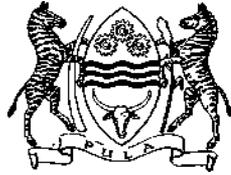


INSURANCE ACT, 1979

No. 12



of 1979

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An Act to make provision relating to the carrying on of Insurance Business and other matters connected therewith

Date of Assent: 26.4.79

Date of Commencement: On notice

ENACTED by the Parliament of Botswana

PART I *Preliminary*

- 1. This Act may be cited as the Insurance Act, 1979, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint. Short title and commencement
- 2. In this Act, unless the context otherwise requires, — Inter-pretation
 - “agent for brokers” means a person who transacts insurance business on behalf of a registered insurance broker;
 - “approved securities” means securities issued by the Government and such other securities or investments as the Registrar may approve;
 - “association of underwriters” means —
 - (a) underwriters at Lloyds; or
 - (b) an association of individual underwriters organized in accordance with the system known as Lloyds, in which every underwriting member of each syndicate of members becomes liable for a separate part of the sum secured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured;
 - “chairman”, in relation to an association of persons, includes the individual presiding over the board of directors or other governing body of the association;

“child” includes an illegitimate child, stepchild or a child adopted in accordance with the Adoption of Children Act, or in accordance with any enactment whatsoever, whether within or outside Botswana, relating to the adoption of children;

“contingent obligation dependent on human life” means –

- (a) an obligation to pay to a particular person certain sums of money at specified intervals or a certain sum of money or to provide for a particular person certain other benefits –
 - (i) on the occurrence of the death of a particular person or the birth of a child to a particular person at any time or within a specified period; or
 - (ii) in the event of a particular person continuing to live throughout a specified period; or
- (b) an obligation assumed –
 - (i) until the occurrence of the death of a particular person; or
 - (ii) during a specified period or until the occurrence of the death of a particular person before the expiration of that period;

“dependant”, in relation to any person, includes his surviving spouse and any parent, child and grandchild of his;

“deposit” means a deposit of money or any thing having a monetary value which by virtue of regulations made under this Act may be accepted as a deposit;

“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 may be called;

“external insurer” means a registered insurer whose head office is not in Botswana;

“external underwriters” means an association of underwriters which is constituted outside Botswana;

“financial year”, in relation to an insurer, means each period of twelve months at the end of which the balance of the accounts of the insurer is struck, and includes any lesser period;

“friendly society” means an association of persons established with no share capital for the purpose of aiding its members or their dependants, where such association does not employ any person whose main occupation is the canvassing of other persons to become members of the association or the collecting of contributions or subscriptions from its members towards the funds of the association;

“funeral policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide, on the death of any person, benefits, not exceeding in value a total of P500, which consist principally of provision for the funeral of that person or the grant

to another person of some other non-monetary benefit, whether or not the policy provides for —

- (a) the payment at the option of the insurer or any other person of a sum of money instead of provision of a funeral or the grant of a non-monetary benefit; or
- (b) the payment of a sum of money in addition to the provision of a funeral or the grant of some non-monetary benefit;

“industrial policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium payable from time to time, at intervals not exceeding two months, a contingent obligation dependent on human life, not exceeding the sum of P1 000, if the insurer has expressly or tacitly undertaken to send a person from time to time to the owner of a policy or to his residence or place of work to collect the premiums;

“insolvency” has the meaning assigned to it by the Insolvency Act; Cap. 16:01

“insurance agent” means a person who solicits applications for insurance, collects moneys by way of premiums or issues cover notes of insurance for and on behalf of a registered insurer but does not include an employee serving in the office of an insurer unless the emoluments of that employee are related to the volume of business handled by him;

“insurance broker” means a person who as an independent contractor, and for commission or other compensation and not being an agent of the insurer, solicits or negotiates insurance business on behalf of an insured or prospective insured, other than himself;

“insurance business” includes assurance and re-insurance;

“insurer” means a person carrying on an insurance business, otherwise than as an insurance broker or insurance agent, and includes an association of underwriters;

“life insurance business” means the business of assuming the obligations of an insurer under life policies, funeral policies, industrial policies or sinking fund policies;

“life insurance fund” means the fund to which the receipts of an insurer in respect of his life insurance business are carried;

“life policy” means a policy whereby the insurer assumes in return for the payment or promise of the payment of a sum or sums of money or the promise of a periodical payment of a certain 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, an industrial policy, a personal accident policy, a sinking fund policy or an 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;

- “local insurer” means a registered insurer whose head office is in Botswana;
- “local policy” means a policy issued in or outside Botswana upon an application made or presented to an insurer, an insurance broker or an insurance agent at any place in Botswana, but does not include a life policy payable outside Botswana which the owner has agreed in writing shall not be treated as a local policy for the purposes of this Act or any other Act relating to insurance business in Botswana which was in force at the time of the agreement;
- “local underwriters” means an association of underwriters which is constituted in Botswana;
- “minor” means a person who, by reason of his youth, is under a legal disability;
- “mutual insurance company” means an insurance company without share capital which is owned by and operated in the interests of its policy holders or members, and the affairs of which are directed by a board of trustees or directors elected by the members;
- “owner”, in relation to a policy, means the person who for the time being has the legal title to the policy;
- “personal accident policy” means a policy whereby the insurer assumes, in return for the payment or the promise of payment of a sum or sums of money 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 illness causing death or injury or disability of a particular person;
- “policy” includes every writing whereby any contract of insurance is made or agreed to be made;
- “prescribed” means prescribed by regulations made under section 86;
- “Registrar” means the Registrar of Insurance provided for in section 3;
- “sinking fund policy” means a contract whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment or the promise of a payment from time to time of a certain sum of money by the other party to the contract;
- “stock insurance company” means an insurance company with permanent share capital owned and controlled by its shareholders and includes a statutory corporation carrying on insurance business;
- “trustee”, in relation to an estate in insolvency, includes an assignee or, as the case may be, a trustee in a deed of arrangement of the person having the conduct of an order of composition;

“underwriter’s liabilities”, in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the committee of the association and approved —

- (a) in the case of an association constituted in Botswana, by the Registrar; and
- (b) in the case of an association constituted outside Botswana, by the appropriate authority in which is vested the administration of the insurance law relating to associations of underwriters in the country concerned;

“underwriters” include any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of a sum secured by the policy or contract.

PART II *Administration*

3. (1) There shall be a Registrar of Insurance (hereinafter in this Act referred to as “the Registrar”) who shall be a public officer appointed by the Minister. Appointment of Registrar

(2) The Registrar shall, subject to any directions given by the Minister, be charged with the general administration of this Act.

(3) The Minister may appoint such other persons as may be necessary to assist the Registrar in the administration of this Act.

4. The functions of the Registrar shall include the following — Functions of Registrar

- (a) the registration of insurers who transact business in Botswana;
- (b) the formulation of standards in the conduct of the business of insurance with which insurers so registered must comply;
- (c) the recommendation to the Minister of regulations for the carrying out of Government policies relating to insurance;
- (d) the inspection of insurers as provided in this Act;
- (e) the approval of standard conditions to apply to policies of insurance;
- (f) the superintendence of the conduct of insurance brokers, insurance agents and agencies which specialize in the handling of insurance claims;
- (g) the determination, with the prior approval of the Minister, of the rates of commissions payable by insurers; and
- (h) such other functions as are assigned to the Registrar by this Act or regulations made thereunder.

