

# INSURANCE INDUSTRY ACT, 2015

No. 10



of 2015

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**An Act to provide for the licensing, governance and regulation of all insurers, insurance brokers, insurance agents and representatives operating in Botswana and for matters incidental to or connected therewith.**

*Date of Assent:* 29.09.2015

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

1. This Act may be cited as the Insurance Industry Act, 2014, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint. Short title and commencement
2. In this Act, unless the context otherwise requires — Interpretation
- “actuary” means an associate or fellow of a professional actuarial body that is a member of the International Actuarial Association, or such other body as may be approved by the Regulatory Authority;
- “approved person” means a person who has relevant qualifications and experience to determine general insurance liabilities, which person is approved by the Regulatory Authority in terms of section 19;
- “auditor” means an auditor registered with the Botswana Institute of Chartered Accountants under the Accountants Act; Cap. 61:05
- “beneficial shareholder” means the beneficiary of shares registered in another person’s name, who ultimately becomes the owner of the shares;
- “Botswana Institute of Chartered Accountants” means the Institute that is established under the Accountants Act;
- “company” means a company incorporated in accordance with, and registered under the Companies Act, or deemed to have been so incorporated and registered; Cap. 42:01
- “controller” of an insurer, insurance broker or insurance agent includes —
- (a) a person who is in a position to control or exert significant influence over the business or financial operations of an insurer, insurance broker or insurance agent;
  - (b) a director or member of the governing body of an insurer, insurance broker or insurance agent;
  - (c) a person that has the power to appoint another person to be a director or member of the governing body of an insurer, insurance broker or insurance agent;
  - (d) a person whose consent is needed for the appointment of another person as a director of an insurer, insurance broker or insurance agent;

- (e) a person who holds at least 20 per cent of the shares of the insurer, insurance broker or insurance agent;
- (f) a person who has the power to control at least 20 per cent of the voting rights attached to shares or other securities of the insurer, insurance broker or insurance agent;
- (g) a person who holds rights in relation to an insurer, insurance broker or insurance agent, which if exercised, would result in that person holding at least 20 per cent of the shares of an insurer, insurance broker or insurance agent;
- (h) if the insurer, insurance broker or insurance agent is a subsidiary of another person, a person that is a controller of the parent or controlling body; or
- (i) a person declared by the Regulatory Authority to be a controller of an insurer, insurance broker or insurance agent, and written notice of the declaration is given to that person,

but a Minister or the Regulatory Authority, in that capacity, is not a controller of an insurer, insurance broker or insurance agent;

“court” means the High Court of Botswana, and includes a Magistrate Court where the jurisdiction permits;

“derivative” means a financial instrument, the price of which is derived from the value of one or more underlying assets or any agreed upon pricing arrangement;

“director” in relation to a body corporate, has the same meaning assigned to it under the Companies Act;

“fair value” has the same meaning assigned to it in the International Accounting Standards, or such other accounting standard as may be approved by the Regulatory Authority;

“financial crime” means --

- (a) a criminal offence (whether or not arising under this Act) that involves fraud or dishonesty in relation to an insurer, insurance broker or insurance agent;
- (b) financing or facilitating a criminal offence (whether or not it arises under this Act) in relation to an insurer, insurance broker or insurance agent;
- (c) dealing with the proceeds of a criminal offence (whether or not it arises under this Act) in relation to an insurer, insurance broker or insurance agent;
- (d) the offence of money laundering in terms of the Proceeds and Instruments of Crime Act; or
- (e) financing of a terrorist activity;

“fit and proper requirements” means the necessary qualities and traits that will allow a controller, director, manager, principal officer or significant shareholder to perform the duties and responsibilities of his or her position with the insurer, insurance broker or insurance agent, and includes --

- (a) integrity demonstrated in personal conduct;
  - (b) soundness of judgment;
  - (c) financial soundness; or
  - (d) sufficient knowledge, experience and professional qualifications as may be determined by the Regulatory Authority;
- “general insurance business” means the business of providing or undertaking to provide policy benefits under any of the classes specified in Schedule 1;
- “general insurance policy” means an insurance policy of any class of a general insurance business, or a contract comprising a combination of any of those policies;
- “general insurer” means a person licensed or deemed to be licensed to conduct general insurance business;
- “holding company” has the same meaning assigned to it under the Companies Act;
- “insurance agent” means a person who solicits applications for insurance for an insurer;
- “insurance business” means the business of undertaking to provide policy benefits, which includes general insurance, life insurance and reinsurance, whether or not that business is a member of an association of underwriters;
- “insurance broker” means a person who offers services as an intermediary, otherwise than as an agent of the insurer;
- “insurer” means a person who undertakes liabilities by way of insurance (including general insurance, life insurance and reinsurance), whether or not as a member of an association of underwriters;
- “International Actuarial Association” means the worldwide association of professional actuarial associations;
- “licence” means a licence issued under this Act;
- “life insured” means a person, including an unborn child, to whose life, or to the functional ability or health of whose mind or body, a long term policy relates;
- “linked liabilities” means the liability of a long term insurer in respect of a linked policy;
- “linked policy” means a long term policy of which the amount of the policy benefits is not guaranteed by the long term insurer, but is determined solely by reference to the value of particular assets or categories of assets which are specified in the policy, and are actually held by or on behalf of the insurer, specifically for the purposes of the policy;
- “long term insurance business” means the business of providing or undertaking to provide policy benefits under any of the classes specified in Schedule 2;
- “long term insurer” means a person licensed or deemed to be licensed to conduct long term insurance business;

- “long term policy” means an insurance policy of any class of a long term insurance business, other than a linked policy of which the amount of policy benefits is determined in whole or in part by reference to the value of a defined asset or category of defined assets;
- “manager” includes an employee of the insurer who exercises managerial functions in relation to the insurer;
- “market related policy” means a long term policy other than a linked policy of which the amount of benefits is determined in whole or in part by reference to the value of a defined asset or category of defined assets;
- “micro insurance policy” means a contract in terms of which a person, in return for a premium, undertakes to provide benefits under any class of long term insurance and general insurance, subject to the following limitations —
- (a) the benefits may not exceed P50 000 or any maximum amount that may be prescribed;
  - (b) the premium amount may not be guaranteed for a term exceeding 12 months; or
  - (c) a risk such as weather insurance, catastrophe and other pooled disaster risk policies, including a reinsurance policy of such a risk must be independent, and be excluded;
- “net liabilities” means the net of permitted reinsurance liabilities of the insurer;
- “non-bank financial institution” has the same meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act;
- “person associated with” in relation to an insurer, insurance broker or insurance agent includes —
- (a) the spouse or minor child of that person;
  - (b) any company of which that person is a director;
  - (c) any person who is an employee or partner of that person; or
  - (d) if the person is a company —
    - (i) any director of that company,
    - (ii) any subsidiary of that company, or
    - (iii) any director or employee of any such subsidiary;
- “permitted reinsurance” means reinsurance permitted in the determination of the net policyholder liabilities and calculation of the prescribed capital target;
- “policy” includes every writing whereby any contract of insurance is made or agreed to be made; and “insurance policy” shall be construed accordingly;
- “policy benefits” means one or more sums of money, services or other benefits, including an annuity payable by an insurer to the policyholder in terms of an insurance policy;
- “policyholder” means a person who enters into a contract of insurance, and includes a person entitled to be provided with or enforce the policy benefits under an insurance policy;

- “premium” means the consideration given or to be given in return for an undertaking to provide policy benefits;
- “prescribed capital target” means an amount of capital which an insurer is required to have, as may be prescribed;
- “principal officer” means the person responsible for the daily management of an insurer, insurance broker or insurance agent;
- “Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act;
- “reinsurance” means insurance provided by another insurer of all or part of a risk previously assumed by an insurer;
- “representative” means a natural person who renders services as an intermediary to a client for or on behalf of an insurer, insurance broker or insurance agent in terms of employment or any other mandatory agreement, and does not include a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service —
- (a) does not require judgement on the part of the latter person; or
  - (b) does not lead another person to any specific insurance product in response to general inquiries;
- “resident in Botswana” in the case of a company means that —
- (a) the company’s registered office or place of incorporation is in Botswana; or
  - (b) the company is managed or controlled from Botswana;
- “services as an intermediary” means any act performed by a person, for or on behalf of the insurer or policyholder —
- (a) the result of which is that another person may enter into, offer to enter into, vary or renew an insurance policy; or
  - (b) with a view to —
    - (i) maintaining or servicing or providing administration services in relation to the policy,
    - (ii) collecting, accounting for and paying premiums to the insurer, or
    - (iii) receiving, submitting or processing claims against the policy;
- “significant shareholder” means a person who holds at least 20 per cent of the shares in an insurer, insurance broker or insurance agent as approved by the Regulatory Authority in terms of section 27 (2);
- “subsidiary” has the same meaning assigned to it under the Companies Act;
- “survival benefit” means a policy benefit which is to be provided in the event of the life of a person or an unborn child, continuing or having continued for a given period;
- “unborn child” means a human foetus conceived but not born; and
- “valuator” means an actuary who is appointed as a valuator in terms of section 19.

Application  
of Act

3. (1) This Act applies to every insurer, insurance broker, insurance agent or representative and every class of insurance business.

(2) This Act shall not apply to the Motor Vehicle Accident Fund established under the Motor Vehicle Accident Fund Act.

Cap. 69:02

Part II — *Licensing of Insurers*

Licensing  
of insurer

4. (1) A person shall not commence or carry on insurance business —

(a) without a licence of an insurer issued under this Act; and

(b) contrary to the provisions of this Act.

(2) For the purposes of this section, a person shall in the absence of evidence to the contrary, be deemed to be carrying on insurance business in Botswana, if the person undertakes to provide policy benefits under an insurance policy to another person.

(3) A person shall not perform any act, the object of which is, or which results in or is likely to result in —

(a) another person entering into, offering to enter into or varying an insurance policy; or

(b) maintaining, servicing or otherwise dealing with an insurance policy to which an insurer is not a party,

without the approval of the Regulatory Authority.

(4) A person who carries on insurance business without a licence commits an offence and is liable to a fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

Restrictions  
on business

5. (1) An insurer shall not carry on such business, other than the insurance business which the insurer is authorised to carry on under a licence issued under section 8.

(2) Notwithstanding the generality of subsection (1), an insurer shall not carry on —

(a) business which is prohibited by the Regulatory Authority, in relation to a particular insurer or to insurers in general; or

(b) business otherwise than in accordance with and subject to, the limitations and conditions which the Regulatory Authority may determine in relation to a particular insurer or insurers in general.

(3) The Regulatory Authority shall not impose any restriction on business referred to under subsection (2), unless the Regulatory Authority has —

(a) given an insurer written notice of the intention to impose such restriction, setting out the reasons for the restriction and requesting the insurer to make any representation within the period specified in the notice, which period shall not be more than 21 days; and

(b) taken into account any representation made by the insurer within the period specified in the notice.

(4) An insurer shall not transact both general and long term insurance business, unless that insurer is licensed as a reinsurer.

(5) A general insurer shall not undertake to provide a survival benefit or any linked policy.

(6) An insurer shall not offer any new product without the prior approval of the Regulatory Authority.

(7) An insurer who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

6. (1) An insurer licensed under this Act shall not reinsure risks from another insurer or otherwise carry on reinsurance business except where —

Reinsurance

- (a) the insurer is licensed as a reinsurer to carry on reinsurance business only; or
- (b) the insurer informs the Regulatory Authority of the intention to carry on reinsurance business, and undertakes to carry on the business in terms of the conditions the Regulatory Authority may approve.

(2) Notwithstanding subsection (1), a reinsurer licensed under this Act may carry on reinsurance business of any category or any class except where specifically restricted.

7. (1) A person who wishes to carry on insurance business shall apply to the Regulatory Authority for an insurance licence.

Application  
for insurance  
licence

(2) An application made under subsection (1) shall be in such form and accompanied by such fee as may be prescribed.

8. (1) The Regulatory Authority shall not issue a licence to carry on insurance business unless the Regulatory Authority is satisfied that —

Licensing  
requirements

- (a) the applicant is incorporated as a company under the Companies Act;
- (b) the company is resident in Botswana;
- (c) insurance business is the sole object of the company; and
- (d) the person proposed to handle the day to day management of the company is resident in Botswana and meets the fit and proper requirements, as may be prescribed.

(2) An applicant for a licence to carry on insurance business must have sufficient capital to carry on such business, which capital shall consist of paid-up shares or other funds set aside solely for the insurance business, and approved by the Regulatory Authority, subject to such terms and conditions as may be determined by the Regulatory Authority, which capital shall not amount to less than the greater of the minimum capital target, and the prescribed capital target.

(3) Where the application meets all the requirements, the Regulatory Authority may issue a licence in such form as may be prescribed.

(4) A licence issued under subsection (3) may be subject to such terms and conditions as the Regulatory Authority may specify in the licence.

(5) The Regulatory Authority shall publish notice of the issue of a licence in the *Gazette*.

