

SHORT-TERM INSURANCE ACT 4 OF 1998

[ASSENTED TO 11 MARCH 1998] [DATE OF COMMENCEMENT: 1 JULY 1998]

(Signed by the President)

as amended by Namibia Financial Institutions Supervisory Authority Act 3 of 2001

ACT

To regulate the carrying on of short-term insurance business in Namibia and to provide for matters incidental thereto.

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

- 1 Definitions
- 2 Unregistered person may not carry on insurance business
- 3 Limitation of insurance business and policies

PART II ADMINISTRATION OF ACT

- 4 Registrar of short-term insurance
- 5 Objects of Registrar
- 6 Power of Registrar to obtain information
- 7 Power of Registrar to extend certain periods
- 8 Powers of inspection of Registrar
- 9 Delegation of powers and assignment of duties
- 10 Appeal against decisions of Registrar or staff members
- 11 Annual report by Registrar
- 12 Advisory committee

PART III: CLASSIFICATION OF SHORT-TERM INSURANCE BUSINESS AND REGISTRATION AND CANCELLATION OF REGISTRATION OF INSURERS AND REINSURERS

- 13 Classes of short-term insurance business
- 14 Registration of existing insurers
- 15 Application for registration of new insurers and reinsurers
- 16 Requirements for registration of insurers and reinsurers, including capital and reserves
- 17 Cancellation of registration of insurers and reinsurers

PART IV: MANNER OF CARRYING ON SHORT-TERM INSURANCE BUSINESS

- 18 Use and change of registered name
- 19 Principal office and principal officer
- 20 Margin of solvency
- 21 Financial year
- 22 Accounts
- 23 Appointment and powers and duties of auditor

- 24 Appointment and powers and duties of valuator
- 25 General conduct of short-term insurance business
- 26 Holding of assets
- 27 Value of assets to be held in Namibia
- 28 Statement of assets
- 29 Valuation of assets
- 30 Assets not to be pledged or encumbered
- 31 Liabilities to be recorded separately
- 32 Certain liabilities not to be incurred without approval
- 33 Statement of liabilities
- 34 Calculation of liabilities
- 35 Calculation of unmaturred domestic policy liabilities

PART V: PROVISIONS RELATING TO LLOYD'S

- 36 Appointment of Lloyd's representative
- 37 Trust account to be kept by Lloyd's representative
- 38 Returns to be submitted by Lloyd's representative in respect of trust account
- 39 Application of certain provisions of Act to Lloyd's representative
- 40 Registration of Lloyd's intermediaries
- 41 Appointment of chief executive officer by Lloyd's intermediaries
- 42 Duties of Lloyd's intermediaries
- 43 Payments to Permanent Secretary
- 44 Cancellation of registration of Lloyd's intermediaries and imposition of prohibition on activities of Lloyd's intermediaries
- 45 Application of certain provisions of Act to Lloyd's intermediaries
- 46 Claims against underwriters at Lloyd's
- 47 Payment of certain claims against underwriters at Lloyd's

PART VI: AMALGAMATION, TRANSFER, JUDICIAL MANAGEMENT AND WINDING-UP OF SHORT-TERM INSURANCE BUSINESS OF REGISTERED INSURERS AND REINSURERS

- 48 Amalgamation of registered insurers and reinsurers and transfer of short-term insurance business
- 49 Registered insurers and reinsurers not to be judicially managed or wound up otherwise than in accordance with this Act
- 50 Determination by Court on application for judicial management or winding-up.
- 51 Judicial management
- 52 Winding-up

PART VII: PROVISIONS GOVERNING THE CARRYING ON OF SHORT-TERM INSURANCE BUSINESS BY INSURANCE AGENTS, INSURANCE BROKERS AND REINSURANCE BROKERS

- 53 Insurance agents, insurance brokers and reinsurance brokers to be registered
- 54 Insurance brokers and reinsurance brokers to make deposit with Treasury and to maintain professional indemnity insurance policy
- 55 Insurance brokers and reinsurance brokers to be members of controlling body
- 56 Insurance agents, insurance brokers and reinsurance brokers to submit annual returns
- 57 Cancellation of registration of insurance agents, insurance brokers and reinsurance brokers
- 58 Application of certain provisions of Act to insurance agents, insurance brokers and reinsurance brokers

PART VIII: MISCELLANEOUS PROVISIONS

- 59 Restriction upon use of certain names
- 60 Prohibition of certain conditional transactions
- 61 Registrar's certificate on certain copies
- 62 Inspection of documents kept by Registrar
- 63 Miscellaneous provisions relating to domestic and other policies
- 64 Publication of statements of authorized, subscribed and paid-up capital
- 65 Prohibition of transacting certain business with or securing certain business for unregistered concern
- 66 Misleading, false and deceptive statements
- 67 Restriction upon acquisition of shares or other interest
- 68 General offences and penalties
- 69 Penalty for failure to submit certain documents or to furnish certain information
- 70 Penalty for failure to comply with certain financial requirements
- 71 Regulations
- 72 Repeal of laws, and saving
- 73 Interpretation of certain expressions
- 74 Short title and commencement

Schedule 1 - Classes of short-term insurance business

Schedule 2 - Kinds of assets to be held by registered insurers and reinsurers

Schedule 3 - Laws repealed

PART I: PRELIMINARY (ss 1-3)

1 Definitions

(1) In this Act, unless the context otherwise indicates-
"actuary" means any person who is a fellow of the Institute of Actuaries of England or of the Faculty of Actuaries in Scotland or of any like institute, faculty, society or other association regulating the admission to, the qualification or

registration for, and the practise of, the profession of actuaries and which is recognized by the Registrar for the purposes of this Act;

"advisory committee" means the Advisory Committee on Short-term Insurance established by section 12(1);

"auditor" means an auditor who-

- (a) is registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951);
- (b) is a member of an institution recognized by the Registrar, for the purposes of this Act, as a controlling body for auditors; and
- (c) is resident in Namibia;

"co-insurance business" means the business whereby, in respect of any other class or classes of short-term insurance business, two or more-

- (a) insurers each takes a direct share of any risk which is too large for any one insurer to carry itself; or
- (b) reinsurers each takes a direct share of any risk which is too large for any one reinsurer to carry itself;

"Companies Act" means the Companies Act, 1973 (Act 61 of 1973);

"deposit premium" means a provisional premium which is agreed upon in the event of it being impossible at the due date of the premium to determine the exact premium, and which represents a reasonable estimate of the premium;

"director" means a person holding office as director or alternate director of a company incorporated in terms of the Companies Act;

"domestic policy" means a policy issued in Namibia and which is payable in Namibia in the currency of Namibia;

"due date" means-

- (a) in relation to a premium-
 - (i) in the case of a new policy, the inception date of the policy;
 - (ii) in the case of an existing policy which has been renewed, the renewal date of the policy; and
 - (iii) in the case of any extension or other change of an existing policy, the inception date of such extension or other change; and
- (b) in relation to an installment of a premium, the commencement date of the period in respect of which the installment is payable;

"existing insurer" means a person who at any time before the commencement of this Act carried on short-term insurance business in Namibia;

"financial year" means-

(a) in relation to-

- (i) a registered insurer and reinsurer; and
- (ii) an insurance agent, an insurance broker and a reinsurance broker to which the provisions of section 285(1) of the Companies Act apply,

the financial year of the registered insurer or reinsurer, or the insurance agent or insurance broker or reinsurance broker, determined in terms of the said section 285(1); and

- (b) in relation to an insurance agent, an insurance broker and a reinsurance broker other than an insurance agent, an insurance broker and a reinsurance broker referred to in subparagraph (ii) of paragraph (a), the annual accounting period of 12 months of the insurance agent or insurance broker or reinsurance broker, the first such period commencing on the first day of the month immediately following the month during which the insurance agent or insurance broker or reinsurance broker was registered as such;

"foreign insurer" means a person registered in terms of the laws of a country other than Namibia to carry on insurance business;

"foreign reinsurer" means a person registered in terms of the laws of a country other than Namibia to carry on reinsurance business;

"guarantee insurance business" means the business of assuming obligations under guarantee policies;

"guarantee policy" means any contract whereby a person assumes an obligation (in return for the payment or the promise of payment of a premium or premiums, and otherwise than incidentally to an insurance effected by means of some other class of policy) to discharge the debts or other obligations of any other person in the event of the failure of that person to do so, and includes any statutory form of bond, guarantee or undertaking issued by a person in return for payment;

"insurance agent" means a person who on behalf of one or more insurers-

- (a) solicits short-term insurance business; or
- (b) performs any act relating to the receiving of proposal forms for such business or the issue of policies or the collection of premiums in respect of such business, but does not include an employee of an insurer unless the remuneration of that employee comprises commission;

"insurance broker" means a person who on behalf of any other person negotiates short-term insurance business other than reinsurance business with one or more insurers, but does not include an insurance agent or an employee of an insurer unless the remuneration of that employee comprise commission;

"Lloyd's" means the association of underwriters generally known as Lloyd's which is incorporated by the Lloyd's Act of 1871(34 Vict. c21), passed by the Parliament of the United Kingdom of Great Britain and Ireland, and any amendments thereto, in respect of which a council known as the Council of Lloyd's has been established by the Lloyd's Act, 1982, passed by the Parliament of the United Kingdom, which is, by virtue of the last-mentioned Act, charged with the management and superintendence of the affairs of Lloyd's;

"Lloyd's broker" means a person permitted by the Council of Lloyd's to perform any act as a broker at Lloyd's;

"Lloyd's intermediary" means a person who performs any act relating to the placing of short-term insurance business with, or the issue of policies or the collection of premiums in respect of such business for or on behalf of, a Lloyd's broker or an underwriter at Lloyd's;

"Lloyd's representative" means the person appointed in terms of section 36 and includes an alternate representative while acting as the Lloyd's representative as contemplated in that section;

"Minister" means the Minister of Finance;

"net liabilities" means the liabilities of a registered insurer or reinsurer reduced to the extent that any such liabilities have been reinsured with another registered insurer or reinsurer;

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

"Permanent Secretary" means the Permanent Secretary: Finance;

"policy" means a valid written short-term insurance contract, irrespective of the form in which the rights and obligations of the parties thereto are expressed or created, and includes a guarantee policy;

"policy benefits" means one or more sums of money, services or other benefits;

"policyholder" means the owner of a policy;

"premium" means the consideration given or to be given in return for an undertaking to provide policy benefits and includes a deposit premium;

"prescribed" means prescribed by regulation;

"principal officer" means the person appointed by a registered insurer or reinsurer in terms of section 19;

"public company" means a public company with a share capital incorporated in Namibia in terms of the Companies Act or any law repealed by that Act;

"registered" means registered in terms of this Act, and "registration" shall have a corresponding meaning;

"registered insurer" means a person registered as an insurer in terms of section 16(3) to carry on short-term insurance business;

"registered reinsurer" means a person registered as a reinsurer in terms of section 16(3) to carry on short-term insurance business;

"Registrar" means the registrar of short-term insurance referred to in section 4;
[Definition of "Registrar" substituted by sec 37 of Act 3 of 2001.]

