

CHAPTER 46:01
INSURANCE INDUSTRY
ARRANGEMENT OF SECTIONS

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First Schedule - Classes of Long Term Business

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Act 21, 1987,
S.I. 120, 1990,

Act 17, 2003,
Act 2, 2007,
S.I. 11, 2008.

An Act to make provision relating to the carrying on of insurance business and other matters connected therewith.

[Date of Commencement:
ss 47, 52, 57(2), (3) and (4), and 105: 1st July, 1991;
s 54: 1st July, 1992;
the rest of the Act, except ss 104 and 106: 1st July, 1990;
ss 104 and 106: 22nd January, 2008]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Insurance Industry Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**actuary**" means-

- (a) a fellow of the Institute of Actuaries in England or of the Faculty of Actuaries in Scotland; or
- (b) such other person having actuarial knowledge as the Registrar may approve;

"**agent**" means the same as "insurance agent" herein described;

"**agent for broker**" means a person who transacts insurance business on behalf of a registered insurance broker;

"**approved securities**" means securities issued by the Government and such other securities or investments as the Registrar may approve;

"**associate**", in relation to an applicant for licensing as an insurer or broker includes-

- (a) the spouse or minor son or daughter 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 that person is a company-
 - (i) any director of that company;
 - (ii) any subsidiary of that company;
 - (iii) any director or employee of any such subsidiary;

"**association of underwriters**" means underwriters at Lloyd's of London;

"**broker**" means the same as "**insurance broker**" herein described;

"**chairman**", in relation to an association of persons, includes the individual presiding over the board of directors or other governing body of the association;

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

"**contingent obligation dependent on a human life**" means-

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

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

"controller", in relation to an applicant for licensing as an insurer or broker, means-

- (a) a Managing Director or Chief Executive of the applicant or of a body corporate of which the applicant is a subsidiary; or
- (b) a person in accordance with whose directions or instructions the directors of the applicant or of a body corporate of which the applicant is a subsidiary are accustomed to act; or
- (c) a person who either alone or with an associate or associates is entitled to exercise, or control the exercise of, one-third or more of the votes at any general meeting of the applicant or of any body corporate of which the applicant is a subsidiary;

"controller", of a person or body corporate, other than in relation to an applicant for licensing as an insurer or broker means-

- (a) a Managing Director or Chief Executive of a body corporate which is a subsidiary of the person or body corporate;
- (b) a person in accordance with whose directions or instructions the directors of a body corporate which is a subsidiary of the person or body corporate are accustomed to act; or
- (c) a person who either alone or with an associate or associates is entitled to exercise, or control the exercise of, 15 per cent or more of the votes at any general meeting of, or of a subsidiary of, a person or body corporate;

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

"deposit" means a deposit of money or anything having a monetary value which by virtue of the regulations made under this Act may be accepted as a deposit;

"deposit administration policies" means a contract whereby-

- (a) an insurer maintains a fund to which-
 - (i) is credited all amounts paid by the insured to the fund; and
 - (ii) is debited all amounts withdrawn from the fund to provide benefits in terms of the rules of the fund and such administrative and other expenses as are agreed upon between the insured and the insurer from time to time; and
 - (iii) such investment income and capital profits or losses as are agreed upon between the insured and the insurer as being for the account of the fund; and
- (b) the liability of the insurer to the insured, at any given time, is limited to the amount standing to the credit of the fund;

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

"financial year", in relation to an insurer, means each period of 12 months at the end of which the balance of the accounts is struck, and includes any lesser or greater periods as the Registrar shall approve;

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

"funeral policy" means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide, on the death of any person, benefits, not exceeding in value such amount as may be prescribed, which consist principally of provision for the funeral of that person or the grant to another person of some non-monetary benefit, whether

or not the policy provides for-

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

"general business" has the meaning assigned to it under section 37;

"gross profit" means the chargeable income of the insurer as ascertained under Part VI of the Income Tax Act;

"insolvency" has the meaning assigned to it by the Insolvency Act;

"insurance agent" means a person who solicits applications for insurance, collects moneys by way of premiums and acting in accordance with his agency agreement may bind the licensed insurer for whom he acts in the issue of insurance cover;

"insurance broker" means persons, who acting with complete freedom as to their choice of undertaking, and for commission or other compensation and not being an agent of the insurer, bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance, and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;

"insurance business" includes assurance and reinsurance;

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

"life insurance business" means the business of assuming the obligations of an insurer classified under section 37 as transacting long term business;

"life insurance fund" means the fund established under section 70 to which the receipts of an insurer in respect of his life insurance business are carried;

"life policy" means any contract of insurance made or agreed to be made by an insurer classified under section 37 as transacting long term business;

"long term business" has the meaning assigned to it under section 37;

"management expenses" means expenses incurred in the administration of an insurer which are not commission payable and, in the case of general insurance business, are not incurred in claims paid, claims outstanding, expenses for settling claims and expenses for settling claims outstanding;

"manager", in relation to an applicant for licensing as an insurer or broker includes an employee of the applicant (other than a controller), who, under the immediate authority of a director or chief executive of the applicant exercises managerial functions or is responsible for maintaining accounts or other records of the applicant not exclusively related to business conducted from a place of business outside Botswana;

"member of the insurance industry" includes an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster and claims settlement agent, whether licensed under this Act or not;

"minor" means a person who, by reason of his youth, is under a legal disability;

"owner", in relation to a policy, means the person who for the time being has the legal title to the policy;

"policy" includes every writing whereby any contract of insurance is made or agreed to be made;

"prescribed" means prescribed by regulations made under section 131;

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

"Registrar" means the Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act;

"stock insurance company" means an insurance company with permanent share capital owned and controlled by its shareholders and includes a statutory corporation carrying on insurance business;

"trustee", in relation to an estate in insolvency, includes an assignee or, as the case may be, a trustee in a deed of arrangement of the person having the conduct of an order of composition;

"underwriter" includes any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by the policy or contract;

"underwriter's liabilities", in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the responsible body at Lloyds of London vested with the administration of the relevant insurance law.

PART II **Administration (ss 3-4)**

3. - 4..... PART III

Capital and other Requirements for Insurers other than Associations of Underwriters (ss 5-11)

5. Application of Part III

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

6. Insurer to be a resident company

No insurer may, after the coming into operation of this Act, be licensed as an insurer in Botswana unless it is incorporated as a company under the Companies Act and is deemed to be resident in Botswana.

7. Restrictions on general and long term insurers

(1) No individual insurer may transact both general and long term insurance business.

(2) Any insurer who carries on business in contravention of this provision will be liable to have his licence cancelled.

(3) An insurer transacting both general and long term insurance business immediately before the coming into operation of this Act shall be permitted to transact both general and long term insurance business for a period not exceeding one year from the date on which this Act comes into operation.

8. Separation of insurers and brokers

(1) No insurer shall register the transfer of more than five per cent of its shares to any person or body of persons directly or indirectly, wholly or partly owned or controlled by a Botswana licensed insurance broker or 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 broker or any person or body of persons associated with either.

(2) No insurer shall directly or indirectly acquire or hold any legal interest or any equitable interest in excess of five per cent in any Botswana licensed 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 licensed broker or in any company or partnership associated with any such broker.

(3) No Botswana licensed broker may permit any Botswana licensed 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 licensed 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 a broker.

(4) No person, company or body of persons who has a legal or equitable interest in or is owned, controlled or employed by-

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

may be employed as the manager, controller, director or principal officer of a Botswana licensed insurer or broker respectively, nor may a Botswana licensed insurer or broker enter into any management agreement with any such person, company or body of persons.

(5) Where at the coming into force of this Act an insurer or broker is in contravention of any of the provisions of subsections (1) to (4), such insurer or broker may, notwithstanding such contravention, be licensed under this Act for a period not exceeding two years.

9. Capital requirement

(1) The Minister shall prescribe the minimum paid-up share capital to be maintained by a licensed insurer.

(2) For the purposes of subsection (1) the Minister may prescribe different amounts in respect of insurers transacting general business and insurers transacting long term business.

(3) Every insurer shall transfer from its net profits of each year, before any dividend is declared and after due provision has been made for taxation, a sum not less than 25 per cent in the case of an insurer transacting long term business or 15 per cent in the case of an insurer transacting general business-

- (a) to the paid-up share capital of the insurer; or
- (b) to a Capital Reserve Account which account may be reduced only for the purpose of increasing the paid-up share capital of the insurer:

Provided that an insurer shall not be required to transfer any part of its net profits if the aggregate of the paid-up capital and the Capital Reserve Account exceeds such sum as may be prescribed by the Minister:

Provided also that the Capital Reserve Account shall be wholly utilised not less frequently than every five years to increase the paid-up share capital of the insurer.

(4) Any licensed insurer who permits its paid-up share capital to be reduced to a level below that prescribed by the Minister or fails to increase capital in accordance with the requirements of subsection (3) shall be guilty of an offence and shall in addition to any other penalty prescribed by this Act be liable to have its licence cancelled.

(5) The Minister may by regulations prescribe the form in which paid-up share capital may be maintained by an insurer.

10. Margin of solvency

(1) No insurer may carry on business as an insurer unless it maintains in Botswana at all times while it so carries on insurance business a margin of solvency of not less than such amount as may be prescribed.

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

(3) Any insurer acting in contravention of this section shall be guilty of an offence and shall in addition to any penalty prescribed by this Act be liable to have its licence cancelled.

11. Statutory Reserve Solvency Account

(1) Upon the coming into force of this Act every licensed Botswana insurer transacting general business shall commence and maintain a statutory fund (to be known as the "Statutory Reserve Solvency Account"), and shall, in every year, before any dividend is declared, transfer to such account a sum equivalent to 10 per cent of its gross profits:

Provided that, where the transfer of 10 per cent of its gross profits would result in the total sum in the account exceeding 25 per cent of the gross premiums received in the previous financial year, an insurer may transfer only so much as is necessary to raise the total sum in its account to a sum equivalent to 25 per cent of the gross premiums received in the previous financial year.

(2) The Statutory Reserve Solvency Account shall be kept distinct and separate from all other accounts in the books of account and other records of the insurer.

(3) The Statutory Reserve Solvency Account shall neither be reduced nor encumbered: Provided that the Registrar may by notice in writing to the insurer specify circumstances

in which it may be reduced or encumbered.

(4) No insurer shall at any time declare credit or pay any dividend or make any other transfer from profits other than a transfer to the Statutory Reserve Solvency Account until all encumbrances or reductions allowed by the Registrar under the provisions of subsection (3) have been removed.

PART IV

Provisions governing Insurers

other than Associations of Underwriters (ss 12-37)

12. Application of Part IV

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

13. Licensing of an insurer

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

(2) An insurer resident in Botswana carrying on insurance business immediately before the commencement of this Act may, within three months after such commencement, make an application for a licence under this Act, and may, until the grant or refusal of its application, continue to carry on its insurance business.

14. Exclusion of burial societies

(1) The provisions of this Act shall not apply to burial societies, registered under the Societies Act.

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

15. 16. Licensing requirements

An insurer seeking a licence shall satisfy the Registrar that-

- (a) it is a company registered under the Companies Act;
- (b) it has a principal office in Botswana;
- (c) its controller, manager, principal officer and directors who handle the day to day management of the company are all resident in Botswana; and that
- (d) its controller, manager and principal officer are persons with sufficient business and insurance knowledge and experience.