(6) An insurer shall prominently display a copy of its licence at its principal office in Botswana.

(7) An insurer who contravenes subsection (6) is liable to a fine not exceeding P1 000 as may be imposed by the Regulatory Authority.

Validity of licence	<p><b>9.</b> (1) A licence issued to an insurer shall be valid for a period of 12 months, and shall be renewed in the manner prescribed.</p> <p>(2) An insurer who does not renew a licence is liable to a fine of P2 500 for each day the licence is not renewed, up to a maximum of 90 days, as may be imposed by the Regulatory Authority.</p> <p>(3) Where an insurer fails to renew a licence after a period of 90 days as provided for under subsection (2), the Regulatory Authority shall cancel the licence.</p>
Licence conditions	<p><b>10.</b> The Regulatory Authority may impose licence conditions on a licence, which conditions may include —</p> <ul style="list-style-type: none"> <li>(a) limiting the types of policies or policy terms and conditions that the insurer may enter into;</li> <li>(b) limiting the amount or value of the policy benefits to be provided by the insurer under certain policies determined by the Regulatory Authority;</li> <li>(c) limiting the amount of the premiums that the insurer may contract to receive, during a period determined by the Regulatory Authority;</li> <li>(d) requiring the insurer to obtain reinsurance cover where the insurer reinsures at least a portion of the liabilities incurred as determined by the Regulatory Authority;</li> <li>(e) requiring the insurer to institute a dispute resolution process between itself and the insured; and</li> <li>(f) any other condition considered to be reasonably necessary by the Regulatory Authority to ensure that the insurance business concerned is in a sound financial condition in terms of section 28 (1).</li> </ul>
Variation of licence	<p><b>11.</b> The Regulatory Authority may, on the written request by an insurer, or on its own initiative by notice made in writing to an insurer, vary a licence by —</p> <ul style="list-style-type: none"> <li>(a) restricting the activities that can be carried on in terms of the licence; or</li> <li>(b) including further conditions on the licence.</li> </ul>
Suspension of licence	<p><b>12.</b> (1) The Regulatory Authority may suspend a licence —</p> <ul style="list-style-type: none"> <li>(a) if it is satisfied that an insurer — <ul style="list-style-type: none"> <li>(i) is likely not to carry on the business for which it is licensed with integrity, prudence and professional skill,</li> <li>(ii) is likely to become in an unsound financial position,</li> <li>(iii) is likely to cause or promote instability in the financial system,</li> <li>(iv) is likely not to comply with this Act,</li> <li>(v) is likely to be involved in financial crime, or</li> <li>(vi) has failed to pay a fine imposed by the Regulatory Authority under this Act; or</li> </ul> </li> <li>(b) on the written request by an insurer.</li> </ul>

(2) The Regulatory Authority shall not suspend a licence unless the Regulatory Authority has —

- (a) given written notice of the suspension to an insurer, which notice shall state the reasons for such suspension and request the insurer to make a representation within the period specified in the notice, which shall not be more than 21 days; and
  - (b) taken into account any representation made by the insurer within the period specified in the notice.
- (3) Where the insurance licence is suspended, the insurer shall —
- (a) not carry out the business or the part of the business in relation to which the suspension relates; or
  - (b) continue to be subject to any provision of this Act as if the licence has not been suspended.

(4) Any insurer conducting business while the suspension of the insurance licence is still in effect, is liable to a fine not exceeding P100 000, as may be imposed by the Regulatory Authority.

**13.** (1) The Regulatory Authority may cancel a licence —

- (a) if it is satisfied that an insurer —
  - (i) is not carrying on the business for which it is licensed with integrity, prudence and professional skill,
  - (ii) is in an unsound financial position,
  - (iii) is causing or promoting instability in the financial system,
  - (iv) is not complying with this Act,
  - (v) is involved in financial crime;
  - (vi) has failed to pay a fine imposed by the Regulatory Authority under this Act,
  - (vii) has made a material misrepresentation to members of the public in connection with the insurance business carried on by it,
  - (viii) has failed to comply with the licence conditions imposed by the Regulatory Authority, or
  - (ix) has failed to rectify the situation to the satisfaction of the Regulatory Authority within a period determined by the Regulatory Authority;
- (b) if it is satisfied that the licence was obtained by means of fraud or misrepresentation; or
- (c) on the written request by an insurer.

(2) Where the Regulatory Authority intends to cancel a licence, the Regulatory Authority shall satisfy itself that —

- (a) the insurer has made proper arrangements to ensure that its liabilities under all insurance policies or policies relating to the particular class of insurance business, as the case may be, will be met;
- (b) all the insurance business or a particular class of insurance business of an insurer has been discontinued by virtue of its amalgamation with, or the transfer of its insurance business to another licensed insurer; or
- (c) the insurance business is wound up in terms of section 49 or 50.

Cancellation  
of licence

(3) The Regulatory Authority shall not cancel a licence unless the Regulatory Authority has —

- (a) given written notice of the cancellation to an insurer, which notice shall state the reasons for such cancellation and request the insurer to make a representation within the period specified in the notice, which shall not be more than 21 days; and
- (b) taken into account any representation made by the insurer within the period specified in the notice.

Public notice

**14.** The Regulatory Authority shall give public notice, by publication in the *Gazette* and two newspapers of national circulation, of the —

- (a) variation of a licence;
- (b) suspension of a licence; or
- (c) cancellation of a licence.

### Part III — *Manner of Carrying on Insurance Business*

Name of insurer

**15.** (1) An insurer shall not be issued with a licence to conduct insurance business or conduct business under a name, or a translation, shortened form or derivative thereof, if the name, translation, shortened form or derivative —

- (a) is identical to that of another insurer;
- (b) so closely resembles that of another insurer that the one is likely to be mistaken for the other;
- (c) is identical to that under which another insurer was previously licensed and reasonable grounds exist for objection to the name, translation, shortened form or derivative being used by the insurer; or
- (d) is misleading or undesirable.

(2) An insurer shall not change its name, or use a translation, shortened form or derivative thereof, without the prior approval of the Regulatory Authority.

(3) An insurer shall not —

- (a) change the name under which it is licensed; or
- (b) use or refer to itself by a name other than the name under which it is licensed, including a shortened form or derivative of such name, without the prior written approval of the Regulatory Authority.

(4) Subject to subsection (3), an insurer shall for all purposes and in every public document issued by it, use the name under which it is licensed.

(5) An insurer who contravenes a provision of this section is liable to a fine not exceeding P30 000 as may be imposed by the Regulatory Authority.

Principal office and principal officer

**16.** (1) An insurer shall —

- (a) establish and maintain a principal office in Botswana; and
- (b) with the approval of the Regulatory Authority, appoint a principal officer.

(2) A person shall not be appointed as a principal officer unless he or she —

(a) satisfies the fit and proper requirements as may be prescribed; and

(b) is resident in Botswana.

(3) Where a person or the Regulatory Authority wishes to address an insurer, the person or Regulatory Authority, as the case may be, shall do so through the principal officer, who shall ensure that the matter is attended to by the insurer.

(4) Service of process in any legal proceedings against an insurer licensed under this Act may be effected at the principal office of the insurer.

(5) The principal officer shall, in so far as it is within his or her power, ensure that an insurer complies with the provisions of this Act.

(6) The principal officer shall, when he or she becomes aware of any breach of any of the provisions of this Act, report to the Regulatory Authority within 14 days of becoming aware of the breach.

(7) An insurer who knowingly employs a person not approved in terms of this section, is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

(8) An insurer who fails to appoint a principal officer is liable to a fine not exceeding P2 500 for each day the appointment is not made, up to a maximum of 60 days, as may be imposed by the Regulatory Authority.

(9) Where an insurer fails to appoint a principal officer after a period of 60 days provided under subsection (8), the Regulatory Authority shall cancel a licence in terms of section 13.

**17.** (1) Any principal officer who resigns his or her position with the insurer, or whose appointment has been terminated by the insurer shall, within 14 days of the resignation or termination, inform the Regulatory Authority of the resignation or termination in writing, and of any matter relating to the affairs of that insurer of which he or she became aware of in the performance of his or her duties, and which may prejudice the insurer's ability to comply with this Act.

Termination  
or resignation  
of principal  
officer

(2) The insurer shall be obliged to inform the Regulatory Authority in writing, of the resignation or termination of the principal officer and the reasons for the termination within 14 days of the termination.

(3) Any information submitted by a principal officer in terms of subsection (1) shall not be used by the Regulatory Authority in any subsequent criminal proceedings against the principal officer.

(4) A person who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Auditor

18. (1) The accounts of every insurer shall be audited annually by an independent auditor registered with the Botswana Institute of Chartered Accountants, and approved by the Regulatory Authority.

(2) The auditor shall inform the Regulatory Authority and the board of directors of the insurer, without delay, in writing, of any matter relating to the business of the insurer of which the auditor becomes aware of in the performance of his or her functions and which, in the opinion of the auditor —

- (a) constitutes a contravention of this Act; or
- (b) in future may prejudice the insurer's ability to comply with any provision of this Act,

which information shall give a description of the matter and include such other particulars as the auditor considers appropriate.

(3) The auditor shall —

- (a) furnish copies of the auditor's report and other relevant documents to the Regulatory Authority, which report may include any irregularities identified by the auditor in the performance of his or her duties; and
- (b) carry out such duties as may be assigned by this Act, the Companies Act and those provided by the Botswana Institute of Chartered Accountants.

(4) An auditor who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Valuator and approved person

19. (1) An insurer writing long term insurance business shall, with the approval of the Regulatory Authority, appoint an actuary to be its valuator.

(2) An insurer shall not appoint an actuary as a valuator under subsection (1), if the actuary —

- (a) is not an associate or fellow of a professional actuarial body which is a member of the International Actuarial Association or such other body as may be approved by the Regulatory Authority;
- (b) is not authorised by the professional body referred to under paragraph (a), to act as a valuator of a long term insurer; and
- (c) has no appropriate practical experience relating to long term insurance business.

(3) An insurer writing general insurance shall, with the approval of the Regulatory Authority, appoint an approved person who shall be responsible for determining the general insurance liabilities.

(4) A valuator and an approved person appointed under this section shall carry out the duties assigned to him or her under this Act.

(5) A valuator shall —

- (a) have the right of access to the accounting records and other books and documents of a long term insurer, and be entitled to require from the controllers, directors or managers of the insurer, any information that he or she may deem necessary for the carrying out of his or her duties; and

(b) be entitled to —

- (i) attend and speak at a general meeting of the long term insurer, and to receive any notice and other communication relating to a general meeting which a member of that long term insurer is entitled to receive, or
- (ii) attend and speak at any meeting of the board of directors of the long term insurer, which meeting concerns the duties conferred on, or assigned to him or her as a valuator, and to receive any notice and other communication relating to the meeting, which a member of the board of directors of the insurer is entitled to receive.

(6) A valuator shall, without delay, report in writing to the board of directors of the long term insurer, any matter relating to the business of the long term insurer of which he or she becomes aware in the performance of his or her duties as a valuator, which, in his or her opinion —

- (a) constitutes a contravention of this Act which relates to the duties of the valuator; or
- (b) in future may prejudice the long term insurer's ability to comply with any provision of this Act relating to the duties of the valuator.

(7) A report made under subsection (6) shall —

- (a) give a description of the matter and may include such other particulars as the valuator considers appropriate; and
- (b) be submitted without delay to the Regulatory Authority where, in the opinion of the valuator, the matter —
  - (i) materially prejudices the insurer's ability to comply with this section, or
  - (ii) requires immediate remedial action to be taken by the long term insurer.

(8) If the valuator is not satisfied with the steps taken by the board of directors of the long term insurer to rectify a matter raised in the report made under subsection (6), the valuator shall within 30 days after the date of the report, inform the Regulatory Authority.

(9) A person who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

**20.** (1) Where an insurer practising as a long term insurer, fails to appoint an auditor or valuator under section 18 and 19, the Regulatory Authority shall appoint an auditor or valuator for that insurer.

Appointment of auditor or valuator by Regulatory Authority

(2) An auditor or valuator appointed under subsection (1) shall be deemed to have been appointed by the insurer in accordance with this Act.

**21.** (1) Where the appointment of an auditor, valuator or approved person is terminated for any reason, the auditor, valuator or approved person and insurer shall inform the Regulatory Authority of the termination in writing, within 14 days of such termination, and shall submit to the Regulatory Authority a statement of what the auditor, valuator or approved person and insurer believes to be the reason for that termination.

Termination or resignation of auditor, valuator or approved person

(2) The termination of appointment of an auditor, valuator or approved person of the insurer does not exempt the auditor, valuator or approved person from submitting a report or informing the Regulatory Authority of matters relating to the insurer under this Part, which the auditor, valuator or approved person would have had reason to submit, had the appointment not been terminated.