"**reinsurance broker**" means a person who on behalf of any insurer negotiates reinsurance business with one or more reinsurers;

"**reinsurance business**" means the business of insuring any insurer or reinsurer in respect of the insurer's or reinsurer's contractual obligation under any policy;

"**short-term insurance business**" means any transaction in connection with the business of assuming the obligations of any insurer or reinsurer under any class of short-term insurance business specified in Schedule 1, and includes reinsurance business, but does not include-

- (a) the activities of an association of persons established for the purposes of rendering aid to its members or their dependents, commonly called a friendly society, and registered as such, or exempted from registration, in terms of the Friendly Societies Act, 1956 (Act 25 of 1956), and which does not at any time after the commencement of this Act employ a person whose main remunerated occupation consists of inducing persons to become members of the association or collecting from those members contributions or subscriptions towards the funds of the association;
- (b) any transaction connected with and subsidiary to any business other than insurance or reinsurance, which in the opinion of the Registrar is not short-term insurance business as ordinarily understood;
- (c) any such business as may be prescribed which shall be deemed not to be short-term insurance business for the purposes of this Act;

"**short-term insurance contract**" includes a reinsurance contract;

"staff member" means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act 13 of 1995);

"this Act" includes the regulations;

"trust account" means the trust account opened in terms of section 37(1);

"underwriter at Lloyd's" means an underwriting member of Lloyd's;

"valuator" means a valuator referred to in section 24(1).

(2) Except where it is inconsistent with the context or clearly inappropriate, a reference in this Act to a reinsurer shall be construed as a reference to a registered reinsurer.

2 Unregistered person may not carry on insurance business

(1) No person shall, after the expiry of 90 days from the commencement of this Act, carry on short-term insurance business in Namibia unless such person is registered to carry on such business.

(2) Notwithstanding the provisions of subsection (1), the Registrar may, if he or she is satisfied that no registered insurer or reinsurer can in any particular case provide short-term insurance cover at equitable terms, grant exemption to any foreign insurer or foreign reinsurer to issue a policy payable in Namibia in the currency of Namibia to provide such cover.

(3) For the purposes of subsection (1), a person shall, in the absence of evidence to the contrary, be deemed to carry on short-term insurance business in Namibia, if such person performs in Namibia-

- (a) any act the object or result of which is that another person enters into or varies a policy in terms of which such first-mentioned person undertakes to provide policy benefits; or
- (b) in relation to a policy in terms of which such first-mentioned person has undertaken to provide policy benefits, any act directed towards-
 - (i) maintaining, servicing, surrendering, or otherwise dealing with, or providing a loan in respect of, or on the security of, such policy; or
 - (ii) collecting or accounting for premiums payable under such policy; or
 - (iii) receiving, submitting, settling, assisting or otherwise dealing with, a claim under such policy.

3 Limitation of insurance business and policies

(1) No registered insurer or reinsurer shall-

- (a) in Namibia carry on insurance business other than short-term insurance business;
- (b) in Namibia issue policies other than written domestic policies;

- (c) vary a domestic policy so that it becomes payable either outside Namibia or in a currency other than the currency of Namibia, or both:
Provided that, at the request of the registered insurer or reinsurer concerned, the Registrar may, if he or she is satisfied that it will not be detrimental to the interests of policyholders and will not be contrary to the public interest-
- (i) grant, subject to the provisions of any law, prior approval to that registered insurer or reinsurer to effect or renew reinsurance business outside Namibia subject to such conditions or limitations as may be determined by the Registrar;
 - (ii) grant exemption for a policy to be issued in a currency other than the currency of Namibia, provided every premium payable in respect of the policy is payable in Namibia in the same currency as that in which the policy is issued.

(2) The provisions of subsection (1) shall apply mutatis mutandis in relation to an existing insurer.

PART II ADMINISTRATION OF ACT (ss 4-12)

4 Registrar of short-term insurance

The person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as the chief executive officer of the Namibia Financial Institutions Supervisory Authority shall be the registrar of short-term insurance.

[Sec 4 substituted by sec 37 of Act 3 of 2001.]

5 Objects of Registrar

The objects of the Registrar are to ensure-

- (a) that short-term insurance business in Namibia-
 - (i) is carried on in accordance with the provisions of this Act; and
 - (ii) is efficiently administered, controlled and regulated; and
- (b) that every registered insurer, reinsurer, insurance agent, insurance broker, reinsurance broker and Lloyd's intermediary and the Lloyd's representative at all times maintain a sound financial position with regard to any short-term insurance business carried on in terms of this Act.

6 Power of Registrar to obtain information

The Registrar may by written notice require-

- (a) any registered insurer, reinsurer, insurance agent, insurance broker, reinsurance broker, Lloyd's intermediary or Lloyd's broker;
- (b) any other person who the Registrar has reason to suspect is carrying on business or is engaged in activities in contravention of

a provision of this Act, to submit or furnish to the Registrar, within a period specified in the notice, any such document or information relating to the affairs of the registered insurer, reinsurer, insurance agent, insurance broker, reinsurance broker, Lloyd's intermediary or Lloyd's broker or such other person as the Registrar may reasonably require for the purposes of the performance of his or her functions in terms of this Act.

7 Power of Registrar to extend certain periods

Where any person is obliged or entitled in terms of a provision of this Act to perform any act within a specified period or before or on a specified date, the Registrar may at any time, whether before or after the expiry of that period or date, extend that period or date if the Registrar is satisfied that it is just and equitable to do so in any particular case.

8 Powers of inspection of Registrar

In addition to the powers and duties conferred or imposed upon the Registrar by or under this Act, the Registrar shall, for the purposes of the performance of his or her functions in terms of this Act, have powers and duties in all respects corresponding to the powers and duties conferred or imposed by or under the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984), upon a registrar referred to in the last-mentioned Act.

9 Delegation of powers and assignment of duties

The Registrar may, subject to such conditions as he or she may determine, delegate any power or assign any duty conferred or imposed upon him or her by or under this Act to a staff member, but the Registrar shall not thereby be divested or relieved of the power or duty so delegated or assigned.

10 Appeal against decisions of Registrar or staff members

(1) Any person aggrieved by a decision of the Registrar, or of any staff member acting by virtue of a delegation or an assignment under section 9, may appeal against the decision to the Minister.

(2) The appeal shall be in the form of a written statement which shall-

- (a) contain a full description of the subject matter of the decision to which the appeal relates and the grounds of appeal; and
- (b) be submitted to the Minister within 30 days after the appellant has received notification of the decision to which the appeal relates.

(3) Upon receipt of the appeal, the Minister shall transmit a copy thereof to the Registrar, who shall forthwith furnish the Minister with a written statement of the reasons for the decision to which the appeal relates.

(4) After consideration of the statements referred to in subsections (2) and (3) and of such other evidence, information or representations as the Minister may deem relevant or may require, including, if the Minister so chooses, any comments of the advisory committee on the appeal, the Minister may confirm, vary or set aside the decision to which the appeal relates.

(5) The Minister shall notify the appellant in writing of his or her decision on the appeal.

11 Annual report by Registrar

The Registrar shall annually, not later than 31 July of each year, submit to the Minister a report on his or her activities in terms of this Act during the period of 12 months preceding 31 March of that year and shall furnish such other information relating to anything done by the Registrar in terms of this Act as the Minister may require.

12 Advisory committee

(1) There is hereby established a committee to be known as the Advisory Committee on Short-term Insurance.

(2) The advisory committee shall consist of-

(a) the Registrar, who shall be the chairperson; and

(b) at least four other members appointed from time to time by the Minister in terms of subsection (3).

(3) The Minister shall appoint as members of the advisory committee persons who in his or her opinion possess the necessary expertise in short-term insurance business to represent the interests of policyholders and to make a substantial contribution towards the functions of the advisory committee.

(4) The members of the advisory committee shall designate as secretary to the advisory committee a staff member nominated by the Registrar from among the staff of his or her office.

(5) If the chairperson of the advisory committee is absent from any meeting of such committee, the members present thereat may elect one of their number to preside at that meeting.

(6) A member of the advisory committee appointed by the Minister shall-

(a) hold office for a period of three years and shall be eligible for reappointment upon the expiry of his or her term of office;

(b) vacate his or her office if he or she resigns or if the Minister removes him or her from office under subsection (7).

(7) The Minister may at any time remove a member of the advisory committee appointed by him or her from office if he or she is of the opinion that there are sufficient reasons for doing so.

(8) Each member of the advisory committee appointed by the Minister may, with the concurrence of the Minister, nominate as alternate member a person who is equally capable of representing the field of expertise for which the member has been appointed, and any alternate member so nominated may during the absence of the member by whom he or she has been nominated or his or her inability to act as member, act as member in the place of that member.

(9) The remuneration and allowances of a member of the advisory committee not being in the full-time employment of the State shall be determined from time to time by the Minister.

(10) The advisory committee may with the prior approval of the Minister conduct any investigation into, and advise or make recommendations to the Minister on,

any matter relating to short-term insurance business, and shall advise or make recommendations to the Minister on any such matter referred to it by the Minister, but no advice or recommendation so given or made by the advisory committee shall be binding upon the Minister unless otherwise provided in this Act.

(11) The Registrar may, at the request of the advisory committee, submit to such committee any information which is in his or her possession or which he or she may obtain and which is relevant to any matter which such committee is investigating or considering.

(12) Meetings of the advisory committee shall be held at such times and places as the chairperson of such committee may determine.

(13) The advisory committee may, with the approval of the Minister, make rules relating to the procedure at its meetings, including the quorum for such meetings and its decisions thereat.

PART III: CLASSIFICATION OF SHORT-TERM INSURANCE BUSINESS AND REGISTRATION AND CANCELLATION OF REGISTRATION OF INSURERS AND REINSURERS (ss 13-17)

13 Classes of short-term insurance business

(1) The classes of short-term insurance business in respect of which-

- (a) an insurer may be registered to carry on business other than reinsurance business;
- (b) a reinsurer may be registered to carry on reinsurance business only, in Namibia are as specified in Schedule 1.

(2) If a registered insurer or reinsurer or a person applying for registration and the Registrar do not agree as to the class to which any particular short-term insurance business belongs, or if such insurer or reinsurer or person so requests, the Registrar shall determine the class under which such business shall be dealt with.

(3) At the request of a registered insurer or reinsurer, the Registrar may, if he or she is satisfied that it will not be detrimental to the interest of any person and will not defeat any object of this Act, determine that any short-term insurance business of any particular class which the registered insurer or reinsurer carries on or intends to carry on shall, for the purposes of this Act, be dealt with as short-term insurance business of another class subject to such conditions or limitations as may be determined by the Registrar.

14 Registration of existing insurers

(1) Every person who immediately before the commencement of this Act was lawfully carrying on any particular class of short-term insurance business in Namibia as a registered insurer in terms of the Insurance Act, 1943 (Act 27 of 1943), shall, within 30 days after such commencement, notify the Registrar in writing whether such person intends to continue to carry on that particular class of short-term insurance business in terms of this Act.

(2) Where a person referred to in subsection (1) notifies the Registrar that such person intends to continue to carry on business as a short-term insurer or reinsurer in any particular class of short-term insurance business, such person shall, within

60 days after the commencement of this Act, apply to the Registrar for registration in respect of that particular class of short-term insurance business.

- (3) An application for registration referred to in subsection (2) shall-
- (a) be made in such manner and form as may be determined by the Registrar; and
 - (b) be accompanied by-
 - (i) such documents and information as the Registrar may require in the particular case; and
 - (ii) the prescribed application fees.

(4) Where a person referred to in subsection (1) notifies the Registrar that such person does not intend to continue to carry on business as a short-term insurer or reinsurer in any particular class of short-term insurance business, that notification shall be deemed to be an application by a registered insurer or reinsurer in terms of subsection (1) of section 17 for cancellation of its registration and shall be dealt with in accordance with the provisions of that section.

(5) Where a person referred to in subsection (1) fails to notify the Registrar of such person's intention as required by that subsection, the Registrar shall by written notice inform such person that he or she intends to cancel such person's registration, and such person may thereupon, within 30 days from the date of receipt of that notice, make written representations to the Registrar in connection with the matter.