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

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

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

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

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

17. Restriction on insurers whose officers are deemed unsuitable

No insurer may employ as its manager, controller or principal officer any person who-

- (a) has been adjudged an undischarged bankrupt in any country;
- (b) has made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside;
- (c) has been convicted by any court in any country of an offence involving dishonesty; or
- (d) is in the opinion of the Registrar an unfit person to hold the office.

18. Grant of application

(1) If the Registrar is satisfied that-

- (a) the class or classes of insurance business in respect of which the application is made will be conducted in accordance with sound insurance principles;
 - (b) the relevant capital requirements for insurers are adequate, having regard to any regulations made in relation thereto under section 9, have been complied with by the applicant;
 - (c) the margin of solvency of the insurer is adequate having regard to any regulations made in relation thereto under section 10; and
 - (d) the applicant complies with the requirements of Parts III and IV of this Act,
- the Registrar may grant the application for a licence as an insurer and issue the prescribed licensing certificate.

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

19. - 22. 23. Retentions and reinsurances

(1) The Registrar may by stipulating in writing to the insurer set limits within which a licensed insurer may accept insurances of all or any class by-

- (a) restricting the gross premiums received by an insurer to a specified maximum in any one financial year; or
- (b) restricting the gross premiums less gross reinsurances payable by an insurer to a specified maximum.

(2) The Registrar may by stipulating in writing to an insurer prohibit a licensed insurer from transacting any individual policy or all insurance of a class or classes where-

- (a) in the opinion of the Registrar the arrangements for reinsurance in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business are not favourable to the economy or the insurance industry or are not in the public interest; or
- (b) in the opinion of the Registrar the gross or net retention limits are too low or too high.

(3) The Registrar, having regard to such matters as he considers relevant, may, by notice in writing to the insurer, exempt an insurer, subject to such terms and conditions and for such period as he specifies in the notice, from the requirements of this section.

24. 25. Preservation of records

An insurer shall maintain all records or accurate transcriptions of all records relating to insurance transactions inside and outside Botswana undertaken by it, for a minimum period of six years-

- (a) in the case of a life policy, after the maturity, cancellation, surrender or realisation of the policy or after the death of the insured;
- (b) in all other cases after the maturity, cancellation or realisation of the policy or date of loss.

26. Amendment of accounts, etc.

(1) If, in the opinion of the Registrar, an account or balance sheet furnished by a licensed insurer under section 31 is incorrect or is not prepared as prescribed, the Registrar may, by notice in writing, call upon the insurer to amend such account or balance sheet, to furnish a correct account or balance sheet, or, as the case may be, an account or balance sheet prepared as prescribed under section 31.

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

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

27. Audit of accounts of insurers

(1) The accounts of every licensed insurer shall be audited annually by a resident auditor

approved by the Registrar.

(2) 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 the Minister may by regulations prescribe.

28. Registrar's powers re commissions, deposit of funds and management expenses

(1) The Registrar may, by notice in the *Gazette*, determine the minimum and maximum commission rates payable by insurers to other insurers, brokers or agents in respect of all or any class of insurance whether insurance or reinsurance.

(2) The Registrar may, by notice in writing, require an insurer to deposit in the Bank of Botswana, within such time as the Registrar shall consider reasonable, such securities as the Registrar shall stipulate in the said requisition in respect of any or each class of insurance business being carried on by that insurer.

(3) After consideration of the extent and duration of the business carried on by an insurer and the provision generally made for management expenses in the premium rates of insurers, the Registrar may-

- (a) by notice published in the *Gazette* require insurers to limit their management expenses to an amount contained in the notice;
- (b) by notice in writing to an insurer allow dispensation from the provisions of paragraph (a) to any other amount and for any period as the Registrar shall consider reasonable except that such period shall not exceed two consecutive years.

29. Valuation of assets and liabilities

(1) The Minister may make regulations with respect to the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by any provision of this Act to be determined in accordance with valuation regulations.

(2) Without prejudice to the provisions of subsection (1), regulations made under this section may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent.

(3) For the purposes of this section the Minister may make separate regulations for the determination of the value of assets and the amount of liabilities of general and long term insurers.

30. Change of financial year

The financial year of an insurer may be changed by the insurer with the approval of the Registrar.

31. Annual returns to the Registrar

(1) An insurer shall, within four months after the end of its financial year furnish to the Registrar in the prescribed forms-

- (a) an audited balance sheet and profit and loss account;
- (b) an audited income and expenditure statement for each category of insurance underwritten;
- (c) an audited statement of solvency;
- (d) an audited statement of all admissible and inadmissible assets; and
- (e) all such other information as he may require.

(2) The Registrar may, at his discretion, extend the time within which the insurer should comply with the provisions of subsection (1) by a maximum of three months:

Provided that an insurer shall be liable to pay to the Registrar a penalty of P150 for every day during which it is in default beyond such extended time granted by the Registrar.

(3) Where the insurer fails to furnish the required documents and information within the extended time or fails to pay the penalty, the insurer shall be regarded as having failed to comply with the provisions of subsection (1).

32. Publication of authorised capital

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.

33. Powers re restriction and instruction on insurers

(1) The Minister may by regulations-

- (a) prohibit an insurer from making investments of a specified class or description;
- (b) require an insurer to realise the whole or part of a particular investment within a specified period;
- (c) require an insurer or all insurers to invest such percentage of the insurance funds of such insurers or insurer, as the case may be, accruing in respect of their or its insurance business in Botswana or assets representing the Statutory Reserve Solvency Account in such Botswana securities and such other securities in Botswana, as may be specified.

(2) An instrument made under subsection (1) may prescribe different percentages of such insurance funds to be so invested according to the class or description of an insurer, and may prescribe different percentages for local insurers.

(3) Except with the prior express consent in writing of the Registrar, no insurer shall invest or otherwise lend insurance fund moneys outside Botswana.

(4) An insurer may-

- (a) borrow any money, whether secured or unsecured;
- (b) guarantee or bind itself as surety for the discharge of any debt or obligation of any person or body of persons, or issue any bond, guarantee or undertaking provided it is licensed to carry on such guarantee business and the guarantee or undertaking is incorporated in a guarantee policy,

except that where it mortgages or charges assets-

- (i) exceeding 20 per cent of the aggregate of its paid up share capital and Capital Reserve Account in the case of an insurer other than an insurer carrying on long term insurance business in order to secure for itself temporary loans or bank overdrafts; or
- (ii) exceeding 25 per cent of the aggregate life insurance funds or four times the aggregate of its paid up share capital and Capital Reserve Account, whichever is less in the case of an insurer carrying on long term insurance business in order to secure loans for itself,

it shall notify the Registrar in writing within one month of so doing and shall provide the Registrar with such information as the Registrar may require relating thereto.

(5) The Minister may, by statutory instrument, make an order enjoining the Registrar himself to take or require an insurer to take such action as appears to the Registrar appropriate to protect the policyholders of the insurer against the risk that the insurer may be unable to meet its liabilities, or in the case of an insurer transacting long term business, to fulfil the reasonable expectations of the policyholders.

34. Trusteeship of assets

(1) The Registrar may, at any time before or during the course of an investigation in terms of section 112, require an insurer to transfer all or a specified portion of its assets into a trust to be administered by a person nominated by the Registrar.

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

35. Preferred creditors of an insurer

Notwithstanding any law to the contrary, in the event of the liquidation, insolvency or bankruptcy of a licensed insurer-

- (a) the owners of life policies and other classes of long term business issued by the insurer

- shall have preference against all other creditors of the insurer in respect of the life insurance and long term business funds maintained by it; and
- (b) the owners of all other policies issued by the insurer shall rank before any other creditor of the insurer in the distribution of such assets of the insurer as remain after the claims, if any, by owners of life policies and other classes of long term business against the estate have been discharged.

36. Insurers' code of practice

(1) The Minister may by regulations set out a code of practice and a guide for insurers in the conduct of their business:

Provided that an insurer may in the interest of prudent underwriting, and in specific cases, undertake practices discouraged by the code, but shall submit his reasons for so doing, in writing, to the Registrar as soon as practicable thereafter.

(2) The principal officer of each insurer shall ensure that all directors, managers and employees of the insurer are made aware of, and comply with, the provisions of the code of practice described in subsection (1).

37. Classification

(1) For the purposes of this Act insurance business is divided into long term business and general business; and-

- (a) "long term business" means insurance business of any of the classes specified in the First Schedule to this Act; and
- (b) "general business" means insurance business of any of the classes specified in the Second Schedule to this Act.

(2) For the purposes of this Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first mentioned class, and no other, if subsection (3) or (4) applies to the contract.

(3) This subsection applies to a contract whose principal object is within any class of long term business but which contains subsidiary provisions within general business class 1 or 2 if the insurer is authorised to carry on long term business class 1.

(4) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being general class 14 or 15.

PART V

Association of Underwriters Licensed as Insurers (ss 38-42)

38. Application of Part V

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

39. Registrar to determine conditions for licensing

(1) The Registrar may determine the conditions of licensing of an association of underwriters.

(2) Notwithstanding the generality of subsection (1), such powers shall include, *inter alia*, the determination of the necessity and amount of-

- (a) classes of business underwritten;
- (b) capital requirements;
- (c) margins of solvency;
- (d) retention of premiums;
- (e) deposits and investments in Botswana; and
- (f) any such additional requirements and conditions as considered necessary by the Registrar.

40. Association of underwriters to deposit sums or securities

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

41. Premiums received to be held in trust

A proportion, to be determined by the Registrar, of all premiums received by an association of underwriters from Botswana insurance business shall be held in trust in Botswana by a trustee approved by the Registrar for the payment of the underwriting expenses of the association's insurance business in Botswana.

42. Audit of accounts of an association of underwriters

(1) An association of underwriters shall furnish evidence to the satisfaction of the Registrar that the accounts of each member of the association are subject to an annual audit by an independent auditor.

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

(3) An association of underwriters shall furnish annually to the Registrar-

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

PART VI

Third Party (Rights Against Insurers) (ss 43-45)

43. Third party rights against insurers on bankruptcy, etc. of the insured

(1) Where under any contract of insurance a person (in this Act referred to as "the insured"), is insured against liabilities to third parties which he may incur, then-

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary-winding up being passed, with respect to the company, or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order is made under the Insolvency Act for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties hereunder upon the happening to the

insured of any of the events specified in paragraph (a) or (b) of subsection (1) or upon the making of an order under the Insolvency Act in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or (2), the insurer shall, subject to the provisions of section 45, be under the same liability to the third party as he would have been to the insured, but-

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Part shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Part shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Part, the expression "liabilities to third parties" in relation to any person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Part shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

44. Duty to give necessary information to third parties

(1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors, or in the event of an order being made under the Insolvency Act in respect of the estate of any person, or in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to any company, or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, receiver, or manager or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Part and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events shall be of no effect.