(3) A person who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Audit  
committee

**22.** (1) Subject to subsection (2), every insurer shall by resolution of the board of directors of the insurer, set up an audit committee which shall perform such functions, and consist of such members as the board of directors may prescribe.

(2) An auditor, whether an internal auditor or external auditor may attend a meeting of the audit committee set up under subsection (1).

(3) The audit committee may appoint an advisor or request an employee of the insurer to advise or assist it in the performance of its functions.

(4) An insurer who contravenes the provisions of subsection (1) is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Furnishing of  
information  
to Regulatory  
Authority

**23.** (1) An insurer shall, when required by the Regulatory Authority and within a period determined by the Regulatory Authority, furnish the Regulatory Authority with any particulars and information of its shareholders, controllers, directors, managers, auditor, valuator and approved person.

(2) An insurer shall notify the Regulatory Authority of any changes in its shareholders, controllers, directors, managers, auditor, valuator and approved person, as may be prescribed.

(3) An insurer who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

(4) A person who reports to the Regulatory Authority —

(a) financial difficulties or suspected financial difficulties in an insurer, insurance broker or insurance agent;

(b) a breach or suspected breach of the Act; or

(c) the involvement or suspected involvement of an insurer, insurance broker, or insurance agent in financial crime,

whether or not the report is required by law, shall not be liable for damages or other sanction in relation to a loss caused by the report unless it is established that the report was motivated by malice or was made in bad faith.

(5) A person who subjects another person (in this subsection referred to as a “reporter”), to any prejudice in his or her employment, or penalises a reporter in any way, on the ground that the reporter made a report in terms of subsection (4), even if the report was not required by law, is liable to a fine not exceeding P20 000.

**24. (1)** Notwithstanding the provisions of the Companies Act, an insurer shall not, without the approval of the Regulatory Authority, or as the Regulatory Authority may otherwise determine —

Preference shares, debentures, share capital and share warrants

- (a) issue any debentures, or convert any of its shares into debentures;
- (b) issue preference shares, or convert any of its shares to preference shares other than preference shares which are compulsory to convert to ordinary shares;
- (c) issue share warrants;
- (d) convert any of its shares of a particular class, into shares of another class;
- (e) reduce its share capital;
- (f) issue different classes of ordinary shares;
- (g) allow its subsidiary to acquire shares in it, directly or indirectly; or
- (h) conclude a transaction that gives financial assistance to the purchase of shares in the insurer or a subsidiary company.

(2) The Regulatory Authority shall, when a licence is issued, provide in the licence conditions that an approval is to be required for dealing with shares in terms of subsection (1).

(3) An insurer shall not reduce its minimum paid up share capital below the minimum capital requirement prescribed.

(4) An insurer who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

**25. (1)** An insurer shall not, knowingly —

- (a) allot or issue any of its shares to, or register any of its shares in the name of a person other than the intended beneficial shareholder; or
- (b) register or transfer any of its shares to a person other than the intended beneficial shareholder,

Registration of shares in name of nominee

without the approval of the Regulatory Authority.

(2) A person in whose name shares in an insurer are registered, or who wishes shares in an insurer to be allotted or issued to him or her, or to be registered in his or her name, and any person acting on behalf of that person, shall, upon the written request of the insurer concerned, furnish the insurer with the information the insurer may require for the purposes of complying with subsection (1).

(3) Subsection (1) shall not apply to the allotment, issue or registration of the shares of an insurer —

- (a) to or in the name of any executor, administrator, trustee, curator, guardian or liquidator, whether on the death, bankruptcy or insolvency of a shareholder of the insurer, or otherwise;
- (b) where it is necessary that the shares be issued, allotted or registered in order to facilitate delivery to the purchaser of the shares or to protect the rights of the beneficial shareholder in respect of those shares for a reasonably limited temporary period;

- (c) in the name of a person acting as a trustee or custodian or a recognised depository institution where that person, the insurer or shareholder concerned is able, on request, to disclose to the Regulatory Authority the name of the beneficial shareholder on whose behalf shares are held;
  - (d) to or in the name of a trustee or custodian of a collective investment undertaking, or an appointee of such trustee or custodian appointed in terms of a collective investment undertaking; or
  - (e) to or in the name of another person prescribed by the Minister.
- (4) An insurer who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Registration  
of shares  
contrary  
to Act

**26.** (1) A person shall not —

- (a) personally, or by proxy, cast a vote attached to; or
- (b) receive a dividend payable in respect of,

a share in an insurer allotted, issued to or registered in that person's name contrary to this Act.

(2) A person who contravenes a provision of this section is liable to a fine not exceeding P50 000 as may be imposed by the Regulatory Authority.

Limitation on  
control

**27.** (1) Subject to this section, a person shall not, without the approval of the Regulatory Authority, acquire or hold shares or any other interest in an insurer, insurance broker or insurance agent which results in the person directly or indirectly, alone or with a related party, becoming a controller of an insurer, insurance broker or insurance agent.

(2) A person shall not acquire shares in an insurer, insurance broker or insurance agent if the aggregate nominal value of those shares, by itself or together with the nominal value of shares already owned by the person, or by the person and his or her related parties, will amount to 20 per cent or more of the nominal value of all of the issued shares of the insurer, insurance broker or insurance agent concerned, without prior approval of the Regulatory Authority.

(3) The approval referred to in subsection (2) —

- (a) may be given if a person, alone or with the person's related parties, already owns shares in the insurer, insurance broker or insurance agent of an aggregate nominal value for such minimum period, not exceeding 12 months as determined by the Regulatory Authority, subject to —

- (i) the aggregate nominal value of the shares owned by the person concerned, and that person's related parties, not exceeding such percentage as may be determined by the Regulatory Authority without further approval in terms of this section, and

- (ii) such other conditions as the Regulatory Authority may determine; and

- (b) shall not be given if it is contrary to the public interest or the interests of the policyholders.

(4) Where the Regulatory Authority is of the opinion that the retention of a particular shareholding by a particular shareholder is prejudicial to the insurer, insurance broker or insurance agent, the interests of a policyholder or of the insurance industry, it may, by notice in writing —

(a) within a period specified by the Regulatory Authority, require the shareholder to reduce his, her or its shareholding to a percentage of the stated capital of the insurer, insurance broker or insurance agent which shall be below the percentage qualifying that shareholder to be a significant shareholder; and

(b) limit the voting rights to be exercised by the shareholder to a percentage of the voting rights, which shall be below the percentage qualifying him or her to be a significant shareholder.

(5) A person who takes a step to become a controller of an insurer, insurance broker or insurance agent without the approval of the Regulatory Authority is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

(6) If —

(a) a person is a controller of an insurer, insurance broker or insurance agent by virtue of the degree of voting power he or she has or controls in relation to that insurer, insurance broker or insurance agent; and

(b) the person takes a step as a result of which the degree of voting power it controls varies by more than the percentage prescribed; then, unless the Regulatory Authority has approved the variation, the person is liable to a fine not exceeding P10 000 as may be imposed by the Regulatory Authority.

(7) If —

(a) a person becomes or ceases to be a controller of an insurer, insurance broker or insurance agent; and

(b) at the end of 14 days after the event, the change has not been reported to the Regulatory Authority in accordance with the regulations; the person shall be liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

(8) If —

(a) a person is a controller of an insurer, insurance broker or insurance agent by virtue of the degree of voting power in relation to the institution that the person has or controls;

(b) the degree of voting power in relation to the insurer, insurance broker or insurance agent that it has or controls varies by more than the amount prescribed; and

(c) at the end of 14 days after the event, the variation has not been reported to the Regulatory Authority as may be prescribed, the person, insurer, insurance broker or insurance agent shall be liable to a fine not exceeding P10 000 as may be imposed by the Regulatory Authority.

(9) A variation referred to under subsection (4) or (6) may be either by way of increase or decrease in the percentage of voting power the person has or controls.

Part IV — Financial Soundness Requirements

Maintenance  
of sound  
business

**28.** (1) An insurer shall at all times maintain the insurance business in a financially sound condition by —

- (a) owning assets;
- (b) providing for its liabilities and maintaining its prescribed capital target; and
- (c) generally conducting the insurance business in a manner where it is able to meet its liabilities and maintain its prescribed capital target at all times.

(2) An insurer shall be deemed to have failed to comply with subsection (1), if the insurer —

- (a) does not own assets as required under section 29;
- (b) does not own assets in Botswana as required under section 30; or
- (c) has not made provisions for the liabilities, and fails to maintain the prescribed capital target under this Act.

(3) An insurer who fails, or is likely to fail to comply with subsection (1), shall without delay, notify the Regulatory Authority of the failure or the likelihood of failure.

(4) An insurer shall not declare or pay a dividend to its shareholders —

- (a) when the insurer fails or is likely to fail to comply with subsection (1);
- (b) where the declaration or payment would result in the insurer failing or being likely to fail to comply with subsection (1); or
- (c) if, after the declaration or payment, the aggregate value of assets required under section 29 would be less than the aggregate value of the insurer's liabilities, issued share capital and non-distributable reserves.

(5) A long term insurer shall not declare or pay a dividend to its shareholders unless the insurer's valuator has certified that the declaration or payment will not be contrary to subsection (4).

Overall assets

**29.** An insurer shall own assets the aggregate value of which, on any day, is not less than the aggregate value, on that day, of the insurer's net liabilities and prescribed capital target, when the value of those assets, net liabilities, and prescribed capital target are calculated in terms of the regulations.

Assets in  
Botswana

**30.** An insurer shall own assets in Botswana, other than assets in respect of linked liabilities for a long term insurer, which have —

- (a) a fair value of not less than 70 per cent; or
- (b) a higher percentage, which may be prescribed in a written notification to the insurer by the Regulatory Authority,

of the aggregate value of its net liabilities and prescribed capital target.

Kinds and  
spread of  
assets

**31.** (1) Subject to sections 29 and 30, an insurer shall own assets, other than assets in respect of linked liabilities, in the case of a long term insurer, which have a fair value, which when expressed as a percentage of the aggregate value of the insurer's net liabilities and the prescribed capital target, do not exceed the percentage in respect of particular kinds or categories of the assets prescribed by the Regulatory Authority.

(2) The Regulatory Authority may approve higher limits on particular kinds or categories of assets —

- (a) in a particular case;
- (b) for a specified period; and
- (c) subject to such conditions as the Regulatory Authority may determine.

(3) Subject to subsection (1), the kind of assets that a long term insurer has, and the spread of those assets among different kinds of assets shall —

- (a) to the satisfaction of the valuator of the insurer, be proper and suitable having regard —
  - (i) to the nature of the insurer's various liabilities,
  - (ii) to the time and place, and
  - (iii) the manner in which, it is required, or expects to be required to meet the liabilities; and
- (b) to the extent so prescribed, comply with any general requirement prescribed by the Regulatory Authority for the appropriate matching of assets and liabilities.

32. (1) For the purposes of sections 29 and 30 —

- (a) an investment made outside Botswana for assets under section 30, may only be made in assets listed on an exchange approved by the Regulatory Authority, subject to the limitation of investment in particular kinds or categories of the assets prescribed by the Regulatory Authority;
- (b) if there is documentary evidence of the title of an insurer to an asset, the asset shall be deemed not to be in Botswana unless the documentary evidence is in Botswana or is held outside Botswana in such manner and subject to such conditions as the Regulatory Authority may determine;
- (c) an asset shall be deemed not to be held by an insurer if it is encumbered in favour of another person, or held by another person without the approval of the Regulatory Authority, unless —
  - (i) the encumbrance or holding of the asset by another person is prescribed by any other written law, or
  - (ii) the person is another insurer and the encumbrance or transfer takes place in terms of a reinsurance policy; and
- (d) an investment in derivatives shall be made in accordance with the requirements prescribed.

(2) If the assets which an insurer holds in terms of sections 29, 30 and 31 include shares in the insurer's holding company —

- (a) the shares shall be deemed to be held by the insurer for the sole benefit of the policyholder, whether the holding company is incorporated in Botswana or not;
- (b) the shares shall only be held by the insurer with prior approval of the Regulatory Authority, and subject to such conditions as the Regulatory Authority may determine; and
- (c) the insurer shall not have the right to vote at meetings of the holding company or at meetings of any class of members thereof.

Provisions  
concerning  
assets

Liabilities

**33.** (1) For the purposes of this Act, the liabilities of an insurer include its contingent liabilities for policy benefits which have not become claimable net of permitted reinsurance as may be prescribed.

(2) The liabilities of an insurer, other than the insurer's contingent liabilities under insurance policies shall be determined in accordance with the International Accounting Standards.

(3) Notwithstanding subsections (1) and (2), any liability of an insurer in respect of which the insurer's creditors have waived any right to have the obligation discharged, until all obligations to other creditors have been discharged in full, shall be valued in a manner and for an amount determined by the insurer, and approved by the Regulatory Authority.

