

H.B. 1, 2021.]

INSURANCE BILL, 2021

EXPLANATORY MEMORANDUM

This Bill seeks to replace the Insurance Act [*Chapter 24:07*] with the new law. The proposed law introduces best practices in the insurance industry, in particular, the individual clauses provide as follows—

Clause 1 provides for the short title of the Bill.

Clause 2 provides application of the Act. The Bill does not apply to friendly societies. In terms of this Clause, the Minister does have powers to exempt certain entities from the application of the Bill.

Clause 3 provides for interpretation of terms used in the Act.

Clause 4 provides for classes of insurance. In terms of this clause, insurance business can be either life or non-life insurance.

Clause 5 provides for factors to be considered by the Commission in the discharge of its duties. The Commission must ensure that it protects the rights of the policy holders among other factors.

Clause 6 provides that every person wishing to carry on business of insurance must be registered with the Commission. The clause makes it an offence for any person to conduct insurance business without being registered.

Clause 7 provides for the procedure for applying to be registered as an insurer.

Clause 8 provides for the procedure that has to be followed when one wants to amend his or her registration as an insurer.

Clauses 9 and 10 provide for cancellation of the insurer's registration and the requirement to have the cancellation published.

Clauses 11 and 12 provide that insurance brokers, risk consultants, loss adjusters and insurance surveyors are to be registered. The procedure for registration for such players is also provided under this portion.

Clause 13 provides for the procedure of amending the registration of insurance brokers, risk consultants, loss adjusters and insurance surveyors.

Clauses 14 and 15 provide for the cancellation of insurance brokers, risk consultants, loss adjusters and insurance surveyors. Any cancellation done in terms of these clauses must be published.

Clause 16 provides for interpretation of terms used in Part iv of the Bill.

Clauses 17 and 18 provide for registration requirements and procedures of mutual insurance societies.

Clause 19 provides for the Commission's power to regard a foreign mutual insurance society as a local society subject to conditions set in clause 19.

Clause 20 provides that once the mutual insurance society has been registered by the Commission, it assumes the corporate status. The clause further prohibits the registration of a society as a company.

Clause 21 sets out the requirement that every society must have a constitution and the by-laws which comply with specified check list in this clause. The society's constitution and the by-laws must be approved by and registered with the Commission. The clause also provides for amendment procedure for the constitution and the by-laws.

Clause 22 provides for the disqualification grounds for any person from being a director of a society. The disqualification grounds include unrehabilitated insolvency, being a non-citizen of Zimbabwe among others.

Clause 23 provides for composition of the boards of societies. The minimum number of directors for societies is five while eighteen is the maximum number. At least two-thirds of such directors must be non-executive directors. This increases objectivity of decisions made by the board of the society.

Clause 24 provides for liability of members. The member's liability in respect of acts or omissions of the society must be limited to contributions payable by the member concerned.

Clause 25 prohibits the use of the word "mutual" and "society" in combination by any insurance player other than registered society.

Clause 26 provides for the procedures for converting an insurance company or part thereof into a society.

Clause 27 prohibits any insurer whose registration has been approved by the Commission to commence the insurance business without the approval of the Commission.

Clause 28 provides for practices that should be complied with by every registered insurer. Every registered insurer must conduct its business prudently and lawfully.

Clause 29 prohibits insurers from adopting unethical business practices.

Clause 30 provides for the requirement by every registered insurer to have principal office of business registered with the Commission.

Clause 31 provides for annual fees to be paid by registered persons.

Clause 32 provides that certain registered persons must submit to the Commission annual returns.

Clause 33 provides for requirements for boards of directors of registered insurers and registered insurance brokers. Every registered insurer and every registered insurance broker must have a board of directors with a minimum number of five directors. Not more than two-fifths of the directors must be officers of the registered insurer or registered insurance broker. Every registered insurer and every registered insurance broker must have their directors approved by the Commission. This clause also imposes duties upon directors including the duty to protect policy holders.

Clause 34 provides for disqualification grounds for directors of registered insurers and insurance brokers.

Clause 35 provides for the mandatory appointment of the principal officer by registered insurers and insurance brokers. Every principal officer must be approved by the Commission.

Clause 36 prohibits the acquisition of significant interest in the insurance company. According to this clause, significant interest shall be prescribed.

Clause 37 prohibits the establishment of branches outside Zimbabwe by registered insurer or registered insurance broker without the approval of the Commission.

Clause 38 prohibits the placement of insurance business outside Zimbabwe by registered insurer or registered insurance broker without the approval of the Commission.

Clause 39 provides for the procedures to be followed when the registered insurer wants to amalgamate with another registered insurer. This clause also provides for the

procedures to be followed when the registered insurer wants to transfer the insurance business to another registered insurer.

Clause 40 provides for the procedures for the change of name by the registered insurer.

Clause 41 places an obligation upon the insurance broker to pay premiums to the registered insurer within seven working days after receiving such premiums. This enhances the protection of policy holders. This clause also places an additional obligation upon the insurance broker to open a bank account for purposes of premiums to be received.

Clause 42 provides for the Commission's power to prescribe margin of solvency which must be maintained by every registered insurer. Margin of solvency will ensure that cases of insolvency of insurers are minimised. This is a measure that has the effect of protecting policy holders.

Clause 43 provides for the Commission's power to prescribe minimum assets and liabilities for purposes of the maintenance of margin of solvency which shall be maintained by the registered insurer.

Clause 44 provides for the Commission's power to demand the valuation from a registered insurer of its liabilities and assets.

Clause 45 provides for the power of the Commission to prescribe margin of solvency for registered insurance brokers.

Clause 46 requires every registered insurer to establish and maintain insurance fund. This is to act as the security for liabilities for the registered insurer. The insurance fund shall not be executable by creditors other than policy owners.

Clause 47 places an obligation upon registered insurer to furnish the Commission with the changes that may have occurred in its insurance business.

Clause 48 permits the registered insurer to hold shares in the holding or subsidiary company subject to limitations set out in this clause.

Clause 49 prohibits the placing of registered insurer's assets outside Zimbabwe except with the approval of the Commission subject to percentages of assets that may be prescribed.

Clauses 50, 51 and 52 place obligation upon registered insurer and insurance broker to prepare and submit to the Commission financial statements and thereafter publish such statements in the newspaper and in any other media approved by the Commission.

Clause 53 places an obligation upon a registered insurer to submit to the Commission an actuarial valuation report which must be harmonised with the audit report. At any time, where the Commission has reason to believe that a registered insurer is conducting unethical business, the Commission may demand an actuarial valuation report for the whole or part of insurance business for the registered insurer.

Clauses 54 and 55 provide for appointment of the audit committee and external auditor respectively.

Clause 56 provides for grounds upon which an auditor may be disqualified.

Clauses 57 and 58 provide for the responsibilities and powers of the auditor respectively. The major responsibility of the auditor is to audit the financial affairs of the registered insurer or registered insurance broker concerned. The auditor has the power to access all documents in possession of the registered insurer or registered insurance broker, among other powers.

Clause 59 provides that the provisions of clauses 55 to 58 shall apply with necessary changes to the actuary.

Clause 60 sets out the conditions under which the registered insurer may reinsure all or part of its insurance business.

Clause 61 compels the insurer to promptly notify the Commission of significant modifications that may occur in its net retention, that is to say, the risks that have not been reinsured.

Clause 62 compels insurers and reinsurers to submit annual returns with details of reinsurance contracts in question to the Commission.

Clause 63 places an obligation upon life insurers to enter into reinsurance contracts only with life reinsurers except where the Commission may approve such arrangements to be made between life insurer and non-life reinsurer.

Clause 64 gives the Commission power to prohibit certain reinsurers from conducting business for failure to comply with the practices of insurance business including failure to meet the liabilities arising out of reinsurance contracts.

Clauses 65 and 66 provide for mandatory registration of association of underwriters and the procedure of such registration respectively.

Clause 67 provides for the compulsory appointment of the qualified representative together with the alternate by every registered association of underwriters.

Clause 68 compels the representative of the association of underwriters to keep a trust account at the bank or building society for the prescribed premiums received. The clause also provides for the conditions under which money deposited may be withdrawn.

Clause 69 provides for the compulsory submission of financial statements by the representative of the association of underwriters to the commission within ninety days of the end of each financial year. The clause also provides that such financial statements must be prepared in accordance with generally accepted accounting practices.

Clause 70 provides for the requirement that every person who wishes to act as an intermediary of an association of underwriters must be registered. The Clause further provides for the procedure for applying to be registered. Offences involving dishonesty and insolvency disqualify any person from being registered as an intermediary.

Clause 71 provides that every intermediary must have a registered office in Zimbabwe.

Clause 72 provides that every juristic intermediary must have a principal officer at all times who should be approved by the Commission. Generally, any act done by the principal officer is construed to have been done by the intermediary.

Clause 73 provides for obligation that every intermediary must, within ninety days, submit to the Commission financial statements.

Clause 74 provides for the procedure of cancellation of intermediary upon request from the association of underwriters or upon request from the intermediary. This clause also provides for procedure of cancellation of the association of underwriters and its representative.

Clause 75 confers jurisdiction upon Zimbabwean courts to hear claims instituted against association of underwriters. A representative of the association of underwriters may be cited as a nominal party to the proceedings.

Clause 76 provides that claims against association of underwriters with respect to policies may be settled through trust account or assets of such association.

Clause 77 provides for the manner in which service of court processes may be done upon association of underwriters.

Clause 78 provides that any failure to comply with any law must not invalidate the policy.

Clause 79 confers the right upon the policy owner to enforce his or her policy against the insurer in terms of the law in force.

Clause 80 provides for the general rule that the sum insured must be in the legal tender of Zimbabwe unless the parties to the insurance contract have agreed otherwise.

Clause 81 provides that every policy must be legible.

Clause 82 provides for electronic insurance business. Every insurer which wishes to conduct electronic insurance business must get approval from the Commission.

Clause 83 places an obligation upon the insurer to inform the insured about the duty to disclose material factors that have a bearing upon the insurance contract.

Clause 84 provides that non-material misrepresentation by the insured must not invalidate the insurance contract.

Clause 85 provides for nature of insurance contracts that are void. No insurer may avoid liability on the basis that agent who negotiated the contract was not its agent. The insurer cannot avoid liability on the basis that the insured waived his or her entitlement under the insurance contract.

Clause 86 provides for terms and conditions under which insurance may be issued on credit.

Clause 87 provides that where an insurer pays a claim arising under a policy, no deduction shall be made in respect of premiums or debts due to the insurer under any other policy, unless the person to whom the payment is made consents in writing to the deduction.

Clause 88 provides for the Commission's power to set standards that are in the best interest of policy owners. Such standards may be set through guidelines, directives or prudent norms.

Clause 89 provides for terms and conditions under which the child under the age of fourteen may be covered by insurance.

Clause 90 provides the terms and conditions under which a married person may be insured.

Clauses 91, 92 and 93 provide for protection of life policies against creditors in situations of insolvency, court judgment or death.

Clause 94 places an obligation upon a spouse married in community of property who has effected a premium out of joint estate to settle his or her liability in the event that their joint estate has been sequestrated.

Clause 95 provides for the right of the creditor to attach the life policies or part thereof which are not protected by this law.

Clause 96 provides for the procedure which may be followed by the judgment creditor or liquidator who wants to attach part of the life policy.

Clause 97 provides for terms and conditions under which the ceded or trust policies may be revived where the person has failed to pay premiums.

Clause 98 prohibits the cession of policy or payment of premium with intent to prejudice the creditor. The competent court may order the payment of damages for prejudice suffered by the creditor as a result of such cession or payment of premium.

Clause 99 provides that any written statement made in the proposal or application for the policy as to the age or date of birth of the insured shall be accepted for the purposes of the claim as the correct age or date of birth of the insured, unless the contrary is proved by records of a medical examination of the insured, made at the instance of the insurer, within the period of three years or in any other manner.

Clause 100 provides that where age is incorrectly stated, the insurer must settle the claim according to the correct age subject to the Commission's power which may order the insurer to make necessary adjustments so as to make the claim equitable.

Clause 101 provides that the provision in the policy to the effect that "death by own act shall not be covered" shall not be void if the death by own act occurs after the period specified in the policy. A policy which does not contain this provision shall remain valid and if the insured dies by own act, he or she shall be covered by the insurance.

Clause 102 provides the procedure for recovering the policy which has been lost or destroyed.

Clause 103 provides for the conditions under which disability benefit may be issued in life policies.

Clause 104 prohibits, subject to exceptions stated therein, the discrimination of life policies where persons insured have equal expectation of life and where the insurance is of the same kind.

Clause 105 stipulates that the provisions of clauses 89 to 98 shall apply with necessary changes to sinking fund policies. The provisions referred to cover various provisions of life policy. A sinking fund policy is an insurance against a debt.

Clause 106 provides that clauses 89 to 99, 102 and 104 shall apply with necessary changes to the funeral policy. A funeral policy must give the insured person option of cash rather than non-monetary benefits.

Clauses 107 and 108 provide for conditions under which late payment of premiums may be tolerated in life and funeral policies respectively. These clauses also provide for rights and obligations of parties to the contract where premiums have not been paid in time.

Clause 109 provides for the Commission's power to appoint inspectors who shall assist the Commission in investigating, monitoring and supervising all persons carrying out insurance business.

Clause 110 provides for the powers of the inspectors which include power to enter premises, search premises and seize items that are vital for evidence, among other powers.

Clause 111 provides for steps that may be taken by the Commission upon discovering that any registered person has committed an illegal conduct which include the suspension of the registered person's business, among other steps that may be taken by the Commission.

Clause 112 provides for the procedures of investigations that may be conducted by the Commission when the registered person has committed an illegal conduct.

Clause 113 provides that upon receiving the report from the inspector, the Commission may send the report to the registered person concerned and invite that person to make representations before the Commission takes a corrective action.

Clause 114 provides that the Commission may take a corrective action after considering representations made by the registered person.

Clause 115 entitles the Commission to recover expenses arising out of investigations.

Clause 116 gives the Commission power to place any registered person under curatorship where the registered person concerned is in an unsound financial position.

Clause 117 provides that upon being placed under curatorship, the registered person's directors and other officers will be suspended from performing their normal functions save to the extent permitted by the curator.

Clause 118 provides for the duties of the curator which include managing the affairs of the registered person in accordance with this Act.

Clause 119 gives the Commission power to apply for the winding up of any registered person's business where the Commission is of the opinion that the registered person has solvency challenges that make the registered person unable to meet its liabilities.

Clause 120 provides for the power of the Commission to extend certain time frames within which certain acts are to be performed by the registered person guided by public interest and upon request from the registered person concerned.

Clause 121 provides for the power of the Commission to demand information from any person who is carrying out or is intending to carry out insurance business.

Clause 122 provides for the Commission's power to allow persons make alterations on the prescribed forms so as to suit circumstances of the person making alterations.

Clause 123 provides for the translation of any document submitted in another language other than English.

Clause 124 provides for the Commission's power to require the insurer or insurance broker to deposit with the Commission such security as the Commission considers necessary to meet the liabilities where the Commission has reasonable suspicion that the person concerned may not be able to meet the liabilities.

Clause 125 provides for the issuance of the certificate of deposit to any insurer or insurance broker which has deposited its security with the Commission. The clause further provides that after the investigations, where the Commission is satisfied that the person will be able to meet its liabilities, the Commission will return the security deposited.

Clause 126 provides for the Commission's power to fix maximum and minimum premiums.

Clause 127 provides for appeal procedures.

Clause 128 provides for register which must be kept by the Commission for players in the insurance sector.

Clause 129 obliges the Commission to submit annual report to the Minister within six months after the end of the financial year. The Minister will, in turn, lay the report before Parliament.

Clause 130 provides for the display of certain information which must be complied with by insurers as may be determined by the Commission.

Clause 131 provides for requirements of documentation to be filed with the Commission by registered persons.

Clause 132 gives the public the right to inspect and make copies of documents filed with the Commission.

Clause 133 provides that any document certified by the Commission must be admissible before the court.

Clause 134 provides that any Memorandum or Articles of Association that is inconsistent with the provision of this Act must be invalid to the extent of its inconsistency.

Clause 135 provides for the steps that must be taken by the registered person in the event of currency conversion including the actuarial valuation of the insurance business in order to recalculate the liabilities and assets in line with the new currency.

Clause 136 criminalises any act of falsifying a document.

Clause 137 criminalises any act where one person causes another to enter into an insurance arrangement with an unregistered person.

Clause 138 prohibits the use of titles used by insurers, insurance brokers and other players by other people other than those lawfully carrying out insurance business.

Clause 139 criminalises any act of engaging in insurance business without being registered.

Clause 140 provides for procedure of promulgating regulations and the scope of such regulations.

Clause 141 provides that juristic persons can only be liable to a fine for contravening the provisions of this Act while directors and other employees of juristic persons may be liable to a fine or to imprisonment period or to both.

Clause 142 provides that where any act is required to be performed by the Commission, the Commissioner shall perform such act after she or he has consulted the Board of the Commission.

Clause 143 provides that any employee of the Commission shall not incur personal liability for loss or damage arising within the scope and course of employment unless where such loss or damage was occasioned by acts of recklessness or negligence or where intention to cause loss or damage can be proved.

Clauses 144 and 145 provide for procedure of serving civil penalty order upon any registered person who has violated certain provisions of this Act.

Clause 146 provides for the repeal of the Insurance Act and transitional provisions following the repeal of the Insurance Act.

INSURANCE BILL, 2021

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146. Repeal of Cap. 24:07, transitional provisions and savings.

SCHEDULE: Period for which funeral policy remains in force where premium not paid.

BILL

To regulate the carrying of insurance business in Zimbabwe; to repeal the Insurance Act [*Chapter 24:07*]; and to provide for matters connected with or incidental to the foregoing.

5 ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Insurance Act, 2021.

10 2 Application of Act

This Act shall not extend or apply to—

- 15 (a) an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependants, commonly called a friendly society, which does not at any time after the appointed day employ a person whose main remunerated occupation consists of inducing persons to become members of the association or collecting from members of the association contributions or subscriptions towards the association's funds; or
- 20 (b) a person or class of persons declared by the Minister, by statutory instrument, to be exempt from this Act; or
- (c) a class of insurance business declared by the Minister, by statutory instrument, to be exempt from this Act.

H.B. 1, 2021.]

3 Interpretation

(1) In this Act—

“actuary” means a person, accredited by the Commission for the purposes of this Act, who is an associate or fellow of an institute, faculty, society or association of actuaries; 5

“address” shall include electronic mail address;

“appointed day” means the day when this Act becomes law;

“asset” includes any property and any right, whether vested or contingent, of whatever kind;

“associate”, in relation to— 10

(a) a registered person that is a body corporate, means—

(i) its subsidiary, as defined in section 185 of the Companies and Other Business Entities Act [*Chapter 24:31*]; or

(ii) any company of which the registered person is the single largest shareholder; or 15

(iii) its holding company, as defined in section 185 of the Companies and Other Business Entities Act [*Chapter 24:31*]; or

(iv) where the registered person is itself a subsidiary of a holding company, as defined in section 185 of the Companies and Other Business Entities Act [*Chapter 24:31*], any other such subsidiary of the same holding company; or 20

(v) any person who has power, directly or indirectly, to control the registered person’s management or policies;

(b) a registered person who is an individual, means any person who has power, directly or indirectly, to control the registered person’s insurance or insurance-related business; 25

“association of underwriters” means association of underwriters registered in terms of section 65;

“audit committee” means an audit committee referred to in section 54;

“child”, in relation to any person, includes a child adopted by that person in terms of any law, including customary law; 30

“claims settlement agent” means a person who carries on the business of settling or negotiating insurance claims under policies issued by insurers;

“class of insurance business” means a class of insurance business referred to in section 4; 35

“Commission” means the Insurance and Pensions Commission established in terms of section 3 of the Insurance and Pensions Commission Act [*Chapter 24:21*];

“Commissioner” means the Commissioner appointed in terms of section 19 of the Insurance and Pensions Commission Act [*Chapter 24:21*]; 40

“contingent obligation dependent on human life” means—

(a) an obligation to pay a particular person a certain sum of money or certain sums of money at specified intervals, or to provide for a particular person a certain benefit—

(i) on the occurrence of the death of a particular person or on the occurrence of the birth of a child to a particular person at any time or within a specified period; or 45

(ii) in the event of a particular person continuing to live throughout a specified period or specified periods;

or

(b) an obligation assumed—

(i) until the death of a particular person; or

(ii) during a specified period or until the death of a particular person before the expiry of that period;

“curator” means a person or two or more persons jointly, appointed in terms of this Act to manage the affairs of a registered person where the circumstances referred to in section 116(1) have arisen;

“director” includes an individual occupying the position of director or alternate director of an association of persons, or a member or alternate member of a committee of management or of any other governing body of an association of persons by whatever name he or she may be called;

“financial statements” means—

(a) a statement of financial position; and

(b) a statement of comprehensive income; and

(c) a statement of cash-flow; and

(d) statement of changes in equity; and

(e) audited or unaudited monthly or annual financial accounts; and

(f) any other statements that may be prescribed;

“financial year” means a period of twelve months ending on the 31st of December in any year;

“funeral policy” means a policy whereby the insurer assumes, in return for a premium or the promise of premium, an obligation to provide, on the death of a person, benefits consisting principally of provision for that person’s funeral or the grant to another person of some other non-monetary benefit, whether or not the policy provides for—

(a) the payment of a sum of money instead of the provision of a funeral or the grant of a non-monetary benefit;

(b) the payment of a sum of money in addition to the provision of a funeral or the grant of a non-monetary benefit;

“group life insurance scheme” means a scheme under a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide benefits on the disablement or death of the members of any group of persons, including the employees of any one employer or of a combination of employers, or members of the families of such employees, or the members of any group of persons carrying on the same occupation, but does not include a personal accident policy;

“independent director”, means any person who has no vested interest in the entity where he or she is a director of the board;

“insolvent”, means a person whose estate is under liquidation;

“inspector” means a person appointed as an inspector in terms of section 109;

“insurance agent” means a person who, on behalf of one or more registered insurers, does one or more of the following—

(a) initiates insurance business;

(b) does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;

- but does not include an employee of a registered insurer who receives a salary;
- “insurance broker” means a person registered as such in terms of section 12, who, on behalf of any other person, negotiates insurance business with insurers, and includes a person who negotiates reinsurance business on behalf of any other person, but does not include an employee of a registered insurer who receives a salary; 5
- “insurance business” means the business of assuming the obligations of an insurer in any class or type of insurance business, including reinsurance business, but does not include a type of insurance business to which this Act does not apply; 10
- “insurance-related business” means the business of an insurance broker, risk consultant, loss adjuster, insurance surveyor or claims settlement agent or any other person that may be prescribed;
- “insurance surveyor” means a person who carries on the business of surveying risks and advising on the rates, terms and conditions of premiums; 15
- “insurer” means a person that carries on insurance business and is not a person or a member of a class of persons to which this Act does not apply;
- “intermediary”, in relation to an association of underwriters, means a person registered in terms of section 70 who performs any act relating to the placing of insurance business with, or the issue of policies or the collection of premiums in respect of such business for or on behalf of, a member of that association; 20
- “life insurance business” means the business of assuming the obligations of an insurer under life policies, funeral policies or sinking fund policies; 25
- “life insurance fund” means the insurance fund into which the receipts and from which the payments of an insurer in respect of its life insurance business are paid;
- “life insurer” means a registered insurer that carries on life insurance business;
- “life policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, a contingent obligation dependent on human life, and includes any contract of insurance customarily regarded as a life insurance contract, but does not include a funeral policy, a personal accident policy, a sinking fund policy or any insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy; 30 35
- “liquidator”, in relation to an insolvent estate, means the liquidator or provisional liquidator appointed in terms of this Act;
- “loss adjuster” means a person who carries on the business of assessing and investigating losses on behalf of insurers or insured persons; 40
- “microinsurance business” means the provision of insurance to low income segments of the population in terms of cost, scope, coverage and delivery mechanism;
- “microinsurance” means the protection of low income people against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of the risks involved; 45
- “micro insurer” means a person registered in terms of this Act to carry on micro insurance business;
- “Minister” means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act; 50