PART III *Capital and other Requirements for Insurers other than Associations of Underwriters*

5. This Part shall apply only to insurers who are not associations of underwriters. Application of Part III

6. (1) No person shall carry on business as a local insurer unless that person maintains in Botswana at all times while that person carries on that business, — Capital requirements for carrying on insurance business

- (a) where that person is a stock insurance company, a paid-up capital of not less than such amount as may be prescribed; or

(b) where that person is a mutual insurance company, a surplus of assets over liabilities of not less than such amount as may be prescribed.

(2) No person shall carry on business as an external insurer unless that person maintains at all times while that person carries on that business, —

(a) where that person is a stock insurance company, a paid-up capital of not less than such amount as may be prescribed; or

(b) where that person is a mutual insurance company, a surplus of assets over liabilities of not less than such amount as may be prescribed.

Margin of solvency

7. (1) The Minister may, by statutory instrument, make regulations prescribing margins of solvency for any local insurer carrying on insurance business solely in Botswana, or carrying on insurance business in and outside Botswana, and for any external insurer carrying on insurance business in Botswana, and such margins of solvency may be prescribed in respect of —

(a) life insurance only;

(b) any insurance including life insurance; and

(c) any insurance other than life insurance.

(2) Regulations made under this section may prescribe the method of calculating the assets of an insurer for the purposes of this section.

PART IV *Registration of Insurers*

Registration of insurer

8. (1) Subject to the provisions of this Part, no person shall commence or carry on insurance business in Botswana unless he is registered as an insurer under this Act.

(2) An insurer carrying on insurance business in Botswana immediately before the commencement of this Act may, within three months after such commencement, make an application for registration under this Act.

(3) The prohibition contained in subsection (1) shall not apply to an insurer by whom an application for registration has been duly made under subsection (2) unless, prior to the expiration of twelve months from the date of the commencement of this Act, the insurer is notified in writing by the Registrar of his intention to refuse to grant the application.

Application for registration

9. Every application by an insurer for registration under this Act shall be made to the Registrar in the prescribed form and shall be accompanied by the prescribed documents.

Grant of application

10. (1) If the Registrar is satisfied that —

(a) the class of insurance business in respect of which the application is made will be conducted in accordance with sound insurance principles;

(b) the relevant capital requirements for insurers specified in Part III or in regulations made under this Act have been complied with by the applicant;

- (c) the margin of solvency of the insurer is adequate having regard to any regulations made in relation thereto under section 7; and
 - (d) the applicant, being a body corporate operating outside Botswana, is duly constituted under the laws of the country in which the head office of the applicant is situated,
- the Registrar may grant the application for registration as an insurer and notify the insurer in writing accordingly.

(2) A notice of the grant under this section of every application for registration shall be published in the Gazette.

11. If in the case of any application for registration the Registrar is not satisfied as to any of the matters referred to in section 10 which he is required to be satisfied before granting an application he shall notify the applicant in writing of his intention to refuse to grant the application.

Notice of
intention
to refuse
application

12. (1) Any person aggrieved by the proposal of the Registrar to refuse to grant an application for registration as an insurer may, within 60 days after the date of the notification of intention to refuse to grant the application, lodge with the Registrar a notice of appeal to the Minister.

Appeal to
Minister on
notice of
intention
to refuse
application

(2) Every such notice of appeal shall be in writing setting out the grounds on which it is made.

(3) Any such notice of appeal may be withdrawn by the person aggrieved before the appeal is dealt with by the Minister.

(4) The Registrar shall transmit the notice of appeal with any relevant documents to the Minister within a period of fourteen days from the date of its receipt by the Registrar.

(5) The Minister shall, on receipt by him of the notice of appeal, consider the appeal and the grounds therefor and any other facts or considerations placed before him by the person aggrieved or by the Registrar, and shall decide whether to uphold or disallow the appeal, and his decision shall be final.

(6) The Registrar shall, unless the appeal is withdrawn, give notice in writing to the applicant for registration of the decision of the Minister.

(7) If the appeal is upheld, the Registrar shall register the applicant as an insurer and notify him in writing accordingly.

(8) Notice of the registration or of the disallowance of the appeal, as the case may be, shall be published in the Gazette.

13. If, in the case of any registered insurer, the Registrar is satisfied that –

Cancellation
of registration

- (a) the class of insurance business of the insurer is not being conducted in accordance with sound insurance principles;
- (b) the relevant capital requirements for insurers specified in Part III or in regulations made under this Act are no longer being complied with by the insurer;

- (c) the insurer has fallen short of any margin of solvency applicable to the insurer by virtue of any regulation made under section 7;
- (d) the insurer has ceased to carry on insurance business in Botswana;
- (e) the insurer has requested in writing the cancellation of the registration; or
- (f) a judgment obtained in any court in Botswana against the insurer remains unsatisfied for 30 days after the date of judgment,

the Registrar shall give notice in writing to the insurer of his intention to cancel the registration of the insurer, and the provisions of section 12, with the appropriate modifications, shall apply to any such notice of intention to cancel registration as if it were a notice of intention to refuse to grant an application for registration.

Prohibition on cancellation of registration

14. No insurer shall carry on insurance business in Botswana after the expiration of a period of six months from the date of the cancellation of the registration of such insurer, or after the expiration of such extended time as the Minister may, in a special case, in writing approve.

PART V Provisions governing the carrying on of Insurance Business by Registered Insurers other than Associations of Underwriters

Application of Part V

15. This Part shall apply only to registered insurers who are not an association of underwriters.

Principal office and principal officer of registered insurer

16. (1) A registered insurer shall maintain a principal office in Botswana and shall appoint a principal officer in Botswana and shall notify the Registrar in writing of the address of the principal office and the name of the principal officer.

(2) In the event of a change of the address of his principal office, or the appointment of a new principal officer, the insurer shall, 21 days after such change or appointment, give notice thereof to the Registrar in writing.

Notification of certain changes and particulars

17. A registered insurer shall, within three months after the end of each financial year of the insurance business of the insurer, notify the Registrar in writing of any change which occurred in that financial year and of any particulars relating thereto required to be so notified by regulations made under this Act.

Furnishing information to Registrar

18. A registered insurer shall supply to the Registrar all essential information concerning his capitalization, his reserves, the classes of insurance business he carries on and such other information concerning his structure as the Registrar may require.

Deposit of securities

19. Every registered insurer shall deposit in trust with the Bank of Botswana such approved securities, whether local or foreign, of not less than such amount in value as may be prescribed, and shall keep such securities so deposited for so long as the insurer carries on insurance business in Botswana.

20. (1) A registered local insurer shall keep such records of his business transacted in Botswana and transacted outside Botswana as may be prescribed. Records to be kept

- (2) A registered external insurer shall keep in Botswana –
- (a) a record of all local policies issued by him showing his rights and obligations thereunder;
 - (b) a record of premiums received on all local policies; and
 - (c) documentary evidence of his assets and liabilities in Botswana, including evidence of the proportion of his capital employed in Botswana.