Determination of capital or value on assets and liabilities

**34.** Where the Regulatory Authority is not satisfied with the value of an asset, the liability or the prescribed capital target calculated in terms of this Act, the Regulatory Authority may —

- (a) direct the insurer to appoint another person at the cost of the insurer, to place a proper value on the asset, liability or prescribed capital target; or
- (b) direct the insurer to calculate the value of the asset, liability or prescribed capital target, in another manner which the Regulatory Authority may determine, and which will produce a proper value.

Prohibitions concerning assets and certain liabilities

**35.** (1) An insurer shall not —

- (a) encumber its assets;
- (b) allow its assets to be held by another person on its behalf;
- (c) directly or indirectly borrow any assets;
- (d) by means of suretyship or any other form of personal security, whether under a primary or accessory obligation, give security in relation to obligations between other persons; or
- (e) include in its assets, shares held directly or indirectly in its holding company,

without the approval of the Regulatory Authority given generally or in a particular case, and subject to such conditions as the Regulatory Authority may determine.

(2) An insurer who contravenes a provision of this section is liable to a fine not exceeding P50 000 as may be imposed by the Regulatory Authority.

Failure to maintain sound business

**36.** (1) Where an insurer notifies the Regulatory Authority in terms of section 28 (3), or where the Regulatory Authority is satisfied that an insurer is failing, or is likely to fail to comply with section 28 (1), the Regulatory Authority may, by notice in writing, direct the insurer to furnish the Regulatory Authority, within a specified period, with —

- (a) specified information relating to the nature and cause of the failure; and
- (b) the insurer's proposal as to the course of action that it should adopt to ensure the insurer complies with section 28 (1).

(2) When the Regulatory Authority has received the information and proposal referred to under subsection (1), the Regulatory Authority may, without derogating from its powers —

- (a) if the insurer is a long term insurer, authorise the insurer, by notice, in writing to adopt a course of action, approved by the Regulatory Authority after considering the proposal and after consultation with the auditor and the valuator, and which the Regulatory Authority is satisfied will reasonably ensure that the insurer complies with section 28 (1);
- (b) if the insurer is a long term insurer, after further consultation with the auditor and the valuator, by notice in writing, authorise the modification of that course of action to the extent that the Regulatory Authority deems appropriate in the circumstances; or
- (c) if it is reasonably necessary in the interests of the policyholders of the insurer, at that time, or at any time thereafter, and notwithstanding any steps already taken by the Regulatory Authority in terms of paragraphs (a) and (b), or any other provision of this Act, appoint a statutory manager in terms of section 46.

**37.** An insurer shall conduct an annual investigation of its financial soundness, in such manner as may be prescribed.

Annual investigations

**38.** (1) An insurer shall furnish returns to the Regulatory Authority in such manner as may be prescribed.

Returns to Regulatory Authority

(2) Where the Regulatory Authority is satisfied that a return furnished to it in terms of subsection (1) is incomplete or incorrect, the Regulatory Authority may, by notice in writing —

- (a) direct the insurer to furnish to it, within a specified period, such information or documents as may be specified by it, which the Regulatory Authority considers necessary to complete or correct the return; or
- (b) reject the return and require the insurer to furnish the Regulatory Authority, within a specified period, with returns which are complete and correct.

(3) Where the Regulatory Authority is satisfied that a statement forming part of the returns furnished by the insurer in terms of subsection (1) requires further investigation, the Regulatory Authority may by notice in writing, direct the insurer to furnish it, by a specific date or within a specific period, with a report containing the required information in a specified form, compiled by a person nominated by the Regulatory Authority at the cost of the insurer.

(4) An insurer who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

**39.** (1) An insurer shall maintain records relating to insurance transactions undertaken by it, in such manner as may be prescribed.

Preservation of records

(2) An insurer who contravenes this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Independent investigations

**40.** The Regulatory Authority may require an actuary, auditor or other expert to review —

- (a) the annual investigations conducted by an insurer under section 37;
- (b) whether long term policies are actuarially sound in terms of section 52;
- (c) the reasonability of premium rates of a general insurer; or
- (d) any other matters relating to the conduct of insurance business by an insurer,

and provide a report to the Regulatory Authority, at the expense of the insurer.

#### Part V — *Amalgamation and Transfer*

Approval required for transfer or amalgamation

**41.** (1) An insurance business shall not be transferred to another person, or amalgamated with the business of another, except under a scheme for the transfer or amalgamation that has been approved by the Regulatory Authority.

(2) An insurer seeking approval for a transaction under subsection (1) shall make an application in such form and manner as may be prescribed.

(3) An insurer seeking approval to transfer or amalgamate a business under subsection (1) shall make an application as may be prescribed.

(4) A transfer or amalgamation contrary to subsection (1) shall be void.

(5) Any arrangement entered into between two or more insurers, by which a liability of any insurer towards a policyholder is to be substituted for a liability on another insurer towards such policyholder whether or not —

- (a) the liability of the insurer is expressed in or created by an existing or new policy; or
- (b) the terms of such new policy are the same as or different from the terms of the original policy,

shall be deemed for the purposes of this Part to be a scheme for the transfer of the insurance business concerned, except where the Regulatory Authority is satisfied that the policyholder is made aware or will be made aware in writing, of the nature of such substitution and the policyholder has given his or her consent in writing.

Application for approval of transfer or amalgamation

**42.** (1) When an insurer intends to make an application to the Regulatory Authority for the approval of a transaction referred to under section 41, the insurer shall —

- (a) at least 60 days before lodging the application, give notice to the Regulatory Authority together with full particulars of the transaction in such form and manner as may be prescribed by the Regulatory Authority;

- (b) at least 30 days before lodging the application, cause notice to be published in the *Gazette* and any newspaper of national circulation, inviting any person, including an employee, controller, director, manager, shareholder, policyholder, creditor or any other person who has an interest in the transaction, to submit to the Regulatory Authority such representations concerning the transaction as are relevant to him or her, or its interests, within 30 days of the publication of the notice; or
  - (c) before lodging the application, provide any other report or document as may be required by the Regulatory Authority.
- (2) The Regulatory Authority may open any document for inspection by a shareholder, policyholder and creditors of the insurers concerned for a period of not less than 30 days from the date of publication of the notice given under subsection (1) (b).
- (3) The Regulatory Authority —
- (a) may, at the expense of the insurers concerned, appoint a person to enquire and report to it on the desirability or otherwise of the proposed transaction;
  - (b) shall, in the case of a long term insurance business, require the insurers concerned to obtain and submit to it the opinion of its valuers on the fairness of the proposed transaction to the policyholders; or
  - (c) may by notice in writing, direct any insurer to provide the Regulatory Authority or the person appointed under paragraph (a) with all the information and documents it may require in connection with the transaction.
- 43.** (1) The Regulatory Authority shall approve a transfer or an amalgamation of insurers if it is satisfied that —
- (a) the provisions of this Part have been complied with;
  - (b) the transaction is consistent with this Act and the interests of the policyholders of the insurers are protected;
  - (c) the insurers are licensed to conduct the relevant class of insurance business;
  - (d) undertaking the transaction will not place the insurers in an unsound financial position, as determined under section 28; and
  - (e) the insurers have made payment of the expenses in terms of section 42 (3).
- (2) Subject to subsection (1), the Regulatory Authority may after considering the accounts, documents and reports lodged with it and any representations made in connection with an application under section 42 —
- (a) approve a scheme of transfer or amalgamation of insurers on such terms as it considers necessary; or
  - (b) reject the application.

Conditions of approval of transfer or amalgamation

Approved transaction

**44.** (1) Subject to subsection (2), in the absence of any agreement or consent, an instrument giving effect to a transfer or amalgamation of insurers approved by the Regulatory Authority shall be effective —

- (a) to transfer to the transferee or amalgamated insurer, all the rights and obligations under the policies included in the instruments of the insurers concerned with the transfer or amalgamation; and
- (b) where the instrument makes provision to secure the continuation by or against the transferee or the amalgamated insurer of any legal proceedings by or against the transferor or any party to the amalgamation which relates to those rights or obligations.

(2) Where a transfer or amalgamation of insurers has taken place, no policyholder shall be regarded as having abandoned any claim which he or she would have had against the original insurer or to have accepted in its place the liability of another insurer, unless he or she, or his or her agent has signed a written document abandoning that claim and accepting in its place the liability of that other insurer.

Submission of financial information

**45.** The transferee or amalgamated insurer, as the case may be, shall furnish returns to the Regulatory Authority after the publication of a notice of approval, as may be prescribed.

#### PART VI — *Statutory Management and Winding up*

Appointment of statutory manager

**46.** (1) The court may, on application, appoint a person to be the statutory manager of an insurer.

(2) An application made under subsection (1) shall be made by the Regulatory Authority or by an insurer, with the Regulatory Authority's written consent.

- (3) The court may appoint a statutory manager —
  - (a) if it is satisfied that an insurer requested the appointment; or
  - (b) if it appears to the court that an insurer —
    - (i) is not complying with this Act;
    - (ii) is or is likely to be in an unsound financial position; or
    - (iii) is or may be involved in a financial crime,

and the court considers it in the interests of the policyholders of an insurer or the financial system to make the appointment.

(4) Subject to subsection (5), the Regulatory Authority may appoint a person to be the statutory manager of an insurer if it appears to the Regulatory Authority that —

- (a) subsection (3) (b) is applicable; or
- (b) it is necessary to appoint a statutory manager urgently to protect —
  - (i) the interests of the policyholders of the insurer,
  - (ii) the stability, fairness, efficiency and orderliness of the financial system, or
  - (iii) the safety and soundness of financial institutions.

(5) An appointment made in terms of subsection (4) takes effect immediately, but the Regulatory Authority shall, as soon as practicable after the appointment and in any event within five business days after the appointment, apply to the court for an order confirming the appointment.

(6) On an application made under subsection (5), the court shall, by order, confirm the appointment unless satisfied that the Regulatory Authority was not entitled to make the appointment, or that the grounds for making the appointment no longer exist.

47. (1) When a statutory management is granted in respect of an insurer, any reference in this Act to an insurer shall, unless it is inconsistent with the provisions of this Act, be construed as a reference to the statutory manager.

(2) A statutory manager of an insurer shall —

- (a) manage the affairs of the insurer to the exclusion of its directors and managers;
- (b) not enter into any new insurance policy, unless he or she has been granted permission to do so by the Regulatory Authority or the statutory management order;
- (c) have power to repudiate a contract to which the insurer is a party, but only if the statutory manager considers the contract detrimental to the interests of policyholders of the insurer; and
- (d) be entitled to receive such remuneration from the insurer as ordered by the court.

(3) A repudiation of a contract in terms of subsection (2) (c) does not affect any rights of the parties that have accrued before the repudiation.

(4) A statutory manager of an insurer shall manage the affairs of the insurer with the greatest economy possible compatible with efficiency and, as soon as practicable, shall report to the Regulatory Authority —

- (a) what steps should be taken to ensure that the insurer —
  - (i) complies with this Act,
  - (ii) will be financially sound; or
  - (iii) will not be involved in financial crime;
- (b) if the statutory manager considers that it is not practicable to take steps as mentioned under paragraph (a) —
  - (i) whether steps should be taken to transfer the business of the insurer to another appropriate person and, if so, to whom and on what terms, and
  - (ii) whether the insurer should be wound up.

(5) A statutory manager of an insurer shall comply with written directions from the Regulatory Authority in relation to his or her functions.

(6) A statutory manager of an insurer may apply to the court at any time for directions.

(7) The Regulatory Authority may at any time remove a statutory manager from office, and appoint a replacement, for whom the Regulatory Authority shall apply to court for an order confirming the appointment in terms of section 46 (5).

(8) A statutory manager of an insurer is not liable for a loss that the insurer suffers unless it is established that the loss was caused by the statutory manager's fraud, dishonesty, negligence or wilful failure to comply with the law.

Termination  
of statutory  
management

**48.** If a statutory manager is appointed to an insurer, the Regulatory Authority shall ensure that the statutory manager remains appointed until the Regulatory Authority —

- (a) is satisfied that the grounds for making the appointment no longer exist; or
- (b) applies for the insurer to be wound up on the basis that it considers that the insurer is insolvent and is unlikely to return to solvency within a reasonable time.

Winding up

**49.** (1) The Regulatory Authority may make an application to the court for the winding up of an insurer if —

- (a) a statutory manager has been appointed to the insurer; or
- (b) the Regulatory Authority is satisfied that —
  - (i) the insurer is insolvent and cannot be restored to solvency within a reasonable time, or
  - (ii) it is in the interests of the policyholders of the insurer.

(2) An application to the court for the winding up of an insurer, whether under the Companies Act or under any other written law, shall be made by the Regulatory Authority or by another person, with the approval of the Regulatory Authority.

(3) The Regulatory Authority shall not give approval under subsection (2), unless —

- (a) an insurer's licence has been or is to be revoked; and
- (b) the Regulatory Authority is satisfied that adequate provision has been made to protect the interests of the policyholders of an insurer.

