

# INSURANCE INDUSTRY (AMENDMENT) ACT, 2003

No. 17



of 2003

## ARRANGEMENT OF SECTIONS

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### **An Act to amend the Insurance Industry Act**

*Date of Assent:* 19.09.02.

*Date of Commencement:* 10.10.03.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Insurance Industry (Amendment) Act, 2003.

2. Section 2 of the Insurance Industry Act (hereinafter referred to as "the Act") is amended by substituting —

Short title

Amendment  
of section 2  
of Cap.  
46:01

(a) for the words “a total of P2000” which appear therein in relation to the definition of “funeral policy”, the words “such amount as may be prescribed”; and

(b) for the definition of “principal officer” which appears therein, the following new definition —

“ “principal officer” means the person for the time being serving one principal office and being responsible for the daily management of the principal office in Botswana of the insurer, broker or agent;”.

Amendment  
of section  
14 of the  
Act

3. Section 14 of the Act is amended by substituting for that section, the following new section —

“Exclusion  
of burial  
societies  
Cap. 18:01  
14. (1) The provisions of this Act shall not apply to burial societies registered under the Societies Act.

(2) Notwithstanding the provisions of subsection (1), section 119 of the Act shall apply to burial societies.”.

Amendment  
of section 15  
of the Act

4. Section 15 of the Act is amended in subsection (1) thereof by deleting the words “or renewal of registration” which appear therein.

Amendment  
of the Act

5. The Act is hereby amended by inserting, immediately after section 16 thereof, the following new section —

“Renewal of  
registration  
of an insurer  
16A (1) Every insurer shall, immediately after a period of 12 months has expired from his initial registration, apply to the Registrar in such form as may be prescribed to renew such registration for a further period of 12 months.

(2) An insurer shall thereafter apply to the Registrar to renew his registration whenever a period of 12 months has expired from his previous renewal of registration.

(3) Where an insurer does not renew his registration when it expires, he shall pay, to the Registrar, a penalty of P150 per day during the period he does not renew his registration, which period shall not exceed three months.

(4) Where an insurer does not renew his registration within 3 months of its expiry, the Registrar shall cancel that registration.

(5) Where the registration of an insurer is cancelled, the insurer shall re-apply for registration, which re-application shall be treated as a new application for registration.”.

Amendment  
of section 20  
of the Act

6. Section 20 of the Act is amended by inserting the words “or apply to the court for the judicial management or winding-up of the business of the insurer in terms of section 123” immediately after the words “registration of the insurer”, which appear therein.

Amendment  
of section 31  
of the Act

7. Section 31 of the Act is amended in subsection (2) thereof —

(a) by inserting the words “a maximum of” immediately before the words “three months”, which appear therein; and

(b) by substituting, for the words “P50” which appear therein, the words “P150”.

**8. Section 33 of the Act is amended—**

- (a) in subsection (2) thereof, by deleting the words “and external” which appear therein; and
- (b) in subsection (4) thereof, by substituting for the word “unless” which appears in paragraph (b), the word “provided”.

Amendment  
of section 33  
of the Act

**9. Section 49 of the Act is amended —**

- (a) in subsection (1) thereof, by inserting the words “or insurance broker” immediately after the words “by an insurer”, which appear therein;
- (b) in subsection (2) thereof, by inserting the words “and such agreement shall only be issued to an agent who has complied with the provisions of this Act” immediately after the words “the Registrar”, which appear therein;
- (c) by substituting, for subsection (5) thereof, the following new subsection (5) —

Amendment  
of section 49  
of the Act

“(5) Every insurance agent applying to the Registrar for registration shall apply in the prescribed form and shall provide such additional documentation and information as the Registrar may require.”; and

- (d) by inserting, immediately after subsection (5) thereof, the following new subsections —

“(6) The Registrar may stipulate such amendments as he considers necessary to such documentation to ensure that they comply with the requirements of the Act.

(7) The Registrar may refuse to register or may cancel the registration of any agent who, in his opinion, does not possess the qualifications set down by the Minister.”.

**10. The Act is hereby amended by inserting, immediately after section 49 thereof, the following new section —**

Amendment  
of the Act

“Renewal of  
registration  
of an agent

49A (1) Every agent shall, immediately after a period of 12 months has expired from his initial registration, apply to the Registrar in such form as may be prescribed to renew such registration for a further period of 12 months.

(2) An agent shall thereafter apply to the Registrar to renew his registration whenever a period of 12 months has expired from his previous renewal of registration.