(6) After consideration of the representations referred to in subsection (5) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may-

- (a) permit the person concerned to apply for registration within such period as may be determined by the Registrar, but within a period not exceeding 45 days from the date on which such person has been permitted to apply for registration; or
- (b) by written notice to the person concerned and by notice in the Gazette cancel such person's registration with effect from a date specified in those notices.

15 Application for registration of new insurers and reinsurers

(1) Any person who intends to carry on business as a short-term insurer or reinsurer in any particular class of short-term insurance business in Namibia shall, subject to the provisions of this Act, apply to the Registrar for registration in respect of that particular class of short-term insurance business.

- (2) An application for registration referred to in subsection (1) shall-
- (a) be made in such manner and form as may be determined by the Registrar; and
 - (b) be accompanied by-
 - (i) such documents and information as the Registrar may require in the particular case; and
 - (ii) the prescribed application fees.

16 Requirements for registration of insurers and reinsurers, including capital and reserves

(1) No person shall be registered as an insurer or a reinsurer in respect of any class of short-term insurance business unless such person-

- (a) is a public company managed by a board of directors of which-
 - (i) the managing director; and
 - (ii) at least 50 per cent of the other directors, shall, having regard to the provisions of section 19(1)(b), be Namibian citizens resident in Namibia: Provided that the Registrar may in exceptional circumstances grant written permission that a managing director may, for such period as may be determined by the Registrar, be a person other than a Namibian citizen; and
- (b) has in respect of such business in Namibia capital consisting of paid-up shares, or other funds approved by the Registrar, set aside solely for that purpose subject to such conditions as may be determined by the Registrar, amounting to not less than-
 - (i) in the case of a person applying for registration in respect of any one class of-
 - (aa) short-term insurance business other than reinsurance business, N\$1 000 000; or
 - (bb) reinsurance business, N\$5 000 000; or
 - (ii) in the case of a person applying for registration in respect of any two or more classes of-
 - (aa) short-term insurance business other than reinsurance business, N\$4 000 000; or
 - (bb) reinsurance business, N\$10 000 000; and
- (c) has, subject to such conditions as may be determined by the Registrar, deposited with the Treasury an amount, or securities approved by the Registrar having an aggregate value, of not less than-
 - (i) in the case of a person applying for registration in respect of any one class of-
 - (aa) short-term insurance business other than reinsurance business, N\$50 000; or
 - (bb) reinsurance business, N\$500 000; or
 - (ii) in the case of a person applying for registration in respect of any two or more classes of-
 - (aa) short-term insurance business other than reinsurance business, N\$100 000; or
 - (bb) reinsurance business, N\$1 000 000.

(2) When considering an application for registration referred to in section 14(2) or 15(1), as the case may be, the Registrar shall satisfy himself or herself that-

- (a) it will not be contrary to the public interest for the applicant to particular class of short-term insurance business;

- (b) the manner in which the applicant intends to carry on short-term insurance business is not likely to be inconsistent with the provisions of this Act;
- (c) the memorandum of association and articles of association or the the applicant, as the case may be, are not inconsistent with the provisions of this Act and that the main objects of the applicant stated therein include the following, namely-
 - (i) to carry on any particular class or classes of short-term insurance business;
 - (ii) to carry on short-term insurance business and conduct all affairs relating thereto in accordance with sound insurance practices and methods and the provisions of this Act;
 - (iii) to in so far as practicable protect the interests of policyholders; and
 - (iv) to at all times maintain a margin of solvency sufficient for the purposes of meeting all obligations to policyholders; and
- (d) the name under which the applicant intends to carry on short-term insurance business is not-
 - (i) identical to the name of any other registered insurer or reinsurer; or
 - (ii) a name which so closely resembles the name of any other registered insurer or reinsurer that the one insurer or reinsurer is likely to be mistaken for the other; or
 - (iii) a name which is likely to be misleading to the public.

(3) Subject to the provisions of subsection (1), the Registrar shall, after having satisfied himself or herself as contemplated in subsection (2), register the applicant as an insurer or a reinsurer in accordance with the provisions of section 13(1) to carry on business in the class or classes of short-term insurance in respect of which registration is required.

(4) Upon registration of an applicant in terms of subsection (3), the Registrar shall issue to the applicant a certificate of registration in a form determined by the Registrar.

17 Cancellation of registration of insurers and reinsurers

(1) Where a registered insurer or reinsurer intends to cease carrying on short-term insurance business or any particular class of short-term insurance business, the registered insurer or reinsurer shall, at least 90 days before the proposed cessation, apply to the Registrar, in a manner and form determined by the Registrar, for cancellation of its registration or its registration in respect of the particular class of short-term insurance business, as the case may be.

(2) Upon receipt of an application referred to in subsection (1), the Registrar shall, after the registered insurer or reinsurer has complied with such conditions as may be determined by the Registrar, by written notice to such insurer or reinsurer and by notice in the Gazette prohibit such insurer or reinsurer, with effect from a date specified in those notices, from issuing policies or policies relating to the

particular class of short-term insurance business in respect of which such insurer or reinsurer is registered.

(3) If the Registrar-

- (a) is satisfied that a registered insurer or reinsurer has-
 - (i) within one year after its registration, failed to commence to carry on short-term insurance business or any particular class of short-term insurance business in respect of which it is registered; or
 - (ii) ceased to carry on short-term insurance business or any particular class of short-term insurance business in respect of which it is registered, or that the volume of business it transacts in any particular class of short-term insurance business is less than the volume of business a registered insurer or reinsurer can reasonably be expected to maintain;or
- (b) on reasonable grounds suspects that the business of a registered insurer or reinsurer is in an unsound financial position or is being conducted in a manner which is likely to result in such business being placed in an unsound financial position, the Registrar may by written notice to the registered insurer or reinsurer inform such insurer or reinsurer that he or she intends to cancel such insurer's or reinsurer's registration or its registration in respect of the particular class of short-term insurance business, as the case may be, and in such notice state the grounds for such intended action.

(4) A registered insurer or reinsurer may, within 30 days from the date of receipt of a notice referred to in subsection (3), make written representations to the Registrar in connection with the matter.

(5) After consideration of the representations referred to in subsection (4) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may-

- (a) if he or she is satisfied that it is just and equitable to do so in the particular case, by written notice to the registered insurer or reinsurer withdraw the notice referred to in subsection (3); or
- (b) by written notice to the registered insurer or reinsurer and by notice in the Gazette prohibit such insurer or reinsurer, with effect from a date specified in those notices, from issuing policies or policies relating to the particular class of short-term insurance business in respect of which such insurer or reinsurer is registered.

(6) Where the Registrar prohibits a registered insurer or reinsurer in terms of subsection (2) from issuing policies, the Registrar shall require such insurer or reinsurer to make proper arrangements for ensuring that its liabilities under policies or policies relating to the particular class of short-term insurance business, as the case may be, issued by it will be met and, if the Registrar is satisfied that such arrangements have been made, he or she shall by written notice to such insurer or reinsurer and by notice in the Gazette cancel such insurer's or reinsurer's registration or its registration in respect of the particular class of short-

term insurance business, as the case may be, with effect from a date specified in those notices.

(7) Where the Registrar prohibits a registered insurer or reinsurer under subsection (5)(b) on the grounds mentioned in subsection (3)(a)(i) or (ii) from issuing policies, the Registrar may by written notice to the registered insurer or reinsurer and by notice in the Gazette-

- (a) withdraw the prohibition if the registered insurer or reinsurer satisfies the Registrar that it will, within a period which the Registrar considers reasonable-
 - (i) commence to carry on short-term insurance business or the particular class of short-term insurance business in respect of which it is registered; or
 - (ii) increase or restore the volume of business it transacts in respect of the particular class of short-term insurance business to a reasonable level; or
- (b) cancel the registered insurer's or reinsurer's registration or its registration in respect of the particular class of short-term insurance business if the Registrar is not satisfied as contemplated in paragraph (a),

with effect from a date specified in those notices.

(8) Where the Registrar prohibits a registered insurer or reinsurer under subsection (5)(b) on the grounds mentioned in subsection (3)(b) from issuing policies, the Registrar shall by written notice to such insurer or reinsurer direct such insurer or reinsurer to furnish the Registrar, within a period specified in the notice, with a written proposal of the course of action it proposes to take for restoring its business to a sound financial position or preventing it from being placed in an unsound financial position.

(9) If the Registrar, after consultation with the auditor and, if appointed, the valuator of the registered insurer or reinsurer concerned, is satisfied that the course of action proposed by such insurer or reinsurer is, within a period which the Registrar considers reasonable, likely to restore its business to a sound financial position or prevent it from being placed in an unsound financial position, the Registrar may approve such proposal and by written notice to such insurer or reinsurer and by notice in the Gazette withdraw the prohibition with effect from a date specified in those notices.

(10) Where a registered insurer or reinsurer fails to propose any course of action as contemplated in subsection (8), or fails to adopt or adhere to a proposal approved by the Registrar under subsection (9), or if the Registrar refuses to approve the registered insurer's or reinsurer's proposed course of action under subsection (9), the Registrar may-

- (a) require the registered insurer or reinsurer to make proper arrangements for ensuring that its liabilities under policies or policies relating to the particular class of short-term insurance business, as the case may be, issued by it will be met and, if the Registrar is satisfied that such arrangements have been made, he or she shall by written notice to such insurer or reinsurer and by

notice in the Gazette cancel such insurer's or reinsurer's registration or its registration in respect of a particular class of short-term insurance business, as the case may be, with effect from a date specified in those notices; or

- (b) apply to the High Court in accordance with the provisions of section 50 for an order placing the registered insurer or reinsurer under judicial management or for the winding-up of the registered insurer or reinsurer,

whichever course appears to the Registrar to be in the best interest of the owners of policies issued by such insurer or reinsurer.

(11) If the Registrar is satisfied that-

- (a) the certificate of registration of a registered insurer or reinsurer was obtained by means of fraud or misrepresentation;
- (b) a registered insurer or reinsurer is contravening or has contravened, or is failing or has failed to comply with, any provision of this Act, continues with or repeats such contravention or failure;
- (c) a registered insurer or reinsurer has made a material misrepresentation to members of the public in connection with the entering into of any policy;
- (d) a registered insurer or reinsurer is carrying on short-term insurance business in respect of which such insurer or reinsurer is registered and that such insurer or reinsurer, notwithstanding a written notice from the Registrar to that effect, has, within a period specified in the notice, failed to rectify the situation either by applying for registration in respect of the appropriate class of short-term insurance business or by any other means acceptable to the Registrar;
- (e) any class of short-term insurance business in respect of which an insurer or a reinsurer is registered is not being carried on by the registered insurer or reinsurer in accordance with sound insurance practices and methods; or
- (f) a judgment obtained against a registered insurer or reinsurer in any court in Namibia has remained unsatisfied for 21 days from the date of the judgment or, in the event of an appeal, from the date on which the appeal is abandoned or dismissed,

the Registrar may by written notice to the registered insurer or reinsurer inform such insurer or reinsurer that he or she intends to cancel such insurer's or reinsurer's registration or its registration in respect of the particular class of short-term insurance business, as the case may be, and in such notice state the grounds for such intended action.

(12) A registered insurer or reinsurer may, within 30 days from the date of receipt of a notice referred to in subsection (11), make written representations to the Registrar in connection with the matter.