(4) In winding up an insurer, the court —

- (a) shall appoint a liquidator, who shall receive such remuneration as the court may direct, to wind up the affairs of the insurer; and
- (b) may issue such directions as it may deem necessary, to the liquidator with regard to the functions to be carried by the liquidator.

(5) The liquidator appointed under subsection (4) (a) shall —

- (a) act under the control of the court and may at any time apply to the court for direction on the manner in which to wind up the affairs of an insurer; and
- (b) furnish the Regulatory Authority with such information as the Regulatory Authority may require from time to time.

(6) In the winding up, the value of the policies under which an insurer is liable shall be ascertained on such basis and in such manner as the court may direct, and the available funds shall be distributed on such basis as the court may deem just and equitable.

(7) Notwithstanding any other written law, in the event of the liquidation, insolvency or bankruptcy of an insurer, the policyholder issued with a policy by the insurer shall have preference against all other creditors of that insurer in respect of the assets maintained in terms of section 29.

(8) A right or obligation shall not, on or after the date of the final winding up order in respect of an insurer, arise or become enforceable under any policy issued by the insurer.

(9) The law applicable to the winding up of companies shall with the necessary modifications, apply to the winding up of an insurer in terms of this Act, except in so far as the provisions of any such law are inconsistent with any provision of this Act, or of an order or direction made by the court in terms of subsection (4).

**50.** (1) Notwithstanding the provisions of the Companies Act or any other written law, an insurer shall not be wound up voluntarily without the prior written consent of the Regulatory Authority.

Voluntary  
winding up

(2) The Regulatory Authority may authorise an insurer to wind up voluntarily, where the insurer is solvent and submits a declaration to the effect that arrangements satisfactory to the Regulatory Authority have been made by that insurer to meet all its liabilities under the insurance policies entered into by it, prior to the winding up.

(3) Where an insurer has received the authorisation of the Regulatory Authority under subsection (2), the insurer shall --

(a) immediately cease to do business, retaining only the power to carry out the necessary insurance business for the purpose of effecting an orderly winding up;

(b) make necessary arrangements to discharge its obligations under all existing policies under section 13 (2); and

(c) wind up all operations undertaken.

(4) An insurer shall --

(a) not later than 30 days from the receipt of an authorisation under subsection (2), send a notice of voluntary winding up, specifying such information as the Regulatory Authority may specify, to all policyholders, creditors and other persons entitled to the funds or property held by the insurer as a fiduciary; or

(b) cause a notice of the voluntary winding up to be published in such manner as the Regulatory Authority may specify.

**51.** (1) The authorisation to wind up an insurer under section 50 (2) shall not prejudice the rights of a policyholder, creditor or other person to payment in full of his or her claim, nor the right of an owner of funds or other property held by the insurer to the return thereof.

Rights of  
policyholders  
and creditors

(2) Subject to section 50, all lawful claims against an insurer shall be paid promptly and all funds and other property held by the insurer shall be returned to the rightful owner within a maximum period, which shall be determined by the Regulatory Authority.

PART VII — *Business Practice, Policies and Policyholder Protection*

Long term  
policy to be  
actuarially  
sound

- 52.** (1) A long term insurer shall not —
- (a) enter into any particular kind of long term policy unless the valuator is satisfied that the premiums, benefits and other values thereof are actuarially sound and are in accordance with sound insurance business principles;
  - (b) make a distinction between the premiums, benefits or other values of different long term policies unless the valuator is satisfied that the distinction is actuarially justified; or
  - (c) award a bonus or similar benefit to a policyholder unless —
    - (i) it is done in accordance with the principles and practices of financial management of the long term insurer, and
    - (ii) the valuator is satisfied that it is actuarially sound that a surplus is available for that purpose.

(2) For the purposes of subsection (1) (c) (i) “principles and practices of financial management” means a statement approved by the board of directors of a long term insurer, setting out the discretion retained by the board of directors and the parameters within which that discretion shall be exercised in respect of long term policies, where the long term insurer has to exercise the board’s discretion in awarding a bonus or similar benefit.

Validity of  
contracts

**53.** (1) An insurance policy shall not be void merely because a provision of any written law, including a provision of this Act, in connection with the insurance policy, has been contravened or not complied with.

(2) If a person has entered into an insurance policy with an insurer or other person who was, in terms of this Act, prohibited from entering or not authorised to enter into an insurance policy, the policy may be cancelled by that person or the Regulatory Authority, and the person shall immediately be deemed to be in the same legal position in respect of the insurer or that other person, as if the policy had been cancelled on account of a breach of contract by that insurer or such other person.

Certain clauses  
of agreement  
void

**54.** A clause of an agreement of an insurance policy shall be void, if the purpose of the clause is —

- (a) to exempt an insurer from liability for the action, omission or representation of a person acting on the insurer’s behalf in relation to the insurance policy;
- (b) to make a declaration or admission that the person who acted on behalf of an insurer in connection with the offer or negotiations held before entering the policy, was in fact appointed by the person who entered into the policy;
- (c) that the obligation of an insurer under an insurance policy is dependent upon the discharging of an obligation of another person under a reinsurance policy; or
- (d) to waive a right to which a person who has entered into an insurance policy, or the life insured is entitled to.

**55.** (1) The undertaking of an insurer to provide policy benefits under a policy, other than a fund policy or a reinsurance policy, shall be suspended until the insurer has received the first or only premium, or until arrangements have been made to the satisfaction of that insurer, for the provision of the premium by debit order, stop order, credit card or other form of payment as may be approved by notice issued by the Regulatory Authority.

Policy suspended until payment of first premium

(2) Where a premium payable under subsection (1) is received on behalf of an insurer, by a person authorised under section 82, the receipt of the premium shall be deemed to be a receipt of a premium by the insurer for the purpose of subsection (1), and the onus of proving that the premium was received by a person not authorised to receive the premium shall lie on that insurer.

(3) For the purposes of this section, where a premium is remitted through a postal money order or a cheque sent by post, the date of booking the money order and the date of posting the cheque shall be treated as the date of payment of the premium, if the cheque is honoured.

**56.** (1) Where a premium under an existing insurance policy, other than a fund policy or a reinsurance policy has not been paid on its due date, the policy shall, notwithstanding anything to the contrary, remain in force for a period of 30 days after the due date, or for such longer period as an insurer may determine.

Grace period for payment of premiums

(2) Any notice that an insurer shall issue inviting the renewal of any policy, shall include a statement indicating the time period during which an insurance cover will remain operative prior to receipt of instructions to renew the policy.

**57.** (1) Where an overdue premium is not paid by the end of the grace period referred to under section 56, the general insurance policy will be deemed to have lapsed on the last day of the previous insurance period.

Failure to pay premiums for general insurance policy

(2) An insurer shall not extend an insurance cover in respect of any policy of general insurance effected in the course of its business, beyond the period referred to under section 56, unless specific instruction has been received from the policyholder or his or her insurance broker prior to or during that period, to renew such insurance, and where such instruction is not received the policy cover shall be treated as having lapsed.

(3) An insurer shall notify a policyholder, in writing or by any other method prescribed by the Regulatory Authority, at least 15 days prior to the lapse of the policy, that the policy is about to lapse due to non-payment of premiums.

Failure to pay  
premiums  
for long term  
policy

**58.** (1) Where the overdue premium for a long term policy is not paid by the end of the grace period referred to under section 56, an insurer shall, in terms of subsection (2), determine the remaining value of the long term policy after the satisfaction of any claim which is secured solely by the policy benefits to be provided under the long term policy.

(2) An insurer shall have such rules as may be approved by a valuator, which may prescribe a sound basis on which, and the methods by which, the value of the long term policy is determined and otherwise dealt with for the purpose of subsection (1).

(3) Where the long term policy has no remaining value as determined under subsection (1), the policy shall lapse, otherwise an insurer shall after the expiration of the grace period —

(a) notify the policyholder, in such form and manner as may be determined by the Regulatory Authority, of the amount of the remaining value, that the policy will remain in force, in accordance with the rules of the long term insurer, until —

(i) the policy no longer has any such remaining value, where upon it will lapse,

(ii) the payment of premiums is resumed,

(iii) the provisions of the policy are amended in accordance with the rules of the insurer, so that it becomes a policy which is fully paid-up, or

(iv) the policyholder requests that the policy be surrendered in accordance with the rules of the insurer, and the remaining value is paid to the policyholder; and

(b) deal with the policy accordingly.

(4) An insurer may, until payment of the overdue premium of a long term policy, charge compound interest on the premium, on terms not less favourable to the policyholder than the rate prescribed by the Regulatory Authority.

(5) The overdue premium and any compound interest charged on the policy under subsection (4) shall, for the purposes of this Act, be deemed to be a debt owing to an insurer under the policy.

(6) The insurer shall notify the policyholder, in writing or by any other method acceptable to the Regulatory Authority, at least 15 days prior to the lapse of the long term policy, that the policy is about to lapse due to non-payment of premiums.

Paid-up  
policies for  
long term  
insurance

**59.** (1) A policyholder who desires to discontinue further premium payment on a long term policy that has acquired policy value determined under section 58 (1) shall, on application to the insurer, be entitled to receive in lieu of that policy, a paid-up policy for an amount not less than the value determined under section 58 (1).

(2) A paid-up policy referred to under subsection (1) shall be payable upon the happening of the contingency on which the amount assured under the original policy would have been payable.

**60.** The policyholder of a long term policy who acquired a value determined under section 58 shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the value of the policy, less the amount of any debt owing to the insurer under, or secured by the policy.

Surrender of policies for long term insurance

**61.** Where a claim arising under a long term policy is paid, no deductions shall, except with the consent in writing of the claimant, be made on account of premiums or debts due to the insurer under any other policy.

No deductions in respect of other long term policies

**62.** (1) Each long term insurer shall establish a bonus policy statement for each group of policyholders.

Bonus policy

(2) The bonus policy statement shall set out the provisions of the bonus policy with the profit policy and be disclosed by the insurer to a policyholder at the time of taking out the insurance policy, and should be made available by the insurer at anytime to all policyholders.

(3) The bonus policy statement referred to in subsection (2) shall be approved by the board of directors of the insurer, setting out the discretion retained by the board of directors and parameters within which that discretion shall be exercised, where the insurer has to exercise discretion in awarding a bonus or similar benefit.

(4) The bonuses of policyholders participating in the profits of an insurer —

(a) shall be awarded in accordance with the bonus policy and with the principles and practices of financial management of the insurer; and

(b) the valuator must be satisfied that a surplus is available to declare a bonus to policyholders.

**63.** (1) An insurer shall not provide or undertake to provide a policy benefit in the event of the death of a minor —

Insurance of minors

(a) before the minor attains the age of 16 years; and

(b) if the value of the policy benefit, on its own or when added to the value of the policy benefit, which is to be provided by an insurer in terms of any policy, exceeds P30 000, or the sum of the total of the premiums paid under such policy, whichever is greater, or other amount prescribed by the Regulatory Authority:

Provided that this section shall not apply to or prohibit the allocation of profit in respect of a policy on the life of a minor, which allocation does not exceed the profits allocated to another policy on the life of a person who is not a minor.

(2) A minor who has attained the age of 16 years may, without the consent of his or her parent or guardian, effect a long term insurance policy upon his or her own life and shall be as competent as any other policyholder, and have and exercise all powers and privileges attached to a policyholder in relation to the policy as if he or she were of adult age, except that the minor shall not while he or she is still a minor, pledge or cede the policy without the written consent of his or her parent or guardian.

(3) For the purposes of this section the Regulatory Authority may by notice in writing to each insurer, direct procedures to be undertaken in the processing of claims in respect of a policy on the life of a minor.

Protection of  
policy benefits  
under certain  
long term  
policies

- 64.** Subject to section 63 —
- (a) the policy benefits provided or to be provided to a person under one or more micro-insurance, life, disability or health policies, in which that person or the spouse of that person is the life insured; and
  - (b) which has acquired a long term policy value as determined under section 58 (1); or
  - (c) the assets acquired exclusively with the policy benefits,
- shall, other than for a debt secured by the policy —
- (i) during his or her lifetime, not be liable to be attached or subjected to execution under a judgement of a court or form part of his or her insolvent estate, or
  - (ii) upon his or her death, if he or she is survived by a spouse, child or parent, not be available for the purpose of the payment of his or her debts.

Selection for  
realisation of  
protected long  
term policies

**65.** A judgement creditor or the trustee of an insolvent estate, as the case may be, shall determine which policy shall be realised, wholly or partially, in order to make available to the judgement creditor or trustee, the aggregate realisable value not protected and to which he or she is entitled, if —

- (a) two or more long term policies referred to under section 64, held by the same policyholder, are attached in execution of a judgement or order of any court at the instance of a creditor;
- (b) a policyholder of two or more long term policies referred to under section 64 is found to be or otherwise declared insolvent by a court; or
- (c) only a part of the aggregate realisable value of the policies is protected as contemplated under section 64.