(3) Where an agent does not renew his registration when it expires, he shall pay, to the Registrar, a penalty of P150 per day during the period he does not renew his registration, which period shall not exceed three months.

(4) Where an agent does not renew his registration within 3 months of its expiry, the Registrar shall cancel that registration.

(5) Where the registration of an agent is cancelled, the agent shall re-apply for registration, which re-application shall be treated as a new application for registration.”.

Amendment  
of section 50  
of the Act

**11.** Section 50 of the Act is amended in subsection (1) thereof by deleting the words “or renewal of registration” which appear therein.

Amendment  
of section 52  
of the Act

**12.** Section 52 of the Act is amended by deleting paragraph (b) thereof.

Amendment  
of the Act

**13.** The Act is hereby amended by inserting, immediately after section 52 thereof, the following new section —

“Renewal of  
registration  
of an insurance  
broker

52A (1) Every insurance broker shall, immediately after a period of 12 months has expired from his initial registration, apply to the Registrar in such form as may be prescribed to renew such registration for a further period of 12 months.

(2) An insurance broker shall thereafter apply to the Registrar to renew his registration whenever a period of 12 months has expired from his previous renewal of registration.

(3) Where an insurance broker does not renew his registration when it expires, he shall pay, to the Registrar, a penalty of P150 per day during the period he does not renew his registration, which period shall not exceed three months.

(4) Where an insurance broker does not renew his registration within 3 months of its expiry, the Registrar shall cancel that registration.

(5) Where the registration of an insurance broker is cancelled, the insurance broker shall re-apply for registration, which re-application shall be treated as a new application for registration.”

Amendment  
of section 54  
of the Act

**14.** Section 54 of the Act is amended in subsection (2) thereof by deleting the words “in respect of a limited company” which appear therein.

Amendment  
of section 59  
of the Act

**15.** Section 59 of the Act is amended by inserting the words “or apply to the court for the judicial management or winding-up of the business of the insurance broker in terms of section 123” immediately after the words “registration of the said broker”, which appear therein.

Amendment  
of section 63  
of the Act

**16.** Section 63 of the Act is amended in subsection (2) thereof —  
(a) by inserting the words “a maximum of” immediately before the words “three months”, which appear therein; and  
(b) by substituting, for the words “P50” which appear therein, the words “P150”.

Amendment  
of section 79  
of the Act

**17.** Section 79 of the Act is amended in subsection (3) thereof by inserting the word “also” immediately before the words “apply to a married woman”, which appear therein.

**18. Section 96 of the Act is amended —**

Amendment of  
section 96 of  
the Act

- (a) in subsection (1) thereof, by inserting the words “between insurance policies which are of the same kind” immediately after the words “rate of premiums charged”, which appear therein;
- (b) in subsection (2) thereof by substituting —
  - (i) for the word “life” which appears therein, the word “insurance”, and
  - (ii) for the words “P100 000” which appear in paragraph (b), the words “P200 000”;
- (c) in subsection (3) thereof —
  - (i) by substituting for the word “life” which appears in paragraph (a), the word “insurance”,
  - (ii) by substituting, for paragraph (b) thereof, the following new paragraph (b) —  
“(b) any consideration or thing of value intended as an inducement to effect insurance cover;”, and
  - (iii) by inserting, in paragraph (d) thereof, the word “life” immediately before the word “policy”;
- (d) in subsection (7) thereof by substituting, for the words “a life” which appear therein, the words “an insurance”; and
- (e) by inserting, immediately after subsection (7) thereof, the following new subsection —  
“(8) A person who is not an insurer, broker, agent or the employee of such insurer, broker or agent shall not, directly or indirectly, pay or allow, agree to pay or allow, or attempt to pay or allow, compensation or anything of any value to any person for —
  - (a) placing or negotiating insurance on any life, property or interest in Botswana; or
  - (b) negotiating the continuance or renewal of insurance on any life, property or interest in Botswana.”.

**19. Section 100 of the Act is amended in subsection (4) thereof by substituting, for the words “subsection (2)” which appear therein, the words “subsection (1)”.**

Amendment  
of section 100  
of the Act

**20. Section 107 of the Act is amended by —**

Amendment  
of section 107  
of the Act

- (a) substituting, for the words “other payment” which appear therein, the words “consideration or thing of value”; and
- (b) inserting the words “subject to the provisions of subsection (3) and subsection (5) of section 96” immediately after the words “policy of insurance.”, which appear therein.