(2) If the information given to any person in pursuance of subsection (1) discloses reasonable ground for supposing that there have or may have been transferred to him under this Part rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by subsection (1) on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

45. Settlement between insurers and insured persons

Where the insured has become bankrupt or where in the case of the insured being a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed, with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the bankruptcy or winding-up, as the case may be, nor any waiver, assignment, or other disposition made by, or payment made to the insured after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Part, but those rights shall

be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

PART VII

Licensing Requirements of Insurance Brokers, Insurance Agents and Agents for Brokers (ss 46-64)

46. Insurance brokers, agents and agents for brokers to be licensed

(1) - (2) (3) An employee of a licensed insurance broker may accept insurance business without himself being licensed provided the compensation of such employee is not related to the volume of business so handled.

(4) An employee of a licensed insurance agent or agent for an insurance broker may-
(a) accept over the counter insurance business at the permanent office of such agent without being licensed:

Provided that the compensation of such employee is not related to the volume of business so handled;

(b) accept insurance business elsewhere than at the permanent office of such agent without being licensed:

Provided that such employee carries an identity card issued in accordance with the provisions of subsection (3) of section 49 and he accepts only such insurances as are compulsorily required under any other law of Botswana.

47. Agents to act for one principal only ^{i*}

No insurance agent or agent for an insurance broker may act-

(a) for more than one insurer or broker licensed under this Act;

(b) outside the terms of an approved agency agreement.

48. Insurer's and broker's responsibility for agents

(1) An insurer or an insurance broker shall be liable for the acts of an agent or an employee of an agent in carrying out his duties as an agent where the act complained of falls within the area of authority of the agent or his employee as is explicitly stated in his agency certificate or might reasonably be implied from it by a person seeking insurance.

(2) Insofar as it affects a policyholder or potential policyholder, all premiums paid to an agent or an employee of an agent shall be deemed to have been paid to the insurer or broker for whom he is the agent.

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

(4) Nothing contained in this section shall prevent an agent seeking redress against his employee where an insurer or broker incurs an expense or liability under subsections (1) and (2) and where the said agent is similarly liable to the insurer or broker under the provisions of subsection (3).

49. Licensing of agents

(1) The Minister may make regulations setting down the minimum qualifications required of any person to whom an agency agreement and certificate may be issued by an insurer or insurance broker.

(2) An insurer or broker employing an agent shall issue to that agent a form of agency agreement approved by the Registrar agreement shall only be issued to an agent who has complied with the provisions of this Act.

(3) Every insurer and broker shall issue to each agent and each employee of an agent identity cards of a type approved by the Registrar stating the name of the insurer or broker, the class or classes of business the agent or employee of the agent is empowered to transact, whether he is empowered to effect insurance cover and collect premiums, and the name, address and a photograph of the agent, or employee of an agent approved by the insurer or

broker as eligible to undertake business as defined under subsection (4)(b) of section 46.

(4) Insurers and brokers shall maintain-

- (a) records of all agency agreements issued in accordance with subsection (2); and
- (b) duplicate copies of all identity cards issued in accordance with subsection (3).

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

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

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

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

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

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

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

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

50. 51. Restriction on broker's officers

No insurance broker may employ as its manager, controller or principal officer any person who-

- (a) has been adjudged an undischarged bankrupt in any country;
- (b) has made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside;
- (c) has been convicted by any court in any country of an offence involving dishonesty; or
- (d) is, in the opinion of the Registrar, an unfit person to hold the office.

52. Licensing requirements of insurance brokers ^{ii*}

An insurance broker seeking a licence shall satisfy the Registrar-

- (a) if it is a limited company, that-
 - (i) it is a company registered under the Companies Act;
 - (ii) it has a principal office in Botswana;
 - (iii) its controller, manager, principal officer and directors who handle the day to day management of the company are all resident in Botswana; and
 - (iv) its controller, manager and principal officer are persons with sufficient business and insurance knowledge and experience.
- (b)

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

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

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

(4) Where an insurance broker does not renew his licence within three months of its

expiry, the Registrar shall cancel that licence.

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

53. Grant of broker's application

If the Registrar is satisfied that-

- (a) the relevant bank deposits and capital requirements for the insurance broker are adequate having regard to any regulations made in relation thereto under section 54;
- (b) the relevant trust accounts will be operated in a satisfactory manner in accordance with section 57;
- (c) insurances necessarily required under section 55 have been obtained by the applicant; and
- (d) the applicant complies with the requirements of Part VII of this Act,

the Registrar may grant the application for a licence as a broker and issue the prescribed licensing certificate.

54. Broker's capital requirements ^{iii*}

(1) The Registrar may, within such limits as the Minister may prescribe by regulations, by notice in writing, require a broker to deposit either in money or in stipulated securities, security in a value stipulated by him, within such time as the Registrar may consider reasonable.

(2) The Minister shall, prescribe the minimum paid-up capital to be maintained by a broker, and any broker who permits its paid-up capital to be reduced to a level below that prescribed by the Minister shall be guilty of an offence and shall in addition to any other penalty prescribed by this Act be liable to have its licence cancelled.

55. Broker's responsibilities and insurance requirements

(1) A broker is liable for his acts or omissions and for the acts or omissions of his agents and staff in transacting insurance business, and shall insure himself against any such liability:

Provided that where the Registrar is satisfied that such insurance cannot be obtained to cover agents or staff he may exempt the broker from effecting such insurance and instead require the broker to increase the security, if any, deposited by him under section 54 by such sum as the Registrar may consider reasonable.

(2) The Registrar may by notice in writing to the broker require him to provide a minimum indemnity in a stated amount against losses arising as a result of the provisions of subsection (1) as the Registrar shall consider appropriate but such minimum indemnity shall not be less or more than that which the Minister may prescribe.

(3) The Registrar may by notice in writing to the insurance broker require him to restrict the first amount payable by the insurance broker in respect of any claim or series of claims insured by virtue of the provisions of subsection (1) as the Registrar shall consider appropriate.

56. Broker's records and rights of access

(1) A broker shall maintain records relating to insurance transactions undertaken by it inside and outside Botswana, for a minimum period of six years after the maturity, cancellation or realisation of an insurance policy or after the date of loss under such policy as the case may be.

(2) A broker shall provide access to a client or his authorised legal representative to all documents and correspondence issued or held by the broker of insurance transactions undertaken on behalf of the client:

Provided that no person shall be entitled, other than upon the order of a competent court, to take copies of any such documents or correspondence without the consent of the broker.

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

57. Broker's responsibility for premiums

(1) A broker shall be liable to a Botswana insurer for all premiums collected by him and

all premiums due to the insurer by virtue of insurances effected at the instruction of the broker.

^{iv*}(2) A broker shall remit to the insurer all premiums due to the insurer within the time specified by regulations made under the provisions of this Act.

^{v*}(3) All moneys received by a broker either from or for a client shall be deposited in a separate trust account and shall not in any circumstances be mixed with moneys belonging to the broker; moneys earned by way of interest on sums deposited in such trust accounts shall accrue to the benefit of the broker:

Provided that the Registrar may accept a guarantee given by a bank registered under the Banking Act, in lieu of the establishment of a separate trust account, if the guarantee is addressed to the Registrar and cannot be withdrawn or cancelled except with his written consent and is for a sum equal to not less than 50 per cent of the gross premium receipts less commissions received by the broker for the previous financial year or such other greater sum as the Registrar may stipulate.

^{vi*}(4) The Registrar may stipulate where trust accounts required by virtue of subsection (3) may be maintained and in what form they shall be maintained.

58. Broker's accounts

(1) The accounts of every registered broker shall be audited annually by a resident auditor approved by the Registrar.

(2) 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 the Minister may by regulations prescribe.

(3) The auditor shall audit trust accounts maintained by the broker in accordance with the provisions of subsection (3) of section 57 and shall state in the accounts whether in his opinion they comply with the provisions of this Act.

(4) Where the Registrar has accepted a guarantee in lieu of the maintenance of a trust account in accordance with the provisions of subsection (3) of section 57 the broker shall ensure that a separate record is maintained of all moneys received from or for a client.

59. Cancellation of licence If in the case of any licensed insurance broker, the Registrar is satisfied that-

- (a) the business of the insurance broker is not being conducted in accordance with sound business principles;
 - (b) the broker has ceased to carry on insurance broking business in Botswana;
 - (c) the broker has requested in writing the cancellation of the licence;
 - (d) the broker is acting or has acted in contravention of any of the provisions of this Act,
- the Registrar may give notice in writing to the insurance broker of his intention to cancel the licence of the said broker apply to the court for the judicial management or winding-up of the business of the insurance broker in terms of section 123.

60. 61. Financial year end of broker

The financial year of an insurance broker may be changed by the broker with the approval of the Registrar.

62. Broker's amalgamations, sales and transfers

(1) No transfer, sale, amalgamation, takeover of the ownership of or business of a broker or other similar arrangement in respect thereof may be entered into by an insurance broker without the prior written approval of the Registrar.

(2) The Registrar in deciding whether to grant his approval shall primarily consider whether the terms are in the interest of the clients, or the economy or the insurance industry or in the public interest.

(3) The Registrar may, as a condition for the granting of his approval, require that such amendments as he may recommend shall be made to such transfer, sale, amalgamation, takeover or other similar arrangement.

63. Broker's annual returns to the Registrar

(1) An insurance broker shall, within four months after the end of its financial year, furnish to the Registrar in the prescribed form-

- (a) an audited balance sheet and profit and loss account;
- (b) an audited premium income, other income and expenditure statement; and
- (c) all such other information as he may require.

(2) The Registrar may, at his discretion, extend the time within which the broker should comply with the provisions of subsection (1) by a maximum of three months:

Provided that a broker shall be liable to pay to the Registrar a penalty of P150 for every day during which he is in default beyond such extended time granted by the Registrar.

(3) Where the broker fails to furnish the required documents and information within the extended time or fails to pay the penalty, the broker shall be regarded as having failed to comply with the provisions of subsection (1).

64. Insurance brokers' code of conduct

(1) The Minister may by regulations set out a code of conduct and a guide for insurance brokers in the conduct of their business:

Provided that a broker may in an extraordinary case undertake practices discouraged by the code, but shall submit his reasons for so doing, in writing, to the Registrar as soon as practicable thereafter.

(2) The principal officer of each broker shall ensure that all directors, managers, agents and employees of the broker are made aware of, and comply with, the provisions of the code of conduct described in subsection (1).

(3) A copy of the code of conduct described in subsection (1) shall be prominently displayed in areas of access to the public at each office of the broker.

PART VIII

Special Provisions relating to Long Term (Life) and other Policies (ss 65-102)

65. Life insurance tables

(1) Every insurer licensed to transact long term insurance business shall, within three months from the commencement of this Act or, in the event of subsequent alteration within one month from the implementation of such alteration, furnish the Registrar with-

- (a) a copy of every printed standard policy document and standard endorsements and every table or statement of the rates of premium which he ordinarily charges and of the benefits including paid-up and surrender values which the insurer ordinarily undertakes to grant in respect of policies insuring normal lives; and
- (b) a report from an actuary approved by the Registrar that any table or statement submitted by virtue of paragraph (a) is actuarially sound.

(2) No insurer shall make use of any policy document, table or statement in the conduct of its long term business referred to in subsection (1), unless an actuary approved by the Registrar has reported that it is actuarially sound.