21. A registered insurer shall, within three months after the end of each financial year of the insurance business of the insurer, prepare and furnish to the Registrar in the prescribed forms respectively – Accounts, etc. to be furnished to Registrar

- (a) a certificate as to the solvency of the insurer, signed, in the case of a life insurer, by an actuary;
- (b) a balance sheet duly audited, showing the financial position of the insurance business of the insurer at the close of that year, together with a copy of the relevant profit and loss account;
- (c) a certified copy of the revenue account in respect of life insurance business, if any, carried on by the insurer in that year;
- (d) a statement of life insurance business, other than business in connexion with industrial insurance and sinking fund policies, if any, carried on by the insurer in Botswana in that year;
- (e) a certified copy of the revenue account in respect of insurance business (not being life insurance business) carried on by the insurer in that year; and
- (f) such other documents and information relating to the relevant accounts and balance sheet (including copies of reports on the affairs of the insurer for the financial year as submitted to the policy holders or shareholders of the insurer) as the Registrar may from time to time require.

22. (1) If, in the opinion of the Registrar, an account or balance sheet furnished by a registered insurer under section 21 is incorrect or is not prepared as prescribed, the Registrar may, by notice in writing, call upon the insurer to amend such account or balance sheet, or to furnish a correct account or balance sheet, or, as the case may be, an account or balance sheet prepared as prescribed under section 21. Amendment of accounts, etc.

(2) If a registered insurer fails to comply with a notice referred to in subsection (1) to the satisfaction of the Registrar, the Registrar may himself either amend the account or balance sheet giving the insurer particulars of the amendments, or he may reject the account or balance sheet.

(3) An account or balance sheet amended by an insurer or the Registrar under this section shall be treated as if it had been originally submitted in its amended form.

(4) If the Registrar amends an account or balance sheet under this section the insurer shall have the right of appeal to the Minister.

(5) The appeal shall be lodged in writing with the Registrar within 30 days after receipt by the insurer of the notice of intention to make the amendment.

(6) The decision of the Minister on the appeal shall be final and notice of the decision shall be given by the Minister to the insurer.

(7) If the account or balance sheet of a registered insurer is rejected by the Minister under this section the insurer shall, to that extent, be deemed to have failed to comply with the provisions of this Act.

Audit of
accounts of
insurers

23. (1) The accounts of every registered insurer shall be audited annually by an auditor approved by the Registrar.

(2) The auditor shall not be an employee, manager or director of the insurer.

(3) The auditor shall satisfy himself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(4) The auditor shall certify whether or not —

(a) he has obtained adequate information from the books and records of the insurer;

(b) the accounts of the insurer accord with the information given to him by the insurer for the purposes of his audit; and

(c) the balance sheet and profit and loss account respectively of the insurer give a true and fair view of the insurer's financial position and profit or loss.

Publication
of authorized
capital, etc.
of registered
insurer

24. A registered insurer shall not publish or issue a document on which is printed a statement —

(a) of his authorized capital, unless the statement also sets forth the amount of his subscribed capital and of his paid-up capital; or

(b) of his subscribed capital, unless the statement also sets forth the amount of his paid-up capital.

Life
insurance
fund

25. (1) Where a registered insurer carries on life insurance business together with any other class of insurance business, the insurer shall keep a separate account of all receipts in respect of the life insurance business.

(2) The receipts referred to in subsection (1) shall be brought by the insurer to, and shall form a separate life insurance fund with, an appropriate name.

(3) Nothing in subsection (1) or (2) shall be deemed to require the investments of the life insurance fund to be kept separate from the investments of any other fund of the insurer.

- (4) The life insurance fund –
 - (a) shall be absolutely the security of the policy holders as though it belonged to an insurer carrying on no other business than life insurance business;
 - (b) shall not be liable for any contracts of the insurer for which it would not be liable if the business of the insurer were only life insurance business; and
 - (c) shall not be applied directly or indirectly for any purposes other than those of the life insurance business referred to in subsection (1).

26. (1) If a registered insurer fails to comply with any of the provisions of this Act or of the regulations made thereunder the Registrar may, in any case in which it appears to him proper so to do, with the approval of the Minister, make an investigation into the affairs of that insurer.

Investigation
by Registrar

(2) For the purposes of an investigation made by him under this section the Registrar shall be deemed to be a Commissioner under the Commissions of Inquiry Act.

Cap. 05:02

PART VI Association of Underwriters registered as Insurers

27. The provisions of this Part shall apply only to associations of underwriters registered as insurers and their members.

Application
of Part VI

28. The Registrar may request any association of underwriters to deposit a substantial sum satisfactory to the Registrar in trust with the Bank of Botswana and to keep that sum so deposited for so long as the association carries on business in Botswana.

Registrar
may request
association of
underwriters
to deposit
sums with
Bank of
Botswana

29. All premiums received by each member of an association of underwriters shall be held in trust in the names of trustees for the payment of the underwriting liabilities attached thereto of each member and the expenses of his insurance business.

Premiums
received to
be held in
trust

30. The accounts of every member of an association of underwriters constituted in Botswana shall be audited in accordance with the provisions of section 24.

Audit where
association is
constituted in
Botswana

31. An association of underwriters constituted outside Botswana shall furnish evidence to the satisfaction of the Registrar that the accounts of each member of the association are subject to an annual audit by an independent auditor.

Audit where
association is
constituted
outside
Botswana

32. The auditor of a member of an association of underwriters shall certify to the committee of the association whether or not the underwriting assets held by the member at the close of each financial year are sufficient to cover the underwriting liabilities attached at that time to the underwriter's accounts.

Certificate
of auditor

33. (1) An association of underwriters constituted in Botswana shall furnish annually to the Registrar such returns relating to the insurance business carried on by each of the members of the association as the Registrar may require.

Additional
information
for Registrar

(2) An association of underwriters constituted outside Botswana shall furnish annually to the Registrar —

- (a) a certified copy of the returns of insurance business carried on by the association and furnished in each year to the appropriate authority in the country where the association is constituted; and
- (b) a certificate signed by the chairman of the association and the said appropriate authority that the members have in respect of the preceding year complied with the requirements of the insurance law in the country where the association is constituted in so far as it relates to associations of underwriters.

PART VII *Insurance Brokers, Agents and Agents for Brokers*

Insurance
brokers,
agents, etc.
to be
registered

34. (1) Subject to the provisions of subsections (2) and (3), no person shall act in Botswana as an insurance broker, insurance agent or as an agent for a broker unless he is registered as such in accordance with the provisions of section 35.

(2) Nothing in subsection (1) shall apply to a person who has acted in Botswana as an insurance broker, insurance agent, or as an agent for a broker on or after the commencement of this Act if —

- (a) immediately before such commencement he was acting in Botswana as such broker, agent, or agent for a broker;
- (b) within three months after such commencement he applies for registration under section 35; and
- (c) within nine months after such commencement he is so registered.

(3) An employee in the office of a registered insurance broker, insurance agent, or agent for a broker may accept over the counter insurance business in such office without being registered under section 35 so long as the compensation of such employee is not related to the volume of business so handled.

Registration
of insurance
brokers,
agents, etc.

35. (1) An application for registration as an insurance broker, insurance agent, or as an agent for an insurance broker may be made to the Registrar by any person having the prescribed qualifications.

(2) Every such application shall be made in the prescribed form containing the prescribed particulars and shall be made in the prescribed manner.

(3) The Registrar may grant, or, on grounds which appear to him sufficient, refuse to grant any such application.