(13) After consideration of the representations referred to in subsection (12) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may-

- (a) if he or she is satisfied that it is just and equitable to do so in the particular case, by written notice to the registered insurer or reinsurer withdraw the notice referred to in subsection (11); or
 - (b) by written notice to the registered insurer or reinsurer and by notice in the Gazette prohibit such insurer or reinsurer, with effect from a date specified in those notices, from issuing policies or policies relating to the particular class of short-term insurance business in respect of which such insurer or reinsurer is registered.
- (14) Where the Registrar prohibits a registered insurer or reinsurer under subsection (13)(b) on any of the grounds mentioned in subsection (11) from issuing policies, the Registrar may by written notice to the registered insurer or reinsurer and by notice in the Gazette-
- (a) withdraw the prohibition if the registered insurer or reinsurer satisfies the Registrar that it will, within a period which the Registrar considers reasonable, rectify the situation by reason of which it is prohibited from issuing policies; or
 - (b) cancel the registered insurer's or reinsurer's registration or its registration in respect of the particular class of short-term insurance business if the Registrar is not satisfied as contemplated in paragraph (a), with effect from a date specified in those notices.
- (15) When the Registrar is satisfied that-
- (a) all of the short-term insurance business of a registered insurer or reinsurer has been-
 - (i) discontinued by virtue of its amalgamation with that of, or the transfer of its short-term insurance business to, another registered insurer or reinsurer, as the case may be, in accordance with the provisions of section 48; or
 - (ii) wound up in accordance with the provisions of section 50; or
 - (b) any class of short-term insurance business of a registered insurer or reinsurer has been discontinued by virtue of the transfer of such class of business to another registered insurer or reinsurer in accordance with the provisions of section 48,
- the Registrar shall by written notice to the registered insurer or reinsurer and by notice in the Gazette cancel such insurer's or reinsurer's registration or its registration in respect of the class of short-term insurance business that has been transferred with effect from a date specified in those notices.

PART IV: MANNER OF CARRYING ON SHORT-TERM INSURANCE BUSINESS (ss 18-35)

18 Use and change of registered name

- (1) Subject to the provisions of subsection (2), every registered insurer and reinsurer shall for all purposes and in every public document issued by it use the name under which it is registered.
- (2) No registered insurer or reinsurer shall-

- (a) change the name under which it is registered;
- (b) use or refer to itself by a name other than the name under which it is registered; or
- (c) use or refer to itself by a shortened form or derivative of the name under which it is registered,

without the prior written approval of the Registrar.

(3) An application for a change of name contemplated in subsection (2) (a) shall-

- (a) be made in such manner and form as may be determined by the Registrar; and
- (b) be accompanied by-
 - (i) such documents and information as the Registrar may require in the particular case; and
 - (ii) the prescribed application fees.

(4) Upon receipt of an application referred to in subsection (3), the Registrar shall, if he or she is satisfied-

- (a) as contemplated in paragraph (d) of section 16(2) (as if he or she were considering an application for registration under that section); and
- (b) that the provisions of any other law relating to such a change of name have been complied with,

register the registered insurer or reinsurer concerned under its new name and issue to such insurer or reinsurer, in a form determined by the Registrar, a new certificate of registration under that name.

19 Principal office and principal officer

(1) Every registered insurer and reinsurer shall-

- (a) establish and maintain a principal office in Namibia; and
- (b) appoint a fit and proper person to be its principal officer in Namibia and who shall, unless the Registrar in exceptional circumstances otherwise determines, be a person who is a Namibian citizen.

(2) Every registered insurer and reinsurer shall notify the Registrar in writing of the address of its principal office and the name of its principal officer prior to the establishment of such office or the appointment of such officer.

(3) Every registered insurer and reinsurer shall, prior to any change in-

- (a) the address of its principal office; or
 - (b) the appointment of its principal officer,
- notify the Registrar in writing of such intended change.

(4) The Registrar shall, upon request and without charge, inform any person of the address of the principal office of a registered insurer or reinsurer or of the name of its principal officer.

(5) The principal officer of a registered insurer or reinsurer is authorized to act for such insurer or reinsurer in all matters in so far as may be necessary to ensure the compliance by such insurer or reinsurer with the provisions of this Act, and in any case where a person, including the Registrar, is permitted or required to address such insurer or reinsurer, that person may do so by addressing himself or herself

to the principal officer who shall ensure that the matter is attended to by such insurer or reinsurer.

(6) Process in any legal proceedings against a registered insurer or reinsurer may be served by delivering a copy thereof to its principal officer or, in the absence of such officer, to any other responsible employee at its principal office or, if no such office is in existence, by service on the Registrar which shall be deemed to be a service on the registered insurer or reinsurer.

20 Margin of solvency

(1) Every registered insurer and reinsurer shall have and at all times maintain a margin of solvency sufficient for the purposes of carrying on short-term insurance business, and shall be deemed to have and be maintaining such a margin if the aggregate value of its assets exceeds the amount of its net liabilities by not less than-

- (a) N\$4 000 000; or
- (b) 15 per cent, or such other percentage as may from time to time be determined by the Minister by notice in the Gazette, of the total amount received by it in respect of premiums (after deducting an amount equal to the premiums paid by the registered insurer or reinsurer in respect of any reinsurance business) during its last preceding financial year,

whichever is the greater amount.

(2) For the purposes of subsection (1) all contingent and prospective liabilities of the registered insurer or reinsurer, but excluding liabilities in respect of share capital or non-distributable or distributable reserves, shall be taken into account in assessing the amount of its net liabilities.

21 Financial year

(1) Every registered insurer and reinsurer shall, within 30 days after its registration, notify the Registrar in writing of the date on which its financial year ends.

(2) The financial year of a registered insurer and reinsurer shall not exceed a period of 12 months.

(3) No registered insurer or reinsurer shall without the prior written approval of the Registrar change its financial year.

22 Accounts

(1) Every registered insurer and reinsurer shall-

- (a) keep proper accounts of, and financial information relating to, its short-term insurance business; and
- (b) annually, within six months after the end of its financial year, submit to the Registrar-
 - (i) a revenue account for that year in respect of each class of short-term insurance business in respect of which it is registered;

- (ii) unless it has no share capital, a profit and loss account for that year in respect of its short-term insurance business;
- (iii) a balance sheet showing its financial position at the end of that year; and
- (iv) a statement of reinsurance business accepted, ceded and retroceded by or to it, containing the terms and conditions of any such acceptance, cession or retrocession,

duly audited and certified by its auditor, together with a written report by that auditor.

(2) The accounts, balance sheet and statement referred to in subsection (1) shall be prepared by the registered insurer or reinsurer concerned in such form as may be determined by the Registrar and shall be accompanied by such documents and information as the Registrar may require.

23 Appointment and powers and duties of auditor

(1) Every registered insurer and reinsurer shall, subject to the approval of the Registrar, appoint, and at all times have, an auditor for its business in Namibia and shall notify the Registrar in writing of such appointment.

(2) Upon receipt of a notice referred to in subsection (1), the Registrar shall, if he or she is satisfied that the auditor appointed by a registered insurer or reinsurer or any partner of a partnership of auditors so appointed, as the case may be, is not an employee or a director of such insurer or reinsurer, by written notice to such insurer or reinsurer, approve the appointment of that auditor.

(3) Whenever the appointment of an auditor is terminated by a registered insurer or reinsurer-

- (a) the registered insurer or reinsurer shall, within 30 days after the said termination, notify the Registrar in writing thereof and furnish the Registrar with a written statement of the reasons for the termination of the appointment;
- (b) that auditor shall, within the period mentioned in paragraph (a), submit to the Registrar a written statement of what he or she believes to be the reasons for the termination of the appointment, stating any matter relating to the affairs of the registered insurer or reinsurer which in the opinion of that auditor may be of concern to the Registrar.

(4) The auditor of a registered insurer or reinsurer shall, in addition to the duties imposed upon him or her by or under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951)-

- (a) audit the accounts, balance sheet and statements of the registered insurer or reinsurer and, if the auditor is satisfied that they are prepared in the form determined by the Registrar and that-
 - (i) the accounts, balance sheet and statement referred to in section 22 present fairly, or give a true and fair view of, or reflect correctly, the matters dealt with therein;

- (ii) the statement of assets referred to in section 28 is a true and fair statement of the assets of the registered insurer or reinsurer;
 - (iii) the statement of liabilities referred to in section 33 is a true and fair statement of the liabilities of the registered insurer or reinsurer; and
 - (iv) the margin of solvency contemplated in section 20 is maintained by the registered insurer or reinsurer,
- according to the books of the registered insurer or reinsurer, the auditor shall, if he or she is so satisfied, certify such accounts, balance sheet and statements to that effect, or, if he or she cannot so satisfy himself or herself, certify such accounts, balance sheet and statements subject to such qualifications as he or she may deem necessary; and
- (b) as soon as practicable after the audit-
 - (i) furnish the registered insurer or reinsurer with a written report on his or her findings; and
 - (ii) submit to the Registrar a written report on any material irregularity, if any, that he or she believes has taken place or is taking place in the conduct of the affairs of the registered insurer or reinsurer which has caused or is likely to cause financial loss to it or to its policyholders or creditors.

(5) For the purposes of subsection (4)(a) the auditor may, in auditing the particulars contained-

- (a) in the statement of assets of the registered insurer or reinsurer, if the Registrar at the request of the registered insurer or reinsurer so directs; and
- (b) in the statement of liabilities of the registered insurer or reinsurer, accept at face value, without further enquiry or examination, any of such particulars that have been attested by the valuator of the registered insurer or reinsurer, if appointed, and in such event that auditor shall record the facts thereof in his or her report.

(6) In certifying any statement in terms of subsection (4)(a)(ii), the auditor shall satisfy himself or herself according to generally accepted auditing standards of the existence of the assets shown in the statement.

(7) The auditor of a registered insurer or reinsurer shall, at the cost of the registered insurer or reinsurer, undertake such other examination of the affairs of the registered insurer or reinsurer as may be requested by the Registrar for the purposes of satisfying himself or herself as contemplated in section 17(9).

(8) An auditor shall not incur any liability to any person in consequence of having furnished in good faith information on any irregularity or other matter which the auditor has become aware of in his or her capacity as auditor of a registered insurer or reinsurer and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions in terms of this Act.

(9) Any person who hinders or obstructs an auditor in the performance of his or her duties or the exercise of his or her powers in terms of this Act shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

24 Appointment and powers and duties of valuator

(1) If at any time so requested in writing by the Registrar, a registered insurer or reinsurer shall, subject to the written approval of the Registrar, appoint, and at all times during such period as may be determined by the Registrar have, an actuary to be its valuator for the purposes of this Act.

(2) Whenever the appointment of a valuator is terminated by a registered insurer or reinsurer-

- (a) the registered insurer or reinsurer shall, within 30 days after the said termination, notify the Registrar in writing thereof and furnish the Registrar with a written statement of the reasons for the termination of the appointment; and
- (b) that valuator shall, within the period mentioned in paragraph (a), submit to the Registrar a written statement of what he or she believes to be the reasons for the termination of the appointment, stating any matter relating to the affairs of the registered insurer or reinsurer which in the opinion of that valuator may be of concern to the Registrar.

(3) The valuator of a registered insurer or reinsurer shall, at the cost of the registered insurer or reinsurer, undertake such evaluation or examination of the affairs of the registered insurer or reinsurer as may be requested by the Registrar for the purposes of the performance of his or her functions in terms of this Act.

(4) A valuator shall not incur any liability to any person in consequence of having furnished in good faith information on any irregularity or other matter which the valuator has become aware of in his or her capacity as valuator of a registered insurer or reinsurer and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions in terms of this Act.

(5) Any person who hinders or obstructs a valuator in the performance of his or her duties or the exercise of his or her powers in terms of this Act shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

25 General conduct of short-term insurance business

(1) Every registered insurer and reinsurer shall, in carrying on its short-term insurance business and conducting its affairs relating thereto-

- (a) act in all respects in good faith;
- (b) employ sound insurance practices and methods consistent with its memorandum of association and articles of association or its regulations, as the case may be; and

(c) comply with the provisions of this Act.

(2) No registered insurer or reinsurer shall without the prior written approval of the Registrar make additions to or alter the provisions of its memorandum of association or articles of association or its regulations, as the case may be.

