

## **MARRIED WOMEN'S PROPERTY ACT POLICIES** **(MWPA)**

**Section 6** of the married women's property act, 1874 deals with insurance where policy of insurance is taken by **husband for the benefit of wife**. The relevant extract of said section is as follows:- " A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the **benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to a trust for the benefit of his wife**, or of his wife and children, or any of them, according to the interest so expressed, **and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.**"

**Section 6** provides for a simple method by which a married man can make a provision for **settlement of the benefits** in case of his untimely death to his dependent as within mentioned specified category, without a legal formality of a deed of settlement. It also operates to give the beneficiaries under such a policy by virtue of which they secure protection than they would get under a voluntary settlement outside the act. Policy taken under the provisions of MWP act operates as a valid declaration of trust giving the beneficiary a vested interest in the policy. Such a policy will not be aggregated with the other property left by the deceased.

Under MWP, there will be 3 separate bodies namely 1) life assured 2) trustees 3) Beneficiaries. While taking policy under MWP act, any one should ensure following:-

- Choosing the correct addendum to the proposal form.
- Whether to appoint special trustees as individuals or any institution.
- Whether trustees should be appointed two or more. If yes, then which rights should be given to them? Whether any provision should be made for alternate trustees or not?
- Whether any rights for raising the loan under the policy should be given at proposal stage or not?
- Who will be the beneficiaries? Whether beneficiaries should be mentioned as a class or by named beneficiaries?
- Whether alternate beneficiaries should be appointed or not?
- If beneficiaries are appointed more than one, then whether they will be appointed as joint tenants or tenants – in – common.

### **PERSONS TO WHOM MWP ACT POLICIES CAN BE ISSUED**

- Proposer/ life assured should be male. He should be married man or a widower or a divorced man. Here what is important that to become eligible for taking this policy male member

should have once married and subsequent to this his wife may have expired or divorced. It is not necessary that wife should be alive as on taking the policy.

- The proposal is on the proposer's own life.
- Male married proposers who are Non-resident of India. However, the currency of the policy is Indian rupees, the place of payment of policy monies mentioned in policy should be in India, and office issuing the policy should also be in India. Issue of such policy should be subject to exchange control regulations not only in India but also of the country where the life assured resides.
- Women, even if married and having her independent income and estate can not effect a policy on her own life. And also male member who is unmarried or about to be married through shortly after issue of the policy can not take the policy under this act.

#### PLANS UNDER WHICH MWP ACT POLICIES CAN BE ISSUED

- All plans where life assured and proposer are same.
- Children deferred assurance plans and policies on the life of another cannot be taken under this act.
- All types of annuities plans are allowed provided life assured and proposer are same one.

#### **PERSONS WHO CAN BE BENEFICIARIES UNDER THE POLICY**

The status of a beneficiary is that of a beneficial owner. The person who can be beneficiaries under MWP act provides are the 1)wife alone, 2)any one or more children alone or the wife and 3)any one or more children together. In above definition, the word 'children' means children by blood only of the proponent. However, if the proposer is Hindu alone, then even adopted children are also included in the definition of the word of children.

#### CONTINGENT BENEFICIARIES

- Beneficiaries once appointed will have an immediate absolute interest in the policy from the start of the policy against life assured, trustees and all other persons.
- However, if non-muslim proposer/ life assured wants to provide that the beneficiaries interest should be contingent on the beneficiaries survival and should pass on to another beneficiary belonging to permissible class of beneficiaries in the event of principal beneficiaries' death. Then, this provision of contingent or alternate beneficiaries is available.
- But, this provision of contingent beneficiary is not available for muslim proposer.
- Thus, non-muslim proposer can provide that policy should be for benefit of his named wife, if she should survive him, but that in the event of her prior death, the benefit should pass on

to his sons and /or daughters named and / or unnamed. If proposer desires so, then necessary modification will be required in the addendum to the proposal.