(4) The Registrar shall refuse to grant the application of any person who has —

- (a) in accordance with the provisions of any enactment in force in any other country —
 - (i) been adjudged insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or an arrangement or composition with creditors which has been rescinded or set aside; or

(b) been convicted by a court in any country of an offence involving dishonesty, an appeal against the conviction not having been brought or, having been brought, was withdrawn or dismissed.

36. Every registered insurance broker, insurance agent and agent for a broker shall pay to the Registrar at the commencement of each financial year the annual fee prescribed respectively for such broker, agent, or agent for a broker.

Annual fees

37. (1) The Registrar —

Cancellation of registration

(a) may cancel the registration of any insurance broker, insurance agent or an agent for an insurance broker on any ground on which he could have refused to grant the application for registration; and

(b) shall cancel such registration for any reason for which the Registrar is required in pursuance of the provisions of section 35(4) to refuse to grant an application for registration.

(2) Before cancelling any such registration the Registrar shall give notice in writing to the party or parties concerned setting out the grounds for the proposed cancellation, and shall afford to that party or those parties an opportunity to be heard thereon.

(3) Upon cancellation of registration the relevant certificate of registration shall be returned by the holder thereof to the Registrar.

38. (1) A registered insurance broker shall maintain a principal office in Botswana and shall appoint a principal officer in Botswana and shall notify the Registrar in writing of the address of the principal office and the name of the principal officer.

Principal office and principal officer of registered insurance broker

(2) In the event of a change of the address of his principal office, or the appointment of a new principal officer, the insurer shall, 21 days after such change or appointment, give notice thereof to the Registrar in writing.

39. (1) Every registered insurance broker shall keep records of the insurance transactions handled by him.

Records to be kept by registered insurance broker

(2) Every such record shall contain particulars as to the names and addresses of insured persons and insurers under coverages procured by the insurance broker, the nature of the coverage, the premiums collected and such other particulars, if any, as may be prescribed.

(3) Every such record shall be kept in the broker's place of business in Botswana, and shall be so kept for a period of not less than three years after the date on which the related transaction took place.

40. Every registered insurance broker shall prepare in the prescribed form and furnish to the Registrar, within three months after the end of each financial year, a report containing the prescribed particulars relating to all insurance transactions handled by him during that financial year.

Reports to Registrar by registered insurance broker

Periodic
actuarial
investigation
by persons
carrying life
insurance
business

PART VIII *Special provisions relating to Life and other Policies*

41. (1) Any person carrying on life insurance business shall once in every three years or at such shorter intervals as may be prescribed cause an investigation to be made into his financial position in respect of that business, including a valuation of his liabilities thereof by an actuary approved by the Registrar.

(2) When an investigation under subsection (1) has been made, or when at any other time an investigation into the financial position of such person carrying on life insurance business in respect of such business has been made with a view to the distribution of profits, or the results of which are made public, such person shall cause an abstract to be made of the actuary's report of the investigation.

(3) Where under subsection (2) a person carrying on life insurance business causes an abstract to be made of the report of an actuary on the investigation into his financial position in respect of his life insurance business, such person shall prepare a statement of his life insurance business at the date to which the accounts of such business are made up for the purposes of the investigation:

Provided that if the investigation is made annually the person carrying on life insurance business may prepare such a statement at any time so long as it is made at least once in every three years.

(4) For the purposes of any investigation to which this section applies the value of any assets and the amount of any liabilities shall be determined in accordance with such method of valuation as may be prescribed.

(5) The form and contents of any abstract or statement under this section shall be as may be prescribed.

Amalgamation and Transfer of Life Insurance Business

Amal-
gamation
and transfer
of life
insurance
business

42. (1) A local insurer shall not —

(a) amalgamate with one or more insurers if one or more or all of the insurers to be amalgamated are persons carrying on life insurance business; or

(b) transfer his life insurance business or a part thereof to, or take transfer of a life insurance business or a part thereof from, another insurer,

unless the amalgamation or the transfer, as the case may be, is sanctioned by the Minister in accordance with the provisions of this section.

(2) If it is intended to amalgamate two or more insurers carrying on life insurance business, one or more or all of whom are local insurers, or to transfer the life insurance business or a part thereof from one insurer to another insurer, one or both of whom are local insurers, the directors of the insurers concerned may apply in writing to the Minister to sanction the proposed amalgamation or transfer, as the case may be.

- (3) Before an application to the Minister is made under subsection (2) –
- (a) notice of the intention to make the application shall be published in the Gazette;
 - (b) a statement of the nature of the amalgamation or transfer, as the case may be, together with –
 - (i) an abstract containing the material facts embodied in the agreement under which the amalgamation or transfer is proposed to be effected; and
 - (ii) copies of the actuarial reports upon which the agreement under subparagraph (i) is founded, including a report by an actuary approved by the Registrar,
 shall be posted to the registered or last known address of each life, funeral, industrial or sinking fund policy-owner in Botswana of each insurer and to the Registrar; and
 - (c) the agreement under which the amalgamation or transfer, as the case may be, is proposed to be effected shall be open for inspection by policy-owners and shareholders at the offices of the insurers in Botswana for a period of 21 days after the publication of the notice in the Gazette.
- (4) If he is satisfied that no sufficient objection to the arrangement has been established, the Minister may, after considering the application and such representations as may be made by policy-owners and shareholder of the insurers concerned and by other persons whom he considers are entitled to be heard, sanction the arrangement.
- (5) If it appears to him that the life, funeral, industrial or sinking fund policy-owners, representing one-fifth or more of the total amount insured by any of the insurers carrying on life insurance business concerned, dissent from the amalgamation or transfer, the Minister shall not sanction such amalgamation or transfer, as the case may be.
- (6) If an amalgamation or transfer has taken place in accordance with the provisions of this section no life, funeral, industrial or sinking fund policy-owner shall be regarded as having abandoned any claim which he would have had against the original insurer, or to have accepted in place thereof the liability of another insurer, unless he or his agent has signed a written statement abandoning that claim and accepting in place thereof the liability of that other insurer.

43. Within three months after the date of the completion of an amalgamation or transfer under section 42 the combined insurers or the purchasing insurers, as the case may be, shall deposit with the Registrar –

- (a) certified copies of statements of the assets and liabilities of the insurers concerned in the amalgamation or transfer, together with a statement of the amalgamation or transfer;

Statements relating to amalgamation or transfer of life insurance business

- (b) a certified copy of the agreement or deed under which the amalgamation or transfer was effected;
- (c) certified copies of the actuarial or other reports upon which the agreement or deed was founded; and
- (d) a declaration under the hand of the chairman and of the principal officer of each insurer that –
 - (i) to the best of their knowledge and belief every payment made or to be made to any person whomsoever on account of the amalgamation or transfer is therein fully set forth and no other payments, except those set forth, have been made or are to be made, in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the amalgamation or transfer; and
 - (ii) due notice of the proposed amalgamation or transfer was given to the shareholders, if any, and policy-owners of each insurer concerned in compliance with the provisions of section 42.

Re-insurance contracts of life insurers

44. A life insurer shall not enter into a contract of re-insurance against any liability in respect of his life insurance business in Botswana otherwise than with a life insurer or re-insurer.