**21. Section 112 of the Act is amended —**

Amendment  
of section 112  
of the Act

- (a) by substituting for subsection (1) thereof, the following new subsection —  
“(1) The Registrar may, in writing, require for the purposes of this Act, the production of any document or information relating to or concerning the insurance business of any insurer, broker or agent or of any applicant for registration, as the case may be, within such period as he may stipulate, which period shall not exceed 21 days.”; and

(b) by inserting, immediately after subsection (3) thereof, the following new subsections —

“(4) The Registrar may make copies of portions or the whole of any document or information produced under subsection (1) and may require the principal officer of an insurer, broker, agent or applicant for registration to provide any further information, as may be required by the Registrar, in relation to any such document or information.

(5) The Registrar or any other person authorised to act on his behalf may enter the premises of any insurer, broker, agent or applicant for registration, if it appears to him that there are reasonable grounds for suspecting that there is at the premises of such persons any document or information relating to or concerning the insurance business of such person, with respect to which —

- (a) any offence has been, or is suspected on reasonable grounds to have been, committed;
- (b) there are reasonable grounds for believing that it will afford evidence as to the commission of any offence; or
- (c) there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

in order to search the premises, or to take possession of such documents or information, or to take any other step which may appear necessary for preserving such documents or information or for preventing any interference therewith.

(6) Any action taken by the Registrar or any other person authorised to act on his behalf in accordance with subsection (5) shall, as far as possible, be taken in the day time and in the presence of two or more persons.

(7) Any document or information that has been seized by the Registrar or any other person authorised to act on his behalf under this section may be retained for a period of three months and shall remain absolutely privileged during that period.

(8) Any costs incurred during any investigation carried out by the Registrar or any other person authorised to act on his behalf in accordance with this section shall be borne by the person who is the subject of the investigation, unless it is found that no breach of this Act has been committed.”.

Amendment  
of section 114  
of the Act

**22.** Section 114 of the Act is amended by inserting the words “or agent” immediately after the words “registered insurer or broker”, which appear therein.

Amendment  
of section 119  
of the Act

**23.** Section 119 of the Act is amended in subsection (3) thereof, by substituting for the words “P5 000” which appear therein, the words “P18 000”.

**24.** Section 123 of the Act is amended —

Amendment  
of section 123  
of the Act

- (a) in subsection (1) thereof by inserting the words “or broker” immediately after the words “an insurer”, which appear therein;
- (b) in subsection (3) thereof by inserting the words “or broker” immediately after the words “an insurer”, which appear therein;
- (c) in subsection (5) thereof —
  - (i) by substituting the words “the insurer” for the words “the insurer or broker” wherever they appear in this subsection,
  - (ii) by inserting the words “judicial management or” immediately after the words “to the court for the”, which appear therein, and
  - (iii) by inserting, immediately after paragraph (e) thereof, the following new paragraphs —
    - “(f) in terms of section 20;
    - (g) in terms of section 59.”;
- (d) by substituting, for subsection (6) thereof, the following new subsection —
  - “(6) The court may, after considering the petition presented by the Registrar, order the judicial management or winding up of the insurer or broker if it is of the opinion that there are sufficient grounds and it is just and equitable to do so.”;
- (e) in subsection (7) thereof by inserting the words “or broker” immediately after the words “the insurer”, which appear therein; and
- (f) in subsection (8) thereof by substituting for the word “insurer” the words “insurer or broker” wherever they appear in this subsection.

**25.** Section 126 of the Act is amended in subsection (3) thereof, by substituting for the words “P10 000” which appear therein, the words “P36 000”.

Amendment  
of section 126  
of the Act

**26.** Section 128 of the Act is amended —

Amendment  
of section 128  
of the Act

- (a) in subsection (3) thereof by substituting for the words “P1000” which appear therein, the words “P3600”;
- (b) in subsection (4) thereof by substituting for the words “P1000” which appear therein, the words “P3600”; and
- (c) in subsection (5) thereof by substituting for the words “P5000” which appear therein, the words “P18 000”.

**27.** Section 129 of the Act is amended in subsection (2) thereof by substituting for the words “P25 000” and “P10 000” which appear therein, the words “P90 000” and “P36 000” respectively.

Amendment  
of section 129  
of the Act

**28.** Section 130 of the Act is amended in subsection (1) thereof by substituting for the word “P1000” which appears therein, the word “P3600”.

Amendment  
of section 130  
of the Act

PASSED by the National Assembly this 25th day of July, 2003.

A. MATLHAKU,  
*Clerk of the National Assembly.*