- By provision of above contingent liability , if the wife survives the proposer, she would get the policy monies entirely, but if she expires before death of proposer, then policy money will go to the survivors or survivor of the named sons or the survivors or survivor of the children, jointly or in equal shares.
- It is also possible for non-muslim proposer to create contingent trust providing that beneficiary's interest should be contingent upon his death and that on his survival the policy should revert back to him as though no trust was ever existed.
- If such contingent trust is created and also appointment of contingent beneficiaries is also created, then such contingent beneficiary's interest will also be created immediately. It can not be presumed that creation of trust or beneficiaries is contingent and their existence would step in only in the contingency of the principal beneficiary's death, hence the interest of the contingent trust or beneficiary will not come into operation.
- But it is to be understood that the alternate or contingent beneficiary takes an immediate vested interest in the trust property from the start of the policy, but such contingent beneficiary would not get nothing if any benefit is payable under the policy, provided principal or original beneficiary is alive on that date. In other words, the alternate or contingent beneficiary immediate vested interest in policy moneys would be destroyed by the principals beneficiary's or assureds' survival.
- When a non-muslim proposer makes an appointment of a contingent beneficiary, our office has to approve the same or acknowledge on par with the principal beneficiary for all purposes and dealing under the policy.

#### APPOINTMENT OF TRUSTEES, THEIR POWERS AND DUTIES

- The function of the trustee or trustees under MWP act policy is to receive policy money on claim arising and carry out the objects of the trust. Where the beneficiaries are all majors, the trustees will pay to the beneficiaries the claim amount received from the LIC unless they have been given specific directions to the contrary by the person creating the trust. The simple payment of amount will complete the executing of the trust and the trust will come to an end. Where the beneficiaries are all minors, the trustees will hold the amount for the benefit of the minors. When trustees appointed is not alive on claim, payment will be considered to all beneficiaries provided they are major and competent to contract and are of one mind.
- A trust under sec 6 of the said MWP act is a statutory trust and is on par with a contractual trust in all respect. By filling the addendum to proposal form regarding appointment of special trustee by the life assured itself forms the trust under the policy. If the trust is formed at proposal stage, it does not attract any stamp duty.

- Special trustee may be an individual person. If two or more persons are appointed as special trustees then trust may like the survivors or survivor of group of trustees.
- There is also provision to appoint alternate or contingent trustee who can take over as special trustee as a result of the death of the principal trustee this alternate trustee is possible where principal trustee is appointed as person and not as institution.
- Proposer may even appoint a corporate special trustee i.e a bank or an executor and trustee co; instead of appointing individual as a trustee.
- If any special trustee is appointed, then his signature in the addendum as acceptance as trustee will be required. Otherwise, the appointment would not be complete and the result would be that there is no appointment of trustee at all.

  

- Where a proposer does not appointment special trustee in the form of addendum to proposal or where proposer replied the question as the same will be appointed in future date, then at a future date whenever he desires to appoint special trustee, he have to execute a deed poll appointing a special trustee/s on a stamp paper . The value of stamp paper will depend on the place of execution and rates of each state. After executing the deed poll on requisite stamp paper, the same should be required to be registered by the branch office where policy is being serviced.
- As per Indian trusts act, there is no prohibition for appointment of beneficiaries as trustees under the policy. The beneficiary is not treated as incapacitate from being trustee for himself and for others. But as a general rule, he is not a fit person for the office of the trustees because of conflict of interests of a beneficiary and duties and responsibility of a trustee. However, if proposer still insists for appointment of beneficiary as trustee, our office should proceed further with.
- Life assured cannot work as trustee, since sec 6 of MWP act provides that policy shall not be subject to the control of the husband.
- Special trustees appointed under MWP act policies would be in the position of trustees generally and would have all powers and be subject to all the liabilities and duties of trustees as defined under the Indian trust act. But they cannot act beyond the powers conferred upon by them by way of addendum to the proposal form.
- Where special trustees have not been appointed, the policy money at the time of claim is payable strictly to the official trustee of the state where the policy is issued. However, there is a doubt whether the office of the official trustee referred to in said sec 6 is the same authority as the present official trustee appointed under the official trustees act 1913. In view of this, our office pay maturity claim and death claim directly to beneficiaries if the same are named, major, competent to contract and are of one mind.

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**CANCELLATION OF APPOINTMENT OF EXISTING TRUSTEE AND / OR APPOINTMENT OF NEW TRUSTEES**