Value of certain assets

45. If the proceeds on realization of an asset which was acquired with moneys paid by the insurer under a life policy and with other moneys exceed in amount the moneys paid under the policy which were used for the purpose of acquiring the asset, a reference in this Part to the proceeds on realization of the asset shall be construed as a reference to the amount of the moneys paid under the policy which were used for the purpose of acquiring the asset, and a reference to the value of any such asset shall be construed accordingly.

Minor may insure his life

46. (1) A minor who has attained the age of eighteen years may, without the consent of his parent or guardian, effect a life policy upon his life and pay the premium due under the policy with money he has earned or with any money lawfully at his disposal.

(2) Subject to the provisions of subsection (3), a minor who has effected a life policy under subsection (1) shall be as competent in all respects to be a policy-owner and to have and to exercise all the powers and privileges of a policy holder in relation to the policy as if he were of adult age.

(3) A minor who has effected a life policy under subsection (1) shall not, without the written consent of his parent or guardian, pledge, cede or surrender the policy while he is a minor.

Life policy effected by married persons

47. (1) Notwithstanding any provision of any law to the contrary, but subject to the provisions of this Part, –

- (a) a married woman may in all respects as if she were a single woman of adult age and capacity –

- (i) effect and own a life policy;
 - (ii) hold and, by way of gift or otherwise, acquire from or dispose of to any person, including her husband, any interest in a life policy;
 - (iii) hold any moneys paid by the insurer in respect of any interest held by her in a life policy or any assets acquired by her with those moneys;
 - (iv) hold any moneys or assets acquired by her in respect of the disposal of any interest held by her in a life policy or any assets acquired by her with those moneys; and
 - (v) dispose of to any person, including her husband, by way of gift or otherwise, any moneys or assets referred to in subparagraphs (iii) and (iv);
- (b) a man married out of community of property may, in all respects as if he were a single man of adult age and capacity, by way of gift, acquire from or dispose of to his wife —
- (i) any interest in a life policy;
 - (ii) any moneys paid by the insurer in respect of any interest in a life policy or any assets acquired with those moneys; and
 - (iii) any moneys or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those moneys.
- (2) For the purposes of this Part a man married in community of property may, in all respects as if he were a single man of adult age and capacity, and subject to the provisions of this Part, —
- (a) dispose of to his wife, by way of gift or otherwise, —
- (i) his share in any interest in a life policy effected or held by him on behalf of such community;
 - (ii) any moneys paid by the insurer in respect of his share in any interest under subparagraph (i) or any assets acquired with those moneys; and
 - (iii) any moneys or assets acquired in respect of the disposal of any interest under subparagraph (i) or any assets acquired with those moneys; and
- (b) acquire from his wife, by way of gift or otherwise, and hold and dispose of for his own benefit any moneys or assets under subsection (1) (a) (v).
- (3) The provisions of subsection (1) (a) shall apply to a married woman in relation to —
- (a) a life policy effected prior to her marriage;
 - (b) any interest in a life policy acquired prior to her marriage;
 - (c) any moneys due or paid to her prior to her marriage in respect of a life policy under paragraph (a), or any interest in a life policy under paragraph (b), or acquired by her prior to her marriage in respect of the disposal of any interest in a life policy; and

- (d) any assets acquired prior to her marriage with moneys under paragraph (c), as if the policy, interest, moneys or assets were effected or paid to or acquired by her or became due during her marriage.

Life policy
on own life:
protection
afforded
during life

48. (1) If a life policy effected by a person, whether married or not, on his own life which has insured for three years or longer from the date of the payment of the first premium —

- (a) is attached in execution of a judgment or order of any court at the instance of a creditor of that person; or
- (b) becomes part of that person's estate in insolvency and, if that person is married in community of property, of the joint estate of the insolvent and the surviving spouse,

during the lifetime of that person, the proceeds on realization of the policy shall, to the extent specified in subsection (2), be protected against that person's creditors and against any claim in connexion with such attachment or such insolvency.

(2) The protection afforded by the provisions of subsection (1) in respect of a life policy referred to therein —

- (a) shall extend to so much of the proceeds on realization of the policy as does not exceed an amount of P4 000; and
- (b) shall, subject to the provisions of paragraph (a), extend, if the policy is pledged, to so much of the proceeds on realization of the policy as exceeds the amount of the liability, the payment of which the pledge secures, but no further.

(3) During a period of five years as from the date upon which any moneys become due or have been paid by the insurer under a life policy under subsection (1) or assets acquired with those moneys or with those moneys and other moneys —

- (a) are attached in execution of a judgment or order of any court at the instance of a creditor or a person by whom the policy was effected; or
- (b) become part of the estate in the insolvency of the person by whom the policy was effected and, if that person is married in community of property, of the joint estate of the insolvent and the surviving spouse,

the moneys due or paid under the policy or the proceeds on realization of the assets shall, to the extent specified in subsection (4), be protected against that person's creditors and against any claim in connexion with the attachment or the insolvency.

(4) The protection afforded under subsection (3) in respect of moneys or assets of a person referred to in that subsection —

- (a) shall extend to those moneys or to the proceeds on realization of those assets in so far as those moneys and proceeds, together with —

- (i) all other moneys due or paid to that person under life policies under subsection (1);

- (ii) the value of all other existing assets of that person acquired with moneys paid under life policies under subsection (1) or with such moneys and other moneys; and
 - (iii) the realizable value of all life policies under subsection (1) of which that person is the owner, do not exceed P4 000;
 - (b) shall, subject to the provisions of paragraph (a), extend, in the case of an asset which is pledged or mortgaged, to so much of the proceeds on realization of the assets as exceeds the amount of the liability, the payment of which the pledge or mortgage secures, but no further; and
 - (c) shall not extend to any moneys due or paid under a life policy under subsection (1) on surrender of the policy or to any assets acquired with those moneys or with those moneys and other moneys.
- (5) For the purposes of 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 surrender policy as a consideration for the new policy; and
 - (b) a life policy which an insurer issues under section 54 (3) shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.
49. (1) For the purposes of this section “beneficiary” means –
- (a) the surviving spouse of an owner;
 - (b) a dependant under the will of an owner;
 - (c) a dependant by right of succession on intestacy; or
 - (d) a dependant under or by virtue of an order made in accordance with the provisions of any enactment in Botswana relating to inheritance or succession.
- (2) If –
- (a) a beneficiary has, on the death of the owner, a claim –
 - (i) under a life policy; or
 - (ii) to moneys or assets, in respect of which protection is afforded under section 48; and
 - (b) the life policy, moneys or assets referred to in paragraph (a) –
 - (i) are attached in execution of a judgment or order of any court at the instance of a creditor of the deceased owner; or
 - (ii) become part of the deceased owner’s estate in insolvency and, if the deceased owner was married in community of property, of the joint estate of the deceased’s insolvency and the surviving spouse,
- the beneficiary shall, in respect of his claim, enjoy the protection afforded under section 48.