(3) Every registered insurer and reinsurer shall comply with such conditions as may be determined by the Registrar regarding the prohibition of or the rectification of anything arising from or caused by the employment of any such practices or methods of carrying on short-term insurance business as may by notice in the Gazette be declared by the Minister, after consultation with the advisory committee, to be irregular or undesirable.

26 Holding of assets

Every registered insurer and reinsurer shall, subject to the provisions of section 27, hold assets having an aggregate value, determined in accordance with the provisions of section 29, of not less than the total amount of-

- (a) the amount of its net liabilities calculated in accordance with the provisions of section 34; and
- (b) an amount of N\$4 000 000.

27 Value of assets to be held in Namibia

(1) Every registered insurer and reinsurer shall, in respect of the assets required to be held by it in terms of section 26, hold assets in Namibia having an aggregate value, determined in accordance with the provisions of section 29, of not less than the total amount of-

- (a) a prescribed percentage of the net liabilities in respect of its domestic policies; and
- (b) an amount of N\$4 000 000.

(2) The assets required in terms of subsection (1) shall, subject to the prescribed limits of investment in particular kinds or categories of assets, be assets of one or more of the kinds specified in Schedule 2.

28 Statement of assets

(1) Every registered insurer and reinsurer shall annually, within six months after the end of its financial year, submit to the Registrar a statement of the assets held by it as at the end of that financial year, duly certified by its auditor, together with a written report by that auditor.

(2) A statement referred to in subsection (1) shall be prepared by the registered insurer or reinsurer concerned in such form as may be determined by the Registrar.

29 Valuation of assets

(1) Subject to the provisions of section 30(2) and of subsections (2) and (3) of this section, the determination of the value of the assets of a registered insurer or reinsurer shall, for the purposes of sections 26 and 27 and of a statement of assets referred to in section 28, be made by the registered insurer or reinsurer on such basis as the registered insurer or reinsurer considers the most reasonable and

appropriate in any particular case, but, in the case of movable or immovable assets, such value shall not exceed the price that would be paid upon a sale of such assets at arm's length between a willing buyer and a willing seller as estimated by the registered insurer or reinsurer.

(2) In determining the value of assets in terms of subsection (1)-

- (a) the assets shall not include-
 - (i) any amount representing any payments made in advance in respect of expenses of administration, organization or business extension;
 - (ii) the purchase price of any business (except the value of any property belonging thereto) or any goodwill;
 - (iii) any debt (other than a debt which is a kind of asset specified in Schedule 2) owing to a registered insurer or reinsurer;
 - (iv) any amount representing an outstanding premium (irrespective of whether or not it has been debited to an insurance agent or insurance broker) or a deferred installment of a premium;
- (b) the value of any outstanding premiums or premiums debited to insurance agents or insurance brokers shall, subject to the provisions of paragraph (a)(iv), be shown at an amount which in the aggregate does not exceed the full amount of such premiums, reduced by-
 - (i) the amount or estimated amount of any commission which the registered insurer or reinsurer owes or is likely to become liable for in connection with such premiums;
 - (ii) the amount or estimated amount of the corresponding outstanding premiums under any reinsurances of the policies in question (less the corresponding commission payable under those reinsurances), unless the said amount has been or will be included as a liability in a statement of liabilities referred to in section 33;
 - (iii) a reserve, in an amount deemed by the Registrar to be adequate or otherwise determined by the Minister by notice in the Gazette, but not less than seven and a half per cent of the full said amount, to cover the risk of loss arising from non-receipt by the registered insurer or reinsurer of any such premiums.

(3) If in the opinion of the Registrar a value determined in respect of an asset by a registered insurer or reinsurer is not a fair estimate, the value thereof shall be the amount as determined by the Registrar.

30 Assets not to be pledged or encumbered

(1) Except with the prior written approval of the Registrar and to the extent authorized by him or her, no asset of a registered insurer or reinsurer shall-

- (a) be held on its behalf by any person; or

(b) be pledged, hypothecated or otherwise encumbered.

(2) Where an asset of a registered insurer or reinsurer is held, pledged, hypothecated or otherwise encumbered as contemplated in subsection (1), the value of that asset shall, for the purposes of this Act, be reduced proportionately to the extent to which it is so held, pledged, hypothecated or otherwise encumbered.

31 Liabilities to be recorded separately

Every registered insurer and reinsurer shall identify the liabilities under domestic policies in respect of its short-term insurance business in Namibia and those relating to any short-term insurance business carried on by it elsewhere, and such liabilities shall be stated separately in the accounts or other records of the registered insurer or reinsurer and in its statement of liabilities referred to in section 33.

32 Certain liabilities not to be incurred without approval

No registered insurer or reinsurer shall-

(a) borrow money; or

(b) guarantee to discharge, or bind itself as surety for the discharge of, the debts or other obligations of any person, except in terms of a guarantee policy,

without the prior written approval of the Registrar.

33 Statement of liabilities

(1) Every registered insurer and reinsurer shall annually, within six months after the end of its financial year, submit to the Registrar a statement of its liabilities as at the end of that financial year, duly certified by its auditor, together with a written report by that auditor.

(2) Notwithstanding the provisions of subsection (1), a registered insurer or reinsurer shall, if at any time so requested in writing by the Registrar, submit to the Registrar a statement of its liabilities as at any other day specified by the Registrar.

(3) The statements referred to in subsections (1) and (2) shall be prepared by the registered insurer or reinsurer concerned in such form as may be determined by the Registrar.

34 Calculation of liabilities

(1) Subject to the provisions of subsection (2), the liabilities of a registered insurer or reinsurer shall, for the purposes of a statement of liabilities referred to in section 33, be calculated by the registered insurer or reinsurer, and shall include-

(a) the amount of its net liabilities under unmatured domestic policies calculated in accordance with the provisions of section 35; and

(b) an amount, estimated by the registered insurer or reinsurer, in respect of-

- (i) claims under policies which had been intimated to it or an agent of it, but had not been paid by it before the expiry of its financial year;
- (ii) claims under policies which had arisen, but had not been so intimated prior to the expiry of its financial year; and
- (iii) income tax or any other tax which has not been finally assessed.

(2) If the amount estimated by a registered insurer or reinsurer in respect of the liabilities referred to in paragraph (b)(iii) is in the opinion of the Registrar not a fair estimate, the amount of such liabilities shall be as determined by the Registrar.

35 Calculation of unexpired domestic policy liabilities

(1) The liability on any particular date of a registered insurer or reinsurer under unexpired domestic policies in a particular class of short-term insurance business shall be an amount equal to the amount that the registered insurer or reinsurer requires to hold in order to meet claims and expenses arising in connection with those policies after that date and shall, subject to the provisions of subsection (3), be deemed to be the amount calculated in accordance with the provisions of subsection (2).

(2) The amount to be calculated for the purposes of subsection (1) shall be the amount of the premium to which the registered insurer or reinsurer was entitled under each such policy (after deducting the amount of any refund of premium, discount or other allowance made to the owner of the policy in his or her capacity as owner, but without making any deduction in respect of commission, brokerage or other remuneration paid to an insurance broker or to any agent of the registered insurer or reinsurer), reduced by-

- (a) an amount equal to the premiums paid by the registered insurer or reinsurer in respect of any reinsurance business;
- (b) an amount approved by the Registrar as representing the expenses incurred by the registered insurer or reinsurer in conducting the particular class of short-term insurance business, but which amount shall not exceed 20 per cent of the amount obtained after the deduction in terms of paragraph (a);
- (c) such an amount as bears the same ratio to the amount obtained after the deduction in terms of paragraph (b) as the expired part of the insurance period covered by such premium bears to the whole of the said period.

(3) Notwithstanding the provisions of subsection (1), the Registrar may in writing authorize or direct a registered insurer or reinsurer to adopt, for the purposes of calculating its liabilities under all unexpired domestic policies in any particular class or classes of short-term insurance business or part thereof, a different method of calculation which in the opinion of the Registrar will provide a more accurate calculation of such liabilities, and the registered insurer or reinsurer shall thereupon adopt no other method in calculating such liabilities without the prior written approval of the Registrar.

PART V: PROVISIONS RELATING TO LLOYD'S (ss 36-47)

36 Appointment of Lloyd's representative

(1) There shall at all times be a natural person in Namibia appointed by the Council of Lloyd's with authority to act in Namibia as the representative of that Council and of underwriters at Lloyd's, and another person so appointed as an alternate representative to act in Namibia as such representative in the event of the Lloyd's representative for any reason not being able to act as such representative.

(2) The appointment of the Lloyd's representative shall not take effect unless Lloyd's has, subject to such conditions as may be determined by the Registrar, deposited with the Treasury an amount of N\$20 000.

(3) The Lloyd's representative shall notify the Registrar in writing-

- (a) within 15 days after his or her appointment or the appointment of an alternate representative, as the case may be, of such appointment, his or her or such alternate representative's full names, the address of his or her or such alternate representative's office in Namibia and the telephone and, if any, facsimile number at such office;
- (b) of any change in such particulars, within 15 days after such change.

(4) When a process in any legal proceedings against Lloyd's or an underwriter at Lloyd's is required to be served on the Lloyd's representative, such process may be served by delivering a copy thereof at the address referred to in subsection (3).

37 Trust account to be kept by Lloyd's representative

(1) The Lloyd's representative shall open a trust account in the name of Lloyd's at a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act 23 of 1965), or a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act 2 of 1986).

(2) The Lloyd's representative shall, not later than the last working day of each month, deposit in the trust account an amount equal to 70 per cent, or such other percentage as may from time to time be determined by the Minister by notice in the Gazette, of all premiums of whatever nature received by all Lloyd's intermediaries in Namibia in their capacities as such intermediaries, but excluding premiums received in respect of acts performed by them by virtue of an approval referred to in section 42(1)(b), during the month two months immediately preceding such first-mentioned month, less-

- (a) premiums refunded during the month during which such premiums were received by such intermediaries;
- (b) payments referred to in section 43(1)(a); and
- (c) all commissions paid or payable in respect of such first-mentioned premiums.

(3) (a) Any moneys standing to the credit of the trust account that are not required for immediate use may be invested in any asset specified in paragraph 3, 4, 5, 6, 12, 13, 14 or 15 of Schedule 2.

- (b) Any document issued in respect of an investment made under paragraph (a) shall be held by the Lloyd's representative who shall be competent to realize any asset referred to in that paragraph.
- (c) All moneys acquired by virtue of any investment or realization contemplated in paragraphs (a) and (b), respectively, shall as soon as practicable be deposited in the trust account by the Lloyd's representative.

(4) On the last working day of each month an amount equal to the amount deposited in the trust account during the same month of the last preceding year, together with interest thereon, less any amount withdrawn during such first-mentioned month for the purposes of section 47, may be withdrawn from the trust account.

(5) Except for the purposes of section 47 and subsections (3) and (4) of this section, no other moneys shall be withdrawn from the trust account.