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- A trustee once appointed in the addendum to proposal or by way of the deed poll cannot be removed by the life assured, unless there is a specific power reserved to him therein. This is a reason why the forms of addendum to proposal contain a clause whereby the proposer can reserve to himself the right to appoint a new trustee in certain circumstances.
- Where revocation of the appointment of existing trustees and appointment of new trustees in their places is desired , the assured will be required to execute a deed poll of revocation of old trustees and appointment of new trustees. The deed poll will have to be stamped as per requisite stamp value of the state.
- Each policy under MWP act will be treated as separate unit. Hence, for effecting any cancellation of existing trustees, separate stamp paper will be required.
- If original trustee have availed any loan under the policy and life assured seeks for cancellation of existing trustees and appointment of new trustee, then alternate trustee or new trustee may have to accept the old liability. This is because the liability under the policy which was created by the principal or existing trustees in the discharge of his duties and as such the alternate or new trustee would be bound by the action of his predecessor.
- It may happen that either in the form of addendum or in the deed poll of appointment of trustees, the assured may not have delegated any powers to trustees like rising of loan. The assured may either desire to enlarge the powers of the existing trustees, then same can be given provided that all beneficiaries are major and competent to contract and are of one mind, the assured can be allowed to execute a deed poll delegating wider powers to raise loan.

**SETTLEMENT OF MATURITY / DEATH CLAIM**

- Where one or more special trustees has/ have been appointed the claim by maturity or death would be settled with the special trustees on his/ their completing the requirements and executing the discharge form irrespective of whether the beneficiaries are major or minor, named or mentioned as a class or alive or dead and payment for the entire claim amount can be paid in the name of special trustee/s. It would be upto special trustees to hand over the amount to the beneficiary/ies in the manner provided for in addendum.
- If the special trustees make a request to pay the amount to the beneficiaries directly, our offices should do the same provided discharge form and note of authority duly completed by special trustees.
- Where special trustees have not been appointed, the policy money at the time of claim is payable strictly to the official trustee of the state where the policy is issued. However, there is a doubt whether the office of the official trustee referred to in said sec 6 is the same

authority as the present official trustee appointed under the official trustees act 1913. In view of this, a company may pay the maturity claim and death claim directly to beneficiaries if the same are named, major, competent to contract and are of one mind. In this case, discharge form and note of authority should be completed by all beneficiaries.

- If payment is being made in favor of beneficiaries and there are one or more than one minor beneficiaries, or all of them are minor, payment may be made to the natural guardian/s of the beneficiaries. the discharge form required to be signed by all such natural guardian/s. where natural guardian is not available to receive payment then payment can be made to legal guardian/s appointed by court of law.
- Where beneficiaries are appointed as a class, payment can be made to the beneficiaries directly who answer to the description of the class as on the date of claim. It may be clarified that if beneficiaries are appointed as 'all sons as class'. Then only such sons are living on the date of maturity or death of life assured are entitled to receive the policy money. If anyone from the class i.e any one or more sons has/have died, clearly their legal heirs will not have any interest in the trust.
- If the sole beneficiary dies where there is only one such beneficiary or if the beneficiary are tenants- in –common and if one of them dies, the trust to the extent of the deceased interest vests upon the heirs of the deceased beneficiaries.

#### ALTERATIONS IN POLICY AND EXERCISE OF OPTIONS UNDER THE POLICY

- Where the alterations are beneficial to the beneficiaries as a whole, the trustees and the assured may with the consent of the beneficiaries, if they are competent to contract and trustees may apply for alteration even where the beneficiaries are minor or if they are mentioned as a class.
- If trustees have not been appointed, then alteration of such policy can be allowed with consent of life assured alone if beneficiaries are minor or they are mentioned as a class. If beneficiaries are major then life assured and beneficiaries can apply jointly for alteration.
- One certificate issued by life assured and trustee (if any) stating that this alteration is for the benefit of beneficiaries is required.
- The right to exercise the options available under the policy will be exercised by the beneficiaries, trustees at right time.

#### ASSIGNMENT AND NOMINATION

- Since the policy under MWP act is a statutory trust and the life assured has neither any interest nor any control over it, assignment or nomination by the assured is not permissible.
- A nomination by the beneficiary is also not permissible.

- The beneficiary if major and competent to contract can transfer his beneficial interest by way of assignment to any other person by virtue of sec 58 of the Indian trust act, but subject to the law for the time being in force and extent in and to which he may dispose of such interest.
- If such assignment is in favour of the permissible class of beneficiaries under sec 6 of the MWP act i.e wife and /or children of the life assured, the policy would still be within ambit of sec 6 of MWP act.
- If on the other hand, if the assignment is in favour of some one else outside the permissible class of beneficiaries, the policy would lose the identity of being the policy under MWP act. Hence, assignment is not allowed/ preferable.
- On execution of an assignment by beneficiary, neither the trust nor its object comes to an end but the policy still remains with the trust. The effect of assignment will be transfer of beneficial interest of one beneficiary to another beneficiary. If the special trustees appointed will hold the policy in trust for the benefit of the assignee beneficiary instead of for the benefit of the assignor beneficiary.
- The special trustees can assign the policy but only by way of a mortgage with the right of redemption reserved. The special trustees can not assign the policy absolutely. The trustees cannot nominate anyone to receive the policy money.