Life policy on own life: protection afforded on death

Protection afforded in respect of life policy insuring to spouse or children

50. (1) If, —
- (a) before or during marriage, a man effects or cedes for the benefit of his wife or his wife and children, including children to be born to him and his wife, or any of them;
 - (b) before or during marriage, a woman effects or cedes for the benefit of her husband or her husband and children, including children to be born to her and her husband, or any of them; or
 - (c) a person effects or cedes for the benefit of his or her children, including children to be born to him or her,
- a life policy on his or her life or his or her spouse, the policy or moneys due or paid thereunder by the insurer or any asset acquired with those moneys shall not, subject to the provisions of this section and, in the case of a policy which is ceded, to the terms of the cession, —
- (i) be liable to be attached in execution of a judgment or order of any court at the instance of a creditor of the person by whom the policy was effected or ceded; or
 - (ii) form part of the estate in insolvency of the person by whom the policy was effected or ceded and, if that person is married in community of property, of the joint estate of the insolvent and the surviving spouse.
- (2) A benefit conferred or purported to be conferred upon a spouse or child under a life policy under subsection (1) or by virtue of the cession of a life policy under that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject, in the case of a policy which is ceded, to the terms of the cession, 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 the spouse or child has not accepted the benefit and is not a party to the contract of insurance.
- (3) A life policy shall not be treated for the purposes of this section as having been effected for the benefit of the spouse and, additionally or alternatively, the children, including unborn children, or any of them, of the person by whom the policy was effected unless, at the time of its issue, the policy expressly so provides.

Protection afforded in respect of life policy insuring to wife

51. (1) If, before or during marriage, a man effects or cedes for the benefit of his wife a life policy on his or her life and the policy —
- (a) is attached in execution of a judgment or order of any court at the instance of her creditors; or
 - (b) becomes part of her estate in insolvency,
- the proceeds on realization of the policy shall, to the extent specified in section 48 (2), be protected against her creditors and against any claim in connexion with the attachment or the insolvency.
- (2) The provisions of section 48 (3), (4) and (5) and section 50 (2) and (3) shall, *mutatis mutandis*, apply to a life policy under

subsection (1) or moneys due or paid thereunder by the insurer or any assets acquired with those moneys or with those moneys and other moneys.

52. (1) If a premium paid 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 of the payment of the premium 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 estate in insolvency the amount of every such premium in so far as its payment created or increased the excess of liabilities over assets.

Special provisions relating to persons married in community of property

(2) If a woman 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 lawfully acquires any moneys without utilizing for the purpose any assets belonging to the joint estate she may, without her husband's consent, use that money for the purpose of paying any premium due under the policy.

(3) Save as is provided in subsection (4), nothing in this section shall be construed as obliging the husband of a woman married in community of property to pay any premium due under a life policy referred to in this section out of the joint estate, unless he has undertaken so to do.

(4) If the husband of a woman married in community of property has effected or ceded for the benefit of his wife and, additionally or alternatively, children, including unborn children, or any of them, a life policy on his life or on the life of his wife, he shall be obliged during the marriage to pay out of the joint estate any premium under the policy so long as the value of the joint estate exceeds their joint liabilities and, if he fails to make such payment, his wife may, without her husband's consent, make the payment out of moneys she may have earned or otherwise lawfully acquired without utilizing for that purpose any assets belonging to her and her husband jointly or which may otherwise be at her disposal.

53. If —

- (a) two or more life policies or assets in respect of which protection is afforded by the provisions of sections 48, 49 and 51, being the property of one person, are attached in execution of a judgment or order of any court at the instance of a creditor; or
- (b) the owner of two or more life policies or assets in respect of which protection is afforded by the provisions of sections 48, 49 and 51 is adjudged or otherwise declared insolvent, and a part only of the aggregate realizable value of the policies or assets is protected, the judgment creditor or the trustee of the estate in insolvency, as the case may be, shall determine which policy or

Selection for realization of life policies in respect of which protection is afforded

policies or other assets shall be realized, wholly or in part, in order to make available to him so much of the aggregate realizable value as is not protected.

Partial realization and partial conversion of life policies

54. (1) A judgment creditor of the owner of a life policy or the trustee of his estate in insolvency who is entitled to a part of the realizable value of the policy may, if he is in possession of the policy, deliver it to the insurer who is liable under the policy for the purpose of the payment to him of the sum to which he is entitled.

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of the life policy to which the provisions of that subsection apply, the owner or any other person in possession of the policy shall, at the request of the judgment creditor or trustee, deliver it to the insurer who is liable under the policy for the purpose of the payment to the judgment creditor or trustee of the sum to which he is entitled.

(3) On receipt of a life policy delivered to him under subsection (1) or (2) the insurer shall —

- (a) at the request of the judgment creditor or trustee referred to in subsection (1) pay to him a sum equal to the part of the realizable value of the policy to which he is entitled; and
- (b) at the request of the owner of the policy, issue to him a new policy of the same class but for a sum insured equal to the difference between —
 - (i) the full sum insured under the old policy including any bonus which may have accrued in connexion 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 trustee referred to in subsection (1) bears to the full realizable value of the old policy.

(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.

Provisions in case premium on life policy ceded or trust policy cannot be maintained

55. If a person who —

- (a) has effected or ceded a life policy for the benefit of his spouse and, additionally or alternatively, children, including unborn children, or any of them; or
- (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, with the consent of each person who has an interest in the policy, or, if any such person is a minor, with the consent of his parent or guardian or the Master of the High Court, agree with the insurer liable under the policy —

- (i) to exchange the policy for a paid-up life policy of a value equal to that of the original policy according to the insurer's current tariff, 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;
- (ii) 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
- (iii) to apply any bonus which may have accrued in connexion with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

56. (1) Nothing in this Part shall be construed as derogating from the powers of any court to set aside under the law relating to insolvency any cession of a life policy made with intent to benefit someone at the expense of a creditor.

Life policy
ceded or
premium
paid with
intent to
benefit
someone at
the expense
of a creditor

(2) If a premium upon a life policy was paid with intent to benefit a person at the expense of a creditor of the person making the payment, a court may order the owner of the policy to pay a sum equal to the aggregate of all premiums so paid, with interest at a prescribed rate per annum on the amount of each premium so paid from the date of its payment, to the person to whose detriment the premium was to be paid or, if the person has been adjudged or otherwise declared insolvent, to the trustee of his estate in insolvency.

(3) An order for the payment of a sum of money made under 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.

57. If —

Proof of age

- (a) a claim is made for a benefit under a life policy which has insured for a period of three years from the date of the payment of the first premium;
 - (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,
- 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 request of the insurer, within the period of three years referred to in paragraph (a) or in any other manner.

Age
incorrectly
stated

58. (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 the provisions of 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 person's age.

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

Death of
insured by
own act

59. (1) A life policy in which it is provided that the policy shall be void in the event of the insured, whether sane or insane, 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 expiration of that period.

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

Lost or
destroyed
life policy

60. (1) If a local life policy 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 upon which shall be inscribed any endorsement made by the insurer on the original policy 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 issued under subsection (1) shall for all purposes —

(a) take the place of the policy lost or destroyed; and

(b) be the sole evidence of the contract made by the policy.

Life policy
may include
disability
benefits

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

(a) informs the Registrar that he has issued on or before the date of commencement of this Act, or that he intends to issue, local life policies which provide benefits —

(i) on the total or partial permanent disability 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 particular disease; and

(b) requests the Registrar 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 on or before the date of commencement of this Act or after notification to the Registrar as is provided in paragraph (a) shall, subject to the provisions of 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 provided in subsection (1) (a) (i) and (ii) does not exceed in the aggregate —

(a) a waiver of claims to any premium under the policy in respect of the period of the disability; and

(b) (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 cent of the sum payable under the policy on the death of the person;

(ii) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures; or

(iii) 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) A local life policy providing benefits such as are described in subsection (1) (a) which cannot, by reason of the provisions of subsection (2), be treated for the purposes of this Act as a life policy shall, for the purposes of this Act, be treated as both a life policy and a personal accident policy.