“mutual insurance society” or “society” means an association of persons formed in pursuance of any law and by whatever name it may be called that is established solely or principally for the purpose of carrying on any class of insurance business in which—

- 5 (a) all members of the society—
- (i) qualify as such by virtue of their being owners of policies issued by the society as an insurer, and
 - (ii) are entitled to participate at general meetings for the control of the society and in the election or appointment of the directors of the society; and
- 10 (b) the profits of the business of the society are distributed to owners of policies issued by the society as an insurer;

“non-life insurance business” means all types of insurance business other than life insurance business;

15 “officer”, in relation to a registered person—

- (a) means a person who is in the full-time employment of the registered person and who is responsible for managing the whole or any part of the registered person’s business; and
- (b) includes the registered person’s principal officer;

20 “owner”, in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

25 “personal accident policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, and otherwise than incidentally to an insurance effected by means of some other class of policy, an obligation to pay a certain sum or certain sums of money to, or provide any other benefit for, a particular person in the event of an accident or sickness causing the death or injury or disability of a person;

30 “policy” means an insurance contract, whatever the form in which the rights and obligations of the parties to the contract are expressed or created, and includes a sinking fund policy, but does not include an insurance contract in which—

- (a) a person or a member of a class of persons to whom this Act does not apply assumes the obligations of an insurer; or
- (b) a person assumes the obligations of an insurer in a type of insurance business to which this Act does not apply;

35 “premium” means the consideration given or to be given in return for an undertaking to provide benefits under a policy;

“prescribed securities” means—

- (a) stocks, bonds or other like securities issued by the State, a statutory body, or a local authority, and includes, in relation to non-life insurers and the class of insurance business carried on by them, treasury bills, or similar short-term bills issued by a statutory body or local authority; and
- (b) investments approved or prescribed by the Minister from time to time for the purposes of this definition;

45 “principal officer”, in relation to—

- (a) a registered insurer, registered insurance broker, means the principal officer referred to in section 35(1);
- (b) an intermediary of an association of underwriters, means the principal officer referred to in section 72;

50

- “registered person” means any registered person and includes insurer, insurance broker, association of underwriters, intermediary, insurance surveyor, agent, risk consultant, loss adjuster, mutual insurance society and any other person that may be registered by the Commission in terms of this Act; 5
- “reinsurance” means the insurance of any class of insurance business, and “reinsurer” shall be construed accordingly;
- “representative”, in relation to an association of underwriters, means the person appointed or acting as the association’s representative in terms of section 67; 10
- “risk consultant” means a risk consultant registered as such in terms of section 12;
- “security deposit” means a deposit maintained by a registered insurer in terms of section 8;
- “sinking fund policy” means a contract whereby one party to the contract assumes the obligation to pay, after the expiry of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for a premium or the promise of a premium by the other party to the contract; 15
- “unethical business conduct” means a practice or method declared to be an undesirable method of conducting business in accordance with section 29. 20

(2) Any reference in this Act to the currency of Zimbabwe shall be construed as including a reference to any other currency which, for the time being, is accepted as legal tender in Zimbabwe. 25

4 Classes of insurance business

(1) Subject to this section, insurance business shall be classified as follows for the purposes of this Act—

- (a) life insurance business, which includes assuming the liabilities of an insurer under— 30
- (i) life policies;
 - (ii) funeral policies;
 - (iii) sinking fund policies;
- and
- (b) non-life insurance business, which consists of assuming the liabilities of an insurer under any of the following policies— 35
- (i) all-risks policies;
 - (ii) aviation policies;
 - (iii) fire policies;
 - (iv) marine policies; 40
 - (v) motor vehicle policies;
 - (vi) personal accident policies;
 - (vii) public liability policies;
 - (viii) miscellaneous policies; 45
- and
- (c) such other classes as may be prescribed.

(2) At the request of an insurer, the Commission may, subject to subsection (3) and to such conditions and limitations as the Commission may fix, determine that any particular class of insurance business which the insurer carries on or intends to carry on shall be treated, for the purposes of this Act, as insurance business of another class.

5 (3) The Commission shall not make a determination under subsection (2) unless it is satisfied that the determination will not prejudice any policy owner or beneficiary under a policy and will not defeat the objects and purposes of this Act.

5 Factors to be considered by Commission in exercise of its functions

10 (1) In the performance of its functions under this Act, the Commission shall have regard to the need to—

- (a) protect the rights, benefits and interests of policy owners and of any beneficiaries under policies; and
- (b) align the activities of persons carrying on insurance business with the economic, financial and social policies, objectives and interests of the State; and
- 15 (c) maintain the solvency of insurers; and
- (d) ensure the observance of sound insurance principles and practices in the conduct of insurance business; and
- (e) foster and strengthen the insurance market.

20 (2) The Commission shall exercise its functions under this Act in an impartial and transparent manner and shall observe the provisions of section 194 of the Constitution in the discharge of its functions.

PART II

REGISTRATION OF INSURERS

25 6 Insurers to be registered

(1) Subject to subsection (3), no person shall carry on business as an insurer in any class of insurance business unless that person is registered as an insurer in that class.

30 (2) The Commission may prescribe—

- (a) application fee which shall be non-refundable; and
- (b) registration fee payable after the Commission has accepted the applicant to be registrable as an insurer.

35 (3) A person whose registration as an insurer in any class of insurance business has been cancelled in terms of section 9 may, with the Commission's written approval and conditions, continue with the business of insurance only for the purposes of effecting transfer of any running policies to another insurer and settling any liabilities.

(4) Any person who contravenes—

- 40 (a) subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment;
- (b) subsection (3) shall be in default and liable to a category 1 civil penalty order.

7 Registration of insurers

(1) An application for registration as an insurer in any class of insurance business shall be made to the Commission in the prescribed form and shall be accompanied by such documents and information as may be prescribed:

Provided that, other than persons registered as reinsurers and microinsurers, no insurer shall engage in more than one class of insurance business. 5

(2) If on consideration of an application under subsection (1) the Commission is satisfied that—

- (a) the applicant is a body corporate, and—
 - (i) the applicant's structure is suitable for carrying on insurance business of the class applied for; and 10
 - (ii) the applicant's shareholders, directors and other persons in key control functions are fit and proper persons to carry on insurance business of the class applied for; and
 - (iii) at least half the applicant's directors are either— 15
 - A citizens of Zimbabwe who are ordinarily resident in Zimbabwe; or
 - B permanent residents of Zimbabwe; and
- (b) the applicant has, or on registration will have, capital that meets the prescribed requirements as to nature and amount and will be sufficient for the applicant to conduct insurance business of the class applied for; and 20
- (c) the applicant has set aside, in a manner satisfactory to the Commission, an amount equal to a prescribed percentage of its paid-up capital to be deposited to Policy owner and Pensions and Provident Fund Members Protection Fund established in terms of the Insurance and Pensions Commission Act [*Chapter 24:21*]; and 25
- (d) the applicant will conduct insurance business according to sound principles and in a prudent manner; and 30
- (e) the name under which the applicant intends to conduct insurance business—
 - (i) is not undesirable or unsuitable for the class of insurance business that the applicant intends to conduct; or
 - (ii) is not likely to mislead the public in regard to the nature of the applicant or the applicant's business; or 35
 - (iii) is not so similar to the name of another insurer or applicant for registration as an insurer as to be likely to cause confusion, unless that other insurer—
 - A is being, or is about to be, wound up or dissolved; or 40
 - B has ceased, or is about to cease, conducting any insurance business in Zimbabwe;
 and consents, in writing, to the applicant using the name in question; and
- (f) the applicant complies with such other requirements as may be prescribed; and 45
- (g) generally, the applicant will comply with such of the provisions of this Act as are applicable to it;

the Commission shall register the applicant in the class of insurance business concerned and shall issue the applicant with a certificate of registration in the prescribed form.

(3) If, on consideration of an application under subsection (1), the Commission is not satisfied as to any matter referred to in subsection (2)(a) to (g), the Commission shall refuse to register the applicant concerned:

Provided that—

- (a) before refusing to register an applicant, the Commission shall notify the applicant, in writing, that it proposes to refuse the application and of the reasons for doing so, and shall afford the applicant an adequate opportunity to, within five working days after being notified, make representations in the matter;
- (b) within five working days after deciding to reject to register an applicant on any ground, the Commission shall notify the applicant, in writing, of the decision and of the reasons therefor.

(4) Every foreign insurer that wishes to conduct insurance business in Zimbabwe shall register a company as provided for in terms of the Companies and Other Business entities Act [*Chapter 24:31*] in Zimbabwe for it to be registered in terms of this Act.

(5) The Commission may, where necessary, before registering a foreign insurer, seek co-operation with the foreign jurisdiction for the foreign insurer concerned in an endeavour to assess whether the foreign insurer is a fit and proper person to conduct the business of insurance.

(6) The Commission may prescribe additional requirements for registration of a foreign insurer.

(7) The period between the Commission's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which the Commission notifies the applicant of its decision or proposed decision in terms of subsection (3) shall not exceed sixty days unless there are compelling reasons for an extension of the period.

(8) Any insurer who conducts more than one class of insurance business shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

8 Amendment of certificate of registration of insurer

(1) Subject to this section, the Commission may at any time, at the request of an insurer or on its own initiative, amend an insurer's certificate of registration to correct any error.

(2) Before amending an insurer's certificate of registration in terms of subsection (1), otherwise than at the insurer's request, the Commission shall notify the insurer, in writing, of the nature of the amendment it proposes to make and of the reasons for wishing to make it, and shall give the insurer an adequate opportunity to make representations in the matter.

(3) If the Commission refuses to make an amendment, at the insurer's request, it shall, within five working days, notify the insurer, in writing, of the refusal and of the reasons for it.

(4) The fee for amendment of certificate of registration to be chargeable where the amendment is at the initiative of the insurer shall be as prescribed.

9 Cancellation of registration of insurer

(1) Subject to subsections (2) and (3), the Commission may, by notice in writing to the insurer concerned, cancel an insurer's registration if the Commission has reasonable grounds for believing that—

- (a) the registration was obtained in error or through fraud or the misrepresentation of a material fact by the insurer; or 5
- (b) the insurer, after being notified by the Commission that it has contravened a provision of this Act, wilfully continues or repeats the contravention; or
- (c) the insurer misrepresents the facilities which it offers to the public; or 10
- (d) the insurer is engaging in insurance business which is inappropriate to the class of insurance business for which it is registered and has refused, after notice in writing from the Commission, to rectify the situation by applying for registration anew or by some other means acceptable to the Commission; or 15
- (e) the insurer is engaging in unethical methods of conducting business; or
- (f) the insurer has ceased to conduct the class of insurance business for which it was registered; or
- (g) the insurer has not conducted any insurance business within twelve months from the date of its registration; or 20
- (h) the insurer's available capital no longer meets the prescribed requirements or is insufficient for the insurer to conduct insurance business of the class for which it was registered; or
- (i) where the insurer is a subsidiary of another insurer—
 - (i) the parent insurer has ceased to be registered under this Act; and 25
 - (ii) it is in the public interest that the insurer's registration must be cancelled;
 or
- (j) a judgment has been obtained against the insurer in a court in Zimbabwe and has remained unsatisfied for twenty-one days, and an appeal against the judgment has not been brought or, if brought, has been abandoned or dismissed; or 30
- (k) the insurer, having admitted liability under any policy, is unable to meet the liability in full in Zimbabwe within the prescribed period; or
- (l) such registered insurer has been convicted of an offence in terms of section 5 of the Prevention of Discrimination Act [*Chapter 8:16*] and an appeal against the conviction has not been brought or, if brought, has been abandoned; or 35
- (m) such registered insurer would, if he or she were an applicant for registration as an insurer, be disqualified in terms of section 7 to be registered as an insurer in the class or classes of insurance business in which he or she is registered; or 40
- (n) a class or classes of insurance business in which such insurer is registered is not being carried on by that insurer in accordance with sound insurance principles. 45

(2) Before acting in terms of subsection (1), the Commission shall notify, in writing, the insurer concerned that it proposes to cancel the insurer's registration and of the reasons for proposing to do so:

Provided that, if the Commission believes on reasonable grounds that it is not possible to notify the insurer at its registered office, the Commission shall publish a notice in the *Gazette* and in a—

- (a) newspaper having wide national circulation;
- 5 (b) newspaper circulating in the area in which the insurer's registered office is situated;
- (c) media approved by the Commission;

stating that its registration will be cancelled unless the insurer lodges an appeal with the Minister in terms of section 127 within thirty days from the date of publication of the notice in the *Gazette*.

(3) The Commission shall not cancel an insurer's registration in terms of subsection (1)—

- (a) until—
 - 15 (i) the period within which an appeal may be lodged in terms of section 127 has elapsed; or
 - (ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso; unless the insurer concerned has consented to its cancellation;
- 20 (b) if an appeal is lodged in terms of section 127, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, the Commission is notified that the appeal has not succeeded.

(4) The Commission may cancel an insurer's registration in any or all classes of insurance business if the insurer so requests and the Commission is satisfied that the insurer no longer has any liability under a policy or that acceptable provision has been made to meet any such liability:

Provided that, if the Commission refuses to cancel an insurer's registration in terms of this subsection, it shall, within five working days after reaching that decision, notify the insurer, in writing, of the decision and of the reasons for it.

(5) Subject to section 6(3), where a certificate of registration is cancelled the insurer shall cease to operate as an insurer.

10 Notification of registration and cancellation of certificate of registration of insurer

The Commission shall publish a notice of the registration and of the cancellation of registration of an insurer in—

- 35 (a) a *Gazette*;
- (b) newspaper having wide national circulation;
- (c) newspaper circulating in the area in which the insurer's registered office is situated;
- (d) any other appropriate media approved for that purpose by the Commission.

PART III

REGISTRATION OF INSURANCE BROKERS, RISK CONSULTANTS, LOSS ADJUSTERS AND
INSURANCE SURVEYORS**11 Insurance brokers, Risk Consultants, Loss adjusters, insurance agents, insurance surveyors and claims settlement agent to be registered** 5

(1) No person shall, in Zimbabwe—

(a) carry on business as an insurance broker, loss adjuster, insurance surveyor, insurance agent or claims settlement agent; or

(b) hold himself or herself out to be an insurance broker, loss adjuster, insurance surveyor, insurance agent or claims settlement agent; 10

unless he or she is registered in accordance with this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

12 Registration of insurance brokers, etc. 15

(1) An application for registration in terms of this Part shall be made to the Commission in the prescribed form and shall be accompanied by such documents as may be prescribed.

(2) If on consideration of an application under subsection (1) the Commission is satisfied that— 20

(a) the name under which the applicant intends to conduct business—

(i) is not undesirable or unsuitable for the type of business that the applicant intends to conduct; or

(ii) is not likely to mislead the public in regard to the nature of the applicant or the applicant's business; or 25

(iii) is not so similar to the name of another registered person or applicant for registration as to be likely to cause confusion, unless that other person has ceased, or is about to cease, conducting business in Zimbabwe and consents, in writing, to the applicant using the name in question; 30

and

(b) the applicant has not, under the law of any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to or arrangement or composition with his or her creditors which has not been rescinded or set aside; 35

and

(c) the applicant has not been convicted by a court in any country of an offence involving dishonesty for which he or she was imprisoned without the option of a fine; and 40

(d) the applicant, in the case of a body corporate, has not been convicted of an offence involving dishonesty; and

(e) in the case of an application for registration as an insurance broker—

(i) the applicant has not entered into an agreement with any person carrying on insurance business which is likely to impair his or her impartiality in placing insurance business; 45

- (ii) the applicant is authorised, if he or she is to negotiate insurance business other than life insurance business, to act as correspondent of brokers who are authorised by insurers in any country to place business with such insurers; and
- 5 (f) where the applicant is—
- (i) an individual, the applicant is a fit and proper person to carry on the business he or she intends to conduct;
- (ii) a body corporate or an association, the applicant's shareholders and directors are fit and proper persons to carry on the business the
- 10 applicant intends to conduct;
- and
- (g) the applicant complies with such other requirements as may be prescribed;
- the Commission shall, subject to subsection (3) register the applicant and shall issue him or her with a certificate of registration in the prescribed form.
- 15 (3) If, on consideration of an application under subsection (1), the Commission—
- (a) is not satisfied as to any matter referred to in subsection (2)(a) to (f); or
- (b) is of the opinion that it would not be in the public interest to approve the application;
- the Commission shall refuse to register the applicant concerned:

20 Provided that before refusing to register an applicant, the Commission shall notify the applicant, in writing, that it proposes to refuse the application and of the reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter.

25 (4) The period between the Commission's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which the Commission notifies the applicant of its decision or proposed decision in terms of subsection (2) or (3) shall not exceed thirty days unless the applicant consents to an extension of the period.

13 Amendment of registration under this Part

30 (1) Subject to this section, the Commission may at any time, at the request of a registered person or on its own initiative, amend a registered person's certificate of registration to correct any error.

35 (2) Before amending the registered person's certificate of registration in terms of subsection (1), otherwise than at the registered person's request, the Commission shall notify the registered person, in writing, of the nature of the amendment it proposes to make and of the reasons for wishing to make it, and shall give the registered person an adequate opportunity to make representations in the matter.

40 (3) If the Commission refuses to make an amendment, at the registered person's request, it shall, within five working days, notify the insurer, in writing, of the refusal and of the reasons for it.

(4) The fee for amendment of certificate of registration to be chargeable where the amendment is at the initiative of the registered person shall be as prescribed.

14 Cancellation of registration under this Part

45 (1) Subject to subsections (2) and (3), the Commission may, by notice in writing to the person concerned, cancel a person's registration under this Part if—

- (a) the person, after being notified by the Commission that he or she has contravened a provision of this Act, wilfully continues or repeats the contravention; or
- (b) the person is engaging in unethical methods of conducting business; or
- (c) if the person were an applicant for registration under section 12, he or she would not be qualified to be registered; or
- (d) the person has failed to meet the minimum unencumbered capital as provided for in terms of section 45:

Provided that any person who has been practising as an insurance broker, loss adjuster, insurance surveyor and claims settlement agent shall be entitled to commission, fees and other charges for services rendered prior to the cancellation of the registration in terms of this Part.

(2) Before acting in terms of subsection (1), the Commission shall notify, in writing, the registered person concerned that it proposes to cancel the registered person's registration and of the reasons for proposing to do so:

Provided that if it is not possible so to notify the registered person at its registered office, the Commission shall publish a notice in the *Gazette* and in a—

- (a) newspaper having a wide national circulation; and
- (b) newspaper circulating in the area in which the insurer's registered office is situated; and
- (c) appropriate media;

stating that its registration will be cancelled unless the insurer lodges an appeal with the Minister in terms of section 127 within thirty days from the date of publication of the notice in the *Gazette*.

(3) The Commission shall not cancel a person's registration in terms of subsection (1)—

- (a) until—
 - (i) the period within which an appeal may be lodged in terms of section 127 has elapsed; or
 - (ii) the thirty-day period referred to in the proviso to subsection (2) has elapsed, where a notice was published in terms of that proviso;

unless the person concerned has consented to the cancellation;

- (b) if an appeal is lodged in terms of section 127, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, the Commission is notified that the appeal has not succeeded.

(4) The Commission may cancel a person's registration under this Part if the person so requests and the Commission is satisfied that all his or her liabilities in respect of his or her business have been met or that acceptable provision has been made to meet them:

Provided that, if the Commission refuses to cancel a person's registration in terms of this subsection, it shall, within five working days after reaching that decision, notify the person, in writing, of the decision and of the reasons for it.

(5) Subject to the proviso to subsection (1), where a certificate of registration is cancelled the registered person shall cease to operate as a registered person.

15 Notification of registration and cancellation of registration under this Part

The Commission shall cause a notice of the registration of a person under this Part, and of the cancellation of such registration, to be published in the *Gazette* and in one or more newspapers circulating in Zimbabwe or any media approved by the Commission.

PART IV

REGISTRATION OF MUTUAL INSURANCE SOCIETIES AND SPECIAL PROVISIONS RELATING TO SUCH SOCIETIES

10 16 Interpretation in Part IV

In this Part—

- “existing society”, in relation to an applicant for registration as an insurer in terms of this Part, means an applicant which is, at the date of its application for registration, carrying on insurance business in Zimbabwe;
- 15 “insurance company”, for the purpose of section 26, means a company registered in terms of the Companies and Other Business Entities Act [*Chapter 24:31*] which is also a registered insurer;
- “local society” means a society whose head office is in Zimbabwe;
- “member”, in relation to a society, means a member of that society;
- 20 “proposed society”, for the purpose of section 26, means a society proposed to be formed in terms of that section.

17 Societies to be registered

(1) Subject to this section, no society shall carry on any class of insurance business in Zimbabwe without being registered as an insurer in that class of insurance business.

(2) In the case of an existing society, within ninety days of the appointed day, a society shall lodge with the Commission an application for registration in terms of this Part.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

18 Application for registration of society as insurer

(1) An application for registration of a society as an insurer in a class of insurance business shall be made to the Commission in the prescribed form and shall be accompanied by—

- (a) the constitution of the society; and
- (b) the by-laws of the society; and
- (c) such other documents as may be prescribed from time to time.

(2) The Commission shall register the applicant society as an insurer in any class of insurance business with respect to which the application for registration is made and shall issue to it a certificate of registration, if the Commission is satisfied that such applicant society—

- (a) is composed of no fewer than seven members; and
- (b) subject to section 19, is a local society; and

- (c) provides at the time of application a bank guarantee or other similar security acceptable to the Commission, of an amount which may be prescribed by the Commission from time to time; and
- (d) complies with this Act.

(3) If, in relation to an application made in terms of subsection (1), the Commission— 5

- (a) is not satisfied as provided for in subsection (2); or
- (b) is of the opinion that it would not be in the interest of prospective policy owners to approve an application for registration in any class of insurance business; 10

it shall notify the applicant society in writing that it proposes to reject its application for registration and of its reasons therefor, and the Commission shall request the applicant to make representations to the Commission within sixty days and thereafter the Commission shall make its decision.

(4) If an applicant society which has been notified of the Commission's proposal to reject its application fails to lodge with the Commission a request for its case to be submitted to the Minister for appeal as is provided for in section 127 within the period mentioned in that section or, having lodged such a request within that period, withdraws the request before the Minister gives his or her decision in the case, the Commission shall reject the application and notify the applicant society in writing accordingly. 15 20

(5) Upon the registration of a society as an insurer in terms of this Part, section 6(3) shall apply with necessary changes.