(3) No insurer shall make use of any policy document, table or statement in the conduct of its long term business referred to in subsection (1) if-

- (a) the basis of payment to or remuneration of the insurer is other than by a charge upon the relevant life insurance fund of the management costs actually incurred together with a proportion of any established surplus as provided in section 75 from that life insurance fund to such insurer; and
- (b) the approval of the Registrar has not been sought and obtained in writing to any alternative defined basis or formula of payment to or remuneration of the insurer.

(4) For the purposes of subsection (3)(b) any investment unit policy where policyholders purchase investment units shall be deemed to require the insurer to seek the approval of the Registrar under the said subsection (3)(b).

66. Insurable interest essential for all policies

(1) Subject to the provisions of this Act, no policy of insurance shall be issued on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no insurable interest.

(2) An insurable interest shall be deemed to be had by-

- (a) a parent of a minor or the guardian of a minor but only to the extent as provided by section 77;
- (b) a husband, on the life of his wife;
- (c) a wife, on the life of her husband;
- (d) any person, on the life of another upon whom he is wholly or in part dependent for support or education;
- (e) a company or other person, on the life of an officer or employee thereof; and
- (f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person to the extent only of that pecuniary interest at the outset.

67. - 68. 69. Periodic actuarial investigations

(1) A licensed insurer carrying on long term business shall cause an investigation to be made into the financial position of the insurer and of each life insurance fund established by it including a valuation of their individual liabilities by an actuary approved by the Registrar-

- (a) once in every three years or at such shorter intervals as may be prescribed or required by the Registrar; and
- (b) prior to an insurer wishing to distribute profits or transfer sums from the life insurance fund other than payments and investments under long term business or management costs actually incurred.

(2) The actuarial investigation referred to in subsection (1) shall be completed within six months of the expiry of the period to which it relates or within such extended time as the Registrar may allow:

Provided that the insurer shall, unless the Registrar in his sole discretion decides otherwise, be liable to a penalty of P50 for every day of such extended time granted by the Registrar.

(3) The failure of the insurer to complete the investigation within the time stipulated under subsection (2) shall constitute an offence under this Act.

(4) For the purposes of any investigation undertaken in accordance with the provisions of subsection (1) the value of any assets and the amount of any liability shall be determined in accordance with such method of valuation as may be prescribed.

(5) An actuary conducting an investigation undertaken in accordance with the provisions of this section shall submit to the Registrar within three months of the completion of his investigation an abstract the form and content of which shall be as prescribed.

70. Establishment of statutory life insurance fund

(1) An insurer carrying on long term insurance business after the date on which this Act comes into force shall, as at the date of commencement of its next financial year, or as at the date of the commencement of that business, establish and maintain a statutory life insurance fund (in this Act to be known as the "life insurance fund"), under an appropriate name in respect of the long term insurance business carried on by it.

(2) An insurer may establish and maintain a separate life insurance fund, under an appropriate name, in respect of any class or classes of its long term insurance business:

Provided that where an insurer establishes a separate life insurance fund in respect of a part of the long term insurance business of the insurer, the insurer shall forthwith notify the Registrar in writing of the establishment of the fund, the date from which the fund is established, the part of the long term insurance business of the insurer in respect of which the fund is established and the name of the fund.

(3) Where an insurer carries on long term insurance business of more than one class,

the Registrar may in writing direct the insurer-

- (a) to establish, maintain and appropriately name one or more separate funds in respect of any class or classes of long term insurance business carried on by it;
- (b) to maintain an account in respect of each of those classes of long term insurance business;
- (c) to maintain separate life and annuity funds within such limits as he shall from time to time advise.

(4) All amounts received by an insurer in respect of any class of long term insurance business, after the establishment by the insurer of a life insurance fund under this section, shall be carried to that fund.

(5) Where, at any time-

- (a) an insurer is maintaining more than one life insurance fund in respect of his long term insurance business; and
- (b) a particular policy ceases to be included in the part of the long term insurance business of the insurer in respect of which one of the life insurance funds is maintained (in this subsection referred to as "the first fund") and is transferred to another part of the long term insurance business of the insurer in respect of which another of the life insurance funds is maintained (in this subsection referred to as "the second fund"),

the insurer shall forthwith-

- (i) transfer from the first fund to the second fund assets equal to the liability on the policy at that time as ascertained by an actuary approved by the Registrar; and
- (ii) transfer from the assets of the insurer to the second fund an amount equivalent to that amount by which the assets accruing to that policy from the first fund are less than the liability on such policy.

(6) The income arising from the investment of the assets of a life insurance fund shall be carried to and form part of that fund.

(7) The assets of each life insurance fund shall be kept distinct and separate from all other assets of the insurer.

(8) An insurer carrying on long term insurance business shall maintain such books of account and other records as are necessary for identifying-

- (a) the assets representing each life insurance fund maintained by the insurer under this section;
- (b) the liabilities attributable to that class or, as the case may be, each of those classes of long term insurance business.

71. Application of assets of insurer with long term business

(1) Subject to subsections (2) and (4), the assets representing the life insurance fund or funds maintained by an insurer licensed to transact long term business-

- (a) shall be applicable only for the purposes of that business; and
- (b) shall not be transferred so as to be available for other purposes of the company except where the transfer constitutes reimbursement of expenditure borne by other assets (in the same or the last preceding financial year), in discharging liabilities wholly or partly attributable to long term business.

(2) Where the value of the assets mentioned in subsection (1) is shown by an actuarial investigation to exceed the amount of the liabilities attributable to the company's long term business the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.

(3) Subsection (2) shall not authorise a transfer or other application of assets by reference to an actuarial investigation at any time after the date of commencement of the investigation and before 30 days after the date when the abstract of the actuary's report required under the terms of section 69 has been deposited with the Registrar.

(4) Nothing in subsection (1) shall preclude an insurer from exchanging, at fair market

value, assets representing a life insurance fund maintained by the company in respect of its long term business for other assets of the company or a company connected with it.

(5) Any mortgage or charge including a charge imposed by a court on the application of a judgment creditor, shall be void to the extent to which it contravenes subsection (1).

(6) The assets of a life insurance fund maintained by a company in respect of its long term business may not be used for the purposes of any other business of the company or of a company connected with it notwithstanding any arrangement for its subsequent repayment out of the receipts of that other business.

(7) An insurer acting in contravention of subsection (1) shall be guilty of an offence under this Act.

(8) Every director, manager, controller and principal officer of an insurer shall be under the same civil liability, in the event of a contravention of the provisions of subsection (1), as if he had been a trustee under a trust for the execution of those provisions in respect of that fund, and as if the appropriate policyholders had been beneficiaries of such a trust, unless the director, manager, controller or principal officer proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the contravention.

(9) No insurer to which this Part of the Act applies, and no company of which an insurer is a subsidiary, shall declare a dividend at any time when the value of the assets representing the life insurance fund or funds maintained by the insurer in respect of its long term business, as determined in accordance with any applicable valuation regulations, is less than the amount of the liabilities attributable to that business as so determined.

72. Restriction on transaction with connected persons

(1) Neither an insurer which transacts long term business nor a subordinate company of any such insurer shall enter into a transaction to which this section applies-

- (a) at a time when the aggregate of the value of the assets and the amount of the liabilities attributable to such transactions already entered into by the insurer and its subordinate companies exceeds the prescribed percentage of the total amount standing to the credit of the insurer's life insurance funds; or
- (b) at any other time when the aggregate of the value of those assets and the amount of those liabilities would exceed that percentage if the transaction were entered into.

(2) This section applies to any transaction entered into by any such insurer as is mentioned in subsection (1), (whether or not itself a subordinate company of another company), being a transaction under which-

- (a) a person connected with the insurer will owe it money;
- (b) the insurer acquires shares in a company which is a person connected with it; or
- (c) the insurer undertakes a liability to meet an obligation of a person connected with it or to help such a person to meet an obligation,

if the right to receive the money would constitute a long term asset of the insurer, the acquisition is made out of its life insurance funds or the liability would fall to be discharged out of those funds, as the case may be.

(3) Without prejudice to subsection (2), this section applies to any transaction entered into by a subordinate company of any such insurer as is mentioned in subsection (1), being a transaction under which-

- (a) the insurer or a person connected with it will owe money to the subordinate company (not being money owed by the insurer which can be properly paid out of its life insurance funds);
- (b) the subordinate company acquires shares in the insurer or in a company which is a person connected with the insurer; or
- (c) the subordinate company undertakes a liability to meet an obligation of the insurer or of a person connected with that company or to help the insurer or such a person to meet an obligation,

but where the subordinate company is itself an insurer as is mentioned in subsection (1), this section shall not by virtue of this subsection apply to any such transaction if the right to receive the money would constitute a long term asset of the subordinate company, the acquisition is made out of its life insurance funds or the liability would fall to be discharged out of those funds, as the case may be.

(4) In this section "subordinate company", in relation to any such insurer as is mentioned in subsection (1), means-

- (a) a company having equity share capital some or all of which is held by the insurer as part of its long term assets where the share capital so held by the insurer-
 - (i) amounts to more than half in nominal value of that share capital; and
 - (ii) confers on the insurer the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;
- (b) a company having equity share capital some or all of which is held by another company which is itself a subordinate company of the insurer where the share capital held by that other company-
 - (i) amounts to more than half in nominal value of that share capital; and
 - (ii) confers on that other company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company, and for the purposes of this subsection share capital held for any person by a nominee shall (except where that person is connected only in a fiduciary capacity) be treated as held by that person, and share capital held by a person in a fiduciary capacity or by way of security shall be treated as not held by that person.

(5) For the purposes of this section a person is connected with any such insurer as is mentioned in subsection (1) if that person is not a subordinate company of the insurer but-

- (a) controls, or is a partner of a person who controls, the insurer;
- (b) being a company, is controlled by the insurer or by another person who also controls the insurer; or
- (c) is a director of the insurer or the wife or husband or a minor son or daughter of such a director;

and for the purposes of this subsection a person controls a company if he is a controller of it within the meaning of this Act.

(6) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

(7) In this section-

"company", except in the expression "insurer", includes any body corporate;

"equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;

"liability" includes a contingent liability;

"long term assets" and "life insurance funds", in relation to an insurer, mean respectively assets representing the fund or funds maintained by the insurer in respect of its long term insurance business and that fund or those funds;

"the prescribed percentage" means five per cent or such greater percentage as may be defined elsewhere in this Act or prescribed by regulations;

"share" has the same meaning as in the Companies Act;

"son" includes step-son, and "daughter" includes step-daughter.

(8) This section shall not be construed as making any transaction unenforceable as between parties thereto or as otherwise making unenforceable any rights or liabilities in respect of property.

73. Exemption: Botswana Development Corporation

For the purposes of section 72 the prescribed percentage shall read "15 per cent" in respect of transactions described by subsection (1) in which the connected person, defined by subsection (5) of that section, is the Botswana Development Corporation, or any of its directors or employees for the time being in that capacity.

74. Reinsurance contracts of long term insurers

An insurer transacting long term business in Botswana shall not enter into a contract of reinsurance against any liability of its long term business in Botswana otherwise than with a long term insurer or reinsurer approved by the Registrar.