62. (1) An insurer shall not make or permit to be made any discrimination in respect of the rate of premiums charged or the bonuses granted between life policies which are of the same kind and under which the persons whose lives are insured have an equal expectation of life.

Dis-
crimination
between life
policies, etc.
prohibited

(2) Nothing in subsection (1) shall apply to life policies which —

(a) are re-insurance contracts;

(b) are for large sums at preferential rates in accordance with the current tariff of the insurer concerned;

(c) insure at preferential rates the lives of employees of one employer or a combination of employees or members of the families of such employees or the lives of a group of persons carrying on the same occupation; or

(d) are of a class prescribed.

(3) An insurer, director, servant or agent for an insurer shall not pay, allow or give or offer to pay, directly or indirectly, —

- (a) a rebate of the premiums payable on a life policy;
- (b) an advantage in the nature of a rebate of the premium payable on a life policy; or
- (c) preferential treatment in connexion with bonus or other benefit under a life policy.

(4) No person shall knowingly receive as such any rebate of premium, advantage or preferential treatment referred to in subsection (3) as an inducement to insure.

(5) No director, servant or agent for 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 negotiable instrument, not being a cheque payable on the date of issue; or
- (b) an acknowledgment of debt, not being a stop order, in favour of the insurer or any person whomsoever has been given for the first year's premium or any part thereof.

(6) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction thereof to a fine not exceeding double the amount of the annual premium normally payable on a life policy similar to the one in respect of which the offence was committed.

Application of certain provisions of Part VIII to industrial policies

63. The provisions of sections 46 to 59 inclusive and section 61 shall, *mutatis mutandis*, apply to industrial policies.

Application of certain provisions of Part VIII to sinking fund policies

64. The provisions of sections 60 to 62 inclusive shall, *mutatis mutandis*, apply to sinking fund policies.

Application of certain provisions of Part VIII to funeral policies and other provisions in regard thereto

65.(1) The provisions of sections 46 to 57 inclusive and sections 59 and 61 shall, *mutatis mutandis*, apply to funeral policies.

(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 policy shall —

- (a) be entitled to recover from the policy-owner any resultant shortfall in the premiums actually paid; or
- (b) refund to the policy-owner any resultant overpayment of premiums.

(3) A funeral policy issued on or after the date of commencement of this Act —

- (a) shall provide that the policy-owner shall, at his 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; and
- (b) may provide that the insurer liable under the policy shall likewise have the option to pay the sum of money referred to in paragraph (a) instead of providing for each funeral or other non-monetary benefit for which provision is made in the policy.

(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 connexion therewith, in printed or typed letters no smaller than and as legible as the letters of the provisions of the policy.

(5) A registered insurer who issued a funeral policy before the date of commencement of this Act shall, if the policy is still in force, within three months of that date declare to the Registrar the value in money of each funeral or other non-monetary benefit for which provision is made in the policy, and that value shall be stated in clear type and in distinct terms in every premium receipt book issued thereafter in connexion with the policy.

(6) If the Registrar is of the opinion that a sum of money stated in a funeral policy under subsection (4), or that the value declared by a registered insurer under subsection (5) with reference to a particular funeral policy, does not approximate to the value of the funeral or other non-monetary benefit for which provision is made in the policy, he shall declare the amount of money which is, in his opinion, equal to the value of the funeral or other benefit provided for in the policy.

(7) In a funeral policy the amount declared by the Registrar under subsection (6), or, if no amount is so declared, the sum of money stated in the policy under subsection (4), or the value declared under subsection (5), shall be deemed to be the sum insured.

66. (1) If a premium under a local life, industrial 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 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 insurer shall renew the policy.

Days of grace, paid up policies and non-forfeiture provisions: life, industrial and sinking fund policies

(2) If the premiums under a local life or sinking fund policy are payable at monthly intervals, or at intervals of less than one month, the provisions of subsection (1) shall have effect as if the references in that subsection to the words "one month" and "month" were references to the words "fifteen days".

(3) If a claim under a local life, industrial 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.

(4) If a premium under a local policy which is —

- (a) a life policy under which at least three years' premiums have been paid;
- (b) an industrial policy under which at least five years' premiums have been paid; or
- (c) a sinking fund policy under which at least three years' premiums have been paid,

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 him and approved by the Registrar, 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.

(5) The owner of a policy referred to in subsection (4) may in writing waive the rights conferred upon him by that subsection.

(6) The rules referred to in subsection (4) 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 or not a paid-up policy such as is referred to in that subsection shall entitle the owner to any future bonuses thereon.

(7) The provisions of subsection (4) shall not apply in connexion with any particular kind of life or industrial policy which an insurer has issued or proposes to issue if the Registrar 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 him to grant any substantial benefit of a kind described in that subsection.

(8) If on or after the date of commencement of this Act a local 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 Registrar within 30 days of the date on which he is notified by the insurer liable under the policy that the policy has lapsed, or has been so dealt with, or, if he is not so notified, within six months of the date on which the policy lapsed or has been so dealt with that he received no written notice from the insurer a reasonable time beforehand to the effect that the policy was due to lapse or be so dealt with, the Registrar may, unless the insurer satisfies him that the notice was duly despatched to the owner at his last known residence or place of work a reasonable

time before the policy was due to lapse or to be dealt with, require the insurer to revive the policy on payment of the premium required within a period to be fixed by the Registrar. A policy shall be revived under this subsection without any alterations in its conditions with effect from the date of the payment of the premium required.

67. A life policy issued after the commencement of this Act may be cancelled by the proposer or the owner within a period of three months from the date on which the proposal form has been signed or within 30 days of the receipt of the policy by the owner, whichever is the later. In the event of such cancellation all premiums paid by the proposer or owner shall be refunded to him but the insurer shall be entitled to deduct such amount as may be prescribed in respect of expenses and the amount of any medical fees incurred.

Owner may cancel life policy within limited period without penalty

68. (1) If a premium under a local 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 –

Days of grace, paid-up policies and non-forfeiture provisions

- (a) if the insurer is bound by an express or tacit undertaking to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums, for a period of one month as from the due date of the first unpaid premium; and
- (b) if the provisions of paragraph (a) do not apply, for a period expiring on a date specified for that purpose in a written notice, which the insurer shall serve on the owner of the policy at least fourteen days before that date.

(2) If a premium referred to in subsection (1) is paid within the relevant period specified in paragraph (a) or (b), the insurer liable under the policy shall renew the policy, and, if a claim under the policy arises during the period, the insurer shall be entitled to require the owner of the policy to pay the amount of the premium.

(3) If a premium under a local funeral policy which is issued on or after the date of commencement of this Act is not paid within the period specified in subsection (1) the policy shall, subject to the provisions of this section, nevertheless remain in force for the appropriate period fixed under subsection (6) for the full sum insured without payment of further premiums.

(4) 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 21 years and who is not the owner of the policy or his wife or her husband, no benefit shall be claimable under that policy on that person's death if it occurs after he or she attained the age of 21 years.