Partial  
realisation of  
long term  
protected  
policies

**66.** (1) A judgement creditor or the trustee of an insolvent estate of a policyholder, who is entitled to a part of the realisable value of a long term policy may, if he or she is in possession of the policy, deliver it to an insurer who is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he or she is entitled.

(2) If a judgement creditor or trustee referred to in subsection (1) is not in possession of a policy, the 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 that policy for the purpose of the payment to that creditor or trustee of the sum to which he or she is entitled.

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

- (a) at the request of the judgement creditor or trustee, pay to him or her a sum equal to that part of the realisable value of the policy to which he or she is entitled; and
- (b) deal with the remaining part of the realisable value of the policy in terms of section 58.

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

Policy ceded or premium paid to benefit another at expense of creditor

(2) If a premium upon a long term policy was paid with the intention to benefit another person at the expense of a creditor of the person making the payment, a court may order the policyholder 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 creditor, and if the person has been adjudged or otherwise declared insolvent, to the trustee of his or her 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 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.

**68.** (1) Subject to subsection (5), if a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition of that contract or otherwise, that an insurance policy or its policy benefits be made available and used for the purpose of protecting the interests of that party or any other creditor, the person who requires the policy or policy benefits to be made available shall inform a policyholder of his or her entitlement to freedom of choice, and the policyholder shall be given prior notification of that entitlement to free choice —

Free choice in certain circumstances

- (a) as to whether he or she wishes —
  - (i) to enter into a new policy and make it available for that purpose,
  - (ii) to make available an existing policy of the appropriate value for that purpose, or
  - (iii) to utilise a combination of the options in subparagraphs (i) and (ii);
- (b) if a new policy is to be entered into —
  - (i) as to the insurer with which the policy is entered into and as to the person, if any, who is to render services as an intermediary in connection with the transaction, and
  - (ii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose shall exceed the value of the interest of a creditor; and
- (c) if an existing policy is to be made available —
  - (i) as to the person, if any, who is to render services as an intermediary in connection with the transaction, and

(ii) as to whether or not a variation of the policy required for that purpose shall be such as to cause the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of the interests of a creditor.

(2) The policyholder whose policy is to be made available shall confirm in writing, before the policy is used for the purpose of protecting the interest of a creditor, that he or she —

- (a) was given prior written notification of his or her entitlement to freedom of choice referred to in subsection (1);
- (b) exercised the freedom of choice; and
- (c) was not subject to any coercion or inducement as to the manner in which he or she exercised the freedom of choice.

(3) Any policy benefits that may be provided under a policy referred to in subsection (1) shall accrue and be paid to a creditor only to the value of the interests of the creditor in the subject matter of the policy, and any surplus shall accrue and be paid to the policyholder whose policy is used for the protection of the interests of the creditor concerned.

(4) Where subsections (1) and (3) are contravened, the security provided by the policy availed and used for the purpose shall be void, and the policy benefits shall be provided to the person who made it available.

(5) Subsection (1) shall not apply to a policy which is required to be made available in relation to a contract in terms of which money is loaned upon the security of the mortgage of immovable property.

(6) Where a new policy is to be entered into, the premiums payable under that policy shall be reasonable in relation to the premiums generally charged by insurers under similar policies.

(7) This section shall not apply to a policy or policy benefits under subsection (1), which are made available for the purpose of protecting the interests of a creditor under a credit agreement to which another law applies.

(8) A person who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

Prohibition of inducements

**69.** (1) A person shall not provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel an insurance policy, other than a reinsurance policy.

(2) A person who contravenes this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

**70.** (1) A person shall not be paid any commission or consideration or thing of value by an insurer for the effecting or renewing of an insurance policy, except a person who is approved by the Regulatory Authority to render services as an intermediary.

Commission  
payment

(2) A consideration shall not be offered or provided by an insurer or person on behalf of the insurer, or accepted by any person for rendering services as an intermediary other than commission or service fees approved by the Regulatory Authority and as may be prescribed.

(3) A person who contravenes a provision of this section is liable to a fine not exceeding three times the value of any commission, consideration or thing of value received, as may be imposed by the Regulatory Authority.

**71.** (1) A person rendering services as an intermediary shall disclose to a prospective policyholder, any commission or other remuneration that he or she is likely to receive from an insurer in the event that the prospective policyholder enters into, varies or renews an insurance policy for which the intermediary has provided services.

Commission  
disclosure

(2) A person who contravenes this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

**72.** (1) The Regulatory Authority may, by Notice published in the *Gazette* and a newspaper of national circulation, determine that a specified practice in relation to insurance business is an unfair practice.

Unfair  
practices

(2) The Regulatory Authority shall consult relevant industry organisations before making a determination in terms of subsection (1).

(3) The Regulatory Authority may, if it is satisfied that it is necessary to urgently determine that an insurance business is an unfair practice in terms of subsection (1), to protect the interests of policy holders and potential policyholders of an insurer or a person who offers services as an intermediary, do so without consultation required under subsection (2).

(4) A Notice published in terms of subsection (1) may relate to specified insurance business or to insurance business of a specified kind.

(5) An insurer or a person who offers services as an intermediary who engages in an unfair practice in relation to an insurance business is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

**73.** (1) The Regulatory Authority may accept a written undertaking from an insurer, insurance broker or insurance agent in connection with any warning that the Regulatory may have given for any matter, in the exercise of its functions under this Act.

Enforceable  
undertakings

(2) An insurer, insurance broker or insurance agent who has submitted a written undertaking under subsection (1) may, with the consent of the Regulatory Authority, withdraw or vary the undertaking at any time, but only with the consent of the Regulatory Authority.

(3) Where the Regulatory Authority considers that an insurer, insurance broker or insurance agent has breached an undertaking made under subsection (1), the Regulatory Authority may apply to the court for an order in terms of subsection (4).

(4) If the court is satisfied that an insurer, insurance broker or insurance agent has breached an undertaking referred to under subsection (1), the court may make all or any of the following orders —

- (a) an order directing an insurer to comply with the undertaking;
- (b) an order directing an insurer to do a specified act, or refrain from doing a specified act, for one or more of the following purposes —
  - (i) to remedy the effects of the breach,
  - (ii) to compensate persons who have suffered loss due to the breach, or
  - (iii) to ensure that the person does not commit a further breach of the undertaking or of the Act;
- (c) any other order that the court considers appropriate.

(5) The Regulatory Authority shall make a copy of an undertaking referred to under subsection (1) available to any person who asks for it.

(6) The Regulatory Authority shall delete from a copy made under subsection (5), any information that an insurer who gave the undertaking has asked not to be released, but only if the Regulatory Authority is satisfied that the information —

- (a) is confidential information that has a commercial value and the commercial value would be diminished if the information were to be released generally;
- (b) should not be disclosed because it would be against the public interest to do so; or
- (c) consists of personal details of the insurer.

(7) If information has been deleted from a copy of an undertaking in terms of subsection (6), the copy shall include a note stating that some information has been deleted from that copy.

Compensation  
for breaches

**74.** (1) A person who suffers loss as a consequence of a contravention of this Act by another person in this section called a “claimant” may recover the amount of the loss by action in a court against —

- (a) the other person; and
- (b) any person who was knowingly involved in the contravention.

(2) The Regulatory Authority may institute an action of a kind mentioned under subsection (1) on behalf of one or more claimants in this section referred to as “representative action”, if in the opinion of the Regulatory Authority it is proper to do so.

(3) In a representative action, the court may make any appropriate order for the conduct of the action, including an order —

- (a) for advertising the institution of the action;
- (b) for the identification of claimants; and
- (c) in respect of claimants who do not wish to pursue their claims through the action.

(4) A claimant is not entitled to recover in a representative action, and the court may make any appropriate order for the conduct of the relevant actions, if —

- (a) the Regulatory Authority institutes a representative action in respect of a loss suffered by the claimant; and
- (b) the claimant, either before or after the representative action is instituted but before it is determined, institutes an action in terms of this section in respect of the same loss.

(5) The Regulatory Authority shall have the conduct of a representative action to the exclusion of the claimant, and may withdraw, abandon or compromise the representative action, but an agreement or compromise of the representative action is subject to the approval of the court.

(6) In a representative action, if the court orders the payment of compensation, it may, in addition, if the court thinks fit, order a defendant to pay —

- (a) a penalty for punitive purposes not exceeding ten times the amount of the profit or gain that may have accrued to the defendant by the contravention; and
- (b) interest on any amount ordered to be paid.

(7) A judgment in a representative action binds all claimants other than —

- (a) those that the court has by order excluded from the action in terms of subsection (3) (c) or otherwise; and
- (b) claimants mentioned under subsection (4).

(8) Any amount recovered by the Regulatory Authority in a representative action shall be deposited into a specially designated account established by the Regulatory Authority with a commercial bank, and thereupon —

- (a) the Regulatory Authority is, as a first charge against the account, entitled to reimbursement of all expenses reasonably incurred in bringing the representative action and in administering the distributions made in terms of this subsection;
- (b) the Regulatory Authority shall take reasonable steps to identify claimants and determine the amount of their losses in connection with the contravention, including publishing the order of the court; and

(c) the balance of the amount recovered, after making provision for expenses mentioned in paragraph (a), referred to as “distributable balance” shall be distributed among the claimants so that each claimant is paid the amount worked out using the formula —

$$\frac{\text{amount of the claimant's loss}}{\text{Total amount of all claimants' losses}} \times \text{distributable balance}$$

(9) A person knowingly involved in the contravention concerned is not entitled to a distribution in terms of subsection (8).

(10) A distribution made under subsection (8) (c) may be paid in stages.

(11) The surplus of the distributable balance not paid at the end of three years after the first payment in terms of subsection (8) shall become funds of the Regulatory Authority.

#### PART VIII — *Insurance Brokers, Insurance Agents and Representatives*

Application of  
Part VIII

**75.** The provisions of sections 9, 11, 12, 15, 16, 17, 18, 20, 21, 23, 38 and 39 shall with the necessary modifications apply to insurance brokers and insurance agents in so far as they are not inconsistent with the provisions of this Part.

Licensing of  
insurance  
broker and  
insurance  
agent

**76.** (1) Subject to the provisions of this Part, a person shall not render services as an insurance broker or insurance agent unless —

(a) the person is licensed as an insurance broker or insurance agent under this Act; and

(b) the person carries on insurance business in accordance with this Act.

(2) A person who wishes to render services as an insurance broker or insurance agent shall apply to the Regulatory Authority for a licence in such form and manner, and upon payment of such fee as may be prescribed.

(3) The licence issued in respect of an insurance broker or an insurance agent shall be valid for such period as may be determined by the Regulatory Authority, and shall be renewable as may be prescribed.

(4) A person who renders services as an insurance broker or insurance agent without a licence, or contrary to the provisions of this Act commits an offence and is liable to a fine not exceeding P5 000 for each day on which the offence occurs or continues to occur or to imprisonment for a period not exceeding 5 years, or to both.

Licensing  
requirements  
of insurance  
broker and  
insurance  
agent

**77.** (1) The Regulatory Authority shall not issue a licence to carry on the business of insurance broker or insurance agent unless it is satisfied that —

(a) the applicant is a resident of Botswana;

(b) the applicant has a principal office in Botswana; and

(c) the person who shall be handling the day to day management of the company is resident in Botswana, and meets the fit and proper requirements, as may be prescribed.

(2) When considering an application for a licence under this Part, the Regulatory Authority shall satisfy itself that —

(a) it will not be contrary to the public interest for the applicant to act as an insurance broker or insurance agent;

- (b) the controllers, directors and managers are fit for the position;
- (c) the relevant trust accounts will be operated in a satisfactory manner in terms of section 83;
- (d) the applicant is covered by a professional indemnity insurance policy and has set up security acceptable to the Regulatory Authority and meets the requirements under section 84;
- (e) the applicant meets the minimum capital requirements prescribed; and
- (f) the business will be conducted in accordance with sound business principles and the provisions of this Act.

**78.** (1) The Regulatory Authority shall, where it is satisfied that the requirements under section 77 are met, issue a licence to the applicant as an insurance broker or insurance agent to carry on business on such conditions as the Regulatory Authority may determine.

Issue of licence of insurance broker and insurance agent

(2) The issue of a licence under subsection (1) shall be recognised as approval from the Regulatory Authority to render services as an intermediary.

(3) An insurance broker or insurance agent shall prominently display a copy of its licence at its principal office in Botswana.

(4) An insurance broker or insurance agent who contravenes subsection (3) is liable to a fine not exceeding P5 000 as may be imposed by the Regulatory Authority.

**79.** An insurance broker or insurance agent shall at all times maintain minimum capital requirements as may be prescribed.

Insurance broker's and insurance agent's capital requirements

**80.** (1) The accounts of every insurance broker or insurance agent shall be audited annually by a resident auditor or an auditor approved by the Regulatory Authority.

Insurance broker's and insurance agent's accounts

(2) Every insurance broker or insurance agent shall keep proper accounts of, and financial information relating to its insurance business.