75. Allocations to policyholders

(1) Where in the case of an insurer transacting long term business-

- (a) there is an established surplus in a life insurance fund in which both the insurer and the long term policyholders of any category are eligible to participate; and
- (b) an amount has been allocated to policyholders of that category in respect of a previously established surplus in which policyholders of that category were eligible to participate,

the insurer shall not by virtue of subsection (2) of section 71 transfer or otherwise apply assets representing any part of the surplus mentioned in paragraph (a) of this subsection unless the insurer has either allocated to policyholders of that category in respect of that surplus an amount not less than 90 per cent or complied with the requirements of subsection (2) and made to those policyholders any allocation of which notice is given under paragraph (a) of that subsection.

(2) The requirements of this subsection are that the insurer-

- (a) has served on the Registrar a written notice stating that it proposes to make no allocation or an allocation of an amount, specifying it, which is smaller than 90 per cent; and
- (b) has published a statement approved by the Registrar in the *Gazette*,

and that a period of not less than two months has elapsed since the date, or the last date, on which the company has published the statement mentioned in paragraph (b) as required by or under that paragraph.

(3) In this section-

"established surplus" means an excess of assets representing the whole or a particular part of the life insurance fund or funds maintained by the insurer in respect of its long term business over the liabilities, or a particular part of the liabilities, of the company attributable to that business as shown by an investigation to which section 69 applies.

(4) For the purposes of this section an amount is allocated to policyholders if, and only if-

- (a) bonus payments are made to them; or
- (b) reversionary bonuses are declared in their favour or a reduction is made in the premiums payable by them,

and the amount of the allocation is, in a case within paragraph (a) of this subsection, the amount of the payments and, in a case within paragraph (b), the amount of the liabilities assumed by the insurer in consequence of the declaration or reduction.

(5) For the purposes of this section the amount of any bonus payments made in anticipation of an established surplus shall be treated as an amount allocated in respect of the next established surplus in respect of which amount is allocated to eligible policyholders generally; and for the purposes of subsection (2) the amount of any surplus in respect of which such an allocation is made shall be treated as increased by the amount of any such payments.

(6) Subsection (1) shall not authorize the application for purposes other than those mentioned in subsection (1) of section 71 of assets representing any part of the surplus mentioned in subsection (1)(a) of this section which the insurer has decided to carry forward unappropriated; and for the purpose, of subsection (2) of section 71 the amount of any surplus

shall be treated as reduced by any part thereof which the company has decided to carry forward as aforesaid.

(7) For the purposes of subsection (1) policyholders shall be taken to be eligible to participate in an established surplus in any case where they would be eligible to participate in a later established surplus representing it if it were carried forward unappropriated.

(8) This section shall not apply to the long term insurance business of the insurer under which policyholders purchase investment units in an investment unit policy.

76. Investment unit policies

(1) Other than as approved by the Registrar under the provisions of subsection (3)(b) of section 65-

- (a) all investment units purchased and all assets and income belonging thereto shall be held solely to the benefit of the policyholders; and
- (b) no insurer or other person may levy or charge any commission or fee upon a policyholder participating in an investment unit policy or upon the relevant life insurance fund for the purchase, administration or sale of such investment units.

(2) For the purposes of this Act, any alteration to the value of any holding of a unit or units, or other beneficial interest, shall be known as the "adjusted unit value".

77. Life insurance of minors

(1) A minor or a parent or the guardian of a minor may effect a life policy upon his life and pay the premiums due under the policy with money lawfully at the disposal of the minor, his parents or guardian:

Provided that-

- (i) no benefit shall be paid other than as a result of death of the minor, a parent or a guardian if the minor has not attained 16 years of age;
- (ii) the total sums payable against all life insurance policies outstanding at that time on the life of a minor who dies before he attains the age of 16 years shall not exceed P2 000, or the sum of the total of the premiums paid under such policy, whichever is greater, and where there are more policies than one outstanding at that time a contribution shall be due against each policy to make up the total sum of P2 000, or such greater sum as the case may be, in proportion to the sum for which the policy is effected;
- (iii) a minor who has attained the age of 16 years may, without the consent of his parent or guardian, effect a life policy upon his own life and shall be as competent in all respects to be a policy owner and to have and exercise all the powers and privileges of a policy holder in relation to the policy as if he were of adult age, except that he shall not while he is still a minor pledge or cede the policy without the written consent of his parent or guardian.

(2) Notwithstanding the provisions of subsection (1), an insurer shall not pay any sum on the death of a child before he attains the age of 16 years, except upon production of a certificate of death issued by the Registrar of Births and Deaths.

(3) For the purposes of this section the Registrar may by notice in writing to each insurer direct procedures to be undertaken in the processing of claims against such insurers on the death of minors.

78. Value of certain assets

Where an asset was acquired wholly or partly from money paid by an insurer under a life policy and the proceeds, on realisation of that asset exceed that amount, a reference in this Part to the proceeds on realisation or to the value of that asset shall be construed as a reference to that amount only and not any sum in excess thereof.

79. Life policy effected by married persons

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

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

capacity-

- (i) effect and own a life policy;
 - (ii) hold and, by way of gift or otherwise, acquire from or dispose of to any person, including her husband, any interest in a life policy;
 - (iii) hold any moneys paid by the insurer in respect of any interest held by her in a life policy or any assets acquired by her with those moneys;
 - (iv) hold any moneys or assets acquired by her in respect of the disposal of any interest held by her in a life policy or any assets acquired by her with those moneys; and
 - (v) dispose of to any person, including her husband, by way of a gift or otherwise, any moneys or assets referred to in subparagraphs (iii) and (iv);
- (b) a man married out of community of property may, in all respects as if he were a single man of adult age and capacity, by way of gift, acquire from or dispose of to his wife-
- (i) any interest in a life policy;
 - (ii) any moneys paid by the insurer in respect of any interest in a life policy or any assets acquired with those moneys; and
 - (iii) any moneys or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those moneys.

(2) For the purposes of this Part a man married in community of property may, in all respects as if he were a single man of adult age and capacity, and subject to the provisions of this Part-

- (a) dispose of to his wife, by way of a gift or otherwise-
 - (i) his share in any interest in a life policy effected or held by him on behalf of such community;
 - (ii) any moneys paid by the insurer in respect of his share in any interest under subparagraph (i) or any assets acquired with those moneys; and
 - (iii) any moneys or assets acquired in respect of the disposal of any interest under subparagraph (i) or any assets acquired with those moneys; and
- (b) acquire from his wife, by way of gift or otherwise, and hold and dispose of for his own benefit any moneys or assets under subsection (1)(a)(v).

(3) The provisions of subsection (1)(a) shall also apply to a married woman in relation to-

- (a) a life policy effected prior to her marriage;
 - (b) any interest in a life policy acquired prior to her marriage;
 - (c) any moneys due or paid to her prior to her marriage in respect of a life policy under paragraph (a), or any interest in a life policy under paragraph (b), or acquired by her prior to her marriage in respect of the disposal of any interest in a life policy; and
 - (d) any assets acquired prior to her marriage with moneys under paragraph (c),
- as if the policy, interest, moneys or assets were effected or paid to or acquired by her or became due during her marriage.

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

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

- (a) any offence has been, or is suspected on reasonable grounds to have been, committed;
- (b) there are reasonable grounds for believing that it will afford evidence as to the

- commission of any offence; or
- (c) there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

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

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

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

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

80. Life policy on own life: protection afforded during life

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

- (a) is attached in execution of a judgment or order of any court at the instance of a creditor of that person; or

(b) becomes part of that person's estate in insolvency and, if that person is married in community of property, of the joint estate of the insolvent and surviving spouse, during the lifetime of that person, the proceeds on realization of the policy shall, to the extent specified in subsection (2), be protected against that person's creditors and against any claim in connection with such attachment or such insolvency.

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

- (a) shall extend to so much of the proceeds on realization of the policy as does not exceed an amount of P5 000; and

- (b) shall, subject to the provisions of paragraph (a), extend, if the policy is pledged, to so much of the proceeds on realization of the policy as exceeds the amount of the liability, the payment of which the pledge secures, but no further.

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

- (a) are attached in execution of a judgment or order of any court at the instance of a creditor or a person by whom the policy was effected; or

- (b) become part of the estate in the insolvency of the person by whom the policy was effected and, if that person is married in community of property, of the joint estate of the insolvent and the surviving spouse,

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

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

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

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

- (ii) the value of all other existing assets of that person acquired with moneys paid

- under life policies under subsection (1) or with such moneys and other moneys; and
 - (iii) the realizable value of all life policies under subsection (1) of which that person is the owner, do not exceed P5 000;
 - (b) shall, subject to the provisions of paragraph (a), extend, in the case of an asset which is pledged or mortgaged, to so much of the proceeds on realization of the assets as exceeds the amount of the liability, the payment of which the pledge or mortgage secures, but no further; and
 - (c) shall not extend to any moneys due or paid under a life policy under subsection (1) on surrender of the policy or to any assets acquired with those moneys or with those moneys and other moneys.
- (5) For the purposes of this section-
- (a) a life policy which an insurer issues in exchange for or in consideration of the surrender of another life policy under which the insurer was previously liable shall be regarded as having been effected on the date on which the surrendered policy was issued if the insurer received no payment other than the value of the surrender policy as a consideration for the new policy; and
 - (b) a life policy which an insurer issued under section 86 shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.

81. Life policy on own life: protection afforded on death

- (1) For the purposes of this section "beneficiary" means-
- (a) the surviving spouse of an owner;
 - (b) a dependant under the will of an owner;
 - (c) a dependant by right of succession on intestacy; or
 - (d) a dependant under or by virtue of an order made in accordance with the provisions of any enactment in Botswana relating to inheritance or succession.
- (2) If-
- (a) a beneficiary has, on the death of the owner, a claim-
 - (i) under a life policy; or
 - (ii) to moneys or assets,
 in respect of which protection is afforded under section 80; and
 - (b) the life policy, moneys or assets referred to in paragraph (a)-
 - (i) are attached in execution of a judgment or order of any court at the instance of a creditor of the deceased owner; or
 - (ii) become part of the deceased owner's estate in insolvency and, if the deceased owner was married in community of property, of the joint estate of the deceased insolvent and the surviving spouse,
 the beneficiary shall, in respect of his claim, enjoy the protection afforded under section 80.

82. Protection afforded in respect of life policy inuring to spouse or children

- (1) If-
- (a) before or during marriage, a man effects or cedes for the benefit of his wife or his wife and children, including children to be born to him and his wife, or any of them;
 - (b) before or during marriage, a woman effects or cedes for the benefit of her husband or her husband and children, including children to be born to her and her husband, or any of them; or
 - (c) a person effects or cedes for the benefit of his or her children, including children to be born to him or her,

a life policy on his or her life or his or her spouse, the policy or moneys due or paid thereunder by the insurer or any asset acquired with those moneys shall not, subject to the provisions of

this section and, in the case of a policy which is ceded, to the terms of the cession-

- (i) be liable to be attached in execution of a judgment or order of any court at the instance of a creditor of the person by whom the policy was effected or ceded; or
- (ii) form part of the estate in insolvency of the person by whom the policy was effected or ceded and, if that person is married in community of property, of the joint estate of the insolvent and the surviving spouse.

(2) A benefit conferred or purported to be conferred upon a spouse or child under a life policy under subsection (1) or by virtue of the cession of a life policy under that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject, in the case of a policy which is ceded, to the terms of the cession, be enforceable against the insurer liable under the policy at the suit of the spouse or child or the legal representative of the spouse or child, notwithstanding the spouse or child has not accepted the benefit and is not a party to the contract of insurance.