(5) 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 specified in subsection (6) 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.

(6) A funeral policy referred to in subsection (3) shall remain in force for the appropriate period listed in the first column of the following table in accordance with the number of years for which premiums were paid under the policy specified opposite thereto in the second column of the said table –

<i>First column</i>	<i>Second column</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 over and less than 25 years
60 months	25 years or over.

Grant of more favourable terms than those specified in section 66 or 68 Preferred creditors of an insurer

69. Nothing in section 66 or 68 shall preclude an insurer from granting to an owner of a policy of a kind referred to in those sections more favourable terms than those specified for that kind of policy in those sections.

70. Notwithstanding any law to the contrary, in the event of the liquidation, insolvency or bankruptcy of a registered insurer –

- (a) the owners of life policies issued by the insurer shall have preference against all other creditors of the insurer in respect of the life insurance fund maintained by him; and
- (b) the owners of all other policies issued by the insurer shall rank before any other creditors of the insurer in the distribution of such assets of the insurer as remain after the claims by owners of life policies against the estate have been discharged.

PART IX *Miscellaneous Provisions*

Power to require investment of insurance funds in Botswana

71. (1) The Minister may, by statutory instrument, order that all registered insurers, or a registered insurer of a particular class or description specified in the instrument, shall invest such percentage of the insurance funds of such insurers or insurer, as the case may be, accruing in respect of their or its business in Botswana in such Botswana securities and such other securities in Botswana, as may be specified in the instrument.

(2) An instrument made under subsection (1) may prescribe different percentages of such insurance funds referred to in

subsection (1) to be so invested according to the class or description of an insurer, and may prescribe different percentages for local and external insurers.

(3) Every registered insurer to which an instrument made under subsection (1) relates shall comply with the requirements thereof.

72. The Minister may, by statutory instrument, in the public interest, exempt any insurer from all or any of the provisions of this Act. Exemption

73. (1) Where an insurer or an applicant for registration under this Act is required or entitled to do or refrain from doing anything within a specified period of time, the Registrar may, on an application in writing by such insurer or applicant, and if he thinks fit, extend such time for a period of not more than four weeks. Extension of time for registration

(2) The provisions of this section shall apply notwithstanding that the specified period of time may have expired.

74. (1) Subject to the provisions of this Act, and to such conditions as he may impose, the Registrar may, on an application in writing by an insurer, approve the classification of the insurance business of the insurer, or alter its classification. Classification of insurance business

(2) Nothing in this section shall authorize the approval or alteration, as the case may be, of the classification of the insurance business, the subject of the application, where it appears to the Registrar that the approval or alteration will be detrimental to the interest of an insurer other than the applicant or to the interest of any other person.

75. (1) The Registrar may, for the purposes of this Act, require the production of any document or information relating to or concerning the insurance business of any insurer, or of any applicant for registration, as the case may be. Production of documents, etc.

(2) Where any document or information in writing produced under this section is not written in the English language it shall be accompanied by an English translation unless in any proper case the Registrar otherwise directs.

76. (1) A policy holder may inspect a copy of the balance sheet of the insurer at any time during the business hours of the principal office of the insurer in Botswana. Inspection of balance sheet by policy holder, etc.

(2) No fee shall be paid to the insurer for an inspection made by a policy holder of a copy of the balance sheet of the insurer under this section.

(3) On a request being made by a policy holder for a copy of the balance sheet, and on payment by him to the insurer of the prescribed fee, the insurer shall supply a copy of the balance sheet to the policy holder.

Restriction on use of words "insurance" and "assurance"
Service of process

77. No person other than a registered insurer shall, after the expiration of twelve months from the commencement of this Act, use the words "insurance" or "assurance" or any combination or derivative thereof as part of the business name, style or title of that person.

78. (1) Service of process in any legal proceedings against an insurer who is not an association of underwriters may be effected at the principal office of the insurer in Botswana.

(2) If an insurer has no principal office in Botswana or it has ceased to exist, process in any legal proceedings against the insurer may be served at the office of the Registrar, and service upon the Registrar, in such case, shall be deemed to be service upon the insurer.

Enforcement of rights of policy holders

79. (1) The holder of a local policy shall, notwithstanding any contrary provision in the policy or in any agreement relating to the policy, be entitled to enforce his rights under the policy against the insurer liable under the policy in any court in Botswana.

(2) Notwithstanding the provisions of subsection (1), a local policy may provide that the amount of any liability under the policy shall be determined in accordance with the provisions of the Arbitration Act.

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Inspection of documents

80. (1) Any person may with the consent of the Registrar, on payment to the Registrar of the prescribed fee, inspect, or make copies of, or obtain certified copies of, any document in the custody of the Registrar and which has been submitted to the Registrar under section 21.

(2) No fee shall be paid to the Registrar for information supplied by him to the principal officer in Botswana of an insurer at the address of the principal office in Botswana of such insurer.

Copies where documents produced to Registrar

81. (1) Where an original document is produced to the Registrar it shall be accompanied by two copies duly certified as true copies for retention by the Registrar unless he dispenses with production of the copies, or any copy.

(2) Where a copy only of a document is produced, the Registrar may require production of further evidence to account for the absence of the original; and if the Registrar is satisfied by the evidence, two copies shall be prepared and, when duly certified on behalf of the insurer, shall be retained by the Registrar unless he dispenses with their production.

(3) For the purposes of this section a document shall be deemed to be duly signed or certified if it is signed on behalf of the insurer by the principal officer in Botswana of the insurer, or is issued under seal, or is signed by some person approved by the Registrar.

False documents
Fees

82. No person shall issue a document for the purposes of section 81 knowing it to be false in any particular.

83. The Registrar may charge such fees in connexion with the registration of insurers and any other exercise of his functions and

the administration of the office of the Registrar under this Act as may be prescribed.

84. Every person who acts in contravention of any of the provisions of this Act, or of the regulations made thereunder, shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding P2 000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Penalties

85. In the case of any offence for which no other penalty is provided under this Act committed by a body of persons, —

Offences by
bodies of
persons

(a) where the body of persons is a body corporate, every director and officer of the body corporate shall be deemed to be guilty of that offence; and

(b) where the body of persons is a firm, every partner of the firm shall be deemed to be guilty of that offence:

Provided that no person shall be deemed to be guilty of an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent the commission thereof.

86. (1) The Minister may, by statutory instrument, make regulations —

Regulations

(a) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed;

(b) in relation to any other matter or thing authorized or required by this Act to be done by or in accordance with regulations; and

(c) generally for the purpose of giving effect to this Act.

(2) Regulations made under this section may make different provisions for different classes of insurers and insurance business.

87. (1) This Act applies to every insurer and every class of insurance business other than a friendly society, or an insurer or class of insurance business which is exempted from its provisions by a statutory instrument made by the Minister under section 86.

Application
of Act

(2) Where an insurer or class of insurance business is exempted by such an instrument from some but not all of the provisions of this Act, the provisions in respect of which the exemption is made shall not apply to such insurer or such class of insurance business, as the case may be.

88. The Insurance Act, 1969, which was never brought into force, is hereby repealed.

Repeal
21 of 1969

PASSED by the National Assembly this 2nd day of April, 1979.

I.P. GONTSE,
Clerk of the National Assembly.