(3) The form of an audit referred to in subsection (1) shall be in accordance with the requirements of the Companies Act and shall contain such other information or such additional declarations as may be prescribed.

(4) An auditor shall audit the trust accounts maintained by the insurance broker in terms of section 83 and shall state in the audited accounts whether in his or her opinion the trust accounts comply with the provisions of this Act.

(5) Notwithstanding the requirements of subsection (1), the Regulatory Authority may exempt an insurance broker or insurance agent from auditing its accounts and may grant approval for an approved auditor to sign off such accounts.

Insurance broker's and insurance agent's records and rights of access

**81.** (1) An insurance broker or insurance agent shall maintain records relating to insurance transactions it has undertaken inside and outside Botswana.

(2) An insurance broker or insurance agent shall not alter, amend, remove or destroy records required to be maintained under subsection (1) relating to insurance transactions.

(3) An insurance broker or insurance agent shall provide access, where reasonable, to a policyholder or his or her authorised legal representative to documents and correspondence issued or held by the insurance broker or insurance agent of insurance transactions undertaken on behalf of the policyholder.

(4) A person shall not be entitled, other than upon the order of a competent court, to take copies of the documents or correspondence specified in subsection (3), without the consent of the insurance broker or insurance agent.

(5) An insurance broker or insurance agent who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

Collection of premiums by insurance broker

**82.** (1) An insurance broker shall not receive, hold or in any other manner deal with premiums payable under a policy entered into or to be entered into with an insurer, other than a reinsurance policy, and the insurer shall not permit the insurance broker to receive, hold or in any other manner deal with the premiums —

(a) unless authorised to do so through a written agreement with that insurer; and

(b) otherwise than in accordance with such manner as may be prescribed.

(2) An insurance broker shall remit the premiums collected on behalf of an insurer to the insurer according to such requirements as may be prescribed.

(3) In so far as it affects a policyholder or prospective policyholder, all premiums paid to an insurance broker shall be deemed to have been paid to the insurer, subject to section 55 (2).

(4) An insurance broker who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

Separate accounts for premium received

**83.** (1) An insurance broker shall open and maintain a bank account for the keeping of premiums received under section 82 and such account shall be a trust account and be separate from any account which the insurance broker may open and maintain for the keeping of its own funds.

(2) An insurance broker who contravenes this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

**84.** (1) An insurance broker or insurance agent shall maintain a minimum amount of professional indemnity insurance as may be prescribed.

Professional indemnity insurance and security

(2) An insurance broker authorised to collect premiums on behalf of an insurer shall set up security, as may be prescribed.

(3) An insurance broker or insurance agent who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

**85.** (1) A representative of an insurer, insurance broker or insurance agent shall comply with the provisions of this Act.

Representatives

(2) An insurer, insurance broker or insurance agent shall not engage a person to act as a representative unless the insurer, insurance broker or insurance agent complies with the provisions of this section.

(3) An insurer, insurance broker or insurance agent shall enter into an agreement with a representative who offers to render services as a representative on behalf of the insurer, insurance broker or insurance agent.

(4) Every insurer, insurance broker or insurance agent shall issue to each representative, an identity card stating —

(a) the name of the employer;

(b) the class or classes of business the representative is empowered to transact; and

(c) the name, address and a photograph of the representative.

(5) An insurer, insurance broker or insurance agent shall maintain records of all application forms, agreements with representatives and duplicate copies of all identity cards issued in terms of subsections (3) and (4).

(6) An insurer, insurance broker or insurance agent shall submit to the Regulatory Authority on a quarterly basis, a list of representatives, in such manner as may be prescribed.

(7) An insurer, insurance broker or insurance agent shall within 14 days, report to the Regulatory Authority, any misconduct or contraventions to this Act, by its representative, of which it has knowledge.

(8) A person who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

**86.** (1) An insurer, insurance broker and insurance agent shall keep and maintain a register of representatives and a copy of such register shall be submitted to the Regulatory Authority on a quarterly basis.

Register of representatives

(2) A person who contravenes subsection (1) is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

(3) A representative shall be removed from the register of representatives, where he or she fails to comply with the provisions of this Act.

Conditions for rendering services as intermediary

**87.** (1) A representative shall not render services for more than one insurer, insurance broker or insurance agent licensed under this Act.

(2) An insurance agent shall not render services for more than one general insurer and more than one long term insurer registered under this Act.

(3) An insurance agent shall not render services for an insurance broker without prior written approval of the Regulatory Authority.

(4) A principal officer shall not engage the services of a representative without an intermediary agreement.

(5) A representative shall not act outside the terms of the intermediary agreement referred to in subsection (4).

(6) An intermediary agreement referred to under subsection (4) and (5) shall be in such form as may be prescribed.

(7) A person who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

Responsibility for representative

**88.** (1) An insurer, insurance broker or insurance agent shall be liable for any act or omission made or done by a representative whilst carrying out his or her duties as a representative.

(2) Nothing contained in this section shall prevent an insurer, insurance broker or insurance agent from seeking redress against a representative, as a result of the insurer, insurance broker or insurance agent incurring an expense or liability which, but for the provisions of this section, the insurer, insurance broker or insurance agent would not otherwise have incurred.

Obligations of representatives

**89.** (1) An insurer, insurance broker or insurance agent shall notify the Regulatory Authority of any termination of a representative agreement, within 14 days of the date of termination of the agreement, and the reasons for the termination.

(2) Notwithstanding any obligation under an agreement, no disclosure of the reasons of termination of an agreement with a representative, made by an insurer, insurance broker or insurance agent, acting in good faith under subsection (1), shall give rise to any criminal or civil action against the insurer, insurance broker or insurance agent.

(3) A person who contravenes a provision of this section is liable to a fine not exceeding P20 000 as may be imposed by the Regulatory Authority.

Insurance broker's and insurance agent's amalgamations, sales and transfers

**90.** (1) An insurance broker or insurance agent shall not enter into any amalgamation, sale, transfer, takeover of the ownership of, or business of another insurance broker or insurance agent or other similar arrangement, without the prior written approval of the Regulatory Authority.

(2) The Regulatory Authority in deciding whether to grant its approval under subsection (1) shall consider whether the terms and conditions are in the interest of the policyholders, the economy, the insurance industry or the public.

(3) The Regulatory Authority may, as a condition for granting its approval, require such amendments as it may recommend, to be made to the amalgamation, sale, transfer, takeover or other similar arrangement.

## PART IX — Provisions Relating to Underwriting Associations

**91.** The provisions of sections 38, 39 and 40 shall with the necessary modifications apply to underwriting associations in so far as they are not inconsistent with this Part.

Application of certain provisions to underwriting associations

**92.** (1) The Regulatory Authority may determine the conditions for the undertaking of insurance business by an association of underwriters, in such manner as may be prescribed.

Regulatory Authority to determine conditions for licensing

(2) Notwithstanding the generality of subsection (1), the conditions for the undertaking of insurance business may include —

- (a) licensing requirements;
- (b) classes of business underwritten;
- (c) capital requirements;
- (d) margins of solvency;
- (e) retention of premiums;
- (f) deposits and investments in Botswana;
- (g) filing and reporting requirements; and
- (h) any such additional requirements and conditions as may be considered necessary by the Regulatory Authority.

## PART X — Miscellaneous Provisions

**93.** (1) A person shall not, without the approval of the Regulatory Authority —

Prohibition on use of certain words, or performance of certain acts

- (a) apply to his or her, or its business or undertaking, a name or description which includes the word “insure”, “assure” or “underwrite” or any derivative thereof; and
- (b) perform any act which indicates that he or she, carries on or is authorised to carry on any business for which an insurance licence is required, unless the person is authorised to carry on that business.

(2) A person shall not publish misleading or incorrect statements or information that is contrary to the public interest.

(3) A person who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

**94.** (1) The Regulatory Authority may, by an instrument in writing, appoint a person to be an inspector or an investigator under this Act.

Appointment of inspectors and investigators

(2) The Regulatory Authority shall issue an identity card to each inspector and investigator appointed under subsection (1).

(3) An inspector or investigator, when exercising a power conferred by this Act, shall produce the identity card issued under subsection (2), for inspection.

**95.** (1) An inspector may at any time inspect the affairs or any part of the affairs of a person who is, or at any time has been, a licensed insurer, insurance broker or insurance agent to check whether the person —

Routine inspections of licensed insurer, insurance broker or insurance agent

- (a) is complying or has complied with this Act and the conditions of its licence;

- (b) satisfies criteria or standards set out in or made under this Act; or
- (c) is or has been involved in financial crime.
- (2) For the purpose of an inspection under subsection (1) —
  - (a) the inspector may enter any premises used or apparently used by an insurer, insurance broker or insurance agent for carrying on insurance business purposes, at any reasonable time; and
  - (b) inspect and make copies, or take extracts from, any relevant records, documents or things in those premises.
- (3) An insurer, insurance broker or insurance agent, and its directors and officers, shall afford an inspector full and free access to the premises, records and documents of the institution as are relevant to the inspection.
- (4) A person who, without reasonable excuse, contravenes subsection (3) is liable to a fine not exceeding P2 500 for each day on which the contravention occurs or continues to occur as may be imposed by the Regulatory Authority.

Investigations

- 96. (1) This section applies if an investigator —
  - (a) has reasonable grounds to believe that —
    - (i) an offence under this Act has been or may have been committed, or
    - (ii) an insurer, insurance broker or insurance agent is not complying with, or has not complied with this Act; or
  - (b) suspects on reasonable grounds that a person (referred to under this section as the “relevant person”) has in its possession or under its control anything that may afford evidence relevant to the matter (referred to under this section as the “relevant evidence”).
- (2) For the purpose of investigating an offence or suspected offence, the investigator may —
  - (a) subject to subsection (6), enter any premises used or apparently used by an insurer, insurance broker or insurance agent for carrying on insurance business purposes, at any reasonable time and search for any record, document or other thing that the investigator considers may be relevant to the inspection;
  - (b) inspect and make copies, or take extracts from, and where necessary in an appropriate case to take possession of, such records, documents or things;
  - (c) give a direction (orally or in writing) to an insurer, insurance broker or insurance agent, to a director or employee of the institution, or to the relevant person, to produce the relevant evidence to the investigator as specified in the direction; or
  - (d) give a direction to a relevant person to do any of the following —
    - (i) produce to the investigator, at a reasonable time and place specified in the direction, any relevant evidence,
    - (ii) give the investigator explanations or further information about the relevant evidence, or
    - (iii) attend before the investigator at a reasonable time and place specified by the investigator, and answer under oath questions relating to the matter.

(3) An insurer, insurance broker or insurance agent, and its directors, officers and employees, shall afford an inspector full and free access to the premises, records and documents of the institution as are relevant to an investigation under this section.

(4) A person who, without reasonable excuse, refuses or fails to comply with a direction in terms of subsection (2) is liable to a fine not exceeding P2 500 for each day on which the refusal or failure to comply occurs or continues to occur as may be imposed by the Regulatory Authority.

(5) A person who, without reasonable excuse, says anything in answering a question put to the person by an investigator in terms of this section —

(a) that the person knows to be false or misleading in a material particular; or

(b) reckless as to whether it is false or misleading in a material particular,

commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a period not exceeding five years, or to both.

(6) An investigator shall not enter premises in terms of subsection (2) (a) unless —

(a) with the consent of the person in charge of the premises at the time of entry;

(b) in accordance with a warrant under subsection (7); or

(c) in an emergency, under subsection (9).

(7) A warrant for the purposes of subsection (6) is a warrant issued by a magistrate on application by an investigator.

(8) A magistrate shall not issue a warrant under this section unless satisfied that this section applies to the case, as provided in subsection (1).

(9) An investigator may enter premises and exercise powers under this section without the consent or warrant referred to under subsection (6), only if there are reasonable grounds to suspect that it is necessary to do so to prevent loss or destruction of, or damage to, relevant evidence.

**97. (1)** The Regulatory Authority may institute an investigation into the activities of any person, not being a person licensed under the provisions of this Act, whom it suspects is carrying on any class of insurance business as an insurer, insurance broker or insurance agent.

(2) The Regulatory Authority may require a person referred to under subsection (1), who it suspects is carrying on any class of insurance business as an insurer, insurance broker or insurance agent, to produce any documentation and information as the Regulatory Authority thinks necessary, and the person shall comply with the requirements within such time as may be specified by the Regulatory Authority.