19 Special provisions relating to foreign societies

A society that is not a local society shall, for the purposes of section 18, be deemed to be a local society if the Commission is satisfied that— 25

- (a) the society concerned carries on its insurance business in Zimbabwe under the control of a board of directors—
 - (i) who are not disqualified to be elected or appointed or to hold office as directors in terms of section 22 and whose composition complies with section 23; and 30
 - (ii) whose powers include the power to determine, subject to the requirements of this Act relating to assets to be held by registered insurers, the manner in which the funds held by the society in Zimbabwe in respect of its insurance business in Zimbabwe shall be invested; 35

and

- (b) in respect of its insurance business in Zimbabwe—
 - (i) no owners of policies other than policies forming part of the insurance business carried on by the society concerned in Zimbabwe; and
 - (ii) no creditors other than creditors in respect of the insurance business carried on by the society concerned in Zimbabwe; 40

have any claim to the assets held by the society in Zimbabwe.

20 Effect of registration and prohibition of registration as or conversion into company

(1) From the date of registration of a society in terms of this Part, such society shall be a body corporate by the name under which it is registered and shall, in its registered name, be capable of suing and being sued, acquiring property and disposing of it and, subject to its constitution and of this Act, of performing all such acts as bodies corporate may by law perform.

(2) Subject to section 185 of the Companies and Other Business Entities Act [Chapter 24:31], no society registered in terms of this Part shall register or be registered as a company in terms of the Companies and Other Business Entities Act.

(3) Except in accordance with section 39, a society that is registered in terms of this Act shall not be converted into a body corporate different in nature from a mutual society.

21 Constitution of society

(1) The constitution of every society shall, *inter alia*, provide for the following matters—

- (a) the name of the society and the situation in Zimbabwe of its head or principal office; and
- (b) the principal objects of the society and the class or classes of insurance business it intends to offer to its members; and
- (c) the designation as members of the society of those persons who—
 - (i) own policies issued by such society; or
 - (ii) contribute to any pension fund or annuity fund or provident fund of such society;

Provided that where a person contracts with a society in respect of a group life insurance scheme, pension fund or provident fund, that person may be designated as a member to the exclusion of those persons on whose behalf he or she contracted; and

- (d) the rights, privileges and obligations of members; and
- (e) the manner of calling annual general meetings and special general meetings of members, the quorum necessary for the transaction of business at such meetings, and the manner of voting thereat; and
- (f) the right of voting at meetings of the society; and
- (g) the manner of electing, appointing, removing and fixing the remuneration of directors, their qualifications, powers and duties, and the manner of appointing, removing and fixing the remuneration of other officers of the society, including members of local boards or committees of the society; and
- (h) the manner of appointment of an auditor of the society, the periodic audit of the accounts of the society and the making available to members of the auditor's reports; and
- (i) the manner of amending the constitution and of making, altering and rescinding any by-laws of the society; and
- (j) the winding up of the society and the equitable distribution of the assets and liabilities of the society among its members, with due regard to their respective interests as policy owners;

Provided that a society may, with the consent of the Commission, omit to provide for this matter in its constitution; and

(k) such other matters as may be prescribed from time to time.

(2) The Commission shall register the constitution and the by-laws of a society at the time of its registration, and such registered constitution and by-laws and any amendments thereto registered in terms of subsection (4) shall be binding on the society and the members and officers thereof, and on all persons claiming under the constitution or by-laws or whose claims are derived from members. 5

(3) Subject to subsection (4), a society may, in the manner directed by its constitution or by-laws, amend its constitution or by-laws, but no such amendment shall be valid if— 10

- (a) it purports to affect the rights of a creditor of a society who is not a member thereof; or
- (b) it is directed against any particular individual; or
- (c) it purports to alter the rights of members in a winding up. 15

(4) Two copies of every resolution for the amendment of any provision of the constitution or by-laws in terms of subsection (3) shall be signed by the board chairperson and the principal officer of the society or, if the society has at any time no board chairperson or principal officer, by such other person having control over the business of the society as the Commission may specify, and such resolution shall be transmitted to the Commission which, if it is satisfied that the amendment proposed is in conformity with this Act and is not contrary to the interests of members, shall register the resolution and return one of the copies to the society, with the date of registration endorsed thereof, being the date from which the amendment shall take effect. 20

(5) Every society shall make a copy of its constitution and any by-laws available at every branch and agency of the society for inspection by members of the public during the normal business hours of the society. 25

(6) A society that contravenes subsection (5) shall be in default and liable to a category 1 civil penalty order.

22 Persons disqualified to be elected or appointed as directors of societies 30

(1) A person shall be disqualified for election or appointment, or to hold office as a director of a society if that person—

- (a) is not a citizen of Zimbabwe ordinarily resident in Zimbabwe or a permanent resident of Zimbabwe: 35

Provided that the Commission may grant exemptions from this paragraph for such periods as it may specify; or

- (b) subject to section 23 (2), is not a member of the society concerned; or
- (c) is, on the day of his or her proposed election or appointment as a director, an employee, agent, auditor or director of any other society; or 40
- (d) is a minor or otherwise under any legal disability; or
- (e) is an unrehabilitated insolvent; or
- (f) has at any time been convicted within or outside Zimbabwe of an offence involving dishonesty and sentenced by a court to imprisonment without the option of a fine; or 45
- (g) is a body corporate.

(2) If the Commission is in possession of any information which, in its opinion, indicates that a person elected or appointed as a director of a society is disqualified to hold office as such in terms of subsection (1), the Commission shall unless the person concerned sooner resigns his her office—

- 5 (a) enquire into the matter, and furnish to the society a report of the enquiry; and
- (b) if the inquiry referred to in paragraph (a) confirms the disqualification of the person concerned, declare the office of director of that person to be vacant, and notify the society in writing accordingly.

10 (3) A society notified of a vacancy in terms of subsection (2) may fill the vacancy in the manner directed by its constitution or by-laws and in accordance with the provisions of this Part.

23 Composition of boards of directors of societies

15 (1) The board of directors or other governing body of a society, by whatever name it may be called, shall be composed of not fewer than five and not more than eighteen persons, of which two thirds of the total membership of the directors shall be non-executive directors.

 (2) The society may appoint an independent director who, in the society's opinion, may assist the other directors to exercise their functions.

20 (3) No registered society shall appoint a person as a director, whether to fill vacancies or otherwise, without prior notification of and approval by the Commission.

 (4) A society that contravenes subsection (3) shall be in default and liable to a category 1 civil penalty order.

24 Limitation of liability of members of societies

25 The liability of a member of a society in relation to the society and in respect of the acts or omissions of the society shall be limited to the amount of any premium or contribution payable but unpaid by him or her in respect of any financial year at any time after the date on which such premium or contribution fell due.

25 Restriction of use of the word "mutual"

30 No insurer, other than a society which is registered under this Part shall carry on insurance business under a name or title of which the word "mutual" is a part:

 Provided that the use of the word "mutual" in a name, unaccompanied by the word "society", shall not be construed for the purposes of this section or any provision of this Act as indicating that an insurer is a mutual insurance society.

26 Conversion of insurance companies into societies

35 (1) Subject to this section, an insurance company conducting life insurance company may convert itself, or such part of it that is engaged in the life insurance business, into a society.

40 (2) If it is intended to convert into a society an insurance company or part thereof specified in subsection (1), the directors of the insurance company concerned shall—

- (a) lodge with the Commission a copy of the constitution of the proposed society; and

- (b) lodge with the Commission and post to the registered or last known address of every existing policy owner of the insurance company concerned a scheme setting forth the manner in which it is proposed to convert into a society the insurance company or part thereof specified in subsection (1), which scheme shall incorporate— 5
- (i) a statement of the assets and liabilities of the proposed society, supported by copies of the reports of the auditor and, in respect of the life insurance business to be transferred to the society, the actuary of the insurance company concerned; and
 - (ii) a statement of the cost of buying out the existing shareholders and of the manner in which it is intended to buy them out, supported separately or inclusively by copies of the reports referred to in subparagraph(i); 10
- (c) as soon as practicable after lodging with the Commission the documents referred to in paragraphs (a) and (b), publish in the— 15
- (i) *Gazette*;
 - (ii) newspaper having a wide circulation;
 - (iii) appropriate media approved by the Commission;
- a notice of intention to effect the conversion, which notice shall highlight —
- A that copies of the documents referred to in paragraphs (a) and (b) shall be open for inspection by existing policy owners and shareholders at the offices of the insurance company concerned for a period of twenty-one days from the date of publication of the notice; 20
 - B that any objections by existing policy owners and shareholders to the proposed conversion shall be made in writing to both the Commission and the insurance company concerned within the period specified in subsubparagraph A. 25
- (3) Upon the expiration of the period referred to in subsection (2), the Commission shall assess the suitability of the applicant verifying— 30
- (a) the soundness of the scheme referred to in subsection (2) (b); and
 - (b) any objections received from existing policy owners and shareholders in terms of subsection (2)(c) (iii) B; and
 - (c) whether the proposed society would otherwise qualify to be registered in terms of section 18; 35
- or to sanction it subject to such modifications to the scheme referred to in subsection (2)(b) as the Commission shall specify.
- (4) For the purpose of assessing the suitability of the applicant in terms of subsection (3), the Commission may, at the expense of the applicant, appoint an auditor or an actuary or both such auditor and actuary to report independently to it on the matters required to be specified in terms of subsection (2)(b)(i)-(ii). 40
- (5) The Commission, after considering the suitability of the applicant in terms of subsection (3), may sanction or reject the proposed conversion, or sanction it subject to any modifications specified in terms of subsection (3):
- Provided that where the insurance company concerned refuses to accept the modifications as specified, the proposed conversion shall, subject to subsection (6), be deemed to have been rejected. 45

(6) The decision of the Commission to reject a proposed conversion, or to sanction it subject to modifications in terms of subsection (5), shall be final, subject to an appeal in terms of section 127, unless the Commission permits the insurance company concerned to make further proposals in regard to the matter, in which case subsections (2) and (3) shall apply, with necessary changes, to any alternative scheme or modification thereto.

(7) Where the Commission sanctions a proposed conversion, or sanctions it subject to modifications which have not been rejected in terms of subsection (5), the directors of the insurance company concerned shall—

(a) publish a notice in the *Gazette*, a newspaper having a wide circulation or any media approved by the Commission, to the appropriate effect, specifying the modifications, if any, made and accepted in terms of subsection (5); and

(b) apply to have the proposed society registered in terms of section 18.

(8) Notwithstanding section 21(1), the constitution of a proposed society may—

(a) suspend the voting rights of members wholly or in respect of certain specified matters for a period not exceeding three years;

(b) provide for the appointment by the directors or shareholders of the insurance company concerned of a board of directors of the society for a term not exceeding three years, or, additionally or alternatively for the appointment of specified directors of the society for a term not exceeding five years.

(9) Nothing in this section shall affect the rights of existing policy owners held or accrued in terms of their policies.

PART V

CONDUCT OF BUSINESS BY REGISTERED INSURERS AND OTHER REGISTERED PERSONS

27 Commencement of business by registered insurer

(1) No insurer shall conduct insurance business after registration until it has satisfied the Commission that—

(a) its management systems and procedures, including its risk management systems, are adequate to ensure compliance with this Act; and

(b) the persons who are entrusted with overseeing and operating the systems and procedures referred to in paragraph (a) are competent to do so;

and the Commission has authorised the insurer, in writing, to commence insurance business.

(2) The Commission shall, within twenty-one days after receiving notification of the insurer's intention to commence insurance business, grant or reject to authorise the commencement of business:

Provided that where the Commission has rejected to grant authority, it shall furnish the applicant with the reasons thereof.

(3) An insurer that contravenes subsection (1) shall be in default and liable to a category 2 civil penalty order.

28 Registered persons to conduct business prudently and lawfully

(1) Every registered insurer shall conduct its insurance business and other operations in accordance with approved administrative and accounting practices and procedures, adhering to effective systems of risk-management policies and internal controls including effective functions for risk management, compliance, actuarial matters and internal audit. 5

(2) Every registered person other than an insurer shall conduct his or her insurance-related business in accordance with approved administrative and accounting practices and procedures.

(3) Every registered person shall take effective measures to combat money laundering and the financing of terrorism as defined in terms of the Money Laundering and Proceeds of Crimes Act [*Chapter 9:24*]. 10

(4) Every registered person shall comply with the terms and conditions of his or her registration and with any directives given to him or her by the Commission in terms of this Act. 15

29 Unethical business conduct

(1) The Commission may, by notice in the *Gazette*, declare a specified practice or method of conducting business to be an unethical business conduct for all registered persons or for specified classes of registered persons.

(2) Any registered person who employs a practice or method which has been declared an unethical method of conducting business in terms of subsection (1) shall be in default and liable to a category 2 civil penalty order. 20

30 Principal administrative office of registered person

(1) Every registered person shall at all times maintain a principal administrative office in Zimbabwe and upon registration shall inform the Commission, in writing, where the office is situated. 25

(2) A registered person shall not change the situation of his or her principal administrative office in Zimbabwe unless he or she has given the Commission at least twenty-one days' prior written notice of the change.

(3) A registered person who contravenes subsection (1) or (2) shall be in default and liable to a category 2 civil penalty order. 30

31 Annual fees payable by registered persons

(1) Every registered person shall pay the Commission each year a prescribed fee in respect of the class or nature of insurance business or insurance-related business carried on by the registered person. 35

(2) The annual fee referred to in subsection (1) shall be paid by such date and in such manner as may be prescribed.

32 Registered persons to submit returns

(1) The Commission shall require certain registered persons to submit to it returns, within such periods as the Commission may prescribe. 40

(2) Every registered person referred to in subsection (1) shall, within the prescribed periods, submit to the Commission, in such form as may be prescribed—

- (a) such accounts and other documents as may be prescribed; and
- (b) statement setting out such information as may be prescribed;

5 in regard to his or her insurance-related business conducted during that period in question.

(3) A registered person who, without just cause, fails to submit a statement to the Commission in terms of subsection (1) shall be in default and liable to a category 2 civil penalty order.

10 **33 Board of registered insurer and registered insurance brokers**

(1) The operations of every registered insurer shall be directed by a board consisting, subject to this section, of at least five directors.

(2) No person shall exercise any of the functions of a director of a registered insurer following his or her appointment or re-appointment as a director of the insurer, unless his or her appointment or re-appointment, as the case may be, has been approved by the Commission in writing.

(3) No person shall be appointed to act as a director of a registered insurer unless he or she possesses such qualifications and additionally, or alternatively, has such experience or expertise as may be required for the proper administration of the insurance company.

(4) Directors of a registered insurer shall, individually and collectively, in the exercise of their powers and discharge of their duties—

- (a) take reasonable steps to protect the interests of policy owners and beneficiaries;
- 25 (b) act honestly and in good faith with a view to the best interest of the policy owners and beneficiaries; and
- (c) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances; and
- (d) avoid conflict of interest; and
- 30 (e) act impartially towards all policy owners and beneficiaries.

(5) Notwithstanding the generality of subsection (3), every director of a registered insurer must be a fit and proper person with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibilities of the office.

(6) An application for approval under subsection (2) shall be made in writing to the Commission and shall provide such information as may be prescribed or as the Commission may reasonably require.

(7) The Commission shall without delay consider every application made to it under subsection (2), and within fourteen days after receiving it shall notify the applicant, in writing—

- 40 (a) of its decision on the application; and
- (b) if the Commission refuses to approve the appointment of the person concerned, of the reasons for the refusal.

(8) Not more than two-fifths of the total membership of the board of any registered insurer shall be officers of the insurer.

(9) The chairperson of the board of a registered insurer shall not be an officer of the insurer or of any associate of the insurer.

(10) The quorum at any meeting of the board of a registered insurer shall be three-fifths of the total membership of the board:

Provided that officers of the insurer shall not form a majority of any such quorum. 5

(11) Without derogation from subsection (1), the board of a registered insurer shall be responsible for—

- (a) formulating policies relating to the insurer's insurance business;
- (b) exercising oversight over operations of the insurer's insurance business; 10
- (c) formulating strategic plans for the insurance business.

(12) At any time, the Commission may carry out a fit and proper test for the management of the registered insurer.

(13) A board of an insurer shall establish the following committees—

- (a) risk management; 15
- (b) finance and investment;
- (c) audit;
- (d) human resources and remuneration; and
- (f) any other committee that the board may deem necessary or as the Commission may prescribe. 20

(14) Where a board member resigns from the Board prior to the expiration of his or her term of office, the board and the board member must furnish the Commission with the reasons for the board member's resignation.

(15) This section and section 23(1) shall apply with necessary changes to the board of directors of a registered insurance broker. 25

(16) Any person who knowingly contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

34 Disqualification for appointment to board of registered insurer and registered insurance broker 30

(1) No person shall be appointed, or hold office, as a director of a registered insurer and registered insurance broker if—

- (a) he or she is a director of more than five companies registered in Zimbabwe or such lesser number as may be prescribed; or
- (b) he or she is a director of another insurer or broker which carries on business in Zimbabwe; or 35
- (c) under the law of any country—
 - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) he or she has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; 40
- or
- (e) he or she has been convicted of an offence involving dishonesty; or

(f) he or she has been convicted of an offence and sentenced to a term of imprisonment exceeding six months without an option of a fine.

(2) No person who has served as a director of an insurer or insurance broker for a continuous period of ten years shall be eligible for reappointment to the board of the insurer or broker unless at least five years have elapsed since he or she served on that board.

(3) Subsection (1) shall not be construed as preventing the memorandum of association or other constitution of an insurer from prescribing further disqualifications, not inconsistent with this Act, upon the appointment of directors to its board.

10 **35 Principal officer of registered insurer and registered insurance broker, etc**

(1) Every registered insurer and registered insurance broker shall at all times, with the Commission's approval, appoint a principal officer in Zimbabwe who is an individual ordinarily resident in Zimbabwe and responsible, subject to directives given to him or her by the registered insurer's or registered insurance broker's board, for the control and supervision of the registered insurer's or registered insurance broker's insurance business in Zimbabwe.

(2) No person shall be appointed as a principal officer if, under the law of any country—

- 20 (a) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (b) he or she has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or
- (c) he or she has been convicted of an offence involving dishonesty; or
- 25 (d) he or she has been convicted of an offence and has been sentenced to a term of imprisonment exceeding six months without an option of a fine.

(3) Anything done by a registered insurer's or registered insurance broker's principal officer in his or her capacity as such shall be deemed for the purposes of this Act to have been done by the registered insurer or registered insurance broker:

30 Provided that this subsection shall not be construed as limiting—

- (a) the principal officer's personal liability for his or her conduct; or
- (b) the registered insurer's or registered insurance broker's liability under any other law for the principal officer's conduct.

(4) If a principal officer—

- 35 (a) is or is about to be absent from Zimbabwe or for any other reason unable to perform his or her functions as principal officer, for a period not exceeding ninety days, the registered insurer or registered insurance broker shall appoint another person resident in Zimbabwe to act in his or her place while the principal officer is absent from Zimbabwe or unable to perform his or her functions; or
- 40 (b) is or is about to be absent from Zimbabwe or for any other reason unable to perform his or her functions as principal officer, for a period exceeding ninety days, the registered insurer or registered insurance broker shall revoke the principal officer's appointment.

45 (5) Either before appointing or re-appointing a principal officer, whether in an acting or a substantive capacity, or as soon as possible after making such an appointment or re-appointment, a registered insurer or registered insurance broker shall apply to

the Commission, in writing, for approval of the appointment or re-appointment, giving the Commission such information as may be prescribed or as the Commission may reasonably require.

5 (6) The Commission shall without delay consider every application made to it under subsection (4), and within fourteen days after receiving the application or within such longer period as the applicant may agree, the Commission shall notify the applicant, in writing—

- 10 (a) that it considers the person concerned to be a fit and proper person to hold office as principal officer, and approves his or her appointment or re-appointment; or
- (b) that, for reasons to be stated in the notification, the Commission does not consider the person concerned to be a fit and proper person to hold office as principal officer, and therefore does not approve his or her appointment or re-appointment.

15 (7) No person shall act as or purport to be the principal officer of a registered insurer or registered insurance broker unless his or her appointment or re-appointment, as the case may be, has been approved by the Commission in writing.

20 (8) Where a board member resigns from the Board prior to the expiration of his or her term of office, the board and the board member must furnish the Commission with the reasons for the board member's resignation.

(9) Every registered insurer, shall at all times, with the Commission's approval, appoint senior management responsible for the following functions—

- 25 (a) risk management; and
- (b) internal audit; and
- (c) claims; and
- (d) underwriting; and
- 30 (e) actuarial; and
- (f) finance; and
- (g) compliance; and
- (h) any other function that may be necessary for the purposes of realising the objectives of this Act.

35 (10) Subsections (5), (6) and (7) and (8) shall apply, with necessary changes, to the senior management appointed in terms of subsection (9).

40 (11) Any person who knowingly contravenes subsection (7) shall be guilty of an offence and liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(12) A registered insurer that contravenes subsection (1), (5) or (9) shall be guilty of an offence and liable to a fine not exceeding level 6.

36 Acquisition of significant interest in registered insurer

45 (1) In this section, "significant interest" means a percentage of—

- (a) the share capital of an insurer; or
 - (b) the voting rights of members of an insurer; or
 - (c) power to appoint directors to the board or other executive committees;
- which equals or exceeds such percentage as may be prescribed by the Commission.

(2) No person shall knowingly acquire or obtain a significant interest in a registered insurer unless the Commission has given its written approval of the acquisition.

(3) No registered insurer shall permit any person to acquire or obtain a significant interest in it unless the Commission has given its written approval of the acquisition.

(4) Any contract, arrangement or transaction whatsoever which, if implemented or effected, would result in a contravention of subsection (2) or (3) shall be void.

(5) As soon as possible after becoming aware that a person has acquired or obtained a significant interest in a registered insurer, the insurer concerned shall notify the Commission, in writing, of that fact, and any person who contravenes this section shall be in default and liable to a category 1 civil penalty order.

(6) In any proceedings in which it is alleged that a person has contravened subsection (2), it shall be presumed, unless the contrary is proved, that he or she had the knowledge referred to in that subsection.

(7) If, on application being made, the Commission refuses to approve the acquisition by any person of a significant interest in a registered insurer, the Commission shall, within five working days after reaching its decision, notify the applicant, in writing, of the decision and of the reasons for it.

(8) In considering the application for acquisition of significant interest, the Commission shall pay particular attention to the following—

- (a) effect of acquisition of significant interest in the specified insurer;
- (b) solvency record of the applicant;
- (c) fit and proper test for the applicant;
- (d) the criminal record of the applicant;
- (e) any other information that the Commission considers necessary.

(9) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

37 Establishment of branches, etc., outside Zimbabwe by registered insurer and registered insurance brokers

(1) Except with the written approval of the Commission, no registered insurer shall establish a subsidiary, branch or agency outside Zimbabwe for the purpose of conducting insurance business.

(2) An application for the Commission's approval in terms of subsection (1) shall be made in the prescribed form and manner, and shall be accompanied by—

- (a) the prescribed fee, if any; and
- (b) such documents and information as may be prescribed or as the Commission may reasonably require.

