁵

The category of eligible persons under the Motor Compensation Fund has been expanded to include dependants of a person who dies through a motor accident and who are unable to obtain compensation from an insurance company.³⁷

It is now compulsory for a person who imports goods, other than personal effects, into the country to insure the goods.³⁸

33 Section 222(2), Act 1061

34 Sections 33, 123 and 179 of Act 724

35 Section 254, Act 1061

36 Section 192, Act 724

37 Section 229, Act 1061

38 Section 222(1), Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

INSURANCE ACT, 2021 (ACT 1061)

CHANGES IN SIGNIFICANT OWNERSHIP AND LEVEL OF CONTROL

No such provision existed.

A person cannot become a significant owner of an insurance entity, reduce or increase level of control in an insurance without prior written approval of the Commission.³⁹

An insurance company is mandated to apply to the commission for approval before a person ceases or become a significant owner of the entity.

The fit and proper criteria must be satisfied before a person can become a significant owner of an insurance entity.

No such criteria existed.

An insurance company licensed under the Act, is mandated to apply to the Commission for approval before appointing a director, senior manager or a key person in control function.

The Commission must be satisfied that the fit and proper criteria is met before giving the authorisation.

No such criteria existed

The Commission has the power to give directives to a licensed insurance company to remove a director, senior manager or key person in control function on the basis that the person is not fit and proper.⁴⁰

³⁹ Section 52, Act 1061

⁴⁰ Section 56, Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

INSURANCE ACT, 2006 (ACT 724)

INSURANCE ACT, 2021 (ACT 1061)

SOLVENCY AND CAPITAL REQUIREMENT

- The capital required of a company limited by shares is the Cedi equivalent of one million dollars,
- In the case of a reinsurer, the cedi equivalent of two million five hundred thousand dollars
- a mutual company, an amount equal to the value of its liabilities plus fifteen percent of its assets.

No specific amount is stated; however, the Act makes provision for the stated capital and the minimum capital required of an insurance company to be specified in a directive by the Commission.

The categories of an insurance intermediary are stated to be:

Insurance broker, Insurance agent, Insurance sub-agent or Insurance loss adjuster.

The categories of intermediary have been expanded to include;

Bancassurance, insurance loss assessor, insurance investigator, reinsurance broker etc.⁴¹

PENALTY REGIME

Penalty regime existed, with punishments mostly ranging from the imposition of fines, and in some cases, imprisonment.

The new Act has expanded and robust penalty regime.

The fines and imprisonment terms are now stiffer to serve as deterrent to industry players.

Some breaches attract administrative penalties payable to the Commission, some other breaches attract huge fines, with stiffer imprisonment terms for culprits.

41 Section 110, Act 1061

New Changes from Ghana's Insurance Act, 2021

(Act 1061)

Takeaway

- The new Insurance Act seeks to protect consumers with the introduction of compulsory insurances.
- With the passing of the new Act, it is now an offence for any person or entity not licensed to open contact offices without approval of the Commission.
- The Commission are now more responsive in terms of dealing with applications for licences with the imposition of specific timelines on the Commission.
- Insurance companies are now liable to pay only the amount stated in a contract of insurance irrespective of judgment debts that exceed the amount stated in the contract.
- This is a major setback for claimants with judgment debts that exceed the contract amount because where the damage occasioned is worth more than what is stipulated in the insurance contract, the claimant is only limited to the amount in the insurance contract irrespective of what the claimant is justly entitled by a court judgment.
- The Act states in section 43(4) that the Commission shall make a decision concerning a license application within four months, however the commission is required within fourteen (14) days of determining an application give notice in writing of its decision whether to the applicant. The confusion is whether the fourteen days is inclusive of the four months.
- Industry stakeholders are concerned about the need to undertake mandatory marine insurance for goods other than personal effects imported into the Country under the Act.
- The new Insurance Act has an expanded penalty regime to ensure compliance.
- The new Insurance Act has a very robust corporate governance mechanisms to check malpractices by persons managing insurance companies to properly and effectively sanitise the industry.
- The provisions on the power of the Commission to approve or disprove persons to be appointed as directors, senior managers and key persons in control function is very welcoming.

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New Changes from Ghana's Insurance Act, 2021

(Act 1061)

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For more information please visit www.wts.com

WTS Nobisfields

1 Pawpaw Street East Legon
P. O. Box DT 1210 Accra, Ghana
T: +233 302500107/+233508646424
E: info@wtsnobisfields.com
www.wtsnobisfields.com

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Contact

If you have any questions on the matters referred to in this alert, please do contact the authors below:

Theophilus Tawiah

T: +233302500107/+233508646424
E: theophilus.tawiah@wtsnobisfields.com

Peggy Addo

T: 233302500107
E: peggy.addo@wtsnobisfields.com

Stephanie Senyah

T: +233302500107
E: stephanie.senyah@wtsnobisfields.com

Dorcas Anim Bediako

T: +233302500107
E: dorcas.bediako@wtsnobisfields.com