(3) A person who contravenes a provision of this section is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Regulatory  
Authority's  
right of  
inspection of  
documents

Indemnity	<b>98.</b> No matter or thing done or omitted to be done by an officer of the Regulatory Authority or any person performing the functions of his or her office, shall, if the matter or thing is done <i>bona fide</i> in the course of carrying out the duties conferred under this Act, render the officer personally liable to an action, claim or demand.
Insurance business conducted in breach of Act	<b>99.</b> Where a person contravenes section 4 (1) or 76, the Regulatory Authority may by notice in writing, direct the person to make such arrangements as may be approved by the Regulatory Authority to discharge all or any part of the obligations under any insurance policy already entered into by that person.
Publication of stated capital	<b>100.</b> An insurer shall not publish or issue a document on which is printed a statement — (a) of its authorised share capital, unless the statement also sets forth the amount of its subscribed capital and of its paid-up capital; or (b) of its subscribed capital, unless the statement also sets forth the amount of its paid-up capital.
Insurance to be held with Botswana insurers	<b>101.</b> (1) All insurances effected by Botswana residents or Botswana resident companies shall be placed with Botswana insurers and reinsurers, unless an exemption for a particular class of insurance is issued by the Regulatory Authority under subsection (2). (2) Where a class of insurance required to be placed with a Botswana insurer under subsection (1) is not available from a Botswana insurer or reinsurer, an insurance broker placing the business may place such insurance with a non-resident insurer. (3) The person placing insurance business under subsection (2) shall apply in writing to the Regulatory Authority for approval prior to the placement of the insurance business. (4) Nothing in this section shall affect the requirements of any law related to exchange control for the time being in force in Botswana.
Use of local intermediaries	<b>102.</b> In the case of an insurance policy effected outside Botswana by a Botswana resident or Botswana resident company, other than an insurer licensed under this Act, the policy shall be effected through the offices of a Botswana licensed insurance broker.
Unlimited indemnities prohibited	<b>103.</b> An insurer shall not issue or renew a policy of insurance under which the insurer undertakes a liability, which amount or maximum amount is uncertain at the time when the contract of insurance is entered into or renewed.
Enforcement of rights of policyholders	<b>104.</b> Notwithstanding any contract provisions in a policy or in any agreement relating to a policy, the holder of a policy issued by a Botswana insurer shall be entitled to enforce his or her rights under the policy, against the insurer liable under the policy in any court in Botswana.

**105.** (1) An insurer shall not register the transfer of more than five per cent of its shares —

- (a) to any person or body of persons directly or indirectly, wholly or partly owned or controlled by a Botswana insurance broker;
- (b) to any person or body of persons directly or indirectly by itself or through any nominee, holding at that time, any legal or equitable interest in any Botswana licensed insurance broker; or
- (c) to any person or body of persons associated with a person or body of persons under paragraph (a) and (b).

(2) An insurer shall not directly or indirectly acquire or hold any legal interest or any equitable interest in excess of five per cent in any Botswana insurance broker, or in any company or partnership directly or indirectly by itself or through any nominee, holding at that time, any legal or equitable interest in any Botswana insurance broker or in any company or partnership associated with any such insurance broker.

(3) A Botswana insurance broker shall not permit any Botswana insurer or person or body of persons directly or indirectly by itself or through any nominee, holding at that time, any legal or equitable interest in any Botswana insurer, or any person or body of persons associated with either, to acquire or hold more than a five per cent interest in its business as an insurance broker.

(4) A person, company or body of persons who has a legal or equitable interest in or is owned, controlled or employed by —

- (a) any Botswana insurance broker; or
- (b) any Botswana insurer,

shall not be employed as the principal officer, controller, director or manager of a Botswana insurer or insurance broker respectively, nor may a Botswana insurer or insurance broker enter into any management agreement with any such person, company or body of persons.

(5) An insurer, insurance broker or insurance agent who contravenes a provision of this section is liable to a fine not exceeding P70 000 as may be imposed by the Regulatory Authority.

**106.** (1) The Regulatory Authority may, at any time before or during the course of an investigation in terms of section 97, require an insurer, insurance broker or insurance agent to transfer all or a specified portion of its assets into a trust to be administered by a person nominated by the Regulatory Authority.

(2) The assets subject to trusteeship under subsection (1) shall not be mortgaged, pledged or otherwise encumbered in any manner whatsoever in favour of any other person, unless with the prior consent of the Regulatory Authority.

Separation of  
insurers and  
insurance  
brokers

Trusteeship of  
assets

Failure to comply with directions, orders or requirements

**107.** (1) Notwithstanding any steps already taken by the Regulatory Authority, a person who without reasonable excuse fails to comply with a direction, order or requirement given to that person under this Act shall be liable to a fine not exceeding P50 000 as may be imposed by the Regulatory Authority.

(2) Where the Regulatory Authority has imposed a fine in terms of subsection (1), and the person still fails to comply with the direction, order or requirement given to that person, the Regulatory Authority shall impose a further fine of P5 000 for each day that the non-compliance continues, up to a maximum of 90 days, after which the Regulatory Authority shall cancel that person's licence.

Preventing compliance

**108.** A person who knowingly hinders or prevents compliance with a direction, order or requirement given under this Act is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Destruction of documents

**109.** A person who destroys, falsifies, conceals or disposes of or causes or permits the destruction, falsification, concealment or disposal of a document or thing that the person knows or ought reasonably to have known is relevant to the performance or exercise of the Regulatory Authority's functions or powers is liable to a fine not exceeding P100 000 as may be imposed by the Regulatory Authority.

Fatal accidents

**110.** Notwithstanding the provisions of any other enactment, in assessing damages in any court action, whether commenced before or after the commencement of this Act, there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of insurance whether effected before or after the commencement of this Act.

Exemption

**111.** (1) Subject to subsection (2), the Minister may by Order published in the *Gazette*, exempt an insurer, insurance broker, insurance agent, representative or class of insurance business from any of the provisions of this Act.

(2) An exemption made under subsection (1) shall not apply to sections 7, 8, 16, 18, 19, 20, 24, 29, 38, 39, 69, 76, 79, 83 and 105.

Regulations

**112.** (1) The Minister may, in consultation with the Regulatory Authority, make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) the manner in which an application is to be made for a licence and the manner in which a licence is to be issued or renewed;
- (b) the forms to be used and fees to be paid in relation to anything to be done under this Act;
- (c) the calculations for prescribed capital target and minimum capital target;

- (d) procedures for investigations to be conducted to establish the financial soundness of insurers;
- (e) procedures for furnishing returns to the Regulatory Authority;
- (f) maintenance of records of insurers;
- (g) fit and proper requirements of controllers, directors or managers of insurers, insurance brokers and insurance agents;
- (h) qualifications for representatives and procedures for submitting list of representatives;
- (i) procedures for remittance of premiums;
- (j) professional indemnity insurance and security;
- (k) conditions for undertaking insurance business by an association of underwriters;
- (l) the disclosure of information to policyholders or other persons about insurance matters;
- (m) submission to the Regulatory Authority of financial statements, reports, statistics, accounts and other documents; and
- (n) any other thing that may be required for the proper implementation of this Act.

**113.** The Regulatory Authority may make administrative rules in relation to the insurance industry.

**114.** The Insurance Industry Act (hereinafter referred to as the “repealed Act”) is hereby repealed.

**115.** (1) A person who immediately prior to the commencement of this Act was licensed in terms of the repealed Act, and was by virtue of that licence, authorised to carry on long term insurance business as defined under the repealed Act, shall be deemed to be licensed to carry on the long term insurance business or providing or undertaking to provide policy benefits under this Act.

(2) A person who immediately prior to the commencement of this Act was licensed in terms of the repealed Act, and was, by virtue of that licence, authorised to carry on general insurance business as defined under the repealed Act, shall be deemed to be licensed as a general insurer in terms of this Act.

(3) A person who immediately prior to the commencement of this Act was licensed in terms of the repealed Act, and was, by virtue of that licence, authorised to carry on the business of an insurance broker and insurance agent under the repealed Act shall be deemed to carry on business as an insurance broker or insurance agent, in terms of this Act.

(4) A long term or general insurer authorised to carry on insurance business in terms of the repealed Act, shall carry on that business subject to the conditions referred to under section 10, and in terms of this Act.

Administrative  
Rules

Repeal of  
Cap. 46:01

Savings and  
transitional  
provisions

(5) An insurance broker and insurance agent authorised to carry on insurance business in terms of the repealed Act, shall carry on that business subject to the conditions referred to under section 77, and in terms of this Act.

(6) A person referred to under subsection (1), (2), (3), (4) and (5) shall, within a period of six months after the commencement of this Act, make an application to the Regulatory Authority in terms of section 7 and 76, for a new licence in exchange for the certificate of registration issued to that person under the repealed Act.

(7) Upon receipt of an application in terms of subsection (6), the Regulatory Authority shall issue the new licence specifying the conditions referred to in subsection (1), (2), (3), (4) and (5) as if they have been determined by the Regulatory Authority, with the necessary modifications in terms of section 10 and 77, and shall not thereupon vary any of those conditions, or determine a new condition, otherwise than in terms of section 11 and 12.

(8) Any fines (referred to as “civil penalties” under the repealed Act), imposed by the Regulatory Authority under the repealed Act, shall continue as if imposed under this Act.

(9) Any decision or action taken or purported to have been taken or done by the Regulatory Authority under the provisions of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

(10) Any right existing towards any person under a contract of insurance or policy made under the repealed Act, or any liability an insurer has towards any person under a contract of insurance or policy under the repealed Act, shall continue to be in force as if made under this Act, until the right or liability is enforced.

## SCHEDULE 1

### Classes of General Insurance Business (section 2)

<i>Description</i>	<i>Nature of Business</i>
Accident Business	<p>Effecting and carrying out contracts of insurance in terms of which a person in return for a premium, undertakes to provide fixed pecuniary benefits against risks of the person insured —</p> <ul style="list-style-type: none"><li>(a) sustaining injury as the result of an accident or of an accident of a specified class; or</li><li>(b) dying as the result of an accident or of an accident of a specified class,</li></ul> <p>and includes a reinsurance policy in respect of such a contract.</p>
Engineering Business	<p>Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk relating to —</p> <ul style="list-style-type: none"><li>(a) the possession, use or ownership of machinery or equipment, other than a motor vehicle, in the carrying on of a business;</li><li>(b) the erection of buildings or other structures, or the undertaking of other works; or</li><li>(c) the installation of machinery or equipment,</li></ul> <p>occurs; and includes a reinsurance policy in respect of such a policy.</p>
Health Business	<p>Effecting or carrying out contracts of insurance in terms of which, in return for a premium, undertakes to provide policy benefits upon an event relating to the health of the mind or body of a person or an unborn child; subject to any limitations as may be prescribed by the Regulatory Authority; and includes a reinsurance policy in respect of such a contract.</p>

<b>Property Business</b>	Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk other than a risk more specifically contemplated in another definition in this section relating to the use, ownership, loss of or damage to movable or immovable property occurs; and includes a reinsurance policy in respect of such a policy.
<b>Guarantee Business</b>	Effecting or carrying out contracts of insurance in terms of which a person, other than a bank, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the policy as a risk relating to the failure of a person to discharge an obligation, occurs; and includes a reinsurance policy in respect of such a policy.
<b>Liability Business</b>	Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the incurring of a liability, otherwise than as part of a policy relating to a risk more specifically contemplated in another definition in this category, occurs; and includes a reinsurance policy in respect of such a policy.
<b>Miscellaneous Business</b>	Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to any matter not otherwise defined in this section, occurs; and includes a reinsurance policy in respect of such a policy.
<b>Motor Business</b>	Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a motor vehicle, occurs; and includes a reinsurance policy in respect of such a policy.
<b>Transportation Business</b>	Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft or for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed, occurs; and includes a reinsurance policy in respect of such a policy.

## SCHEDULE 2

### Classes of Long Term Insurance Business (section 2)

<i>Description</i>	<i>Nature of Business</i>
Disability Business	Effecting or carrying out contracts of insurance in terms of which a person, in return for a premium, undertakes to provide policy benefits upon the event of the functional ability of the mind or body of a person or an unborn child becoming impaired; and includes a reinsurance policy in respect of such a contract.
Health Business	Effecting or carrying out contracts of insurance in terms of which, in return for a premium, undertakes to provide policy benefits upon an event relating to the health of the mind or body of a person or an unborn child; subject to any limitations as may be prescribed by the Regulatory Authority; and includes a reinsurance policy in respect of such a contract.
Fund Business	Effecting or carrying out contracts of insurance in terms of which, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract;

where "fund" means --

- (a) a fund as defined under the Retirements Funds Act; or
- (b) any other person, arrangement or business prescribed by the Regulatory Authority.

**Life Business**

Effecting or carrying out contracts of insurance in terms of which, in return for a premium, undertakes to —

- (a) provide policy benefits upon, and exclusively as a result of, a life event; or
- (b) pay an annuity for a period,

and includes a reinsurance policy in respect of such a contract;

where “life event” means the event of the life of a person or an unborn child —

- (a) having begun;
- (b) continuing;
- (c) having continued for a period; or
- (d) having ended.

**Sinking Fund Business**

Effecting or carrying out contracts of insurance, other than life business, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money, on fixed or determinable future date, as policy benefits; and includes a reinsurance policy in respect of such a contract.

**PASSED** by the National Assembly this 16th day of July, 2015.

**BARBARA N. DITHAPO,**  
*Clerk of the National Assembly.*