(3) The Commission shall grant its approval of an application in terms of subsection (2) if it is satisfied that the subsidiary, branch or agency

concerned will be properly managed and will not lead to any contravention of this Act, and if the Commission is not so satisfied it shall reject the application:

Provided that, before deciding to reject an application the Commission shall notify the applicant, in writing, that it proposes to reject it and of the reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter.

(4) This section shall apply with necessary changes to the registered insurance broker.

(5) Any registered insurer or registered insurance broker that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

38 Restriction on placement of insurance business outside Zimbabwe

(1) In this section—

“Zimbabwean insurance business” means insurance business in respect of a risk arising in Zimbabwe.

(2) Unless authorised to do so by the Commission, no registered insurer or insurance broker shall place Zimbabwean insurance business with an insurer that is not registered under this Act and that carries on business outside Zimbabwe.

(3) When seeking the Commission’s authorisation under subsection (2), a registered insurer or insurance broker shall disclose fully all factors which he or she knows or has reason to believe are likely to affect the risk that is the subject of the insurance business concerned.

(4) Unless authorised to do so by the Commission, no person shall get any insurance policy in respect of a risk arising in Zimbabwe from an insurer that carries on business outside Zimbabwe and is not registered under this Act.

(5) The Commission—

(a) shall not grant authority under subsections (2) and (4) unless it is satisfied that there is no registered insurer that is able to provide adequate insurance cover in respect of the risk or class of risk concerned;

(b) may impose such conditions or limitations on any authority granted in terms of subsection (2) and (4) as the Commission considers appropriate in the public interest.

(6) A registered insurer or insurance broker that contravenes subsection (2) or (3) shall be guilty of an offence.

(7) The offence referred to in subsection (6) shall be punishable by—

(a) a fine not exceeding level 14; or

(b) the forfeiture of the total sum of proceeds obtained by the insurer or insurance broker from the transaction;

whichever is greater.

(8) Any person who contravenes subsection (4) shall be guilty of an offence and liable to—

(a) a fine not exceeding level 14; or

- (b) a fine equivalent to the premiums paid to an insurer referred to in subsection (4);

whichever is greater.

39 Amalgamation or transfer of insurance business

5

(1) No registered insurer shall—

- (a) amalgamate with one or more other insurers; or
 (b) transfer its insurance business or part of its insurance business to another insurer;

unless the Commission, on application by the boards of all the insurers concerned, and in consultation with the Competition and Tariff Commission established in terms of the Competition Act [*Chapter 14:28*] and any other relevant authority, has consented to the amalgamation or transfer in accordance with this section.

10

(2) Before an application is made to the Commission for its consent referred to in subsection (1)—

15

- (a) the boards of the registered insurers concerned shall cause a notice to be published in the *Gazette* of their intention to make the application; and
 (b) where life insurance business is involved in the proposed transaction, the boards of the registered insurers concerned—

(i) shall cause a statement of the nature of the transaction together with—

20

A an abstract containing the material facts embodied in the agreement or scheme under which the transaction is proposed to be effected; and

B copies of the actuarial reports upon which the agreement or scheme referred to in subparagraph A is founded, including a report by an actuary approved by the Commission;

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to be sent to the Commission and, if the Commission so directs, to be published in one or more newspapers circulating in Zimbabwe and any other media approved by the Commission; and

30

(ii) shall cause a statement, approved by the Commission and—

A setting out the nature of the proposed transaction and the material facts concerning it; and

B specifying the offices where the agreement or scheme and the actuarial reports referred to in subparagraph (i) B will be open for inspection in terms of paragraph (d);

35

to be sent to the registered or last-known address of every owner of a life policy issued by each registered insurer concerned;

and

- (c) where insurance business other than life insurance business is involved in the proposed transaction, the boards of the registered insurers concerned shall notify the policy owners concerned, in such manner as the Commission may direct, of the nature of the proposed transaction; and

40

- (d) copies of statements of the assets and liabilities of the registered insurers concerned in the transaction, together with a statement of the nature and terms of the transaction, and other reports upon which the agreement or deed was founded; and

45

5 (e) copies of the agreement or scheme under which the transaction is proposed to be effected, together with copies of any actuarial reports referred to in paragraph (b)(i)B., shall be kept open for inspection by policy owners and shareholders at the offices of the registered insurers concerned for at least twenty-one days after the notice was published in terms of paragraph (a).

10 (3) After considering an application under subsection (2) and any representations that may have been made by policy owners and shareholders of the registered insurers concerned and by any other person whom the Commission considers should be heard in the matter, the Commission may consent to the transaction to which the application relates if the Commission is satisfied that there is no sufficient objection to it or does not prejudice policy owners.

15 (4) A registered insurer may—
(a) initiate and apply for the Commission's consent to any transaction referred to in subsection (1); and
(b) conclude and give effect to any transaction referred to in subsection (1) if the Commission has consented to it:

20 Provided that the transaction does not contradict anything in the memorandum of association or other document by which the insurer is constituted or in any articles or rules by which the insurer is managed.

25 (5) If a transaction referred to in subsection (1) has taken place in accordance with this section, the owner of a policy shall no longer have a claim against the original insurer but, instead, his or her claim shall be against the registered insurer with whom the business has been amalgamated or to whom the business has been transferred or into which the original insurer has been converted, as the case may be.

30 (6) The new insurer shall not, without the consent of the policy owner, change the rights and obligations provided for in the transferred policies.

(7) Within ninety days of the date of completion of a transaction referred to in subsection (1) which results in the amalgamation of two or more insurers or the creation of a new insurer, the amalgamated or new insurer shall deposit with the Commission—

35 (a) certified copies of statements of the assets and liabilities of the registered insurers concerned in the transaction, together with a statement of the nature and terms of the transaction; and
(b) a certified copy of the agreement or deed under which the transaction was effected; and
40 (c) certified copies of the actuarial reports in the case of a life insurance business or other reports upon which the agreement or deed was founded; and
(d) a declaration signed by the chairperson of each registered insurer concerned, that—
45 (i) to the best of their knowledge and belief, every payment made or to be made to any person whatsoever on account of the transaction is set out fully in the statements referred to in paragraph (a), and no other payments, except those

set out, have been made or are to be made, whether in money, policies, bonds, valuable securities or other assets; and

- (ii) due notice of the transaction was given to the shareholders, if any, and policy owners of each registered insurer concerned in the transaction.

(8) This section shall apply with necessary changes to a registered insurance broker.

(9) Where an insurer's certificate of registration has been cancelled in terms of section 9, the Commission may order the transfer of the insurance business of the deregistered insurer to another insurer with such conditions as the Commission may fix.

(10) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

40 Change of name of registered person

(1) A registered insurer or registered insurance broker may, with the consent in writing of the Commission, alter the name under which he or she is registered.

(2) A registered person shall not, for the purposes of his or her insurance business or insurance-related business, as the case may be, use or refer to himself or herself in writing by—

- (a) a name other than the name under which he or she is registered; or
(b) an abbreviation of the name under which he or she is registered;

unless the Commission has consented in writing to the use of such name or abbreviation.

(3) Whenever the Commission authorises a change of name of a registered person in terms of subsection (1), the registered person shall cause a notice of the change to be published in the *Gazette*, in such newspapers circulating in Zimbabwe and any other media as the Commission may determine.

(4) Nothing contained in subsection (2) shall prevent an insurer or insurance broker, with the written consent of the Commission, from using or referring to himself or herself in conjunction with his or her registered name by the name of a business or undertaking with which he or she has been amalgamated or, in the case of a change of name authorised in terms of subsection (1), by the name by which he or she was previously known.

(5) A registered person that contravenes subsection (1) or subsection (2) shall be in default and liable to a category 1 civil penalty order.

41 Insurance brokers to forward premiums promptly

(1) Within seven working days after a registered insurance broker has received a premium on behalf of an insurer, the broker shall pay the premium to the insurer in full.

(2) Subject to subsection (1), every registered insurance broker shall open and keep an account at a bank as a separate trust account in which he or she shall deposit all premiums received.

(3) Any broker who contravenes the provisions of subsection (1) and (2) shall be guilty of an offence and liable to a fine not exceeding level—

- (a) ten, in the case of the contravention of subsection (1); and
- (b) fourteen in the case of the contravention of subsection (2).

PART VI

5 FINANCIAL PROVISIONS REGARDING REGISTERED INSURERS AND OTHER REGISTERED
PERSONS

42 Margin of solvency to be maintained by registered insurers

10 (1) Every registered insurer shall maintain the levels of solvency that may be prescribed, from time to time, by the Commission.

(2) Before prescribing levels of solvency in terms of subsection (1), the Commission shall invite representations from the registered insurers concerned.

15 (3) In prescribing levels of solvency in terms of subsection (1), the Commission shall consider the following—

- (a) class of insurance business;
- (b) the proportion between admitted assets and liabilities;
- 20 (c) liability in foreign currency;
- (d) the need to ensure that the registered insurers maintain capital adequacy;
- (e) the development of capital markets and its impact on the ability of insurers to raise capital;
- 25 (f) the balance to be struck between protecting policy owners and the impact on the effective operation of the insurance sector and considerations around unduly onerous levels and costs of regulatory capital requirements;
- (g) the need to establish quality risk management and governance frameworks in the insurance sector;
- 30 (h) international best practices;
- (i) any other factor that the Commission considers appropriate in the public interest.

43 Assets and liabilities of registered insurers

35 (1) For the purposes of determining solvency, a registered insurer's assets shall be as prescribed.

(2) For the purposes of this Act, a registered insurer's liabilities shall consist of all the liabilities of the insurer that are shown or, in proper accounting practice, ought to be shown as current, contingent or prospective liabilities in the insurer's books of account, and—

- (a) include the insurer's liabilities in respect of life insurance policies;
- (b) do not include—
 - 45 (i) liabilities in respect of share capital or reserves in lieu of capital that have been approved by the Commission; or
 - (ii) any other liabilities that may be prescribed.

(3) Every registered insurer shall make adequate provision for liabilities in respect of unexpired risks and outstanding and incurred claims, including provision for claims incurred but not reported, computed in accordance with a method prescribed by the Commission.

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44 Determination of value of registered insurers' assets and liabilities

(1) The Commission may, by written notice to a registered insurer, require the insurer to furnish the Commission with such information regarding any of the insurer's liabilities or the valuation of any of the insurer's assets. 5

(2) Where the Commission is not satisfied that the extent of a liability or the value of an asset has been correctly determined by an insurer in response to a notice under subsection (1), the Commission may, by written notice to the insurer, require the insurer to furnish the Commission with a valuation of the liability or asset determined by an independent valuator approved by the Commission. 10

(3) The insurer shall bear the expenses of valuation referred to in subsections (1) and (2).

45 Solvency margin for insurance brokers 15

(1) Every registered insurance broker shall maintain the levels of solvency that may be prescribed, from time to time, by the Commission.

(2) Every registered insurance broker shall effect and maintain a professional indemnity insurance, issued in Zimbabwe, with a limit of liability of not less than— 20

- (a) the amount which may be prescribed from time to time; or
- (b) fifty per centum of his or her net brokerage income in the last financial year;

whichever is the greater amount. 25

(3) Every policy of professional indemnity insurance referred to in subsection (2) shall be issued in Zimbabwe, and the limit of liability, the premium and every other sum of money mentioned in the policy shall be stated in the functional currency of Zimbabwe.

(4) Before prescribing levels of solvency in terms of subsection (1), the Commission shall invite representations from the registered insurance brokers concerned.

46 Insurance funds

(1) Every registered insurer that carries on any class of insurance business shall—

- (a) establish and maintain a fund;
- (b) establish and maintain a bank account;
- (c) keep an account of all receipts;

in respect of such class of insurance business.

(2) The moneys in the insurance fund established for the class of insurance business—

- (a) shall be held in security for obligation to owners of policies of that class of insurance business; and
- (b) not be applied, directly or indirectly, to any purposes other than those of the class of insurance business for which the insurance fund was established.

(3) A registered insurer may hold part of any insurance fund in the form of shares in the insurer's holding company or in any other subsidiary of that holding company:

Provided that the shares shall—

- (a) be deemed to be held by the insurer on behalf of the owners of policies of the class of insurance business for which the insurance fund was established, and any moneys payable to the insurer on account of those shares or on their realisation shall be paid into the insurance fund concerned; and
- 5 (b) be held by the insurer subject to such terms and conditions as the Commission may fix; and
- (c) not confer any right on the insurer to vote at any meeting of members of the holding company, notwithstanding anything to the contrary in the holding company's articles of association.

10 (4) The Commission may prescribe investments guidelines with respect to each class of insurance business in addition to the prescribed securities.

(5) Insurance funds shall not be executable by creditors other than policy owners without the approval of the Commission:

Provided that any competent court shall pay due regard to the Commission's representation in any matter brought before it by creditors other than policy owners.

20 (6) An insurer that contravenes subsection (1) or (2) and (3) shall be in default and liable to a category 1 civil penalty order.

(7) The Commission may, after considering the extent of the contravention and the consequences thereof, cancel the licence for the registered insurer for contravening subsection (1), (2) or (3).

25 **47 Registered insurers to notify Commission of changes in certain matters**

(1) A registered insurer shall, within fourteen days after any change, notify the Commission in writing of any such change, which occurred in any matter prescribed in relation to the insurer for the purposes of this section.

(2) A registered insurer who without just cause and knowingly contravenes subsection (1) shall be in default and liable to a category 1 civil penalty order.

35 **48 Registered insurers may hold shares in holding or subsidiary companies**

(1) A registered insurer may hold shares in its holding company or in any other subsidiary company of that holding company:

40 Provided that the shares so held, excluding shares held in a company which is a subsidiary of the registered insurer, shall not exceed ten *per centum* of the market value of the insurer's total holding of shares.

(2) Section 185 of the Companies and Other Business Entities Act [*Chapter 24:31*] shall apply in determining whether or not a company is an insurer's holding company or subsidiary company for the purposes of this section.

(3) Any registered insurer who contravenes the proviso to subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14.

50 **49 Insurers to maintain assets in Zimbabwe**

(1) Subject to subsection (2) every registered insurer shall maintain his or her assets in Zimbabwe.

(2) The Commission may prescribe the percentage of total assets which may be maintained outside Zimbabwe by the registered insurer.

(3) A registered insurer who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

50 Annual financial statements of registered insurer and insurance brokers

(1) As soon as possible after the end of each financial year, a registered insurer and a registered insurance broker shall cause financial statements for that financial year to be prepared in accordance with practices and guidelines that may be prescribed by the Commission from time to time.

(2) The financial statements shall be prepared in accordance with such requirements and standards as may be prescribed so as to present, in conformity with generally accepted accounting practice, a true and fair view of the state of affairs of the registered person and its business as at the end of the financial year concerned.

51 Financial statements of registered insurers and insurance brokers to be submitted to Commission

(1) Within ninety days after the end of each financial year, every—

- (a) registered insurer; and
- (b) registered insurance broker;

shall submit to the Commission, in such form as may be prescribed—

- (c) the audited financial statements for that financial year; and
- (d) such certificates, reports and other documents and information relating to the financial statements referred to in paragraph (c) as may be prescribed by the Commission.

(2) If the Commission considers that any account, document or information submitted by an insurer or insurance broker in terms of subsection (1) is incorrect or is not prepared in accordance with this Act, the Commission may, by written notice, call upon the insurer or insurance broker concerned to make appropriate amendments to it.

(3) A registered insurer or a registered insurance broker that fails to comply with a notice referred to in subsection (2) shall be regarded, for the purposes of this section, as having failed to submit the account, document or information concerned in terms of subsection (1).

(4) A registered insurer liable under a life policy, funeral policy or sinking fund policy shall, on request, furnish the owner of the policy, free of charge, with a copy of the latest account or document submitted by the insurer in terms of subsection (1).

(5) A registered insurer which, without just cause, contravenes subsection (1) or (4) shall be in default and liable to a category 1 civil penalty order.

(6) A registered insurance broker which, without just cause, contravenes subsection (1) shall be in default and liable to a category 1 civil penalty order.

52 Publication of financial statements

(1) Every registered insurer and registered insurance broker shall, within thirty days after the submission of financial statements referred to in section 51, publish such statements in any newspaper and any other media, approved by the Commission.

(2) A registered insurer or a registered insurance broker which contravenes the provisions of subsection (1) shall be in default and liable to a category 1 civil penalty order.

53 Actuarial investigation into financial position of registered insurer

(1) Within ninety days after the end of each financial year, every registered insurer shall submit to the Commission, in such form as may be prescribed—

(a) the actuarial valuation report whose valuation date shall coincide with the end of the financial year; and

(b) such certificates, reports and other documents and information relating to the actuarial valuation referred to in paragraph (a) as may be prescribed by the Commission.

(2) The registered insurer shall ensure that the actuarial valuation report is harmonised with audited financial statement prepared in terms of section 50.

(3) Notwithstanding subsection (1), if the Commission is of the opinion that a registered insurer is adopting unethical business conduct, the Commission may require the registered insurer to provide it with, in the prescribed form and within sixty days, an actuarial valuation of the registered insurer in respect of its whole or part of insurance business.

(4) A registered insurer which, without just cause—

(a) contravenes subsection (1) or (2); or

(b) fails to comply with a requirement of the Commission in terms of subsection (3);

shall be in default and liable to a category 1 civil penalty order.

PART VII

AUDIT COMMITTEES AND AUDIT OF ACCOUNTS OF REGISTERED INSURERS

54 Audit committees

(1) Every registered insurer and registered insurance broker shall appoint an audit committee consisting of at least three board members.

(2) The majority of the members of the audit committee shall be independent directors.

(3) The Chairperson of the audit committee shall be one of the independent directors.

(4) The functions of an audit committee shall include the following—

(a) audit the operations of the insurance business; and

(b) appoint the external auditor;

(5) An audit committee shall meet as often as may be necessary to carry out its functions.

(6) Decisions of an audit committee shall be decided by a majority vote of the members present.

55 Appointment of external auditor

(1) Subject to this section and section 56, every registered insurer and insurance broker shall appoint as its external auditor a person who is—

- (a) registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; and 5
- (b) selected for appointment by the insurer's audit committee or insurance broker's audit committee; and
- (c) approved by the Commission subject to subsection (2). 10

(2) No person shall be appointed as an external auditor if, under the law of any country—

- (a) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (b) he or she has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or 15
- (c) he or she has been convicted of an offence involving dishonesty; or
- (d) he or she has been convicted of an offence and sentenced to a term of imprisonment exceeding six months, imposed otherwise than as an alternative to or in default of payment of a fine. 20

(3) If the Commission rejects to approve the appointment of an external auditor in terms of subsection (1), it shall, within five working days after reaching its decision, notify the registered insurer or insurance broker concerned, in writing, of the decision and of the reasons for it. 25

(4) No registered insurer shall appoint the same person or partnership as its external auditor in Zimbabwe for a period of more than five years, whether continuous or not, in any eight-year period.

(5) The Commission may prescribe—

- (a) specific time for which certain disqualified persons may not hold office as external auditors in insurance industry;
- (b) grounds for readmission in insurance industry;
- (c) application procedure for readmission in insurance industry.

56 Additional disqualification grounds for an auditor of registered insurer and registered insurance broker

(1) No person shall be qualified for appointment as an external auditor of a registered insurer in terms of section 55 if he or she is—

- (a) a director of the insurer or of any body corporate which controls or is controlled by the insurer; or
- (b) an employee or a secretary or book-keeper, of the insurer or of any person with power to control, directly or indirectly, the insurer's management or policies; or
- (c) a partner or employee of a person referred to in paragraph (a) or (b); or
- (d) an employer of a person referred to in paragraph (a); or
- (e) a person who has a conflict of interest which, in the Commission's opinion, is so serious that it has the potential of compromising the professional judgment of the external auditor.

(2) Any reference in subsection (1) to "employee" shall not be construed as applying to an auditor.

(3) Any person who acts as an external auditor of a registered insurer or a registered insurance broker when he or she knows or ought to have known that he or she was disqualified under subsection (1) and section 58(2) from doing so shall be guilty of an offence and liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

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57 Responsibilities of auditor of registered insurer and insurance broker

(1) A person appointed as an external auditor of a registered insurer or insurance broker in terms of section 55 shall be responsible for—

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(a) subject to this Part, auditing the financial statements of the insurer or insurance broker and reporting on the same; and

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(b) planning and carrying out audit procedures designed to detect irregularities and illegal acts in the conduct of the business of the insurer or insurance broker; and

20

(c) communicating to the audit committee any evidence he or she may have that irregularities or illegal acts have been committed in the course of the business of the insurer or insurance broker, whether or not they may have led to material misstatements in the accounts or records for the insurer or insurance broker; and

25

(d) communicating to the Commission any evidence he or she may have that irregularities or illegal acts have been committed by—

(i) any director of the insurer or insurance broker; or

(ii) any person;

if there is a reasonable possibility that they may cause prejudice to policy owners or significant damage to the financial stability of the insurer and insurance broker.

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(2) When auditing an insurer or insurance broker's accounts in terms of subsection (1), an external auditor shall—

(a) take due care to ensure objectivity; and

(b) apply such auditing standards as the Commission may require.

35

(3) In every report referred to in subsection (1)(a), the external auditor shall state whether the accounts of the insurer or insurance broker concerned are drawn up in accordance with the Companies and Other Business Entities Act [*Chapter 24:31*] applicable to an insurer or insurance broker and any other relevant law.

40

(4) Without derogation from subsection (3), in his or her report referred to in subsection (1)(a), an external auditor shall record any—

(a) irregularity or illegal act which he or she has ascertained, or which he or she suspects, has occurred in relation to the business of the insurer or insurance broker; and

(b) act which has contributed to a loss of any of the assets of the insurer or insurance broker; and

45

(c) other matter which, in the auditor's opinion, requires rectification or attention by the insurer or insurance broker; and

(d) recommendations for improving the financial administration of the insurer or insurance broker.

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(5) Where an external auditor of a registered insurer or registered insurance broker includes in his or her report any matter referred to in subsection (4), he or she shall forthwith send a copy of the report to the Commission.

(6) In addition to the report referred to in subsection (1) (a), an external auditor shall submit such reports to the Commission as the Commission may direct.

(7) Any person authorised by the Commission shall—

- (a) have a right of access at all reasonable times to the working papers and other documents of an external auditor of a registered insurer or registered insurance broker; and 5
- (b) be entitled to require an external auditor of a registered insurer or insurance broker to provide such information and explanations as the person may reasonably require; 10

for the purpose of monitoring the activities of the insurer or insurance broker concerned in terms of this Act.

(8) The external auditor of a registered insurer or registered insurance broker shall comply with his or her obligations under this section notwithstanding any duty of confidentiality to the contrary, and he or she shall not be held liable in any proceedings arising out of his or her compliance with any such obligation unless it is proved that he or she acted in bad faith. 15

(9) Where an external auditor contravenes this section, the Commission shall report him or her to Public Accountants and Auditors Board and Public Accountants and Auditors Board shall institute disciplinary proceedings against such auditor. 20

58 Powers of auditor of registered insurer or insurance broker

- (1) Every external auditor of a registered insurer or insurance broker shall— 25
 - (a) have a right of access at all reasonable times to such records, accounts, vouchers and securities for the insurer or insurance broker; and
 - (b) be entitled to require such information and explanations from any director, employee or agent of the insurer or insurance broker;

as he or she considers necessary in order to perform his or her duties as an auditor.