- 38 Returns to be submitted by Lloyd's representative in respect of trust account
- (1) The Lloyd's representative shall prepare and submit to the Registrar annually, not later than 30 April, in such form as may be determined by the Registrar, a return, audited by an auditor, in respect of the trust account as at the end of the last day of the last preceding calendar year containing such particulars as the Registrar may require.
 - (2) Notwithstanding the provisions of subsection (1), the Lloyd's representative shall, if at any time so requested in writing by the Registrar, submit to the Registrar a return in respect of the trust account as at any other day specified by the Registrar.
- 39 Application of certain provisions of Act to Lloyd's representative
- The provisions of section 23 shall apply mutatis mutandis in relation to the Lloyd's representative in respect of the trust account held by him or her as if the Lloyd's representative were a registered insurer and the reference to an auditor in that section were a reference to an auditor contemplated in section 38(1).
- 40 Registration of Lloyd's intermediaries
- (1) No person shall, after the expiry of 90 days from the commencement of this Act, perform any act as a Lloyd's intermediary in Namibia unless he or she is registered as such.
 - (2) An application for registration as a Lloyd's intermediary shall be made to the Registrar in such manner and form as may be determined by the Registrar and shall be accompanied by-
 - (a) proof in writing that the applicant has been permitted by or on behalf of the Council of Lloyd's to act in Namibia as an intermediary for or on behalf of a Lloyd's broker or an underwriter at Lloyd's;
 - (b) a document signed by or on behalf of the Lloyd's broker or underwriter at Lloyd's concerned containing the terms and

conditions in terms of which the applicant is authorized to act as a Lloyd's intermediary;

- (c) such other documents and information as the Registrar may require in the particular case; and
- (d) the prescribed application fees.

(3) If an application referred to in subsection (1) is granted, the Registrar shall, on such conditions as the Registrar may determine, register the applicant as a Lloyd's intermediary in respect of such class or classes of short-term insurance business as the Registrar may determine with due regard to the terms and conditions referred to in subsection (2)(b).

(4) A Lloyd's intermediary shall notify the Registrar in writing of the address of his or her office in Namibia and the telephone and, if any, facsimile number at such office, and of any change in such particulars.

(5) When a process in any legal proceedings against a Lloyd's intermediary is required to be served on such intermediary, such process may be served by delivering a copy thereof at the address referred to in subsection (4).

41 Appointment of chief executive officer by Lloyd's intermediaries

Every Lloyd's intermediary other than a Lloyd's intermediary who is a natural person shall appoint in Namibia a person as chief executive officer who shall be a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business as a Lloyd's intermediary, and another person as an alternate chief executive officer to act in Namibia as chief executive officer in the event of the chief executive officer being absent from Namibia or for any reason not being able to act as such officer, and shall notify the Registrar in writing-

- (a) within 30 days after the appointment of such chief executive officer or alternate chief executive officer, as the case may be, of the full names of such chief executive officer or alternate chief executive officer and the address, telephone and, if any, facsimile number of such chief executive officer or alternate chief executive officer at his or her office in Namibia;
- (b) of any change in such particulars, within 30 days after such change.

42 Duties of Lloyd's intermediaries

(1) A Lloyd's intermediary shall keep books and records in respect of all acts performed by him or her, separately-

- (a) in his or her capacity as a Lloyd's intermediary; and
- (b) by virtue of a prior written approval of the Registrar in every particular case.

(2) Every Lloyd's intermediary shall prepare and submit to the Registrar annually, not later than 30 April, in such form as may be determined by the Registrar, a return, audited by an auditor, in respect of all acts performed by him or her in his or her capacity as a Lloyd's intermediary during the last preceding calendar year, including acts performed by him or her by virtue of an approval referred to in subsection (1)(b), containing such particulars as the Registrar may require.

43 Payments to Permanent Secretary

(1) A Lloyd's intermediary shall-

- (a) within two months after each period of three months ending on 31 March, 30 June, 30 September and 31 December of each year, pay to the Permanent Secretary an amount equal to two and a half per cent, or such other percentage as may, subject to the provisions of subsection (2), from time to time be determined by the Minister by notice in the Gazette, of all premiums of whatever nature received by the Lloyd's intermediary in his or her capacity as such intermediary, but excluding premiums received in respect of any act performed by him or her by virtue of an approval referred to in section 42(1)(b), during each such period of three months, less premiums refunded by the Lloyd's intermediary in his or her capacity as such intermediary during such period of three months;
- (b) within 14 days from the date on which the amount referred to in paragraph (a) has been paid, submit to the Registrar, in such form as may be determined by the Registrar, a return, audited by an auditor, containing particulars of all premiums so received, the premiums so refunded, a calculation of the amount so paid and such other information as the Registrar may require, together with a copy of the receipt issued in respect of the amount so paid.

(2) If a Lloyd's intermediary fails to pay an amount referred to in subsection (1)(a) within the period mention therein, such intermediary shall pay interest on such amount at the rate referred to in section 79(2) of the Income Tax Act, 1981 (Act 24 of 1981), in respect of each completed month, reckoned from the date on which the amount became payable, during which such amount or a part thereof remained unpaid.

(3) The provisions of section 83 of the Income Tax Act, 1981, shall apply mutatis mutandis in relation to the collection of any amount or any interest referred to in subsections (1)(a) and (2), respectively.

44 Cancellation of registration of Lloyd's intermediaries and imposition of prohibition on activities of Lloyd's intermediaries

(1) If a person registered in terms of section 40(3) as a Lloyd's intermediary-

- (a) is no longer permitted by the Council of Lloyd's to act as an intermediary for or on behalf of a Lloyd's broker or an underwriter at Lloyd's, the Registrar shall by written notice to such person cancel such person's registration as a Lloyd's intermediary;
- (b) has-
 - (i) furnished any false information in connection with an application for registration as a Lloyd's intermediary;
 - (ii) in his or her capacity as a Lloyd's intermediary made a material misrepresentation to members of the public in connection with the entering into of any policy;

- (iii) failed to comply with a condition subject to which he or she has been registered as a Lloyd's intermediary; or
- (iv) contravened or failed to comply with a provision of this Act,

the Registrar may, subject to the provisions of subsection (2), by written notice to such person cancel such person's registration as a Lloyd's intermediary.

(2) The Registrar shall not cancel the registration of a Lloyd's intermediary under subsection (1)(b) unless the Registrar has previously by written notice given the Lloyd's intermediary concerned an opportunity to show cause within a period specified in the notice, which period shall not be less than 30 days, why such registration should not be cancelled.

(3) If the Council of Lloyd's or the Lloyd's representative at any time fails to comply with a provision of section 36, 37, 38 or 47(2), the Registrar-

- (a) may by notice in the Gazette prohibit Lloyd's intermediaries to perform in their capacities as such intermediaries any act other than to collect outstanding premiums;
- (b) shall, unless the Minister otherwise determines, exercise the powers and perform the duties conferred or imposed upon the Lloyd's representative in terms of this Act, to the extent that such powers and duties relate to the trust account as if the Registrar were the Lloyd's representative,

for so long as the Council of Lloyd's or the Lloyd's representative, as the case may be, fails to comply with any such provision.

(4) The provisions of this section shall not be construed as absolving a Lloyd's intermediary from any liability or obligation incurred by such intermediary before the date on which his or her registration as a Lloyd's intermediary has under subsection (1) been cancelled or he or she has under paragraph (a) of subsection (3) been prohibited to perform any act referred to in that paragraph, as the case may be.

- 45 Application of certain provisions of Act to Lloyd's intermediaries
The provisions of section 23 shall apply mutatis mutandis in relation to a Lloyd's intermediary in respect of any return referred to in sections 42(2) and 43(1)(b) as if the Lloyd's intermediary were a registered insurer and the reference to an auditor in the first-mentioned section were a reference to an auditor contemplated in the last-mentioned two sections.
- 46 Claims against underwriters at Lloyd's
(1) Any claim against an underwriter at Lloyd's arising from a policy entered into by virtue of an act performed by a Lloyd's intermediary shall be cognizable by any competent court in Namibia.
(2) In any action or other proceedings instituted in terms of subsection (1) the Lloyd's representative may be cited as nominal defendant or respondent.
- 47 Payment of certain claims against underwriters at Lloyd's

(1) Any claim against an underwriter at Lloyd's arising from a policy entered into by virtue of an act performed by a Lloyd's intermediary, and any amount payable in terms of section 43, may be paid out of the moneys standing to the credit of the trust account or from any assets referred to in section 37(3)(a) or from any amount due to underwriters at Lloyd's in respect of any act performed by a Lloyd's intermediary in his or her capacity as such intermediary.

(2) The Lloyd's representative shall upon production to him or her-

- (a) in the case of a claim referred to in subsection (1), of a warrant of execution issued under an order of a competent court in respect of such claim;
- (b) in the case of an amount payable in terms of section 43, of a certificate issued by the Registrar that the amount stated therein is due in terms of that section, pay such claim or amount, as the case may be, out of the moneys standing to the credit of the trust account or from any assets referred to in section 37(3)(a) or from any amount due to underwriters at Lloyd's in respect of any act performed by a Lloyd's intermediary in his or her capacity as such intermediary.

PART VI: AMALGAMATION, TRANSFER, JUDICIAL MANAGEMENT AND WINDING-UP OF SHORT-TERM INSURANCE BUSINESS OF REGISTERED INSURERS AND REINSURERS (ss 48-52)

48 Amalgamation of registered insurers and reinsurers and transfer of short-term insurance business

(1) No registered insurer or reinsurer shall-

- (a) amalgamate with-
 - (i) in the case of a registered insurer, one or more other registered insurers;
 - (ii) in the case of a registered reinsurer, one or more other registered reinsurers;
- (b) transfer its short-term insurance business or any class of such business to-
 - (i) in the case of a registered insurer, another registered insurer;
 - (ii) in the case of a registered reinsurer, another registered reinsurer,

unless such amalgamation or transfer, as the case may be, is sanctioned by an order of the High Court.

(2) An application to the High Court for an order sanctioning an amalgamation or transfer, as the case may be, referred to in subsection (1) shall, subject to the provisions of subsection (3), be made by the registered insurers or reinsurers concerned.

(3) Before an application referred to in subsection (2) is made-

- (a) notice of such application shall be published by the registered insurers or reinsurers concerned in the Gazette;

- (b) a statement setting out the nature of the proposed amalgamation or transfer, as the case may be, together with-
 - (i) an abstract containing the terms and conditions of the scheme for the proposed amalgamation or transfer, as the case may be; and
 - (ii) where applicable, copies of the actuarial reports upon which such scheme is founded, including, if so required by the Registrar, a report by an auditor, approved by the Registrar, shall, not later than the date of publication of the notice referred to in paragraph (a), be submitted by the registered insurers or reinsurers concerned to the Registrar and, if so directed by the Registrar, be published in one or more newspapers, as the Registrar may direct; and
 - (c) the scheme for the proposed amalgamation or transfer, as the case may be, together with the actuarial reports, shall be open for inspection, free of charge, by policyholders, shareholders and creditors of the registered insurers or reinsurers concerned at the principal offices of such insurers or reinsurers for a period of not less than 21 days from the date of publication of the notice referred to in paragraph (a).
- (4) A notice referred to in subsection (3)(a) shall-
- (a) set out the nature of the proposed amalgamation or transfer, as the case may be;
 - (b) state that the registered insurers or reinsurers concerned intend to apply to the High Court for an order referred to in subsection (1);
 - (c) state the date and hour when, and the place where, the application will be made; and
 - (d) state the place or places where, and specify the period during which, the documents mentioned in subsection (3)(c) will be open for inspection, which period shall not be less than 21 days.
- (5) The Registrar, or any person representing the Registrar, and any policyholder, shareholder, creditor or other person affected or likely to be affected by a scheme for amalgamation or transfer, as the case may be, is entitled to be heard at the hearing of an application referred to in subsection (2) and he or she may make an application to the Court in connection with any matter relating to such scheme.
- (6) Upon hearing an application referred to in subsection (2), the Court may-
- (a) make an order sanctioning the transaction, either as proposed or with such modifications as the Court may direct; or
 - (b) refuse to make such order.
- (7) A transaction sanctioned by the High Court under subsection (6)(a) shall be binding on all persons and shall-
- (a) have effect notwithstanding anything to the contrary contained in the memorandum of association or articles of association or the regulations or any other rules of any party to the transaction, as the case may be; and

- (b) come into effect in such a manner that the short-term insurance business concerned and the liabilities relating thereto are amalgamated or transferred, as the case may be, upon the same date as that on which, having regard to the completion of all of the procedures referred to in subsection (9), all of the assets of the short-term insurance business concerned become the property of the registered insurer or reinsurer with whom the short-term insurance business concerned has been amalgamated or to whom the short-term insurance business concerned has been transferred, as the case may be.