(3) A life policy shall not be treated for the purposes of this section as having been effected for the benefit of the spouse and, additionally or alternatively, the children, including unborn children, or any of them, of the person by whom the policy was effected unless, at the time of its issue the policy expressly so provides, or it was ceded for their benefit not less than 12 months prior to his being declared insolvent.

83. Protection afforded in respect of life policy inuring to wife

(1) If, before or during marriage, a man effects or cedes for the benefit of his wife a life policy on his or her life and the policy-

- (a) is attached in execution of a judgment or order of any court at the instance of her creditors; or
- (b) becomes part of her estate in insolvency,

the proceeds on realization of the policy shall, to the extent specified in subsection (2) of section 80, be protected against her creditors and against any claim in connection with the attachment or the insolvency.

(2) The provisions of subsections (3), (4) and (5) of section 80, and subsections (2) and (3) of section 82 shall, *mutatis mutandis*, apply to a life policy under subsection (1) or moneys due or paid thereunder by the insurer or any assets acquired with those moneys or with those moneys and other moneys.

84. Special provisions relating to persons married in community of property

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

(2) If a woman married in community of property who has effected a life policy or has acquired or holds any interest in a life policy earns or otherwise lawfully acquires any money without utilizing for the purpose any assets belonging to the joint estate she may, without her husband's consent, use that money for the purpose of paying any premium due under the policy.

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

(4) If the husband of a woman married in community of property has effected or ceded for the benefit of his wife and, additionally or alternatively, children, including unborn children, or any of them, a life policy on his life or on the life of his wife, he shall be obliged during the

marriage to pay out of the joint estate any premium under the policy so long as the value of the joint estate exceeds their joint liabilities and, if he fails to make such payment, his wife may, without the husband's consent, make the payment out of moneys she may have earned or otherwise lawfully acquired without utilizing for that purpose any assets belonging to her and her husband jointly or which may otherwise be at her disposal.

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

(1) If-

- (a) two or more life policies or assets in respect of which protection is afforded by the provisions of sections 80, 81 and 83, being the property of one person, are attached in execution of a judgment or order of any court at the instance of a creditor; or
- (b) the owner of two or more life policies or assets in respect of which protection is afforded by the provisions of sections 80, 81 and 83 is adjudged or otherwise declared insolvent,

and a part only of the aggregate realizable value of the policies or assets is protected, the judgment creditor or the trustee of the estate in insolvency, as the case may be, shall determine which policy or policies or other assets shall be realized, wholly or in part, in order to make available to him so much of the aggregate realizable value as is not protected.

86. Partial realization and partial conversion of life policies

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

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

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

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

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

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

If a person who-

- (a) has effected or ceded a life policy for the benefit of his spouse and, additionally or alternatively, children, including unborn children, or any of them; or
- (b) holds a life policy in trust for any other person and is obliged to pay the premiums on the policy,

is or has been unable to pay the premiums, that person may, with the consent of each person who has an interest in the policy, or, if any such person is a minor, with the consent of his parent or guardian or the Master of the High Court, agree with the insurer liable under the policy-

- (i) to exchange the policy for a paid-up life policy of a value calculated in accordance with tables furnished to the Registrar under section 65 in the case of normal lives and in any other case calculated by reference to the said tables and approved by an actuary, payable at the time and in the manner stipulated in the original policy to the person entitled to the sum insured by the original policy;
- (ii) where the policy so permits, to borrow from the insurer upon the security of the policy such sums as may be necessary to keep the policy in force or to revive it; or
- (iii) to apply any bonus which may have accrued in connection with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

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

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

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

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

89. Power to pay into court

(1) An insurer may, subject to any rules of court in that behalf, pay into court any moneys payable by the insurer in respect of a policy for which, in the opinion of the insurer, no sufficient discharge can otherwise be obtained.

(2) The receipt of a registrar of the court for the moneys shall be a good and valid discharge to the insurer for moneys so paid in, and the moneys shall, subject to the rules of the court, be dealt with according to the order of the court.

90. No deductions in respect of other life policies

Where a claim arising under a 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.

91. Proof of age

(1) A form of proposal shall be framed so as to require a person making a proposal for a life insurance policy to specify the place and date of birth of the person whose life is proposed to be insured, and the person making the proposal shall supply those particulars to the best of his knowledge and belief.

(2) Where an insurer issues a life insurance policy which provides that proof of age of the life insured is a condition precedent to the payment of the sum insured, the insurer shall, unless the age of the life insured has already been admitted by it, issue with the policy a printed notice stating that proof of age of the life insured may be required prior to the payment of the sum insured.

(3) If an insurer declines to accept the proof of age tendered in respect of a life insurance policy, whether issued on or after the coming into force of this Act, the policyholder may apply to the Registrar for an order directing the insurer to accept the proof tendered and if the Registrar after giving the insurer reasonable opportunity of being heard, makes such order in writing to the applicant and the insurer, such order shall be binding on the insurer.

(4) The preceding provisions of this section shall not apply to any life insurance policy issued before the coming into force of this Act or to any paid-up policy or certified copy of a policy issued on or after the coming into force of this Act, where the life insurance policy issued replaces a life insurance policy issued before the coming into force of this Act.

(5) Where the provisions of subsection (4) do not apply, the provisions of subsection (6) shall have effect.

(6) If-

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

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

92. Age incorrectly stated

(1) A life insurance policy shall not be avoided by reason of a mis-statement of the age of the life insured, and where-

- (a) the true age is proved to be greater than that on which the policy was based, the insurer may vary the sum insured by, and the bonuses (if any) allotted to the policy, so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to the policy before variation as the amount of the premiums that have been payable under the policy as issued bears to the amount of the premiums that would become payable if the policy had been based on the true age;
- (b) the true age is proved to be less than that on which the policy was based, the insurer shall either-
 - (i) vary the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
 - (ii) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay to the policy owner the amount of over-payments of premiums less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age:

Provided that, where the correct age is found to be beyond the limits within which the insurer, according to his published prospectus, issues the type of policies in question, the policy shall be void *ab initio* and the insurer shall refund to the insured all the premiums received on the policy after deducting the commission payments and expenses incurred by him on the policy; but nothing in this proviso shall apply to annuities and other policies where the insured has already received any payment under the policy.

(2) The provisions of subsections (4) and (5) of section 91 shall *mutatis mutandis* apply to this section.

93. Suicide

(1) A life policy in which it is stated that the policy shall be void in the event of the insured, whether sane or insane, dying by his own act or suffering capital punishment within a stipulated period shall be void-

- (a) in respect of any period that exceeds two years from the issue of the policy notwithstanding any policy conditions to the contrary; or
- (b) if the insured dies by his own act or suffers capital punishment after the expiration of that stipulated period or after two years from the issue of the policy whichever is sooner.

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

94. Lost or destroyed life policy

(1) If a life policy is lost or destroyed and the loss or destruction is proved, the insurer liable under the policy shall, at the request of the policyowner and upon payment by the policyowner to the insurer of the prescribed fee, issue to the policyowner-

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

(2) A certified copy of a life policy issued under subsection (1) shall for all purposes-

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

(3) From the date upon which this Act comes into force an insurer shall maintain a register of all copies of life policies issued in accordance with subsection (1) and shall allow any member of the public showing reasonable cause access to relevant parts of the register.

(4) The register referred to in subsection (3) shall contain-

- (a) the full name of the life insured;
- (b) the full name of the policyowner;
- (c) the last known address of the policyowner;
- (d) the date of birth or year of birth of the life insured; and
- (e) the policy identification number.

95. Life policy may include subsidiary benefits

(1) If an insurer by notice in writing-

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

any such policy issued by the insurer on or before the date of commencement of this Act or after notification to the Registrar shall, subject to the provisions of subsection (2) be treated, for the purposes of this Act, as a life policy only.

(2) A policy referred to in subsection (1)(a) shall not be treated for the purposes of this Act as a life policy only if the value of the benefits provided in subsection (1)(a)(i) and (ii) does not exceed in the aggregate-

- (a) a waiver of claims to any premium under the policy in respect of the period of disability; and
- (b) (i) a monthly benefit, payable during the period of disability of the person whose life the policy insures but not extending beyond the date of termination of the risk of

- the life insurance proper effected by the policy, amounting to two per cent of the sum payable under the policy on the death of the person;
- (ii) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures; or
 - (iii) in the case of a deferred annuity policy, a monthly benefit payable during the period of the disability of the person whose life the policy insures but not extending beyond the date as from which the annuity will become payable, amounting to one twelfth of the annual annuity.

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

96. Discrimination between life policies, etc. prohibited

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

(2) Nothing in subsection (1) shall apply to insurance policies which-

- (a) are reinsurance contracts;
- (b) are for large sums in excess of P200 000 at preferential rates in accordance with the current tariff of the insurer concerned;
- (c) insure at preferential rates the lives of employees of one employer or a combination of employers or members of the families of such employees or the lives of a group of persons carrying on the same occupation; or
- (d) are of a class prescribed.

(3) A director, employee or agent for an insurer or of a broker shall not pay, allow or give or offer to pay, directly or indirectly-

- (a) a rebate of the premiums payable on an insurance policy;
- (b) any consideration or thing of value intended as an inducement to effect insurance cover;
- (c) preferential treatment in connection with bonus or other benefit under a life policy; or
- (d) any portion of the commission payable to the agent or broker in respect of that life policy.

(4) The provisions of subsection (3) shall not apply to the grant to an employee or former employee or spouse or dependant child of an insurer or broker of a rebate of commission on a policy effected by him on his own life.

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

(6) No director, employee or agent of an insurer or of a broker shall accept any proposal or application for a life policy in respect of which-

- (a) a promissory note, bill of exchange or other negotiable instrument, not being a cheque payable on the date of issue; or
- (b) an acknowledgement of debt, not being a stop order or direct debit,

in favour of the insurer or any person whomsoever has been given for the first year's premium or any part thereof.

(7) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction thereof to a fine not exceeding 10 times the amount of the annual premium normally payable on an insurance policy similar to the one in respect of which the offence was committed.

(8) A person who is not an insurer, broker, agent or the employee of such insurer, broker or agent shall not, directly or indirectly, pay or allow, agree to pay or allow, or attempt to pay or

allow, compensation or anything of any value to any person for-

- (a) placing or negotiating insurance on any life, property or interest in Botswana; or
- (b) negotiating the continuance or renewal of insurance on any life, property or interest in Botswana.

97. Non-forfeiture of life policies in certain cases of non-payment of premiums

(1) A life policy, other than those defined in subsection (5), shall not be forfeited by reason only of the non-payment of any premium (in this section referred to as "the overdue premium") if-

- (a) not less than three years' premiums have been paid in cash on the policy; and
- (b) the surrender value of the policy (calculated as at the day immediately preceding that on which the overdue premium falls due) exceeds the sum of the amount of the debts owing to the insurer under, or secured by, the policy, and the amount of the overdue premium.

(2) The insurer may, until payment of the overdue premium, charge compound interest on it on terms not less favourable to the policyholder than such terms as are set out in the tables furnished to the Registrar under section 65.