(2) Any person who fails without just cause—

- (a) to permit an auditor the access referred to in subsection (1)(a);
- (b) to comply with a requirement in terms of subsection (1)(b);

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

59 Provisions of Part VII to apply to actuary

The provisions of sections 55 to 58 shall apply to an actuary, with necessary changes.

PART VIII

REINSURANCE BUSINESS

60 Reinsurance of risks by registered insurer

(1) Subject to this Part, a registered insurer may reinsure part of the risks it has accepted in any class of insurance business.

(2) A contract or arrangement for reinsurance shall contain such provisions as may be prescribed or as the Commission may notify to the insurer and reinsurer concerned.

(3) Where a contract or arrangement for reinsurance is negotiated through an intermediary or insurance broker, the contract or arrangement shall not contain any provision that prohibits a direct relationship between the insurer and the reinsurer.

5 (4) Every reinsurance contract shall be renewed annually, or at such shorter or longer period as may be prescribed from time to time.

61 Modification in registered insurer's net retention

(1) In this section—
 10 “net retention”, in relation to an insurer, means the value of the risks that have been accepted by the insurer in the insurer's class of insurance business that have not been reinsured.

15 (2) A registered insurer shall inform the Commission, within thirty days, of any significant modification in the amount of its net retention in the insurer's class of insurance business.

20 (3) Where the Commission considers that a registered insurer's net retention in the insurer's class of insurance business is not in accordance with the insurer's financial standing, the Commission may direct the insurer to adjust the net retention to such level as the Commission may specify:

Provided that, before giving such a directive, the Commission shall give the registered insurer an adequate opportunity to make representations in the matter.

25 (4) The Commission may prescribe what constitutes a significant modification to an insurer's net retention for the purposes of subsection (2).

62 Annual returns for reinsurance

30 (1) Every registered insurer and reinsurer shall, within ninety days before the renewal of the reinsurance contract, submit to the Commission in the prescribed form details of—

- (a) all reinsurance contracts and arrangements operative during the underwriting year in question; and
- 35 (b) proof of payment of reinsurance premiums; and
- (c) the parties to the contracts and arrangements referred to in paragraph (a).

(2) If the Commission considers that a reinsurance contract or arrangement whose details have been submitted to the Commission in terms of subsection (1) is—

- 40 (a) unduly unfavourable to the policy owners or registered insurer that is party to the contract or arrangement; or
- (b) not in the interests of the insurance industry;

the Commission may direct the insurer—

- 45 (c) to modify the contract or arrangement when it is next renewed; or
- (d) not to renew the contract or arrangement;

and the insurer shall comply with the directive:

50 Provided that, before giving any such directive, the Commission shall afford the parties to the contract or arrangement an adequate opportunity to make representations in the matter.

(3) For purposes of subsection (1) (a), the underwriting year shall run from—

- (a) in the case of new reinsurance contract, the date of signing of the reinsurance contract up to the date of renewal; or

- (b) in the case of an already existing reinsurance contract, the date of renewal to the next date of renewal.

63 Reinsurance contracts of life insurers

No life insurer shall enter into a contract of reinsurance against any liability in respect of its life insurance business except—

- (a) with a life reinsurer; or
 (b) subject to the approval of the Commission, with a non-life reinsurer.

64 Prohibition of dealings with certain reinsurers

(1) Notwithstanding section 63, if the Commission has reasonable grounds for believing that a reinsurer—

- (a) may not be able to meet its liabilities arising out of reinsurance contracts or arrangements; or
 (b) has adopted or is adopting unethical business conduct;

the Commission may, subject to this section, prohibit registered insurers from conducting reinsurance business with that reinsurer.

(2) A prohibition under subsection (1) shall be effected by written notice to all registered insurers.

(3) Before issuing a prohibition under subsection (1), the Commission shall notify the reinsurer concerned of its intention to issue the prohibition and of its grounds for doing so, and shall afford the reinsurer a reasonable opportunity to make representations in the matter.

PART IX

PROVISIONS RELATING TO ASSOCIATIONS OF UNDERWRITERS

65 Associations of underwriters carrying on business in Zimbabwe to be registered

(1) No association of underwriters shall carry on insurance business in Zimbabwe unless the association is registered in terms of this Part.

(2) No person shall conduct any underwriting business in Zimbabwe with or on behalf of an association of underwriters, unless—

- (a) the association is registered in terms of this Part; and
 (b) there is no registered insurer who is able to provide adequate cover in respect of the risk or class of risk concerned.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) In addition to the penalty provided for in subsection (3), any person who contravenes subsection (2) shall be liable to a fine not exceeding the value of the proceeds earned from the business which shall be payable to the Commission.

66 Registration of associations of underwriters

(1) An application for registration in terms of this Part shall be made to the Commission in the prescribed form and shall be accompanied by such documents as may be prescribed or as the Commission may reasonably require.

(2) An organisation whose registration as association of underwriters in any class of insurance business has been cancelled may, subject to any directive from the Commission continue to carry on that business in relation to policies which were issued by the association before the cancellation.

5 (3) If on consideration of an application under subsection (1) the Commission is satisfied that the applicant complies with such requirements as may be prescribed, the Commission shall register the applicant and issue the applicant with a certificate of registration in the prescribed form.

10 (4) The registration of an association of underwriters shall be subject to such terms and conditions as the Commission may determine in relation to—

- (a) the class of business to be underwritten by the association; and
- (b) the capital requirements and margins of solvency to be met by the association; and
- 15 (c) the retention of premiums by the association; and
- (d) deposits and investments in Zimbabwe; and
- (e) such other matters as may be prescribed or as the Commission may consider necessary.

20 (5) If, on consideration of an application under subsection (1), the Commission—

- (a) is not satisfied as provided for in subsection (3); or
- (b) is of the opinion that it would not be in the public interest to approve the application;

25 the Commission shall reject to register the applicant concerned:

Provided that—

- 30 (i) before rejecting to register an applicant, the Commission shall notify the applicant, in writing, that it proposes to reject the application and of the reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;
- (ii) within five working days after deciding to reject to register an applicant on any ground, the Commission shall notify the applicant, in writing, of the decision and of the reasons for it.

35 (6) The period between the Commission's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which the Commission notifies the applicant of its decision or proposed decision in terms of subsection (3) or (5) shall not exceed twenty-one days unless the applicant consents to an extension of the period.

40 (7) Without delay, after registration of an association in terms of this section, the Commission shall cause a notice to be published in the *Gazette*, newspaper of appropriate circulation and any other media approved by the Commission, stating the association's name and address, and the representative's name and address.

45 **67 Appointment and recognition of representative of association of underwriters**

(1) Every association of underwriters shall appoint—

- 50 (a) an individual to represent it in Zimbabwe; and
- (b) another individual as an alternate to represent it whenever the substantive representative is for any reason unable to act as such;

and the representative shall send to the Commission written notification of each such appointment within fourteen days after it was made, informing the Commission of the appointee's name and address and such other particulars as the Commission may reasonably require.

(2) If there is a change in any of the particulars notified to the Commission in terms of subsection (1), the association's representative shall send to the Commission written notification of the change seven days of such change occurring.

(3) Upon being notified of the appointment of a representative or alternate representative of an association of underwriters in terms of subsection (1), the Commission shall without delay recognise the representative, unless the Commission has reason to believe that the appointee is not a fit and proper person to represent the association in Zimbabwe:

Provided that—

- (a) before refusing to recognise an appointee, the Commission shall notify the appointee, in writing, that it does not propose to recognise him or her and of the reasons for not doing so, and shall afford the appointee an adequate opportunity to make representations in the matter;
- (b) within five working days after deciding to reject to recognise an appointee on any ground, the Commission shall notify the appointee, in writing, of the decision and of the reasons thereof.

68 Trust account to be kept by representative of association of underwriters

(1) The representative of an association of underwriters shall open a trust account in the name of the association at a commercial bank registered under the Banking Act [Chapter 24:20] or a building society registered under the Building Societies Act [Chapter 24:02].

(2) The representative of an association of underwriters shall, not later than the last working day of each month, deposit in the association's trust account an amount equal to such percentage as may be prescribed of all premiums received by all the association's intermediaries in Zimbabwe in their capacities as such, other than such premiums as may be prescribed, during the two months immediately preceding such first-mentioned month, less—

- (a) premiums refunded; and
- (b) all commissions paid or payable in respect of those refunded premiums.

(3) Any money standing to the credit of an association's trust account that is not required for immediate use may be invested in any asset approved by the Commission for the purpose of this subsection.

(4) Any document issued in respect of an investment made under subsection (3) shall be held by the representative of the association of underwriters concerned, and the representative shall be competent to realise any asset referred to in that subsection.

(5) The representative of the association of underwriters concerned shall ensure that all moneys acquired by virtue of any investment or realisation contemplated in subsection (3) or (4) are deposited as soon as practicable in the association's trust account.

(6) On the last working day of each month the representative of an association of underwriters may withdraw from the association's trust account an amount equal to the amount deposited in the trust account during the same month of the previous year,

together with interest thereon, less any amount withdrawn during that first-mentioned month for the purposes of section 76.

(7) No moneys shall be withdrawn from the trust account of an association of underwriters except for the purposes of section 76 and subsections (3) and (4) of this section.

69 Financial statements and returns in respect of trust account of association of underwriters

(1) Within ninety days after the end of each financial year, the representative of an association of underwriters shall submit to the Commission—

- (a) financial statements; and
- (b) return in respect of the association's trust account, which return shall contain such particulars as the Commission may require;

as at the end of the last day of that financial year.

(2) Notwithstanding subsection (1), the representative of an association of underwriters shall, whenever so requested in writing by the Commission, submit to the Commission a return in respect of the association's trust account as at any other day specified by the Commission.

(3) A return submitted in terms of subsection (1) or (2) shall—

- (a) be in such form as may be prescribed or as the Commission may determine; and
- (b) contain such particulars as may be prescribed or as the Commission may specify; and
- (c) be audited by an auditor appointed by the representative of the association of underwriters concerned.

(4) Sections 55, 56 and 57(2) shall apply, with any necessary changes, to the auditor referred to in subsection (3) (c) as if the representative of the association of underwriters concerned were a registered insurer.

(5) Within thirty days after submission of financial statements referred to in subsection (1), the representative of an association of underwriters shall publish in any one or more newspapers or any media, approved by the Commission, such financial statements.

(6) The financial statements referred to in subsection (1) shall be prepared in accordance with such requirements and standards as may be prescribed so as to present, in conformity with generally accepted accounting practice, a true and fair view of the state of affairs of the association and its business as at the end of the financial year concerned.

(7) Any person who contravenes the provisions of this section shall be in default and liable to a category 1 civil penalty order.

70 Registration of intermediaries of associations of underwriters

(1) No person shall—

- (a) carry on business or perform any act as an intermediary in Zimbabwe of an association of underwriters; or
- (b) hold himself or herself out to be an intermediary in Zimbabwe of an association of underwriters;

unless he or she is registered as such in accordance with this section.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) An application for registration as an intermediary of an association of underwriters shall be made to the Commission in the prescribed form and shall be accompanied by—

- (a) proof, in writing, that the applicant has been authorised by the association to act in Zimbabwe as an intermediary for or on behalf of a member of the association; and
- (b) a document, signed by or on behalf of the member of the association concerned, stating the terms and conditions under which the applicant is authorised to act as an intermediary; and
- (c) the prescribed application fee; and
- (d) such other documents and information as the Commission may prescribe.

(4) If on consideration of an application under subsection (3), the Commission is satisfied that—

- (a) the applicant has not, under the law of any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or arrangement or composition with his or her creditors which has not been rescinded or set aside;
 and
- (b) the applicant has not been convicted by a court in any country of an offence involving dishonesty, or of an offence in terms of this Act for which he or she was imprisoned without the option of a fine; and
- (c) where the applicant is—
 - (i) an individual, the applicant is a fit and proper person to carry on the business he or she intends to conduct;
 - (ii) a body corporate or an association, the applicant's directors are fit and proper persons to carry on the business the applicant intends to conduct;
 and
- (d) the applicant complies with such other requirements as may be prescribed;

the Commission shall, subject to subsection (5), register the applicant and shall issue him or her with a certificate of registration in the prescribed form.

(5) If, on consideration of an application under subsection (3), the Commission is not satisfied as to any matter referred to in subsection (4), the Commission shall reject to register the applicant concerned and shall notify the applicant, in writing, of the decision and of the reasons for it.

(6) The period between the Commission's receipt of an application in terms of subsection (3) and all documents and information submitted in support of it, and the date on which the Commission notifies the applicant of its decision or proposed decision in terms of subsection (4) or (5) shall not exceed fourteen days unless the applicant consents to an extension of the period.

71 Zimbabwean office of intermediary of association of underwriters

An intermediary of an association of underwriters shall maintain an office in Zimbabwe and shall notify the Commission in writing—

- (a) of the address of office and such other particulars regarding the office as the Commission may reasonably require:

Provided that an intermediary of an association shall, within 14 days before such change of address, notify the Commission of the change; and

- (b) without delay, of any change in the particulars referred to in paragraph (a).

72 Principal officer of intermediary of association of underwriters

(1) Every intermediary of an association of underwriters, other than an intermediary who is an individual, shall, with the approval of the Commission, at all times have a principal officer in Zimbabwe who is an individual ordinarily resident in Zimbabwe and responsible for the control and supervision of the insurance or insurance-related business of the intermediary in Zimbabwe.

(2) Anything which the principal officer of an intermediary of an association of underwriters does in his or her capacity as principal officer shall be deemed for the purposes of this Act to have been done by the intermediary:

Provided that this subsection shall not be construed as limiting—

- (a) the principal officer's personal liability for his or her conduct; or
 (b) the liability of the intermediary under any other law for the principal officer's conduct.

(3) If a principal officer is or is about to be absent from Zimbabwe or for any other reason unable to perform his or her functions as principal officer—

- (a) for a period not exceeding ninety consecutive days, the intermediary of association of underwriters shall appoint another person resident in Zimbabwe to act in his or her place while the principal officer is absent from Zimbabwe or unable to perform his or her functions; or
 (b) for a period exceeding ninety consecutive days, the intermediary of association of underwriters shall revoke the principal officer's appointment.

(4) Either before appointing or re-appointing a principal officer, whether in an acting or a substantive capacity, or as soon as possible after making such an appointment or re-appointment, an intermediary of an association of underwriters shall notify the Commission, in writing, of the appointment or re-appointment, giving the Commission such information as may be prescribed.

(5) An intermediary that contravenes subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding level six.

73 Annual returns by intermediaries of associations of underwriters

(1) Every intermediary of an association of underwriters shall, within ninety days from the end of each financial year, submit to the Commission, in such form as may be prescribed—

- (a) such accounts and other documents as may be prescribed; and
 (b) a return setting out such information as may be prescribed;

in regard to the insurance or insurance-related business conducted by him or her during that financial year in his or her capacity as an intermediary.

(2) The accounts, documents and return referred to in subsection (1) shall be audited by an auditor appointed by the intermediary concerned.

(3) Sections 55, 56 and 57(2) shall apply, with any necessary changes, to the auditor referred to in subsection (2) as if the intermediary were a registered insurer.

(4) If an intermediary of an association of underwriters, without just cause, fails to submit an account, document or return to the Commission in terms of subsection (1) the intermediary shall be in default and liable to a category 1 civil penalty order.

74 Cancellation of registration and prohibition of activities of intermediary of association of underwriters

(1) If an intermediary of an association of underwriters is no longer permitted by the association to act as an intermediary for or on behalf of a member of the association such association shall notify the Commission in writing of that fact, and the Commission shall by written notice to the intermediary cancel his or her registration as an intermediary.

(2) If the Commission has reasonable grounds for believing that an intermediary of an association of underwriters has—

- (a) furnished any false information in connection with an application for registration as an intermediary; or
- (b) in his or her capacity as an intermediary, made a material misrepresentation to any member of the public in connection with the entering into of any insurance contract; or
- (c) failed to comply with a condition subject to which he or she has been registered as an intermediary; or
- (d) wilfully continued or repeated a contravention of a provision of this Act after the Commission has notified him or her of the contravention;

the Commission may, subject to subsection (3), by written notice to the person concerned, cancel his or her registration as an intermediary.

(3) Before acting in terms of subsection (2), the Commission shall notify, in writing, the intermediary concerned that it proposes to cancel his or her registration and of the reasons for proposing to do so:

Provided that, if the Commission believes on reasonable grounds that it is not possible so to notify the intermediary at his or her office or place of business, the Commission shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the intermediary's office is situated and any media approved by the Commission, stating that his or her registration will be cancelled unless he or she lodges an appeal with the Minister in terms of section 127, within thirty days from the date of such publication.

(4) The Commission shall not cancel a person's registration in terms of subsection (2)—

- (a) until the period within which an appeal may be lodged in terms of section 127 has elapsed unless the person concerned has consented to the cancellation;
- (b) if an appeal is lodged in terms of section 127, until the appeal has been abandoned or withdrawn or, where it has proceeded to finality, the Commission is notified that its decision has been upheld.

(5) The Commission may cancel the registration of an intermediary of an association of underwriters if the intermediary so requests and the Commission is

satisfied that all his or her liabilities in respect of his or her insurance or insurance-related business have been met or that acceptable provision has been made to meet them:

5 Provided that, if the Commission refuses to cancel an intermediary's registration in terms of this subsection, it shall, within five working days after reaching that decision, notify the intermediary, in writing, of the decision and of the reasons for it.

(6) If an association of underwriters or the representative of such an association at any time fails to comply with section 67, 68, 69 or 76(2), the Commission—

- 10 (a) may, by notice in the *Gazette*, prohibit the association's intermediaries from performing in their capacities as such any act other than collecting outstanding premiums;
- 15 (b) shall appoint a suitable person to carry out the functions conferred or imposed upon the association's representative in terms of this Act, to the extent that such functions relate to the association's trust account, as if such a person were the association's representative;

for so long as the association or its representative, as the case may be, fails to comply with the section concerned.

20 (7) This section shall not be construed as absolving an intermediary of an association of underwriters from any liability or obligation incurred by him or her before the date on which his or her registration as an intermediary was cancelled or he or she was prohibited from performing any act in terms of subsection (6)(a), as the case may be.

25 (8) Sections 9 and 10 shall apply, with necessary changes, to the cancellation of registration of an association of underwriters.

75 Claims against members of association of underwriters

30 (1) A competent court of Zimbabwe shall have jurisdiction to determine any claim dispute against a member of a registered association of underwriter arising from a policy entered into by virtue of anything done by an intermediary of that association.

35 (2) In any proceedings instituted in respect of a claim referred to in subsection (1), the representative of the association concerned may be cited as nominal defendant or respondent.

76 Payment of certain claims against members of association of underwriters

40 (1) Any claim against a member of an association of underwriters arising from a policy entered into by virtue of anything done by an intermediary of that association may be paid out of the moneys standing to the credit of the association's trust account or from any assets referred to in section 68(3) or from any amount due to members of the association in respect of anything done by an intermediary of the association in his or her capacity as such.

45 (2) The representative of an association of underwriters shall, upon production to him or her of a warrant of execution issued under an order of a competent court in respect of a claim referred to in subsection (1), pay the amount due under the warrant out of the money standing to the credit of the association's trust account or from any assets referred to in section 68(3) or from any amount due to members of the association in respect of anything done by an intermediary of the association in his or her capacity as such.

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77 Service of process

Where any process in legal proceedings against an association of underwriters or a member or intermediary such an association is required to be served on—

- (a) the representative of the association, the process may be served by delivering a copy at the address referred to in section 67(1);
- (b) an intermediary of the association, the process may be served by delivering a copy at the address referred to in section 71.

PART X**PROVISIONS RELATING TO INSURANCE POLICIES GENERALLY****78 Policy not invalid by reason of failure to comply with law**

A policy issued by any person whether before, on or after the appointed day, shall not be invalid merely because that person or his agent contravened or failed to comply with any law in force, including this Act, applying to that policy.

79 Right of action by policy owner against insurer

(1) Notwithstanding anything to the contrary in the policy concerned or in any agreement relating to the policy, the owner of a policy shall be entitled to enforce his or her rights under the policy against the insurer liable under the policy in any competent court in Zimbabwe:

Provided that a policy may validly provide that the amount of any liability under the policy shall be determined in accordance with the Arbitration Act [*Chapter 7:15*].

(2) Any question of law arising in any proceedings relating to a policy which is instituted in Zimbabwe by the owner against the insurer liable under the policy shall, subject to this Act, be decided in accordance with the law in force in Zimbabwe.

80 Sums insured, etc., to be stated in currency of Zimbabwe

(1) Every sum of money mentioned in any policy shall be stated in the functional currency of Zimbabwe, unless the parties to the policy have agreed that any sum of money mentioned in the policy shall be stated in some currency other than the currency of Zimbabwe.

(2) If the parties to a policy have agreed that any sum of money mentioned in the policy shall be stated in a currency other than the currency of Zimbabwe, that fact and the currency in question shall be stated or endorsed on the policy in distinct terms in printed or typed letters no smaller than, and as legible as, the letters of the other provisions of the policy.

81 Policies to be printed legibly

No person shall issue a policy in a form, the printed provisions of which, whatever their nature, are not stated in a clear type-face in letters of a uniform size of not less than ten point.

82 Electronic policies

(1) No registered insurer shall conduct electronic insurance business without the approval of the Commission.

(2) Every registered insurer which wishes to conduct electronic insurance business shall submit such documents as the Commission shall prescribe.

(3) Every registered insurer which conducts electronic insurance business shall, at the conclusion of the electronic insurance contract, avail a copy of the policy document, whether electronic or otherwise, to the policy owner.

(4) No registered insurer which conducts electronic insurance business shall deduct a premium from the prospective policy owner unless that insurer has received a signed copy of the policy document from the prospective policy owner.

(5) Where an insurer deducts or receives a premium in terms of subsection (4), the insurer shall reimburse the policy owner with interest at a prescribed interest rate:

Provided that the policy owner decides to rescind the contract.

(6) Any person who contravenes this section shall be in default and liable to a category 1 civil penalty order.

83 Insurer to inform insured of duty to disclose material facts

(1) Before entering into, renewing, varying or reinstating a policy, an insurer shall inform the insured clearly, in writing, that the insured has a duty to disclose every fact or circumstance that would materially affect—

(a) the calculation of the risk insured; or

(b) the decision whether or not to enter into, renew, vary or reinstate the policy, as the case may be;

and that the duty to disclose such a fact or circumstance exists whether or not the insured has been asked about it.

(2) An insurer that fails to comply with subsection (1) shall not be entitled to avoid any liability under the policy concerned on the ground of non-disclosure of a fact or circumstance referred to in that subsection, unless the non-disclosure was fraudulent.

(3) It shall be sufficient compliance with subsection (1) for an insurer to provide the insured with a clearly legible document in the form prescribed, within fourteen days.

84 Effect of non-material misrepresentation by insured

(1) In this section—

“domestic policy ” means a policy which has been entered into anywhere on an application made or presented in Zimbabwe to the insurer or to an insurance broker or to an agent of the insurer or insurance broker, and—

(a) includes a life policy issued outside Zimbabwe but subsequently made payable in Zimbabwe at the request of the owner, where the owner has agreed in writing that it should be regarded as a domestic policy;

(b) does not include a life policy issued in Zimbabwe but subsequently made payable outside Zimbabwe at the request of the owner, where the owner has agreed in writing that it should not be regarded as a domestic policy.