#### LOAN UNDER THE POLICY

- If life assured has given the powers to trustees to raise loan from LIC only for the benefit of beneficiaries by filling the requisite addendum at the time of submitting the proposal, then only loan can be raised.
- The form of addendum may have restrictive clause like 'provided the beneficiaries are major and competent to contract and all are of one mind.' If this clause is there, then loan can be granted provided the beneficiaries are major and with consent of all such beneficiaries.
- Hence, proper care should be taken while selecting the proper addendum at proposal stage and office should see the addendum while sanctioning the loan under the policy.
- In case of policies where trustees were not originally given any power to raise loan, then at later date life assured can give wider powers to raise loan under the policy from insurance company only by executing a deed poll.
- Life assured can give wider powers to trustees to raise loan from the company during the minority of the beneficiaries or even if the beneficiaries are mentioned as a class.
- Where loan is admissible and the trustees can raise loan, the loan application and the assignment in favour of company should be signed by the trustees only. The consent of the

beneficiaries where required in terms of addendum should be obtained separately in the form of no objection letter. The receipt of loan should be signed by the beneficiaries only.

- Where trustees have not been appointed and where the beneficiaries have not been mentioned as a class, but by name as personal designate by life assured and they are all major and competent to contract, the application for loan and assignment form for loan should be signed by the life assured and all the beneficiaries. The receipt of loan should be signed all beneficiaries only.
- Where policy is foreclosed due to non-payment of loan interest, and balance surrender value is payable, then discharge form must be signed by trustees and the beneficiaries.
- It may happen that the special trustees who in fact obtained loan against the policy and as such was a signatory to the documents for loan including assignment may have died or his appointment may have been revoked and some other trustees may have appointed as a trustees in his place. In such cases after the loan is repaid, reassignment of policy should be in the name of trustees existing at the time of repayment of loan and not in beneficiaries or the assured or the earlier trustees.
- If loan was granted to the beneficiaries where no special trustees are appointed, the reassignment on repayment of loan would be in favour of the beneficiaries.

#### SURRENDER OF THE POLICY

- Surrender of the policy would be the four party agreements between insurance company, the life assured, the trustees, and all the beneficiaries who must be major and competent to contract.
- Application of surrender of policy, surrender discharge form must be signed by the assured, beneficiaries, trustees jointly. The surrender value in such case must be paid over to trustees only.
- Where named beneficiaries have been appointed and all of them are major and are of one mind, surrender of the policy may be allowed even though trustees have not been appointed. All the documents for surrender payment s will be signed by all beneficiaries and life assured. Surrender mount will be paid to beneficiaries directly.
- Where the beneficiaries are mentioned as a class i.e like all son and daughters, surrender of the policy is not permissible. However, when the beneficiaries are mentioned as class, we will have to examine the possibility of any new beneficiaries entering into the class considering the ages of the life assured and his wife and if there is no possibility of entering any new beneficiary. Office should take a proper declaration as to who are the existing beneficiaries that there is no possibility of getting any further issue.

- If any of the beneficiaries is minor without any special trustee, surrender of the policy should not be allowed as minor is incompetent to join the surrender transactions. The natural guardian of minor beneficiaries is also not allowed to give consent for surrender. If at all surrender of a policy is desired when the beneficiary is minor, it can be done only with the permission of the competent court.
- Where any beneficiary is minor and special trustee is appointed, in normal course also, surrender of the policy is not allowed. However, if life assured still insist for surrender of the policy on the ground that the surrender amount would be beneficial for the minor beneficiary, then trustee may be advised to approach to court of law.