(8) Where an amalgamation or transfer transaction is sanctioned by the High Court, the amalgamated registered insurer or reinsurer or the registered insurer or reinsurer to whom the short-term insurance business or any class of such business has been transferred, as the case may be, shall, within 90 days from the date of the order of the Court sanctioning such transaction, submit to the Registrar-

- (a) a statement of the assets and of the liabilities of every registered insurer or reinsurer concerned as at the date of the order of the Court sanctioning such transaction, duly certified by its auditor;
- (b) a copy, certified by the Registrar of the Court, of the order of the Court contemplated in subsection (6)(a) and of the scheme for amalgamation or transfer, as the case may be, as sanctioned by the Court; and
- (c) a declaration under the hand of the chairperson of the board of directors of every registered insurer or reinsurer concerned that to the best of his or her knowledge and belief every payment made or to be made to any person whoever by virtue of the amalgamation or transfer, as the case may be, is fully set out in the scheme referred to in paragraph (b) and that no payments other than those so set out have been or are to be made, either in money, policies, bonds, valuable securities or other property or benefits.

(9) Where a registered insurer or reinsurer has in terms of this section amalgamated with any other registered insurer or reinsurer or has transferred its short-term insurance business or any class of such business to any other registered insurer or reinsurer, as the case may be, the Registrar of Deeds and every other officer in charge of an office in which property or a mortgage or other right is registered in the name of or in favour of the first-mentioned insurer or reinsurer, or an appointment of or by the first-mentioned insurer or reinsurer was made, or a licence was issued to or in favour of the first-mentioned insurer or reinsurer, shall, upon production to him or her-

- (a) of a certificate by the Registrar stating that the High Court has sanctioned the amalgamation or transfer, as the case may be; and
- (b) of the title deed, mortgage bond, deed, certificate, letter of appointment, licence or other document in question,

make such endorsement thereon and such entries in his or her registers or other books as may be necessary to effect or record the transfer of the property, mortgage, other right, appointment or licence in question to the amalgamated

short-term insurance business or to the registered insurer or reinsurer to whom the short-term insurance business or any class of such business has been transferred, as the case may be.

(10) At the written request of a registered insurer or reinsurer, the Minister may, if he or she is satisfied that it is advantageous to policyholders and is not contrary to the public interest, exempt, notwithstanding anything to the contrary in any law contained, the registered insurer or reinsurer from any tax, or transfer or stamp duty, or registration, license or other fees, payable upon the effecting or recording of the transfer of any property, mortgage, other right, appointment or license in terms of this section.

- 49 Registered insurers and reinsurers not to be judicially managed or wound up otherwise than in accordance with this Act
No registered insurer or reinsurer shall be placed under judicial management or wound up otherwise than in accordance with the provisions of this Act.
- 50 Determination by Court on application for judicial management or winding-up
(1) An application to the High Court for a judicial management order in respect of a registered insurer or reinsurer or for the winding-up of a registered insurer or reinsurer may be made-
- (a) by the Registrar, with the written approval of the Minister;
 - (b) by the registered insurer or reinsurer itself, with the leave of the Court;
 - (c) by a creditor of the registered insurer or reinsurer, with the leave of the Court.
- (2) The High Court shall not in terms of subsection (1)(b) or (c) grant leave to a registered insurer or reinsurer or to a creditor unless the registered insurer or reinsurer or the creditor, as the case may be, has given security for an amount which in the opinion of the Court is sufficient to satisfy such order as to costs as the Court may be requested to make and-
- (a) in the case of an application by the registered insurer or reinsurer itself, it has established prima facie the desirability for the order such insurer or reinsurer intends to apply for;
 - (b) in the case of an application by a creditor, the creditor satisfies the Court that he or she has been unable to obtain payment of his or her claim after recourse to the ordinary process of law.
- (3) Upon hearing an application referred to in subsection (1), the Court may-
- (a) dismiss the application; or
 - (b) in the case of an application for a judicial management order, order that the registered insurer or reinsurer be placed under judicial management; or
 - (c) in the case of an application for a winding-up order, order that the registered insurer or reinsurer be wound up; or
 - (d) order the Registrar to investigate or cause to be investigated the affairs of the registered insurer or reinsurer in such manner as the Court may direct and to report thereon to the Court, and the Court

may, upon receipt of such a report, dismiss the application or make an order as contemplated in paragraph (b) or (c); and

(e) make such order as to costs as it may deem just and equitable.

(4) In exercising its discretion under subsection (3), the Court shall act primarily in the interest of the owners of policies issued by the registered insurer or reinsurer concerned.

51 Judicial management

(1) An order of the High Court for the placement under judicial management of a registered insurer or reinsurer shall be subject to the provisions of the following subsections.

(2) The Court-

(a) shall appoint a judicial manager, who shall receive such remuneration as the Court may direct, to manage the affairs of the registered insurer or reinsurer, and the Court may at any time terminate that appointment and appoint any other person as judicial manager;

(b) may issue such directions to the judicial manager with regard to his or her functions as such as it may deem necessary.

(3) The judicial manager of a registered insurer or reinsurer appointed in terms of subsection (2)(a) shall-

(a) take over the management of the affairs of the registered insurer or reinsurer, but, except with the leave of the Court, he or she shall issue no further policies;

(b) act under the control of the Court and may at any time apply to the Court for directions as to the manner in which he or she is to manage the affairs of the registered insurer or reinsurer;

(c) furnish the Registrar with such information as the Registrar may require from time to time;

(d) report to the Registrar whenever he or she intends to apply to the Court for directions as contemplated in paragraph (b);

(e) serve on the Registrar a copy of any application which he or she may propose to make to the Court in connection with the management of the registered insurer or reinsurer; and

(f) conduct his or her management as such with the greatest economy possible compatible with efficiency and shall as soon as practicable report to the Court which of the following steps will be the most advantageous to the owners of policies under which the registered insurer or reinsurer is liable:

(i) The transfer of the registered insurer's or reinsurer's obligations and rights under such policies to any other person, whether for the original amounts or benefits insured or for reduced amounts or benefits or otherwise adjusted;

(ii) the carrying on of the short-term insurance business of the registered insurer or reinsurer, whether with or without share capital, and whether the policies under which the

registered insurer or reinsurer is liable shall continue for the original amounts or benefits insured or for reduced amounts or benefits or otherwise adjusted;

- (iii) the winding-up of the registered insurer or reinsurer; or
- (iv) the dealing with policies of one class or classes in one way and with policies of another class or classes in another way.

(4) The Registrar, or any person representing the Registrar, is entitled to be heard at the hearing of an application referred to in subsection (3)(e) and he or she may make an application to the Court in connection with any matter relating to the judicial management.

(5) Upon consideration of the judicial manager's report in terms of subsection (3)(f), the Court may make such order as it considers most advantageous to the policyholders of the registered insurer or reinsurer, and such an order shall be binding on all persons and have effect notwithstanding anything to the contrary contained in the memorandum of association or articles of association or the regulations or any other rules of the registered insurer or reinsurer, as the case may be.

(6) The law relating to the judicial management of companies shall apply mutatis mutandis in relation to the judicial management of a registered insurer or reinsurer in terms of this Act, except in so far as the provisions of such law are inconsistent with any provision of this Act or of a judicial management order made under section 50(3)(b), or with a direction issued by the Court in terms of this section.

52 Winding-up

(1) An order of the High Court for the winding-up of a registered insurer or reinsurer shall be subject to the provisions of the following subsections.

(2) The Court-

- (a) shall appoint a liquidator, who shall receive such remuneration as the Court may direct, to wind up the affairs of the registered insurer or reinsurer, and the Court may at any time terminate that appointment and appoint any other person as liquidator;
- (b) may issue such directions to the liquidator with regard to his or her functions as such as it may deem necessary.

(3) The liquidator of a registered insurer or reinsurer appointed in terms of subsection (2)(a) shall-

- (a) act under the control of the Court and may at any time apply to the Court for directions as to the manner in which he or she is to wind up the affairs of the registered insurer or reinsurer;
- (b) furnish the Registrar with such information as the Registrar may require from time to time;
- (c) report to the Registrar whenever he or she intends to apply to the Court for directions as contemplated in paragraph (a); and
- (d) serve on the Registrar a copy of any application which he or she may propose to make to the Court in connection with the winding-up of the registered insurer or reinsurer.

(4) The Registrar, or any person representing the Registrar, is entitled to be heard at the hearing of an application referred to in subsection (3)(d) and he or she may make an application to the Court in connection with any matter relating to the winding-up of the registered insurer or reinsurer.

(5) Any amount recovered by a liquidator of the registered insurer or reinsurer under a reinsurance contract shall form part of the assets of the estate of the registered insurer or reinsurer and shall be distributable among all the owners of policies issued by the registered insurer or reinsurer, irrespective of whether or not any particular risk or a part thereof was reinsured under such contract.

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

(7) No right or obligation shall, on or after the date of the final winding-up order in respect of a registered insurer or reinsurer, arise or become enforceable under any policy issued by the registered insurer or reinsurer.

(8) The law relating to the winding-up of companies shall apply mutatis mutandis in relation to the winding-up of a registered insurer or reinsurer in terms of this Act, except in so far as the provisions of any such law are inconsistent with any provision of this Act or of a winding-up order made under section 50(3)(c), or with a direction issued by the Court under this section.

PART VII: PROVISIONS GOVERNING THE CARRYING ON OF SHORT-TERM INSURANCE BUSINESS BY INSURANCE AGENTS, INSURANCE BROKERS AND REINSURANCE BROKERS (ss 53-58)

53 Insurance agents, insurance brokers and reinsurance brokers to be registered

(1) No person shall, after the expiry of 90 days from the commencement of this Act, carry on the business of an insurance agent or of an insurance broker or of a reinsurance broker in Namibia unless such person is registered to carry on any such business.

(2) An application for registration as an insurance agent or an insurance broker or a reinsurance broker shall-

- (a) be made to the Registrar in such manner and form as may be determined by the Registrar; and
- (b) be accompanied by-
 - (i) such documents and information as the Registrar may require in the particular case; and
 - (ii) the prescribed application fees.

(3) If the Registrar, when considering an application for registration referred to in subsection (2), is satisfied that-

- (a) the applicant's registration will not be contrary to the public interest; and
- (b) the applicant-

- (i) is not seeking to be registered under a name identical to the name closely resembling the name of any such person as to be mistaken for it; and
- (ii) is not an un-rehabilitated insolvent; and
- (iii) has not been convicted by any court of any offence which the applicant was imprisoned without the option of a fine; and
- (iv) has, in the case of an application for registration as an insurance broker or a reinsurance broker, not entered into an agreement relating to the preferential offer of short-term insurance business with any other person carrying on short-term insurance business so as to impair his or her impartiality in placing short-term insurance business,

the Registrar shall, subject to the provisions of section 54(1), if applicable, register the applicant as an insurance agent or an insurance broker or a reinsurance broker, as the case may be, and issue to the applicant a certificate of registration in a form determined by the Registrar.