(2) Notwithstanding anything to the contrary in the domestic policy concerned or in any document relating to it, no—

(a) domestic policy shall be invalidated; and

(b) obligation or liability of an insurer under a domestic policy shall be excluded or limited; and

(c) obligation or liability of the owner of a domestic policy shall be increased; on account of any misrepresentation made to the insurer, whether or not the misrepresentation was warranted to be true, unless its correctness was such as is likely to have materially affected the assessment of the risk insured when the domestic policy was issued, renewed, varied or reinstated. 5

(3) Subsection (2) shall apply in respect of any domestic policy, whether issued before, on or after the appointed date.

85 Certain provisions in policies to be void 10

A provision in a policy to the effect that—

(a) the insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to the policy; or 15

(b) the insured declares or admits that a person who acted on behalf of the insurer in negotiations preceding the issue of the policy, was in fact appointed to act on behalf of the insured; or 20

(c) a person who has entered into the policy, or the insured under the policy, waives a right to which he or she is entitled under this Act; 25

shall be void.

86 Insurance on credit 25

(1) A registered insurer may issue insurance policies on credit.

(2) Every registered insurer which issues an insurance policy on credit must record on the policy document that the policy is on credit. 30

(3) Every policy owner shall be entitled to the full value of the claim less premiums due for insurance policy on credit referred to in subsection (1).

(4) The Commission, after carefully assessing the content of the policy document, may come to the conclusion that certain policy is on credit: 35

Provided that the Commission shall invite representations from the insurer concerned before reaching its conclusion. 40

(5) Once the Commission has reached the conclusion referred to in subsection (4), every policy owner shall be entitled to the claim as specified in subsection (3).

(6) A registered insurer which contravenes subsections (2) and (3) shall be guilty of an offence and liable to a fine not exceeding level ten. 45

87 Prohibition of certain deductions in payment of claims

Where an insurer pays a claim arising under a policy, no deduction shall be made in respect of premiums or debts due to the insurer under any other policy, unless the person to whom the payment is made consents in writing to the deduction. 50

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88 Commission may give certain directions in relation to the treatment of policy owners by insurers

(1) The Commission may, from time to time, set standards for the conduct of the business of insurance to ensure protection of policy owners and promotion of a safe and stable insurance industry.

(2) The standards referred to in subsection (1) may be set through—

- (a) guidelines; or
- (b) directives; or
- (c) statements of prudent norms.

(3) Any person who fails to comply with any requirement issued in terms of this section shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

PART XI**PROVISIONS RELATING TO LIFE, SINKING FUND AND FUNERAL POLICIES****89 Restriction of payment on death of children under fourteen years of age**

(1) No insurer shall insure the life of a child who is under the age of fourteen years for any sum of money which exceeds or which, when added to any amount which the insurer knows is payable on the child's death by any other insurer, exceeds such amount as may be prescribed:

Provided that this section shall not prohibit the issue of a policy providing for the payment, on the death of a child, of a sum not exceeding the prescribed amount and, in addition, the aggregate of all the premiums paid in respect of the policy, plus interest on each premium at a rate not exceeding five per centum per annum compounded yearly.

(2) An insurer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

90 Life policies effected by married persons

(1) Notwithstanding any other law but subject to this Part, a married person may—

- (a) effect and own a life policy;
- (b) hold and, by way of gift or otherwise, acquire from or dispose of to any person, including his or her spouse, any interest in a life policy;
- (c) hold—
 - (i) any moneys paid by the insurer in respect of any interest held by him or her in a life policy or any assets acquired by him or her with those moneys;
 - (ii) any moneys or assets acquired by him or her in respect of the disposal of any interest held by him or her in a life policy or any assets acquired by him or her with those moneys;
- (d) dispose of to any person, including his or her spouse, by way of gift or otherwise, any moneys or assets referred to in paragraph (c);

in all respects as if he or she were a single person of full age and capacity.

- (2) Subsection (1) shall apply in relation to—
- (a) a life policy effected by a married person before his or her marriage;
 - (b) any interest in a life policy acquired by a married person before his or her marriage;
 - (c) any moneys— 5
 - (i) due or paid to a married person before his or her marriage in respect of a life policy referred to in paragraph (a) or any interest in a life policy referred to in paragraph (b); or
 - (ii) acquired by him or her before marriage in respect of the disposal of any interest in a life policy;
 - (d) any assets acquired by a married person before his or her marriage with moneys referred to in paragraph (c); 10
- as if the policy, interest, moneys or assets was or were effected or paid to or acquired by him or her or became due during his or her marriage. 15

91 Life policy on own life: protection afforded during life

(1) If a life policy effected by a person, whether married or not, on his or her own life has endured for at least three years from the date of the payment of the first premium, and during the person's lifetime the policy— 20

- (a) is attached in execution of a judgment or order of a court at the instance of a creditor of that person; or
- (b) becomes part of that person's insolvent estate; 25

the policy shall, to the extent specified in subsection (2), be protected against the person's creditors and against any claim in connection with the attachment or the insolvency.

(2) The protection afforded by subsection (1) in respect of a life policy shall extend to so much of the realisable value of the policy which does not exceed such amount as may be prescribed: 30

Provided that—

- (a) where there are two or more such policies on a person's life, their realisable value shall be aggregated for the purpose of determining the extent of the protection afforded by subsection (1); 35
- (b) where any such policy is hypothecated, that part of its realisable value which is hypothecated shall not be included as part of the prescribed amount protected by subsection (1). 40

(3) Where a life policy is afforded protection in terms of subsection (1)(b), the liquidator shall notify the insurer concerned, who shall issue an endorsement to the policy to the effect that during the time that the policy owner remains an un-rehabilitated insolvent the policy may only be dealt in with the permission of the liquidator or, if there is no liquidator, of the Master of the High Court. 45

(4) In this section—

- (a) a life policy which an insurer issues in exchange for or in consideration of the surrender of another life policy under which the insurer was previously liable shall be regarded as having been effected on the date on which the surrendered policy was issued if the insurer received no payment other than the value of the surrendered policy as consideration for the new policy; 50
- (b) a life policy which an insurer issues in terms of section 96(3)(b) shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued. 55

92 Life policy on own life: protection afforded on death

(1) If a life policy effected by a person, whether married or not, on his or her own life has endured for at least three years from the date of the payment of the first premium and, on the person's death—

- 5 (a) the person's liabilities exceed his or her assets, whether or not the person has been declared an insolvent; and
- (b) the person has left a surviving spouse, child or parent;

any moneys payable to the person's estate under the policy shall be paid to his or her estate and such moneys, not exceeding in the aggregate such amount as may be prescribed, shall devolve upon the surviving spouse, child or parent in accordance with 10 any valid will or through the law of intestacy, as the case may be, and shall not be liable to be attached at the instance of a creditor or other person.

(2) In calculating, for the purposes of subsection (1), whether a deceased 15 person's liabilities exceed his or her assets, any life policy such as is referred to in that subsection shall not be included to the extent that the life policy or the aggregate of all such life policies does not exceed such amount as may be prescribed.

93 Protection for life policy in favour of spouse or children

(1) In this section—

"child", in relation to a person, includes a child yet to be born to that person; "spouse" includes an intended spouse.

25 (2) If a person effects a life policy on his or her life or on the life of his or her spouse, and nominates the spouse and additionally, or alternatively, any of his or her children as beneficiaries under the policy, or cedes the policy to the spouse and additionally, or alternatively, any of the children, the policy or moneys due under it shall not—

- 30 (a) be liable to be attached in execution of a judgment or order of a court at the instance of a creditor of any person to whom the policy was ceded or in whose favour the policy was effected or who has been nominated as beneficiary of the policy; or
- 35 (b) form part of the insolvent estate of the person to whom the policy has ceded or in whose favour the policy was effected or who has been nominated as beneficiary under the policy:

Provided that the protection afforded by this section—

- 40 (i) shall be subject to the terms and conditions of the policy or the nomination or cession; and
- (ii) shall not, together with the protection afforded in respect of life policies elsewhere in this Act, exceed such amount as may be prescribed.

45 (3) A benefit conferred in terms of subsection (2) upon a spouse or child under a life policy referred to in that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject to the terms and conditions on which the policy was ceded or effected or the nomination was made, as the case may be, be enforceable against the insurer liable under the policy at the suit of the spouse or child or the legal representative of the spouse or child, notwithstanding that the spouse or child has not accepted the benefit 50 and is not a party to the contract of insurance.

94 Special provisions relating to persons married in community of property

(1) If a premium under a life policy effected by a spouse married in community of property, or in which a spouse married in community of property holds any interest, is paid out of moneys which belong to the joint estate and the liabilities of the spouses continuously exceed the value of their assets from the time the premium was paid until the joint estate is sequestrated as insolvent, the spouse by whom the policy was effected or who holds the interest in the policy shall be liable to pay into the insolvent estate the amount of the premium in so far as its payment created or increased the excess of liabilities over assets. 5

(2) If a person married in community of property who has effected a life policy or has acquired and holds any interest in a life policy earns or otherwise acquires any money without utilising for the purpose any assets belonging to the joint estate, he or she may, without his or her spouse's consent, use that money for the purpose of paying any premium due under the policy. 10 15

95 Selection for realisation of life policies in respect of which protection is afforded

If— 20

- (a) two or more life policies which are protected under section 91, 92 or 93, being the property of one person, are attached in execution of a judgment or order of a court at the instance of a creditor; or
- (b) the owner of two or more life policies which are protected under section 91, 92 or 93 is adjudged or otherwise declared insolvent; 25

and a part only of the aggregate realisable value of the policies is protected, the judgment creditor or, as the case may be, the liquidator of the insolvent estate shall determine which policy or policies shall be attached, wholly or partly, in order to make available to him or her so much of the aggregate realisable value as is not protected. 30

96 Partial realisation and partial conversion of life policies

(1) A judgment creditor of the owner of a life policy or the liquidator of the owner's insolvent estate who is entitled to a part of the realisable value of the policy may, if he or she is in possession of the policy, deliver it to the insurer liable under the policy so that the sum to which the judgment creditor or liquidator is entitled to can be paid. 35

(2) If a judgment creditor or liquidator referred to in subsection (1) is not in possession of the life policy to which that subsection relates, the owner or any other person in possession of the policy shall, at the request of the judgment creditor or liquidator, deliver it to the insurer liable under the policy so that the sum to which the judgment creditor or liquidator is entitled to can be paid. 40 45

(3) On receipt of a life policy delivered to it in terms of subsection (1) or (2), the insurer shall—

- (a) at the request of the judgment creditor or liquidator, pay to him or her a sum equal to the part of the realisable value of the policy to which he or she is entitled; 50
- (b) at the request of the owner of the policy, issue to him or her a new policy of the same class, but for a sum insured equal to the difference between— 55
 - (i) the full sum insured under the old policy, including any bonus which may have accrued in connection therewith; and

- (ii) an amount which bears the same ratio to the full sum insured under the old policy, including any bonus, as the amount paid by the insurer to the judgment creditor or liquidator referred to in subsection (1) bears to the full realisable value at the time of the old policy.

5 (4) If an insurer has made the payment and issued a new life policy as is provided in subsection (3), the old life policy shall lapse.

97 Provisions where life policy ceded or trust policy cannot be kept up

- (1) Subject to subsection (2), if a person who—
- 10 (a) has effected or ceded a life policy for the benefit of his or her spouse and additionally, or alternatively, children, including unborn children, or any of them; or
- 15 (b) holds a life policy in trust for any other person and is obliged to pay the premiums on the policy;
- is or has been unable to pay the premiums, that person may agree with the insurer liable under the policy—
- 20 (c) to exchange the policy for a paid-up policy of a value equal to that of the original policy according to the current tariff of the insurer, payable at the time and in the manner stipulated in the original policy to the person entitled to the sum insured by the original policy; or
- (d) to borrow from the insurer upon security of the policy such sums as may be necessary to keep the policy in force or to revive it; or
- 25 (e) to apply the value of any bonus which may have accrued in connection with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

- (2) A person referred to in subsection (1) may not act under that subsection
- 30 without—
- (a) the consent of each person who has an interest in the policy;
- (b) if any person referred to in paragraph (a) is a minor, the consent of his or her guardian or, failing such consent, of the Master of the High Court;
- 35 (c) if an unborn child would on his or her birth have an interest in the policy, the consent of the Master of the High Court.

98 Life policies ceded or premiums paid with intent to prejudice creditor

(1) This Part shall not be construed as derogating from the power of a competent court to set aside, in terms of the Insolvency Act [*Chapter 6:07*], any cession of a life policy made with intent to benefit someone at the expense of a creditor.

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(2) If one or more premiums upon a life policy were paid with intent to benefit a person at the expense of a creditor of the person making the payment, a competent court may order the owner of the policy to pay a sum equal to the aggregate of all premiums so paid, with interest—

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- (a) at such rate as the Commission may prescribe; or
- (b) if the Commission has not prescribed a rate, at the rate prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*];

50 on the amount of each premium so paid from the date of its payment, to the person to whose detriment the premium was or the premiums were paid or, if the person has been adjudged or otherwise declared insolvent, to the liquidator of his or her insolvent estate.

(3) An order for the payment of a sum of money in terms of subsection (2) shall have the effect of pledging the life policy referred to in that subsection to the person entitled to the payment as security for the payment and, until the payment is made, that person shall be entitled to possess the policy.

99 Proof of age

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If—

- (a) a claim is made for the benefit of any person under a life policy which has endured for a period of at least three years from the date of payment of the first premium; and
- (b) the age or date of birth of the insured has not been admitted by the insurer liable under the policy; and
- (c) the person claiming the benefit shows that, owing to circumstances beyond the control and through no default either of himself or of the person by whom the policy was effected, there was, at no time after the date of the payment of the first premium under the policy, either in existence or available any documentary evidence affording reasonable proof of the age or date of birth of the insured;

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any written statement made in the proposal or application for the policy as to the age or date of birth of the insured shall be accepted for the purposes of the claim as the correct age or date of birth of the insured, unless the contrary is proved by records of a medical examination of the insured, made at the instance of the insurer, within the period of three years referred to in paragraph (a) or in any other manner.

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100 Age incorrectly stated

(1) If after the issue of a life policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the sum insured and other benefits under the policy shall, subject to subsection (2), be the same as those which the premiums payable under the policy would have secured had the policy been based upon a correct statement of the age of that person.

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(2) If the Commission is satisfied that the actuarial nature of life policies of any kind is such as to render the application of subsection (1) inadequate, the Commission may direct an insurer to apply, in relation to policies of that kind, such other method of making adjustments in respect of incorrect age as may appear to the Commission to be equitable.

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101 Exclusions and death by own act

(1) A life policy in which it is provided that the policy shall be void in the event of the insured dying by his own act within a stipulated period shall not be void for that reason if the insured dies by his own act after the expiry of that period:

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Provided that such a provision in a life policy shall not apply where it can be proven that the insured was mentally challenged at the time of death by his or her own act.

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(2) A life policy which contains no provision such as is referred to in subsection (1) shall not be void by reason of the insured dying by his or her own act at any time after the issue of the policy.

(3) A life policy in which it is provided that the policy shall be void if a specified event occurs within a stipulated period shall not be void for that reason if the specified event occurs after the stipulated period.

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102 Lost or destroyed life policy document

(1) If a life policy document is lost or destroyed and the loss or destruction is proved and advertised in the manner prescribed, the insurer liable under the policy shall, at the request of the policy owner and on payment by the policy owner to the insurer of the prescribed fee, issue to the policy owner—

- (a) a correct and certified copy of the policy document upon which is inscribed any endorsement made by the insurer on the original policy document after its issue; and
- (b) a correct and certified copy of any record in the possession of the insurer of any dealings with the policy after its issue.

(2) A certified copy of a life policy document issued in terms of subsection (1) shall for all purposes—

- (a) take the place of the policy document lost or destroyed; and
- (b) be the sole evidence of the contract made by the policy.

(3) Where the original copy document of the life policy referred to in subsection (1) is subsequently recovered, the recovered copy shall be null and void and the owner or any other person in possession of such copy must, without delay, submit it to the insurer.

(4) Where a policy document is lost or destroyed, the liability of the insurer shall not be absolved.

103 Life policy may include disability benefits

(1) If a registered insurer, by notice in writing—

- (a) informs the Commission that it intends to issue life policies which provide benefits—
 - (i) on the total or partial permanent disablement of the person whose life such a policy insures; or
 - (ii) on the death of the person whose life such a policy insures as a result of an accident or a particular disease; and
- (b) requests the Commission that the policies referred to in paragraph (a) be treated, for the purposes of this Act, as life policies only;

any such policy issued by the insurer after notification to the Commission in terms of this subsection shall, subject to the approval of the Commission and to subsection (2), be treated, for the purposes of this Act, as a life policy only.

(2) A policy referred to in subsection (1) (a) shall not be treated, for the purposes of this Act, as a life policy only if the value of the benefits referred to in subparagraph (i) or (ii), as the case may be, of subsection (1)(a) which it provides exceeds an amount equal to the aggregate of the premiums payable under the policy in respect of the period of the disability, together with—

- (a) in the case of a policy other than a deferred annuity policy—
 - (i) a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date of termination of the risk of the life insurance proper effected by the policy, amounting to one and one quarter per centum of the sum payable under the policy on the death of the person; or
 - (ii) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures;

- (b) in the case of a deferred annuity policy, a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date as from which the annuity will become payable, amounting to one-twelfth of the annuity.

(3) Where a life policy providing benefits such as are described in subsection (1)(a) cannot be treated as a life policy only, whether because the Commission has refused approval under subsection (1) or because of the provisions of subsection (2), the policy shall be treated, for the purposes of this Act, as both a life and a personal accident policy.

(4) Where a life policy referred to in subsection (1) was, immediately before the appointed day, treated as a life policy only or as both a life policy and a personal accident policy, it shall continue to be treated as such for the purposes of this Act.

104 Discrimination between life policies, etc., prohibited

(1) No insurer shall make or permit to be made any discrimination in respect of the rate of premiums charged or the rate of bonuses granted between life policies which are of the same kind and under which persons whose lives are insured have an equal expectation of life.

(2) Subsection (1) shall not apply to life policies which—

- (a) are reinsurance contracts; or
- (b) are for large sums at preferential rates in accordance with the current tariff of the insurer concerned; or
- (c) insure at preferential rates the lives of persons under a group life insurance scheme; or
- (d) are of a prescribed class.

(3) No insurer or insurance broker and no director or employee or agent of an insurer or insurance broker shall pay, allow or give or offer to pay, allow or give, directly or indirectly preferential treatment in connection with a bonus or other benefit under a life policy as an inducement to insure.

(4) No person shall knowingly receive as such any preferential treatment referred to in subsection (3) as an inducement to insure.

(5) No director, employee or agent of an insurer shall accept any proposal or application for a life policy in respect of which—

- (a) a promissory note, bill of exchange or other instrument, not being a cheque payable on the date of issue; or
- (b) an acknowledgement of debt, not being stop order;

in favour of the insurer or any person whatsoever has been given for the first year's premium or any part thereof.

(6) A person who contravenes subsections (1), (3), (4) or (5) shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

105 Application of this Part to sinking fund policies

Sections 89 to 98 shall apply, with any necessary changes, to sinking fund policies.

106 Application of this Part to funeral policies and other provisions regarding such policies

(1) Sections 89 to 99, 102 and 104 shall apply, with any necessary changes, to funeral policies.

5 (2) If after the issue of a funeral policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the benefits under the policy shall not be affected thereby, but the premiums payable under the policy from the date on which the person became insured shall be deemed to be those which would have been required had the age been correctly stated, and the insurer liable under the
10 policy shall—

(a) be entitled to recover from the owner of the policy any resultant shortfall in the premium actually paid; or

(b) refund to the owner of the policy any resultant over-payment of premiums;
15 as the case may be.

(3) A funeral policy shall provide that the owner of the policy may, at his or her option, be entitled to a sum of money instead of each funeral or other non-monetary benefit for which provision is made in the policy.
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(4) An option referred to in subsection (3) and the sum of money to which it relates shall be stated expressly and clearly in the funeral policy and in every premium receipt book issued in connection therewith, in printed or typed letters no smaller than, and as legible as, the letters of the policy.
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(5) If the Commission is of the opinion that a sum of money stated in a funeral policy in terms of subsection (4) does not approximate to the value of the funeral or other non-monetary benefit for which provision is made in the policy, the Commission shall declare the amount of money which, in its opinion, is equal to the value of the funeral or other benefit provided for in the policy, and the policy shall be deemed to
30 state the amount so declared.

(6) In a funeral policy the amount declared by the Commission in terms of subsection (5) or, if no amount is so declared, the sum of money stated in the policy in terms of subsection (4), shall be deemed to be the sum insured.
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107 Days of grace, paid-up policies and non-forfeiture provisions: life and sinking fund policies

(1) Subject to subsections (2), (3) and (4), if a premium under a life policy or sinking fund policy has not been paid on its due date the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full sum insured without the payment of a further premium for a period of one month as from the due date of the first unpaid premium and, if the premium is paid within the month, the policy shall continue as such to be
40 in force.

45 (2) Where a premium has not been paid within the one month referred to in subsection (1)—

(a) the policy shall not lapse for a further period of sixty days from the date of the expiry of the said one month period;

(b) the policy owner shall not be entitled to any cover during the sixty day period referred to in paragraph (a);
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(c) the policy shall be revived upon payment of the outstanding premiums by the policy owner within the sixty day period;

(d) and after the expiry of the sixty days referred to in paragraph (a), the policy shall lapse.

(3) Where a premium is not paid within the one month period referred to in subsection (1), the insurer shall, in writing and within the said one month, notify the policy owner of that fact and the rights and consequences thereof referred to in subsection (2). 5

(4) Where an insurer fails to comply with subsection (3), the policy shall remain in force.

(5) If the premiums under a life policy or sinking fund policy are payable at monthly intervals, or at intervals of less than one month, subsection (1) shall have effect as if the references in that subsection to “one month” and “month” were references to such a lesser interval. 10

(6) If a claim under a life policy or sinking fund policy arises during the period of grace provided for in this section, the insurer liable under the policy shall be entitled to deduct the amount of the unpaid premium from the claim. 15

(7) If, under a policy which is—

- (a) a life policy under which at least three years’ premiums have been paid; or 20
- (b) a sinking fund policy under which at least three years’ premiums have been paid;

a premium has not been paid within the period specified in subsection (1) or (2), as the case may be, the insurer liable under the policy shall, in accordance with rules made by the insurer and approved by the Commission, either issue, in return for and instead of the policy, a paid-up policy which shall be free from the obligation to pay any premiums thereunder or, unless the policy is a sinking fund policy, apply the non-forfeiture value of the policy in maintaining the policy in force for a period and by a method to be determined in accordance with the rules referred to in this subsection. 25 30

(8) The owner of a policy referred to in subsection (7) may in writing waive the rights conferred upon him or her by that subsection.