(3) The overdue premium and any interest charged on it under this section and unpaid shall, for the purposes of this Act, be deemed to be a debt owing to the insurer under the policy.

(4) Without affecting the generality of subsection (1), a life policy on which less than three years' premiums have been paid in cash shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due, the insurer liable under the policy serves a notice on the policyholder stating-

- (a) the amount due or payable to the insurer at the date of the notice in respect of the policy; and
- (b) that the policy will be forfeited at the expiration of one month after service of the notice if a sufficient sum is not paid to the insurer in the meantime.

(5) Where a premium is overdue in respect of life policies where premiums are payable at intervals not exceeding two months in each case, to collectors sent by the insurer to each policyowner, or to his residence or place of work-

- (a) a policy on which less than one year's premiums have been paid in cash shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than one month after it became due;
- (b) a policy on which not less than one year's premiums have been paid in cash shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than two months after it became due;
- (c) a policy on which not less than two years' premiums have been paid in cash shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than three months after it became due; and
- (d) in the event of a policy on which not less than three years' premiums have been paid in cash being forfeited by reason of non-payment of any premium, the insurer shall, without requiring any application from the policyholder, grant a paid-up policy for an amount not less than that calculated in accordance with tables approved under section 65; such paid-up policy shall be payable upon the happening of the contingency upon which the amount insured under the original policy would have been payable.

(6) Nothing in this section shall preclude an insurer from granting to an owner of a policy of a kind referred to in this section more favourable terms than those specified.

98. Paid-up policies

(1) A policyholder who desires to discontinue further premium payments on a life policy on which not less than three years' premiums have been paid in cash 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 that determined in accordance with the tables approved under section 65.

(2) The paid-up policy shall be payable upon the happening of the contingency upon the happening of which the amount assured under the original policy would have been payable.

99. Surrender of policies

(1) The owner of a life policy which has been in force for at least three years shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the surrender value of the policy less the amount of any debt owing to the insurer under, or secured by, the policy.

(2) In the application of subsection (1) to a paid-up policy which has been issued in lieu of another policy, the period of three years shall be calculated from the date of issue of the original policy.

(3) For the purposes of this section the surrender value of a policy shall be the amount calculated in accordance with the tables furnished to the Registrar under section 65.

(4) The Registrar may, on application by an insurer, if, in his opinion, the payment in cash of surrender values as required by this section would be prejudicial to the financial stability of the insurer or to the interests of the policyholders of that insurer, suspend or vary for such period and subject to such conditions as the Registrar thinks fit, the obligation of the insurer to pay those surrender values.

100. Cancellation of life policy within limited period without penalty

(1) A life policy issued after the commencement of this Act may be cancelled by the policyholder within a period of three months from the date on which the proposal form was signed, or within one month of the receipt of the policy by the owner, whichever is the later by returning the policy to the insurer with an objection in writing to any term or condition of the policy or a statement that he does not require the policy, and the insurer shall forthwith refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.

(2) For the purposes of this section, where a policy is sent by registered post by an insurer to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time at which it would reach him in the ordinary course of the post.

(3) For the purposes of this section, a policy shall be deemed to have been returned with an objection or statement, as the case may be, if the policy and objection or statement are posted for transmission to the insurer by registered post.

(4) The insurer shall when delivering the policy to the policyholder include therewith a synopsis of the right of the policyholder under subsection (1) hereof to cancel the policy.

101. Publication of bonus rates and unit values

(1) For the purposes of this section, in the case of an insurer transacting long term business where-

(a) there is either-

- (i) an established surplus in which long term policyholders of any category are eligible to participate; or
- (ii) an adjusted unit value in which long term policyholders of that category benefit; and

(b) an amount has been allocated to policyholders of that category in respect of a previously established surplus or adjusted unit value in which policyholders of that category were eligible to participate,

such an allocation made shall-

- (i) during the currency of the policy, be known for the purposes of this section as "the reversionary bonus"; or
- (ii) in addition to any reversionary bonuses attaching to the policy, but only upon the death of the policyholder or upon the happening of some other future event resulting in the payment of benefit under the policy, be known for the purposes of this section as "the terminal bonus".

(2) An insurer transacting long term business who allocates reversionary bonuses to policyholders by the application of a factor applied to the policy sum insured shall advise the Registrar in writing and publish in the *Gazette* and in at least one national Botswana publication-

- (a) within one month from the coming into force of this Act; or
- (b) upon any alteration of the factor thereafter within one month of the date of the approval by the insurer's board of directors with the approval of the actuary,

the amount and effective date of that factor, and on what basis including what continuing basis policyholders eligible to participate are benefited by it.

(3) An insurer transacting long term business who allocated reversionary bonuses to policyholders by amending the value of any holding of units, or other beneficial interest, under an investment unit policy shall advise the Registrar in writing and publish in the *Gazette* and in at least one national Botswana publication-

- (a) within one month from the coming into force of this Act; or
- (b) upon any amendment of the value of the unit thereafter, within two weeks of the date of such amendment or at least monthly whichever is the more frequent,

the value of each unit and the effective date of each revaluation of the fund from which the unit value is calculated, and on what basis including what continuing basis policyholders eligible to participate are benefited by it.

(4) In the event that the policyholders of a single insurer holding different classes or types of policy derive different benefit levels in any bonus distribution issued to them under the terms of this section, the provisions of this section shall apply to each separate type of bonus so distributed.

(5) For the purposes of and in consequence of subsection (3), units may only be allocated to a life policy at the price published immediately prior to a policy being effected and any subsequent unit purchase shall be based upon the last published unit price at the date of purchase for the relevant type of policy.

102. Advertisements and projected benefits

(1) Where an insurer transacting long term business issues policies of a class or classes of which an established surplus, or adjusted unit value, not being a guaranteed sum, is distributable in whole or in part to policyholders then any advertisements issued by the insurer, its employees and agents and any projections on benefits which may accrue to potential policyholders in general or a potential policyholder in particular shall be governed by the provisions of this section.

(2) The provisions of subsection (1) of section 101 shall apply to this section.

(3) An insurer transacting long term business who allocates reversionary bonuses to policyholders by the application of a factor applied to the policy sum insured shall, when making any advertisement or projection of benefits use only the last published factor and application of reversionary bonus as required under the terms of subsection (2) of section 101.

(4) An insurer transacting long term business who allocates reversionary bonuses to policyholders by amending the value of any holding of units, or other beneficial interest, under an investment unit policy shall when making any advertisement or projection-

- (a) of benefits, use only the annual average compounded interest growth rate over the effective four year period of the said unit produced from the mean valuations of-
 - (i) the unit value effective as at the first day of the month in which the advertisement or projection is made and of the 11 preceding monthly unit values; and
 - (ii) the unit value effective as at the first day of the month, 60 months previous to the month in which the advertisement or projection is made and of the 11 subsequent monthly unit values;
- (b) use only those unit values for the purposes of paragraph (a) which shall be published in accordance with subsection (3) of section 101; and
- (c) include in the advertisement or projection if applicable the basis or formula required to

- be approved by the Registrar under the provisions of subsection (3) of section 65.
- (5) When making an advertisement or projection under this section, an insurer shall-
- (a) not include in the financial projection any reference to any terminal bonus or other distribution except that mention may be made to the existence of such a possible provision; and
 - (b) prominently make mention in all advertisements and projections that such projections are not guaranteed and may vary both upwards and downwards from that stated in the advertisement or projection.

PART IX

Miscellaneous Provisions (ss 103-132)

103. Fatal accidents

Notwithstanding the provisions of any other enactment, in assessing damages in any action, whether commenced before or after the passing 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 passing of this Act-

- (a) effected voluntarily by the deceased person; and
- (b) in respect of which the premiums paid were paid by or for the deceased from his personal resources.

104. Insurances to be held with Botswana insurers ^{vii*}

(1) The Minister may by regulations direct that any or all insurances effected by Botswana residents or Botswana resident companies of such class or classes as he shall direct, shall be placed with Botswana insurers.

(2) Where a class of insurance required to be placed with a Botswana insurer under subsection (1) is not available to a person seeking insurance, such person may place such insurance with a non-resident insurer provided that-

- (a) he obtains the prior approval of the Registrar; and
- (b) he complies with the provisions of section 105.

(3) Nothing in this section shall affect the requirements of any exchange control law for the time being in force in Botswana.

105. Compulsory local brokerage ^{viii*}

Any general insurance business policy effected by a Botswana resident or Botswana resident company other than an insurer licensed under this Act with any non-resident insurer shall be effected through the offices of a Botswana licensed broker.

106. Unlimited indemnities prohibited ^{ix*}

An insurer shall not, on or after a date to be specified by the Minister by regulations, issue or renew a policy of insurance under which the insurer undertakes a liability the amount or maximum amount of which is uncertain at the time when the contract of insurance is entered into or renewed.

107. Commissions only to brokers and agents

No company or individual not a party to any contract of insurance, except an agent or broker licensed under this Act or an employee of an insurer, shall be paid any commission or consideration or thing of value by any Botswana insurer, agent or broker for the effecting or renewing of any policy of insurance subject to the provisions of subsection (3) and subsection (5) of section 96.

108. Time limit on payment of premiums

(1) The Registrar may by notice published in the *Gazette* and by written notice to each insurer require insurance premiums due to Botswana insurers from Botswana residents, other than another Botswana insurer, to be paid within a specified time from the date the insurance was effected or renewed.

(2) The Registrar may, in any notice issued under subsection (1), specify different times

for payment of premiums due from brokers, agents and on insurance business placed directly with the insurer or through the offices of an agent or broker.

109. Days of grace

(1) No insurer shall extend insurance cover in respect of any policy of insurance effected in the course of its general business beyond a period of 30 days (to be known as the "days of grace"), commencing with the day following the last day of the previous insurance period unless specific instructions have been received prior to or during the days of grace to renew such insurance, and where such instructions are not received the policy cover shall be treated as having lapsed on the last day of the previous insurance period.

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

110. Exemption

The Minister may, by statutory instrument, in the public interest, make an order exempting any insurer, broker or agent from all or any of the provisions of this Act subject to such terms and conditions as he may think fit.

111. Extension of time

(1) Where an insurer, broker or agent or an applicant for a licence under this Act is required or entitled to do or refrain from doing anything within a specified period of time, the Registrar may at his discretion, on an application in writing by such insurer, broker or agent or applicant, extend such time for a period of not more than three months.

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

112. 113. Inspection of balance sheet by policyholder, etc.

(1) A policyholder may inspect and shall be entitled to receive one copy of the summary of the latest audited balance sheet of any insurer with whom his policy has been effected.

(2) An insurer shall be entitled to receive a copy of the latest audited accounts of any broker who has an agency agreement with that insurer:

Provided that an insurer shall not divulge any information so received to any person or body of persons and shall take all such action as may be necessary to ensure the confidentiality of the said information.

(3) A person entitled to receive a balance sheet or audited accounts shall be entitled to receive such document without payment of any fee therefor upon application during normal business hours at the principal office of the insurer or broker, as the case may be.

114. Restriction on use of words "insurance" and "assurance"

Any person other than a licensed insurer, broker or agent who uses the words "insurance" or "assurance" or any combination or derivative thereof as part of the business name, style or title of that person shall be guilty of an offence.