#### REVOCATION OR CANCELLATION OF TRUST

- A trust under 6 of MWP act is irrevocable in the sense that life assured alone cannot revoke the trust under the policy.
- Where all beneficiaries are named, major, competent to contract and are of one mind, then with the consent of all beneficiaries, life assured can revoke the trust.
- Where beneficiaries have been appointed as a class, revocation of trust is not permissible. This is because the possibility of any new member entering into the class of beneficiary at future date cannot be ruled out.
- While revoking the trust under the policy, the consent of alternative/ contingent beneficiaries is required to be taken. Their signatures on deed poll of release should be obtained
- Where a trust under MWP policy is desired to be revoked, all the beneficiaries who are named, major, competent to contract with life assured are required to execute a deed poll
- Where there are more than one MWP act policies and if the beneficiaries and trustees under all policies are same, one deed poll of release would be sufficient.
- If the sole beneficiary dies or if there is more than one beneficiary and one of them dies and if a request is received for revocation of trust by the heirs of the deceased beneficiary, such a request may be considered. In such cases, the legal heirs of the deceased beneficiaries shall have to obtain appropriate legal evidence of title from competent court of law. The question of waiver of legal evidence of title may be considered as per procedure given in death claims.

#### DIVORCE OF WIFE AFTER ISSUE OF POLICY

- If the wife is the beneficiary named in the policy document as named one and not as a class by description as 'wife' and she is divorced later on, then object of the trust in her favour does not come to end merely on the ground of divorce.

- Even after divorce the policy would continue as a trust in favour of the divorced wife and would not belong to the assured in spite of divorce.
- For entertaining any request to revert the policy to the assured, the divorce decree must be called for.

#### DEATH OF BENEFICIARY

- When the beneficiary dies during the currency of the policy, the trust does not come to end.
- The object of the trust is not the beneficiary/ies. The policy, therefore, still remains impressed with the trust for the benefits of other living beneficiaries or the alternative beneficiaries or if the deceased were the sole beneficiaries
- If the beneficiaries were appointed as joint tenants, on death of the one of the beneficiaries, the trust will work for the surviving beneficiary/ beneficiaries. (but not for legal heirs of deceased beneficiaries)
- The assured cannot replace a beneficiary in place of the deceased one.
- Neither the heirs of such beneficiary can release the policy from trust nor can they assign the beneficial interest in favour of some one or the assured himself.
- If the heirs are all major and they are desirous of releasing the policy from MWP trust, then only alternative is that someone of such heirs should obtain legal evidence of title from court of law. Thereafter, he can execute a deed poll of release.

#### CHANGE OF BENEFICIARIES

- It is not open to life assured to make any changes in the trust by deleting any beneficiaries or by adding any new beneficiaries.
- Where a change of beneficiaries is desired by the life assured and if all the beneficiaries provided they are not mentioned as a class, they are all major and are agreeable to such a change the procedure.
- This deed should be stamped as per requisite value of stamp duty as applicable to the state. This deed should be signed by all named beneficiaries, alternate or contingencies beneficiaries. In case a beneficiary is a minor (applicable for alternate beneficiaries), no change of beneficiaries is allowed.
- Policy document should be endorsed.

#### DEATH OF TRUSTIES

- Where an intimation of death of a trustee is received, death certificate in proof of death of trustee should always be called for.

- If the appointment of trustees was jointly or survivors or survivors of them or as one trustee and an alternative trustee are there, then there is no need to take any action. The other or alternative trustees will come into operation.
- If the trustee was sole trustees has died, the assured may be suggested to have a fresh trustee appointed.

**CANCELLATION OF A PREVIOUS POLICY AND CONVERTING THE SAME INTO MWP ACT POLICY IN LIEU OF FORMER ONE**

- It is possible to cancel the existing policy not issued under the provisions of the act and in its place issue a fresh policy under the MWP act.
- Before cancellation of an existing policy and issue of a fresh one in lieu thereof under MWP act, the assured must be asked to cancel the nomination under the existing policy or if the policy has been assigned, then reassignment should be asked for. Both cancellation of nomination or reassignment in favour of life assured should be registered in the books.
- However, such request for alteration in policy for cancellation of old policy and issue of new under MWP act in lieu of old one cannot be entertained indiscriminately or as a routine matter of course. Such requests may be entertained only on the need for such alterations. One such need may be life assured may have been bachelor at the time of issue of policy but later on he may get married within a period of say 3 to 4 years. The restriction of period of not more than 3 or 4 years from date of commencement of policy or a similar period of 3 to 4 years from date of vesting and genuineness of need for alteration should always be kept in view.
- If competent authority allows for alteration then requirements will be 1) a form of request for cancellation of the existing policy and issue of a fresh policy in lieu thereof under MWP act duly completed by him. 2) Payment of usual alteration fee, policy preparation charges and stamp duty for new policy. 3) Standard forms of addendum 4) endorsement to be placed on new policy.