(9) The rules referred to in subsection (7) shall specify the basis on which and the methods by which the amount of the non-forfeiture value and the amount of the paid-up policy are to be calculated and whether a paid-up policy such as is referred to in that subsection shall entitle the owner to any future bonuses thereon. 35

(10) Subsection (7) shall not apply in connection with any particular kind of life policy which an insurer has issued or proposes to issue if the Commission is satisfied that the actuarial nature of that kind of policy prevents the insurer from accumulating, in respect of policies of that kind, sufficient funds to enable it to grant any substantial benefit of the kind described in that subsection. 40 45

(11) If a life policy under which at least three years’ premiums have been paid lapses or is dealt with as is provided in subsection (4) and the owner of the policy informs the Commission—

- (a) within thirty days of the date on which he or she is notified by the insurer liable under the policy that the policy has lapsed or has been dealt with in terms of subsection (7); or 50
- (b) if he or she is not so notified, within one hundred and eighty days of the date on which the policy lapsed or has been dealt with in terms of subsection (7); 55

that he or she received no written notice from the insurer within a reasonable time beforehand to the effect that the policy was due to lapse or to be dealt with in terms of

subsection (7), the Commission may, unless the insurer satisfies the Commission that the notice was duly dispatched to the owner at his or her last known residence or place of work within a reasonable time before the policy was due to lapse or to be dealt with in terms of subsection (7), require the insurer to revive the policy on payment of the premium required within a period to be fixed by the Commission.

5 (12) A policy shall be revived in terms of subsection (8) without any alterations in its conditions with effect from the date of the payment of the premium required.

(13) An insurer which, without just cause, fails to comply with the requirements of terms of subsections (8) and (9) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(14) This section shall not be construed as preventing an insurer from granting an owner of a life policy or a sinking fund policy more favourable terms than those specified in this section.

108 Days of grace, paid-up policies and non-forfeiture provisions: funeral policies

20 (1) If a premium under a funeral policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full value of the benefits for a period of thirty days from the date a written notice by the insurer is served on the owner of the policy.

25 (2) The written notice referred to in subsection (1) shall also specify the rights and entitlements of the policy owner referred to in subsections (7) and (8).

(3) Where an insurer fails to comply with the requirements of the written notice specified in subsection (2), the policy shall remain in force

30 (4) If a premium referred to in subsection (1) is paid within the relevant period specified in subsection (1), the insurer liable under the policy shall renew the policy, and if a claim under the policy arises during that period, the insurer shall be entitled to require the owner of the policy to pay the amount of the premium.

35 (5) If, in the case of a funeral policy in respect of which premiums have been paid for five years or more, a premium is not paid within the period specified in subsection (1), the policy shall, subject to this section, remain in force for the appropriate period fixed in terms of subsection (8) for the full sum insured without payment of further premiums.

40 (6) If an insurer's liability under a funeral policy is contingent upon the death of two or more persons and the policy provides for a benefit on the death of a person who is under the age of twenty-one years and who is not the owner of the policy or his or her spouse, no benefit shall be claimable under that policy on that person's death if it occurs after he or she has attained the age of twenty-one years.

45 (7) If an insurer's liability under a funeral policy is contingent upon the death of one person only, who was under nine years of age when the policy was issued, the period fixed in terms of subsection (8) shall be computed as if the policy had been issued on the anniversary of the date of its issue when that person was between nine and ten years of age.

50 (8) Subject to subsection (10), a funeral policy referred to in subsection (5) shall remain in force for the appropriate period specified in the first column of the

Schedule in accordance with the number of years for which premiums were paid under the policy specified opposite thereto in the second column of the Schedule.

(9) If, in the case of a funeral policy in respect of which premiums have been paid for five years or more, a premium is not paid within the period specified in subsection (1), the policy shall remain in force and the policy owner shall be entitled, at the time of a claim, to the paid up policy value if he or she has abandoned his or her right in terms of subsection (7). 5

(10) Every registered insurer shall ensure that every funeral policy has a maturity date:

Provided that—

- (i) the maximum maturity period for every funeral policy shall be twenty-five years; 10
- (ii) the Commission may direct an insurer to change the maturity period of a funeral policy if the Commission is of the opinion that maturity period is excessive taking into account the premiums payable under the policy, the sum assured and any other factor which the Commission considers necessary. 15

(11) This section shall not be construed as preventing an insurer from granting an owner of a funeral policy more favourable terms than those specified in this section. 20

PART XII

SUPERVISION AND INVESTIGATION OF REGISTERED PERSONS 25

109 Appointment of inspectors

(1) For the purpose of assisting the Commission to monitor and supervise registered persons or any class of registered persons, to carry out investigations and to ensure compliance with this Act, the Commission may appoint as inspectors— 30

- (a) any of its employees; and
- (b) subject to the Public Service Act [*Chapter 16:04*], any member of the Public Service; and 35
- (c) any other person who, in the Commission's opinion, has the necessary experience, qualifications or skill to exercise all the functions of an inspector or any particular such function, as the case may be.

(2) The Commission may appoint a body corporate or an association as an inspector in terms of subsection (1)(c), and where it does so— 40

- (a) all officers and employees of the body corporate who are designated by the body's chief executive officer or the equivalent shall be inspectors; 45
- (b) all members and employees who are designated by the association's committee or other managing body shall be inspectors.

(3) The Commission shall provide every inspector with a document identifying him or her as an inspector, and he or she shall produce it on request by any interested person: 50

Provided that, where the Commission has appointed a body corporate or an association as an inspector, the Commission may delegate to the body's chief executive officer or his or her equivalent or the association's committee or managing body the function of issuing such identity documents. 55

110 Powers of inspectors

(1) In the exercise of his or her functions under this Act, an inspector may, subject to subsection (2)—

- 5 (a) at any time during normal office hours, without prior notice, enter a registered person's business premises or any other premises in which it is believed on reasonable grounds that there are documents pertaining to a registered person's insurance business or insurance-related business;
- (b) require any employee or agent of a registered person to produce any of the registered person's documents;
- 10 (c) having entered a registered person's premises in terms of paragraph (a)—
 - (i) search the premises for any moneys or records pertaining to the registered person's insurance business or insurance-related business;
 - 15 (ii) open or cause to be opened any strong-room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the registered person's moneys or records;
 - (iii) examine and make extracts from and copies of any of the registered person's records;
 - 20 (iv) remove any records from the premises, for so long as may be necessary for the purpose of examining them or making extracts from or copies of them:

Provided that the inspector shall give a full receipt for any records so removed;

- 25 (d) require any employee or agent of a registered person—
 - (i) to explain any entry in the registered person's records or accounts;
 - (ii) to provide the inspector with such information concerning the registered person's management or activities;
- 30 as the inspector may reasonably require.

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the registered person or of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

111 Action that may be taken by Commission upon discovering illegal conduct by registered person

(1) If, following a report by an inspector and, where appropriate, after considering any representations made by the registered person concerned in terms of subsection (2), the Commission is satisfied that a registered person has contravened any term or condition of his or her registration or any provision of this Act or any directive, requirement or order made under this Act, the Commission may, subject to this section, do any one or more of the following—

- 45 (a) issue a warning to the registered person;
- (b) require the registered person to appoint a person who, in the Commission's opinion, is qualified to advise the institution on the proper conduct of his or her business;
- 50 (c) issue a written instruction to the registered person to undertake remedial action specified in the instruction;
- (d) impose a civil penalty on the registered person, not exceeding the equivalent of a fine of level 10 a day for each day that the contravention has continued;

- (e) instruct the registered person to suspend or remove any of his or her directors or employees;
 - (f) direct the registered person to suspend all or any of his or her insurance or insurance-related business;
 - (g) appoint a person to monitor the registered person's affairs; 5
 - (h) convene a meeting of the shareholders or other owners of the registered person to discuss the remedial measures to be taken;
 - (i) subject to Part XIII, place the registered person under the management of a curator;
 - (j) subject to this Act, amend or cancel the registered person's registration.
- (2) Before taking any action in terms of subsection (1), the Commission shall 10
inform the registered person concerned, in writing, of—
- (a) the contravention of which he or she is believed to be guilty and, in substance, the grounds for that belief; and
 - (b) the action the Commission proposes to take in respect of the alleged 15
contravention;
- and shall afford the registered person an adequate opportunity to make representations 20
in the matter:
- Provided that, where the Commission considers that immediate action is 25
necessary to prevent irreparable harm to the registered person or its policy owners, creditors or shareholders, the Commission may take such action before affording the registered person an opportunity to make representations in terms of this subsection.

112 Investigation into affairs of registered person

- (1) If—
- (a) a registered person has failed to provide the Commission with any 30
document or information required by or under any provision of this Act within the period specified by the provision and has not provided that document or information within a period the Commission deems fair, commencing on the date upon which the Commission or an inspector 35
reminded him or her in writing of his or her failure; or
 - (b) a registered person has provided incorrect or incomplete information to the Commission, and has not furnished correct or complete information 40
within seven days, commencing on the date upon which the Commission or an inspector called upon him or her in writing to correct or complete the information; or
 - (c) any document or information provided to the Commission by a registered person shows that the person has failed to comply with any provision of 45
this Act; or
 - (d) the auditor or actuary of a registered person has informed the person of an irregularity that requires correction and the person has not corrected that irregularity within thirty days, commencing on the date upon which 50
the auditor or actuary called upon the person in writing to correct the irregularity; or
 - (e) the Commission has reasonable grounds to believe that—
 - (i) a registered insurer has failed to maintain the margin of solvency 55
required by section 42; or
 - (ii) any registered person has failed to comply with a prescribed financial requirement;

or

- (f) the Commission has reasonable grounds to believe that a registered person has committed an offence in terms of this Act, other than an offence arising out of conduct referred to in paragraph (a), (b) or (c); or
- 5 (g) the Commission has reasonable cause to believe that the rights of any class of policy owners are being prejudiced by a registered insurer; or
- (h) the Commission has reasonable grounds to believe that a person has or had an interest, direct or indirect, in a registered insurer in contravention of this Act; or
- 10 (i) a registered person or any of his or her employees or agents has prevented an inspector from exercising any of his or her powers in terms of section 110;

and the Commission considers that an investigation is necessary for the purpose of preventing or detecting a contravention of this Act or any other law, the Commission
15 may direct an inspector to conduct an investigation into the registered person concerned or any aspect of his or her management or activities.

(2) It shall not be necessary for the Commission to afford the registered person concerned an opportunity to make representations before it directs an inspector to
20 conduct an investigation in terms of subsection (1).

(3) For the purposes of an investigation in terms of subsection (1), an inspector may—

- 25 (a) seize any securities, records, electronic device or accounts of the registered person concerned which in the inspector's opinion may afford evidence of an offence or irregularity:

Provided that—

- 30 (i) the inspector shall issue a full receipt for any securities, records, electronic device or accounts so seized;
- (ii) any securities, records, electronic device or accounts so seized shall be retained only for so long as may be necessary for the purposes of the investigation;
- 35 (b) examine, whether under oath or otherwise, any person who is or was a director, employee, agent, auditor, legal advisor, valuator, debtor, creditor, policy owner, shareholder or partner of the registered person concerned:

Provided that—

- 40 (i) any person so examined shall be entitled to have his or her legal practitioner present at the examination;
- (ii) no person shall be required to answer any question which he or she would not be required to answer if he or she were a witness in a civil or criminal case before a court;
- 45 (c) require any person referred to in paragraph (b) to produce any security, record or account of the registered person concerned to which he or she has access, or to give any information at his or her disposal relating to the management or affairs of the registered person:

Provided that no such person shall be required to produce anything or to answer any question which he or she would not be required to produce or answer, as the case may be, if he or she were a witness in a
50 civil or criminal case before a court.

(4) A registered person whose securities, records or accounts have been seized under this section shall be entitled, through his or her authorised representative, to

examine, make entries in and make extracts from them during office hours under such supervision as an inspector may determine.

(5) In conducting an investigation in terms of subsection (1), an inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commission of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, with any necessary changes, in relation to an investigation made in terms of this section and to any person summoned to give or giving evidence at that investigation.

(6) Any person who, without just cause, hinders or obstructs an inspector in the exercise of his or her functions under this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(7) If, in the opinion of the Commission, it would be in the interests of existing and prospective policy owners to do so, the Commission may, for the period of an investigation under this section, do one or more of the following necessary measures to a registered insurer being investigated—

- (a) prohibiting the registered insurer from initiating any new insurance business or class of insurance business as the Commission shall specify;
- (b) prohibiting the registered insurer from issuing new policies;
- (c) withholding approval for new business activities or acquisitions;
- (d) restricting the transfer of assets;
- (e) restricting the ownership of subsidiaries;
- (f) restricting activities of a subsidiary where, in its opinion, such activities jeopardise the financial situation of the insurer;
- (g) requiring measures that reduce or mitigate risks;
- (h) requiring an increase in capital;
- (i) restricting or suspending dividend or other payments to shareholders;
- (j) restricting purchase of the insurer's own shares and other assets;
- (k) arranging for the transfer of obligations under the policies from a failing insurer to another insurer that accepts this transfer;
- (l) barring individuals acting in responsible capacities from performing such roles;
- (m) prohibiting and prevent the registered insurer from disposing of any property connected with the insurance business concerned, for which purpose the Commission or inspector may, to such extent as the Commission shall specify;
- (n) prevent the insurer from operating any account with any bank, building society or financial institution.

(8) A registered insurer which, without just cause, fails to comply with a requirement of the Commission in terms of subsection (7) shall be guilty of an offence and liable to a fine not exceeding level fourteen.

113 Procedure on completion of investigation

(1) On completion of an investigation in terms of section 112, an inspector shall forward his or her report thereon to the Commission.

- (2) On receipt of a report in terms of subsection (1), the Commission shall—
- (a) send a report to the registered person who was the subject of the investigation; and

- (b) invite the registered person to make representations on the contents of the report.

(3) A registered person to whom a report has been sent in terms of subsection (2) may, if he or she so wishes, submit to the Commission representations on any of the contents of the report, within fourteen days.

114 Action by Commission following investigation

If, after considering an inspector's report sent to it in terms of section 113(1), together with any representations made by the registered person concerned in terms of that section, the Commission is satisfied that the registered person has contravened any provision of this Act or any directive, requirement or order made under this Act, the Commission shall within fourteen days take any action referred to in section 111(1).

115 Expenses of investigation

(1) The Commission may recover from a registered person who has been investigated in terms of this Part all the expenses necessarily incurred in connection with the investigation.

(2) In any proceedings in a court for the recovery of any expenses referred to in subsection (1), a certificate purporting to be signed by the chairperson of the Commission and setting out the amount of the expenses concerned shall be prima facie proof of the amount.

PART XIII

116 Placing of registered person under curatorship

(1) Where—

(a) the Commission considers that a registered person is in an unsound financial condition and is not operating in accordance with sound administrative and accounting practices and procedures, adhering to proper risk-management policies; or

(b) a registered insurer has failed to comply with the minimum financial requirements prescribed in terms of this Act and the Commission considers that it is unlikely to comply with them unless it is placed in curatorship; the Commission may issue a written directive to the registered person placing the person under the management of a curator for such period as in the Commission's opinion will permit the registered person's financial condition to be remedied or resolved.

(2) Before issuing a directive in terms of subsection (1) in relation to—

(a) a registered insurer, the Commission shall consult the Minister;

(b) any registered person, including an insurer, the Commission shall inform the registered person concerned of its intention to do so and its reasons for forming that intention, and shall afford the person an adequate opportunity to make representations in the matter:

Provided that the Commission need not comply with this paragraph if—

(i) in the Commission's opinion, to do so would permit the registered person or any other person to dispose of any assets or take any other action that would prejudice the registered person's policy owners or creditors; or

(ii) the appointment of a curator was recommended by an investigator in a report sent to the Commission in terms of section 113.

- (3) A directive issued in terms of subsection (1) shall state—
- (a) the reasons for the appointment of a curator; and
 - (b) the name of the curator; and
 - (c) the powers set out in section 118 that may be exercised by the curator; and
 - (d) the period during which the registered person concerned will be managed by the curator.

(4) As soon as possible after issuing a directive in terms of subsection (1) the Commission shall cause it to be published in the *Gazette* and in one or more newspapers of appropriate circulation and any other media approved by the Commission.

(5) The Commission may at any time amend a directive issued in terms of subsection (1), and subsections (2) and (4) shall apply, with any necessary changes, to any such amendment.

(6) The qualifications, disqualifications and remuneration of the curator shall be as prescribed.

117 Effect of placing registered person under curatorship

(1) The issue of a directive in terms of section 116 shall have the effect of suspending the powers of every director, officer and shareholder of the registered person concerned, except to the extent that the curator may permit them to exercise their powers.

(2) With effect from the date on which a directive under section 116 was published in the *Gazette*—

- (a) all legal proceedings and the execution of all writs, summonses and other legal process against the registered person concerned shall be stayed and not be instituted or proceeded with unless the High Court has granted leave; and
- (b) the operation of set-off in respect of any amount owing by a creditor to the registered person concerned shall be suspended.

118 Duties and powers of curator

(1) Subject to the directive under which the curator was appointed and to any subsequent directives given to him or her by the Commission, a curator shall—

- (a) take over and assume the management of the insurance or insurance-related business of the registered person concerned; and
- (b) manage the insurance or insurance-related business of the registered person concerned in such manner as he or she considers prudent and most likely to promote the interests of the registered person and registered person's creditors; and
- (c) ensure proper compliance with this Act by the registered person concerned; and
- (d) ensure that proper accounting records are kept and proper annual financial statements are prepared in relation to the insurance or insurance-related business of the registered person concerned; and
- (e) prepare reports for the Commission showing the assets and liabilities of the registered person concerned and his or her debts and obligations, verified by the registered person's auditor, and all such information as may be necessary to enable the Commission to become fully acquainted with the registered person's financial position; and

- (f) examine the affairs and transactions of the registered person concerned before he or she was placed under curatorship, in order to ascertain whether any past or present director or employee of the registered person—
- 5 (i) has contravened or appears to have contravened any provision of this Act; or
- (ii) has committed or appears to have committed any offence; or
- (iii) is or appears to be personally liable to pay damages or compensation to the registered person or is personally liable for any of the registered person's liabilities;
- 10 and, within ninety days after the registered person was placed under curatorship, shall submit to the Commission a report containing full particulars of any such contravention, offence or liability; and
- 15 (g) one year after the registered person was placed under curatorship and thereafter at six-monthly intervals, report to the Commission, in writing, as to whether or not, in his or her opinion, it is in the interests of the registered person's policy owners and creditors that the registered person should remain under curatorship:
- 20 Provided that, if at any time the curator is of the opinion that continued curatorship will not enable the registered person to become a successful concern, he or she shall advise the Commission accordingly.
- (2) A curator shall have the following powers, to the extent that he or she
- 25 is authorised to exercise them in terms of the directive under which he or she was appointed—
- (a) to suspend or reduce, as from the date on which the registered person concerned was placed under curatorship or any subsequent date, the right
- 30 of creditors to claim or receive interest on any money owing to them by the registered person;
- (b) to make payments, whether in respect of capital or interest, to any creditor of the registered person concerned at such time, in such order and in such manner as he or she thinks fit;
- (c) to cancel any agreement between the registered person concerned and any
- 35 other party to advance moneys due after the date on which the registered person was placed under curatorship or to extend any existing credit facility after that date, if in his or her opinion—
- (i) such advance or any loan under such facility would not be adequately secured or would not be repayable on satisfactory terms; or
- 40 (ii) the registered person lacks the necessary funds to meet his or her obligations under the agreement; or
- (iii) it would not otherwise be in the interests of the registered person to abide by the agreement;
- (d) to convene from time to time, in such manner as he or she thinks fit, a
- 45 meeting of creditors of the registered person concerned for the purpose of establishing the nature and extent of the registered person's indebtedness to them and consulting them on decisions taken by him or her in the course of managing the registered person's affairs, to the extent that the creditors' interests may be affected by those decisions;
- 50 (e) to negotiate with any individual creditor of the registered person concerned with a view to a final settlement of the creditor's affairs with the registered person;

- (f) to make and carry out, in the course of his or her management of the business of the registered person concerned, any decision which in terms of the Companies and Other Business Entities Act [*Chapter 24:31*] would have been required to be made by way of a special resolution contemplated in section 177 of that Act;
- (g) to cancel any lease of movable or immovable property entered into by the registered person concerned before he or she was placed under curatorship: 5

Provided that, notwithstanding section 117(2), a claim for damages in respect of such a cancellation may be instituted against the registered person after the expiry of one year from the date of the cancellation or after such shorter period as the High Court may permit;

- (h) to dispose, by public auction, tender or individual negotiation, of any asset of the registered person concerned, including— 10
- (i) any advance or any loan under a facility contemplated in paragraph (c); and 15
- (ii) any asset for the disposal of which an approval contemplated in the Insolvency Act [*Chapter 6:07*] would have been a prerequisite;
- (i) to suspend or cancel any guarantee issued by the registered person concerned before the date on which he or she was placed under curatorship, other than a guarantee that the registered person is required to make good within a period of thirty days after that date: 20

Provided that, notwithstanding section 117(2), a claim for damages in respect of such a cancellation may be instituted against the registered person after the expiry of one year from the date of the cancellation or after such shorter period as the High Court may permit; 25

- (j) generally, to take any action necessary for the administration or operation of the insurance or insurance-related business of the registered person concerned, including the sale or closure of any branch, agency, or other office of the registered person and, subject to any other law, the dismissal of any of his or her employees. 30

(3) A curator shall record the nature of, and the reasons for, each act he or she performs in the course of his or her curatorship, and such records shall be examined as part of the normal audit of the records of the registered person concerned. 35

(4) Any person who is aggrieved by any decision or action taken by a curator may appeal against it to the Commission. 40

(5) An appeal in terms of subsection (4) shall be made in such manner and within such period as may be prescribed. 45

119 Special provisions relating to winding up of registered person 45

(1) Notwithstanding anything to the contrary in the Insolvency Act [*Chapter 6:07*] in relation to a registered person that is an association or body corporate, the Commission shall have the right to apply to the High Court for the winding up of the registered person if the Commission is satisfied that the registered person has solvency challenges which makes it difficult for the registered person to meet its liabilities and continue with the insurance business or for any other reason which is appropriate and in the public interest: 50

Provided that the Commission shall have the right to oppose any such application made by any other person. 55

(2) No person other than a person recommended by the Commission shall be appointed as provisional liquidator or liquidator of the registered person.

(3) The claims of—

(a) policy owners; and

(b) the Commission, in respect of any fees and expenses incurred in the exercise of its functions in terms of this Act;

against a registered person whose estate is being sequestrated or which is being wound up shall enjoy such priority as may be prescribed.

(4) Sections 9 and 10 of the Insolvency Act [*Chapter 6:07*] shall apply with necessary changes to the voluntary winding up of a registered person:

Provided that the voluntary winding up of such registered person shall be upon the written approval of the Commission.

(5) During the voluntary winding-up of a registered person that is an association or a body corporate, the liquidator shall furnish the Commission with every return or statement which the registered person concerned would have been obliged to furnish to the Commission were the registered person not being wound up.

(6) Sections 42 to 47 and 49 of the Insolvency Act [*Chapter 6:07*] shall apply with necessary changes to the liquidator appointed in terms of this Act.

(7) The qualifications, disqualifications and remuneration of the provisional liquidator or liquidator shall be as prescribed.

PART XIV

ADDITIONAL POWERS OF COMMISSION

120 Commission may extend certain periods

If a registered person or an applicant for registration is required or permitted, in terms of this Act, to perform an act within a specified period, the Commission may, in the public interest and at the person's request, extend the period from time to time, whether before or after the expiry of the period, and may condone a failure by the person to perform the act within the specified period.