115. No advertisement before licensing

(1) No person or body of persons or body corporate shall advertise services requiring a licence under this Act until such licence has been issued to such person, body of persons or body corporate.

(2) Any person, body of persons or body corporate acting in contravention of this section shall be liable to a fine not exceeding P2,000 or to imprisonment for a term not exceeding three months, or to both.

116. Service of process

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

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

117. Enforcement of rights of policyholders

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

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

118. - 121 122. Inspection of returns to the Registrar

(1) The Registrar may permit any person on payment of the prescribed fee to inspect, make copies or obtain certified copies of any document submitted to him under sections 31 and 63.

(2) No fee shall be paid to the Registrar for information supplied by him to the principal officer in Botswana of a licensed insurer or broker.

123. 124. Continuation of business of insurer in liquidation

(1) The liquidator shall, so far as it may be possible and unless the court otherwise orders, carry on the insurance business of an insurer with a view to being transferred as a going concern to another insurer, whether an existing company or a company formed for the purpose; and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding-up order is made but shall not effect any new contracts of insurance.

(2) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to its business require the appointment of a special manager of the business, he may apply to the court, and the court may on the application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(3) The court may require the special manager to give such security as it considers necessary.

(4) The court may make such order as it considers appropriate with regard to the payment of remuneration to the special manager.

(5) The court may, subject to such conditions as it may determine, reduce the amount of the contracts made by an insurer in the course of carrying on his business as an alternative to winding-up or otherwise.

125. Secondary companies

(1) For the purposes of and in consequence of section 123, where the insurance business or any part of the insurance business of an insurer has been transferred to an insurer to which this Act applies under an arrangement in pursuance of which the first-mentioned insurer (in this section called the "secondary company") or the creditors thereof has or have claims against the insurer to which the transfer was made (in this section called the "principal company") then, if the principal company is being wound up by or under the supervision of the court, the court shall, subject to the provisions of this section, order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two insurers and make provision for such other matters as may seem to the court necessary, with a view to the insurers being wound up as if they were one insurer.

(2) The commencement of the winding-up of the principal company shall, except as otherwise ordered by the court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several insurers between themselves, the court shall have regard to the constitution of the insurers, and to the arrangements entered into between the insurers in the same manner as the court has regard to the rights and liabilities of different classes of contributors in the case of the winding-up of a

single insurer or as near thereto as circumstances admit.

(4) Where an insurer alleged to be secondary is not in the process of being wound up at the same time as the principal company to which the insurer is secondary, the court shall not direct the secondary company to be wound up unless, after hearing any objections that may be urged by or on behalf of the insurer against being wound up, the court is of the opinion that the insurer is secondary to the principal company and that the winding-up of the insurer in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding-up of a secondary company in conjunction with a principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where an insurer stands in the relation of a principal company to one insurer, and in the relation of a secondary company to another insurer, or where there are several insurers standing in the relation of secondary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

126. False documents

(1) No person shall, in any statement, return, report, certificate, balance sheet or other document required by or for the purposes of this Act, wilfully make a statement which is false in any material particular knowing such statement to be false or not believing it to be true.

(2) No person shall, with intent to defraud or deceive-

- (a) destroy, mutilate, alter or falsify any books, papers or securities or other record maintained for or by any electronic retrieval system belonging to any insurer, broker or agent; or
- (b) make or be a party to the making of any false or fraudulent entry in any register, book of account or other document or other record maintained for or by any electronic retrieval system belonging to any insurer, broker or agent.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding P36,000 or to imprisonment for a term not exceeding two years or to both.

127. Fees

The Registrar may charge such fees in connection with the licensing of insurers, brokers and agents and any other exercise of his functions and the administration of the office of the Registrar under this Act as may be prescribed.

128. Contraventions punishable by regulatory authority (1) The directors, manager, controller and principal officer of an insurer or a broker acting in contravention of the provisions of section 8, 17 or 25 shall each be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

(2) Any person carrying on any insurance business without first being licensed as an insurer shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority, and, where the person contravening this section is a company or partnership, every director, manager, controller and principal officer of the company or every partner, manager, controller or principal officer of the partnership shall each be personally liable as if he was personally responsible for the contravention.

(3) Any person carrying on the business of an insurance agent, broker or agent for a broker without first being licensed as an insurance agent, broker or agent for a broker, as the case may be, shall be liable to a civil penalty not exceeding P3,600 to be imposed by the Regulatory Authority, and, where the person contravening this subsection is a company or a partnership, every director, manager, controller or principal officer of the company or every partner, manager or principal officer of the partnership shall each be personally liable as if he was personally responsible for the contravention.

(4) An insurance agent or agent for a broker acting in contravention of the provisions of

section 47 shall, in addition to any offence for which he may be liable under any other law be liable to a civil penalty not exceeding P3,600 to be imposed by the Regulatory Authority.

(5) Any insurer or broker who knowingly employs any person deemed unsuitable by virtue of sections 17 and 51 respectively shall be liable to a civil penalty not exceeding P18,000 to be imposed by the Regulatory Authority.

(6) For the purposes of subsection (5), where the facts which render a particular person unsuitable under those sections are either sufficiently notorious or facts that could have been ascertained very readily, the Registrar may presume that the insurer or broker employed that person knowingly.

(7) The Registrar may treat the non-payment of any civil penalty imposed by him as sufficient reason for cancellation of the licence of any licensed insurer, broker, insurance agent or agent for a broker.

(8) Notwithstanding any other action taken by the Registrar under this Act, any civil penalty imposed by him under the provisions of this section shall be recoverable as a civil penalty imposed by a court under the provisions of subsections (1) to (4) of section 303 of the Criminal Procedure and Evidence Act, and an affidavit sworn by the Registrar shall be sufficient proof of the lawful imposition of the civil penalty to enable the court to issue a warrant under those provisions:

Provided that no warrant shall be issued until any appeal under section 118 has been heard and disposed of or until the time within which an appeal may be made thereunder has expired.

129. Offences punishable by court

(1) Every insurer which-

(a) fails to comply with the provisions of section 27 or 31; or

(b) acts in contravention of the provisions of section 11 or 72,

and every broker who fails to comply with the provisions of section 58 or 63 shall be guilty of an offence.

(2) Every insurer guilty of an offence under this section or under the provisions of section 9, 10 or 71 shall be liable to a fine not exceeding P90,000 and every director, manager, controller and principal officer of any such insurer shall each be personally liable to a fine not exceeding P36,000 or to imprisonment for a term not exceeding two years or to both, unless such director, manager, controller or principal officer can prove to the satisfaction of the court that he was unaware of the default and had taken all reasonable steps to keep himself informed of any possibility of such default.

(3) No prosecution shall be commenced under this section by any person other than the Registrar or by a person authorised in writing by the Registrar.

130. General penalty (1) Every person who acts in contravention of any of the provisions of this Act shall, where no punishment has been stipulated by any other section of this Act for that contravention, be liable to a civil penalty not exceeding P3,600 to be imposed by the Regulatory Authority.

(2) Where an contravention to which this section applies is committed by a body of persons, every director, manager, controller and principal officer of the company and every partner, manager or principal officer of the partnership shall held personally responsible for the contravention:

Provided that if the individual concerned can prove to the satisfaction of the Regulatory Authority that he was not aware of the act or default which contravened the provisions of this Act and could not with reasonable diligence have become aware of it, he shall not be deemed liable under this section.

(3) The provisions of subsection (8) of section 128 shall apply to any civil penalty imposed under this section.

131. Regulations

- (1) The Minister may, by statutory instrument, make regulations-
- (a) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed;
 - (b) in relation to any other matter or thing authorised or required by this Act to be made or done by or in accordance with regulations; and
 - (c) generally for the purpose of giving effect to this Act.

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

132. Application of Act

(1) This Act applies to every insurer, broker or agent and every class of insurance business other than an insurer, broker or agent or class of insurance business which is exempted from its provisions by a statutory instrument made by the Minister under section 110.

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

FIRST SCHEDULE CLASSES OF LONG TERM BUSINESS

<i>Number</i>	<i>Description</i>	<i>Nature of Business</i>
I	Life and annuity	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class III below.
II	Marriage and birth	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property and any description (whether or not so specified).
IV	Permanent health	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that- (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.
V	Tontines	Effecting and carrying out tontines.
VI	Capital redemption	Effecting and carrying out contracts of- (a) capital redemption; or (b) pure endowment and deferred annuity as defined in the Pensions and Provident Funds Act.
VII	Deposit Administration schemes	Effecting and carrying out- (a) contracts to maintain and manage deposit administration policies; or

(b) contracts of the kind mentioned in paragraph (a), that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

**SECOND SCHEDULE
CLASSES OF GENERAL BUSINESS**

<i>Number</i>	<i>Description</i>	<i>Nature of Business</i>
1	Accident	Effecting and carrying out contracts of insurance and providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured- (a) sustaining injury as the result of an accident or of an accident of a specified class; (b) dying as the result of an accident or of an accident of a specified class; or (c) becoming incapacitated in consequence of disease or of disease of a specified class, inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within Class 2 below or within Class IV in the First Schedule to this Act (permanent health).
2	Sickness	Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within Class IV in the First Schedule to this Act.
3	Land vehicles	Effecting and carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles, but excluding railway rolling stock.
4	Railway rolling stock	Effecting and carrying out contracts of insurance against loss of or damage to railway rolling stock.
5	Aircraft	Effecting and carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
6	Ships	Effecting and carrying out contracts of insurance upon vessels used on the sea or inland water, or upon the machinery, tackle, furniture or equipment of such vessels.
7	Goods in transit	Effecting and carrying out contracts of insurance against loss or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.
8	Fire and natural forces	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which Classes 3 to 7 above relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
9	Damage to property	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which Classes 3 to 7 above relate) due to hail or frost or to any event (such as theft) other than those mentioned in Class 8 above.
10	Motor vehicle liability	Effecting and carrying out contracts of insurance against damage arising out of or in connection with use of motor vehicles on land, including third party risks and carrier's

11	Aircraft liability	liability. Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including third party risks and carrier's liability.
12	Liability for ships	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third party risks and carrier's liability.
13	General liability	Effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which Class 10, 11 or 12 above relates.
14	Credit	Effecting and carrying out contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.
15	Suretyship	Effecting and carrying out- (a) contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them; (b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or custom bonds or similar contracts of guarantee.
16	Miscellaneous financial loss	Effecting and carrying out contracts of insurance against any of the following risks, namely- (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on; (b) risks of loss to the persons insured attributable to their incurring unforeseen expense; (c) risks neither falling within paragraph (a) or (b) above nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.
17	Legal expenses	Effecting and carrying out of contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

ⁱ**Date of commencement of section 47: 1st July, 1991.**

ⁱⁱ**Date of commencement of section 52: 1st July, 1991.**

ⁱⁱⁱ**Date of commencement of section 54: 1st July, 1992.**

^{iv}Date of commencement of subsection (2): 1st July, 1991.

^vDate of commencement of subsection (3): 1st July, 1991.

^{vi}Date of commencement of subsection (4): 1st July, 1991.

^{vii}**Date of commencement of section 104: 22nd January, 2008.**

^{viii}**Date of commencement of section 105: 1st July, 1991.**

^{ix}**Date of commencement of section 106: 22nd January, 2008.**