121 Commission may demand information

(1) In the exercise of its functions under this Act, the Commission may demand from—

(a) a registered person or a person who has applied for registration; or

(b) a person whom the Commission has reason to believe is unregistered but is carrying on any business for which he or she is required to be registered; or

(c) any director, employee, agent, auditor, legal advisor, valuator, actuary, policy owner or shareholder of a person referred to in paragraph (a) or (b); or

(d) any other person who has in his or her possession or whom the Commission reasonably believes to have in his or her possession;

any record or information relating to any matter connected with the person's business or transactions, whether insurance business or otherwise:

Provided that no person shall be required to produce any record or give any information which he or she would not be required to produce or give if he or she were giving evidence in a civil or criminal trial before a court.

(2) A person who, without just cause, fails to comply with a demand in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

122 Commission may permit alteration or adaptation of prescribed forms

Without derogation from section 5 of the Interpretation Act [*Chapter 1:01*], the Commission may permit in writing a registered person or an applicant for registration to alter any prescribed form for the purpose of adapting the form to meet the circumstances of the registered person or the applicant.

123 Commission may require information to be supplied in English

Where any person, for the purposes of this Act, submits any statement, record or other information to the Commission in a language other than the English language, the Commission may direct the person to provide, at his or her own expense, a translation of the statement, record or information, and until the person concerned complies with the directive, the statement, record or information shall be deemed not to have been submitted for the purposes of this Act.

124 Commission may require insurer and insurance broker to give security

(1) Before an investigation is made into the affairs of an insurer or insurance broker in terms of section 112, or during the course of such an investigation, the Commission may require the insurer or insurance broker to deposit with the Commission such securities as the Commission considers sufficient to meet the liabilities under policies of the insurer or insurance broker.

(2) The Commission may require an insurer or insurance broker which has been notified that the Commission proposes to cancel its registration as an insurer or insurance broker, to deposit with the Commission such securities as the Commission considers sufficient to meet the liabilities under policies of the insurer or insurance broker.

(3) An insurer or insurance broker which, without just cause, fails to comply with a requirement of the Commission in terms of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

125 Certificate of deposit of securities

(1) The Commission shall, issue an insurer or insurance broker which has deposited securities with the Commission in terms of section 124, at the time of making the deposit, with a certificate specifying the securities deposited by the insurer or insurance broker, their face and market value.

(2) An insurer or insurance broker which has deposited securities with the Commission in terms of section 124 shall be entitled to the income derived from such securities.

(3) If the registration of an insurer or insurance broker which has deposited securities in terms of section 124 is cancelled, the Commission may cause the securities deposited by the insurer or insurance broker to be realised to meet the liabilities of the insurer or insurance broker's insurance business under any policies.

(4) Where the Commission is satisfied that the liabilities of the insurance business under any policies of an insurer or insurance broker referred to in subsection (3) have been met, the Commission shall return to the insurer or insurance broker such of the securities deposited by the insurer or insurance broker as have not been realised to meet those liabilities.

(5) If an insurer or insurance broker has deposited securities with the Commission in terms of section 124, the Commission shall return the securities to the insurer or insurance broker as soon as the Commission is satisfied that the insurer or insurance broker has fulfilled the purpose for the payment of the security deposit.

(6) If the registration of an insurer or insurance broker which has deposited securities in terms of section 124 is cancelled, the Commission shall return the securities to the insurer or insurance broker at such time as the Commission considers appropriate, having regard to the insurer or insurance broker's financial position.

126 Commission may prescribe minimum and maximum premiums

(1) Subject to this section, the Commission may in regulations under section 142, prescribe minimum and maximum premiums to be paid in respect of any class of policies:

Provided that, before making any such regulations, the Commission shall consult the appropriate body of actuaries and shall pay due regard to any advice tendered by that body.

(2) The prescription of a minimum or maximum premium in accordance with subsection (1) shall not affect the premiums payable in respect of any policy issued before the date on which the minimum or maximum premium was prescribed.

(3) Without derogation from section 78, where an insurer, or any person on behalf of an insurer, accepts a premium that is less than the minimum prescribed in accordance with subsection (1) for the policy concerned, the insurer shall not on that account be entitled to avoid any liability under the policy.

PART XV

GENERAL

127 Appeals

(1) Subject to this section, any person who is aggrieved by—

- (a) a decision of the Commission not to register an applicant; or
- (b) any term attached to the registration of a person, or a rejection by the Commission to specify a term in a registration certificate; or
- (c) any amendment of a person's registration or a rejection by the Commission to amend a person's registration; or
- (d) a proposal by the Commission to cancel a person's registration or a rejection by the Commission to cancel a person's registration; or
- (e) a rejection by the Commission to give any consent or approval in terms of this Act; or
- (f) a decision by the Commission in terms of section 115 to recover expenses of an investigation from a registered person; or
- (g) a requirement in terms of section 124 that an insurer or insurance broker deposit securities with the Commission; or

(h) such other decision, proposal, directive or action made by the Commission in terms of this Act or as may be prescribed;
 may appeal to the Minister against the decision, proposal, directive or action concerned.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and shall be lodged with the Minister—

- (a) within thirty days after the appellant was notified of the decision, proposal, directive or action appealed against; or
- (b) where a notice was published in terms of the proviso to section 9(2) or section 14(2), within thirty days after the publication of the notice.

(3) In an appeal in terms of subsection (1), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and shall, within thirty days of receiving the appeal, confirm, vary or set aside the decision, proposal, directive or action appealed against:

Provided that the Minister shall ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter.

(4) The Minister shall ensure that the appellant and the Commission are notified of any decision reached by him or her in terms of subsection (3) within five working days after making the decision.

(5) Any person who is aggrieved by a decision of the Minister on an appeal in terms of subsection (3) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

(6) Notwithstanding any other law but subject to sections 9 and 14, appeal in terms of this section shall not suspend the decision made by the Commission or Minister.

128 Register

(1) The Commission shall maintain, or cause to be maintained, a register in which shall be recorded, in relation to each registered person—

- (a) the person's name; and
- (b) in the case of an insurer, the class of insurance business which the insurer is authorised to conduct; and
- (c) any terms subject to which the person is registered; and
- (d) any amendment, cancellation or suspension of the person's registration.

(2) The Commission shall divide the Register into separate parts for the registration respectively of insurers, insurance brokers, risk consultants, loss adjusters, insurance surveyors and any other person required or permitted to be registered by or under this Act.

(3) The Register shall be open for inspection by members of the public at all reasonable times at the Commission's office or any other such media, on payment of the prescribed fee, if any.

129 Annual reports by Commission

(1) The Commission shall, within six months after the end of a financial year, submit to the Minister a report in regard to insurance business in Zimbabwe during the previous financial year.

(2) The Minister shall lay a copy of a report submitted to him or her in terms of subsection (1) before the National Assembly on one of the fourteen days on which the national Assembly sits next after he or she has received it.

130 Display of certain information where business is conducted

(1) The Commission shall require every registered insurer, insurance broker or any such other registered persons as may be prescribed to display at all times when open for business, in a conspicuous place in every place in Zimbabwe in which the registered person carries on business, such information as the Commission may determine.

(2) Every insurance agent shall, in respect of every registered insurer, for which he is an agent, maintain a record of the information required to be displayed by such insurer in terms of subsection (1), and shall, on request, make such information available for inspection by any person without charge.

(3) Any registered person that contravenes this section shall be in default and liable to a category 1 civil penalty order.

131 Requirements for documents furnished to Commission

A registered person shall be regarded as having failed to comply with a provision of this Act requiring him or her to furnish documents or copies of documents to the Commission, unless—

(a) in the case of a document prepared by the registered person which is not in a prescribed form—

(i) the document is signed—

A by the principal officer and one director of the registered person or, if the registered person has no principal officer or director, by such other person as the Commission may specify; and

B by such person, other than the persons referred to in subparagraph A, as required by the relevant provision of this Act to sign or certify the document; and

(ii) the document is accompanied by at least one copy except where the registered person submits an electronic version of the document;

(b) in the case of a document prepared by the insurer or insurance broker which is in a prescribed form—

(i) the document is signed by the persons specified in the form; and

(ii) the document is accompanied by one copy except where the insurer or insurance broker submits an electronic version of the document;

(c) in the case of an original document, other than a document referred to in paragraph (a) or (b), the document is accompanied by one copy;

(d) in the case of a copy of a document, the copy is accompanied by one other copy, and one of those copies is certified as correct by the registered person.

132 Inspection of documents and provision of information

(1) Any person may, on payment to the Commission of the prescribed fee—

(a) inspect any document furnished to the Commission in terms of section 7, 12, 51 or 53; or

(b) make a copy of the document inspected in terms of paragraph (a).

(2) The Commission shall, at the request of any person and on payment of the prescribed fee, furnish a certified copy of or abstract from any document furnished to the Commission in terms of section 7, 12, 53 or 63.

(3) The Commission shall, without charge, provide any person who requests it with the name and address of the principal officer in Zimbabwe of a registered person.

133 Effect of Commission's certification of documents

A document purporting to be certified by the Commission as a copy of a document furnished to the Commission in terms of this Act shall be presumed, unless the contrary is shown, to be a copy of that document, and shall be admissible in evidence in any court as if it were the original document.

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134 Invalidity of certain provisions in constitutions of registered persons

Where the memorandum, articles, constitution or any constitutive document by whatever name it may be called of a registered person that is a body corporate contains a provision that is inconsistent with this Act, the provision shall be void to the extent of the inconsistency.

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135 Currency conversion

(1) In this section—

“currency conversion date” means—

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- (a) the currency conversion date, being the 24th of June, 2019, when the multi-currency system was superseded as legal tender by Zimbabwean dollars; or
- (b) any subsequent date notified by the Minister in the *Gazette* as the date on which any currency which has been legal tender in Zimbabwe is superseded by any other currency;

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“former currency”, in relation to—

- (a) the currency conversion date specified in paragraph (a) of the definition of “currency conversion date”, means the multi-currency system or any other currency before the multi-currency system;
- (b) any subsequent conversion date notified in terms of paragraph (b) of the definition of “currency conversion date”, means the currency which is superseded by a new currency as legal tender in Zimbabwe;

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“new currency”, in relation to—

- (a) the currency conversion date specified in terms of paragraph (a) of the definition of “currency conversion date”, means Zimbabwean dollar;
- (b) any subsequent currency conversion date notified in terms of paragraph (b) of the definition of “currency conversion date”, means the currency which supersedes the former currency as legal tender in Zimbabwe.

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(2) Every insurer, shall as soon as possible after a currency conversion date—

(a) cause the insurer's actuary to calculate—

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- (i) the insurer's liabilities in the former currency towards its policy owners, beneficiaries and other stakeholders at the currency conversion date, taking into account of—
 - A the investment return up to that date; and
 - B the policy owner's premium up to that date;
 - C premium payment period of each policy owner;
 - D rate of inflation;
 - E other factors as may be necessary;

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and assessing separately the insurer's liabilities towards its policy owners; and

(ii) the fair value of the insurer's assets in the former currency at the currency conversion date;

and

(b) cause the insurer's actuary to apportion the fair value of the registered person's assets in the new currency between the policy owners, beneficiaries and other stakeholder so as to establish, so far possible, the insurer's liability in the new currency to each of those classes of persons.

(4) Where assets which were held by an insurer on a currency conversion date increase in value after that date, the increase shall be for the benefit of the policy owners who were policy owners, as the case may be, on that date.

136 False statements, etc.

(1) Any person who, in any document required by or for the purposes of this Act, makes a statement that is false in a material particular, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence.

(2) Any person who, with intent to defraud or deceive—

(a) destroys, mutilates, alters or falsifies any document belonging to or relating to a registered person; or

(b) makes, or is a party to the making of, a false or misleading entry in any document belonging to or relating to a registered person;

shall be guilty of an offence.

(3) A person who is guilty of an offence in terms of subsection (1) or (2) shall be liable—

(a) in the case of an individual, to a fine not exceeding level 7 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or

(b) in the case of a body corporate, to a fine not exceeding level 14.

137 Person acting on behalf of unregistered insurer

Subject to section 6(3) a person who knowingly causes another person to enter into or to apply to enter into a contract of insurance with a person who is not a registered insurer shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

138 Use of certain titles reserved for registered persons

(1) Except with the consent of the Commission, and subject to any conditions that the Commission may impose when granting its consent, no person other than a registered person shall use in the description or title under which he or she carries on business in Zimbabwe—

(a) the word "assure", "assurer", "assurance", "broker", "consultant" (when allied to or used in respect of any form of insurance business), "guarantee", "indemnity", "insure", "insurer", "insurance", "underwriter" or "underwriting", or a literal translation of any such words; or

(b) any combination of letters in which "assure", "assurer", "assurance", "broker", "consultant" (when allied to or used in respect of any form of insurance business), "guarantee", "indemnity", "insure", "insurer", "insurance", "underwriter" or "underwriting" appear.

(2) Where the Commission has consented to an unregistered person using a word in terms of subsection (1), it may vary or withdraw its consent or may impose new or additional or alternative conditions as it considers fit:

Provided that, before doing so the Commission shall afford the person an adequate opportunity to make representations in the matter. 5

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

139 Offences committed by or with unregistered persons 10

(1) Subject to this Act, any person who is not registered and who—

- (a) holds himself or herself out to be registered in terms of this Act; or
- (b) conducts any insurance or insurance-related business for which, in terms of this Act, he or she is required to be registered; 15

shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.

(2) Where—

- (a) an unregistered person conducts with a registered person any insurance or insurance-related business for which, in terms of this Act, the first-mentioned person is required to be registered; and 20
- (b) the registered person with whom he or she conducts the business knows or has reason to believe that he or she is not registered; 25

the registered person shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment. 30

140 Regulations 35

(1) The Commission may make regulations prescribing anything which under this Act is required or permitted to be prescribed or which, in the Commission's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act and for ensuring the proper conduct of insurance business in Zimbabwe. 35

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the registration of persons and organisations carrying on insurance or insurance-related business outside Zimbabwe, including— 40
 - (i) associations of underwriters; and
 - (ii) organisations established in terms of agreements by Heads of States; and the extent to which, and the conditions subject to which, persons and organisations so registered may carry on insurance or insurance-related business in Zimbabwe; 45
- (b) returns and information to be provided to the Commission by registered persons; 50
- (c) standards and requirements for capital adequacy, solvency and the management of risk to be observed by registered persons in addition to the requirements set out in Part VI; 50
- (d) in relation to registered persons that are bodies corporate— 55
 - (i) minimum qualifications for officers of the registered persons;
 - (ii) standards of corporate governance to be observed by the directors and employees of the registered persons;

- (iii) the disclosure of remuneration, bonuses and other benefits paid to or received by the directors and employees of the registered persons;
- (e) the payment by registered insurance brokers to registered insurers of moneys received by such insurance brokers in respect of insurance business placed with registered insurers;
- (f) the information and returns to be supplied by registered insurance brokers to persons on whose behalf such insurance brokers have placed insurance business with registered insurers;
- (g) information to be displayed by registered persons at places where they conduct insurance business;
- (h) the preservation of information and documents by registered persons;
- (i) the cancellation of registration in terms of this Act, and circumstances arising out of such cancellation, including the disposal of the registered person's insurance or insurance-related business;
- (j) the regulation and control of methods of obtaining or negotiating insurance business;
- (k) the regulation and control of insurance agents, including—
- (i) the training and qualifications of such agents; and
 - (ii) the registration or licensing of such agents; and
 - (iii) the cancellation of the registration or licences of such agents;
- (l) the accreditation of actuaries, including a prohibition against any person who is not so accredited practising as an actuary in the insurance industry in Zimbabwe or holding himself or herself out to be an actuary in insurance industry in Zimbabwe;
- (m) the fees to be paid for registering or licensing persons, for inspecting and copying documents in terms of section 132, and for anything else done in terms of this Act;
- (n) the encouragement, control and regulation of microinsurance business, namely the provision of insurance for members of low-income groups and for informal, small and medium enterprises;
- (o) electronic registry for the Commission;
- (p) the registration and regulation of underwriting management agencies;
- (q) the registration and regulation of any person wishing to conduct insurance or insurance-related business.

(3) Regulations made in terms of subsection (1) may provide for penalties for contraventions thereof:

Provided that—

- (a) where it is a criminal penalty, no such penalty shall exceed a fine of level 10 or imprisonment for a period of one year or both such fine and such imprisonment;
- (b) where it is a civil penalty, the penalty shall be as guided by section 144.

(4) Regulations referred to in subsection (2)(c) and (d) may prescribe standards and requirements by reference to such standards and requirements specified in documents drawn up by international or regional bodies:

Provided that the Commission shall ensure that any such document is readily accessible and available for inspection by registered persons who are to comply with the standards and requirements.

(5) Regulations referred to in subsection (2)(n) may provide for the modification, relaxation or suspension of any requirement of this Act in relation to microinsurance business contemplated in that paragraph.

(6) Regulations made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*. 5

(7) The delegation of regulation making function in subsection (1) shall not be construed as preventing the Minister from exercising such functions.

141 Liability of juristic person and directors and other officers

(1) In this Act, the juristic person shall be liable to a fine for contravening this Act: 10

Provided that any director or any other employee of such juristic person who knowingly contravenes this Act shall also be liable to a fine.

(2) Any director or an employee of the juristic person shall, in addition to a fine provided for in subsection (1), be liable to an imprisonment term where the relevant provisions so provide. 15

142 Reference to Commission

(1) In this section—

“Board” means the Board of the Insurance and Pensions Commission established in terms of section 5 of the Insurance and Pensions Commission Act [Chapter 24:21]. 25

(2) In this Act, where any act is to be performed by the Commission, the Commissioner shall, in consultation with the Board, perform such act.

143 Indemnity of members and employees of the Commission

(1) Subject to the provisions of this Act and any regulation made thereunder, no person shall incur any personal liability for any loss or damage caused by any act or omission by him or her in carrying out the duties under this Act or any regulation made thereunder, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence. 30 35

(2) The persons referred to in subsection (1) shall include the following—

- (a) members of the Board of the Commission; 40
- (b) committee members of the Board of the Commission;
- (c) Commissioner;
- (d) every employee of the Commission; and 45
- (e) every inspector engaged by the Commission.

144 Service of civil penalty order

(1) Where default is made in complying with any provision of this Act for which a civil penalty is specified to be leviable, the Commissioner may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act, or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subsection (2) or (3) or any combination of such orders as the provision in question may allow. 50 55

(2) A category 1 civil penalty order referred to in subsection (1) provides for a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

- 5 (a) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
- (b) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—
 - 10 (i) a fixed penalty of the maximum amount for level fourteen for not meeting the specified deadline; and
 - (ii) a cumulative penalty of the maximum amount of level four for each day, not exceeding ninety days, for which the defaulter fails to pay the amount specified in subparagraph (i).

15 (3) A category 2 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Commissioner or is possible), of which—

- 20 (a) the fixed penalty shall be the maximum amount specified for level fourteen; and
- (b) the cumulative penalty shall be a penalty of the maximum amount of level four for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a).

(4) References to the Commissioner serving upon a defaulter any civil penalty order in terms of this Act, is to be interpreted as requiring the Commissioner to deliver such order (or such notice) in writing to the defaulter (or alleged defaulter) concerned in any of the following ways—

- 30 (a) by registered post addressed to the defaulter's (or alleged defaulter's) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or
- (b) by hand delivery to the director, manager or any other senior officer of the defaulter (or alleged defaulter) in person (or through an inspector or other person employed in the Office, or a police officer), or to a responsible individual at the place of business of the defaulter; or
- 35 (c) by delivery through a commercial courier service to the defaulter's (or alleged defaulter's) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or
- 40 (d) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the defaulter (or alleged defaulter) to the Commissioner:

45 Provided that in this case a copy of the order or notice shall also be sent to the electronic mail or telefacsimile address of the defaulter's (or alleged defaulter's) legal practitioner in Zimbabwe.

(5) The Commissioner shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted shall be recorded by the Commissioner.

50 (6) The Commissioner may cite two or more defaults relating to different provisions of this Act if the defaults in question—

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts.

(7) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Commissioner may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(8) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

- (9) The amount of any civil penalty shall—
 - (a) be payable to the Commission and shall form part of the funds of the Commission; and
 - (b) be a debt due to the Commission and shall be sued for in any proceedings in the name of the Commission in any court of competent civil jurisdiction.

(10) If the Commissioner in terms of subsection (9)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, he or she may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
- (b) were served on two or more companies or private business corporations whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the Commissioner has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subsection (8), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Commissioner for the amount of any outstanding civil penalty due from the convicted defaulter.

145 Additional due process requirements before service of certain civil penalty orders

Where it appears to the Commissioner from written representations submitted to him or her that there may be a material dispute of fact concerning the existence or any salient aspect of the alleged default, the Commissioner must afford the alleged defaulter an opportunity to be heard by making oral representations before the Commissioner, for which purpose the Commissioner shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the hearing and determination before the Commissioner of the alleged default in question, and to any person summoned to give evidence or giving evidence before the Commissioner.

146 Repeal of Cap. 24:07, transitional provisions and savings

- (1) In this section—
“repealed Act” means the Insurance Act [Chapter 24:07].
- (2) Subject to this section, the Insurance Act [Chapter 24:07] is repealed.
- (3) Subject to subsection (5), any insurer, insurance agent or other person that was registered in terms of the repealed Act immediately before the appointed day shall be deemed to have been registered in the appropriate part of the Register in respect of the same classes of insurance business and on the same terms and conditions as applied to him or her immediately before that day.
- (4) Subject to subsection (5), a certificate of registration issued in terms of the repealed Act to a person referred to in subsection (3) shall be deemed to have been issued in terms of the appropriate provision of this Act.
- (5) Any registered insurer, other than a reinsurer carrying on more than one class of insurance business under the repealed Act, shall comply with section 4 within three years of the appointed day.
- (6) Any regulations which were made by the Minister under the repealed Act and which were in force immediately before the appointed day shall continue in force as if they had been made by the Commission under the appropriate provision of this Act.
- (7) Any order, notice, application, exemption, approval, permission or other thing which was lawfully made, granted, given, issued, done or commenced in terms of the repealed Act and which, immediately before the appointed day, had or was capable of acquiring legal effect, shall continue to have, or be capable of acquiring, as the case may be, the same effect as if it had been made, granted, given, issued, done or commenced, as the case may be, under the appropriate provision, if any, of this Act.
- (8) Except as is otherwise provided in this Act, this Act shall apply in relation to policies effected or ceded before the appointed day as if they had been effected or ceded on or after the appointed day:
- Provided that, if such a policy was effected for the benefit of a third party or a person named in the policy as a beneficiary, the rights of that person in relation to the policy shall be the same as they were under the repealed Act immediately before the appointed day.

INSURANCE

SCHEDULE (*Section 109*)

PERIOD FOR WHICH FUNERAL POLICY REMAINS IN FORCE WHERE PREMIUM NOT PAID

<i>Period remains in force</i>	<i>Period for which premiums have been paid</i>
6 months	5 years or over and less than 7 years
9 months	7 years or over and less than 9 years
12 months	9 years or over and less than 11 years
18 months	11 years or over and less than 14 years
24 months	14 years or over and less than 17 years
36 months	17 years or over and less than 21 years
48 months	21 years or to 25 years