- 54 Insurance brokers and reinsurance brokers to make **deposit with Treasury** and to maintain professional indemnity insurance policy
- (1) No person shall be registered as an insurance broker or a reinsurance broker unless such person has, subject to such conditions as may be determined by the Registrar, deposited with the Treasury a bank guarantee, or other securities approved by the Registrar having an aggregate value, of not less than N\$25 000 or such greater amount as may be determined by the Registrar in any particular case.
- (2) Every insurance broker and reinsurance broker shall have and maintain a professional indemnity insurance policy-
- (a) with a limit of liability of not less than-
 - (i) N\$500 000; or
 - (ii) 50 per cent of his or her brokerage income from short-term insurance commission during his or her last preceding financial year,

whichever is the greater amount; and
 - (b) carrying an excess of not more than 10 per cent of the sum insured.
- (3) Every policy in respect of professional indemnity insurance contemplated in subsection (2) shall be issued by a registered insurer in Namibia.
- 55 Insurance brokers and reinsurance brokers to be members of controlling body
- (1) Every insurance broker and reinsurance broker shall, within six months after the commencement of this Act, become and remain a member of a controlling body for insurance and reinsurance brokers (hereinafter in this section referred to as a controlling body) registered with the Registrar.
- (2) An application by a controlling body for registration contemplated in subsection (1) shall-
- (a) be made in such manner and form as may be determined by the Registrar; and

(b) be accompanied by the rules of the controlling body applying for registration.

(3) The Registrar shall not register a controlling body unless its rules have been approved by him or her.

(4) No addition to or alteration of the rules referred to in subsection (3) shall be valid unless such addition or alteration has been approved by the Registrar.

56 Insurance agents, insurance brokers and reinsurance brokers to submit annual returns

Every insurance agent, insurance broker and reinsurance broker shall-

(a) keep proper accounts of, and financial information relating to, his or her short-term insurance business; and

(b) annually, within six months after the end of his or her financial year, submit to the Registrar in such form as may be determined by the Registrar, a statement containing such particulars of any short-term insurance business solicited or negotiated by him or her and such other information as the Registrar may require.

57 Cancellation of registration of insurance agents, insurance brokers and reinsurance brokers

(1) If the Registrar is satisfied that an insurance agent or an insurance broker or a reinsurance broker-

(a) does no longer satisfy one or more of the requirements for registration specified in section 53(3); or

(b) has-

(i) in his or her capacity as an insurance agent or an insurance broker or a reinsurance broker made a material misrepresentation to members of the public in connection with the entering into of any policy;

(ii) failed to comply with a condition subject to which he or she has been registered as an insurance agent or an insurance broker or a reinsurance broker; or

(iii) contravened or failed to comply with a provision of this Act,

the Registrar may by written notice to the insurance agent or insurance broker or reinsurance broker inform the insurance agent or insurance broker or reinsurance broker that he or she intends to cancel the insurance agent's or insurance broker's or reinsurance broker's registration and in such notice state the grounds for such intended action.

(2) An insurance agent or an insurance broker or a reinsurance broker may, within 30 days from the date of receipt of a notice referred to in subsection (1), make written representations to the Registrar in connection with the matter.

(3) After consideration of the representations referred to in subsection (2) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may, notwithstanding the provisions of subsection (4)-

- (a) if he or she is satisfied that it is just and equitable to do so in the particular case, by written notice to the insurance agent or insurance broker or reinsurance broker withdraw the notice referred to in subsection (1); or
- (b) by written notice to the insurance agent or insurance broker or reinsurance broker cancel the insurance agent's or insurance broker's or reinsurance broker's registration with effect from a date specified in that notice.

(4) Subject to the provisions of subsection (5), the Registrar may, at the written request of an insurance agent or an insurance broker or a reinsurance broker or of the liquidator, trustee or judicial manager of the insurance agent or insurance broker or reinsurance broker, cancel the insurance agent's or insurance broker's or reinsurance broker's registration.

(5) The Registrar shall not cancel the registration of an insurance agent or an insurance broker or a reinsurance broker under subsection (4) unless the Registrar is satisfied that the insurance agent or insurance broker or reinsurance broker has made proper arrangements for ensuring that his or her liabilities relating to the business in respect of which cancellation of registration is required, will be met.

58 Application of certain provisions of Act to insurance agents, insurance brokers and reinsurance brokers

The provisions of sections 18, 65 and 66 shall apply mutatis mutandis in relation to insurance agents, insurance brokers and reinsurance brokers in so far as they are not inconsistent with the provisions of this Part.

PART VIII: MISCELLANEOUS PROVISIONS (ss 59-74)

59 Restriction upon use of certain names

No person other than a registered insurer, reinsurer, insurance agent, insurance broker, reinsurance broker, Lloyd's intermediary or Lloyd's broker shall carry on business under any name or description which includes the word-

- (a) "assurer", "assurance", "insure", "insurer", "insurance", "Lloyd's", "underwriter" or "underwriting"; or
- (b) "advisor", "agent", "broker", "consultant", "guarantee" or "indemnity", when used in conjunction or association with the word "assurance" or "insurance",

or a literal translation or any derivative or abbreviation of any such word.

60 Prohibition of certain conditional transactions

(1) No person shall lend or offer to lend money or render or offer to render any service or lease or offer to lease goods or grant or offer to grant credit to any person (hereinafter in this section referred to as the debtor) or maintain or offer to maintain any loan of money or the rendering of any service or the lease of any goods or the granting of credit on condition that the debtor or any other person shall take out, renew, vary or cancel any policy unless-

- (a) where for the purposes of securing a debt or other obligation arising from the transaction, it is reasonable to require the debtor or other person concerned, having regard to-
 - (i) the creditworthiness of the debtor;
 - (ii) any other security furnished or offered by the debtor; and
 - (iii) any other relevant consideration,to take out, renew, vary or cancel a policy of the nature and amount of the policy in question; and
- (b) where it is required that a new policy is to be taken out-
 - (i) to insure immovable property which has been or is to be mortgaged to secure a debt or other obligation, the premiums payable under the policy are reasonable in relation to premiums generally charged in respect of any such policy: Provided that a certificate from the Registrar in which he or she states that in his or her opinion the premiums payable under the policy are reasonable, shall for the purposes of this subparagraph be sufficient proof of the reasonableness of such premiums; or
 - (ii) for any other purpose, or if the premiums payable under the policy are considered not to be reasonable as contemplated in subparagraph (i), the debtor is informed that he or she has a free choice in respect of the registered insurer with, and the insurance agent or insurance broker through, whom the policy is to be taken out.

(2) If any person other than the debtor has taken out a policy to which the provisions of subsection (1) apply, he or she shall furnish a copy thereof to the debtor within 14 days after being requested therefore in writing by the debtor.

(3) Any person who contravenes or fails to comply with a provision of subsection (1) or (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

61 Registrar's certificate on certain copies

Any document purporting to be a copy of or an extract from a document deposited in the office of the Registrar, and certified by the Registrar as a true copy or extract, shall be admissible in evidence in any court or proceedings without further proof or production of the original document.

62 Inspection of documents kept by Registrar

Any person may, upon payment of the prescribed fees, inspect or obtain a copy of or make an extract from any document submitted to the Registrar in terms of section 14, 15 or 22.

63 Miscellaneous provisions relating to domestic and other policies

(1) Notwithstanding anything to the contrary contained in any domestic policy or any document relating to such policy, any such policy issued before or after the

commencement of this Act shall not be invalidated, and the obligation of a registered insurer or reinsurer there under shall not be excluded or limited, and the obligations of the owner thereof shall not be increased, on account of any representation made to the registered insurer or reinsurer which is not true, whether or not such representation has been warranted to be true, unless the incorrectness of such representation is of such a nature as to be likely to have materially affected the assessment of the risk under the policy in question at the time of its issue or of any reinstatement or renewal thereof.

(2) A domestic policy issued by a registered insurer or reinsurer before or after the commencement of this Act shall not be invalidated on account of the non-compliance by the registered insurer or reinsurer with a provision of any law applying to that policy.

- 64 Publication of statements of authorized, subscribed and paid-up capital
No registered insurer or reinsurer shall publish any statement or issue any document on which is printed any statement-
- (a) of its authorized capital, unless the statement also sets out the amount of its subscribed capital and paid-up capital; or
 - (b) of its subscribed capital, unless the statement also sets out the amount of its paid-up capital.
- 65 Prohibition of transacting certain business with or securing certain business for unregistered concern
- (1) No person shall transact short-term insurance business with any person who is not a registered insurer or reinsurer unless an exemption has been granted to such last-mentioned person by the Registrar under section 2(2).
- (2) No person shall induce or attempt to induce any person to enter into a domestic policy with a person who is not a registered insurer or reinsurer or to make an application to enter into a domestic policy with such last-mentioned person.
- 66 Misleading, false and deceptive statements
- (1) Any person who-
- (a) makes any statement, promise or forecast knowing it to be misleading, false or deceptive; or
 - (b) willfully conceals any material facts; or
 - (c) negligently makes any statement, promise or forecast which is misleading, false or deceptive,
- for the purposes of inducing or attempting to induce any other person, whether or not such other person is the person to whom the statement, promise or forecast was made or from whom the material facts were concealed-
- (i) to enter into or offer to enter into or to refrain from entering into or offering to enter into any domestic policy with a registered insurer or reinsurer; or

(ii) to exercise or refrain from exercising any rights under such policy, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Where any person has been convicted in terms of subsection (1)-

- (a) the registered insurer or reinsurer concerned shall not be entitled to enforce any such policy which a person was induced to enter into unless so requested in writing by the person so induced; and
- (b) the person who was induced to enter into such policy shall be entitled to cancel such policy and to recover from the registered insurer or reinsurer concerned any money or other property paid or transferred by him or her under such policy, together with such compensation for any loss sustained by him or her as a result of such payment or transfer as he or she and the registered insurer or reinsurer concerned may agree upon or a competent court may determine, but if the person so induced exercises his or her right of recovery he or she shall not be entitled to any benefits under such policy and shall repay any such benefits received by him or her; and
- (c) the person who was induced to exercise or refrain from exercising any rights under such policy shall, within 90 days after the conviction, be entitled to nullify the action he or she was induced to take and to exercise or refrain from exercising his or her said rights in such manner as he or she may determine regardless of any time limit that may have existed in respect of the exercise of those rights.

67 Restriction upon acquisition of shares or other interest

(1) No acquisition of shares or any other interest in the short-term insurance business of a registered insurer or reinsurer resulting in the holding of 25 per cent or more of the value of all the shares or other interest in such business shall be of any force and effect unless that acquisition has previously been approved by the Registrar in writing.

(2) Except with the prior written approval of the Registrar-

- (a) no person shall directly or indirectly acquire control of a registered insurer or reinsurer;
- (b) no insurance broker or reinsurance broker shall acquire or hold shares in the short-term insurance business of a registered insurer or reinsurer.

(3) Where any person has acquired control of a registered insurer or reinsurer without the prior written approval of the Registrar, the Registrar may, notwithstanding the provisions of subsection (2), approve the acquisition of control subject to such conditions with regard to the compulsory disposition of that person's shareholding or other interest or the exercising of that person's voting rights as the Registrar may deem necessary.

68 General offences and penalties

Any-

- (a) person who-
 - (i) contravenes or fails to comply with a provision of section 2, 23(4), (6) or (7), 24(3), 37(5), 40(1), 53(1), 59, 65 or 67(2); or
 - (ii) prepares or issues any document required for the purposes of this Act, or participates in the preparation or issuing of any such document, knowing such document to be false in any material respect; or
- (b) registered insurer or reinsurer which-
 - (i) contravenes or fails to comply with a provision of section 3, 17(1), 18(1) or (2), 19(1), 22(1)(a), 23(1), 24(1), 25, 30(1), 31, 32, 34(1), 48(1) or 64; or
 - (ii) fails to observe any prohibition imposed upon such insurer or reinsurer under a provision of this Act; or
- (c) Lloyd's representative who contravenes or fails to comply with a provision of section 23(1) or 37(2), (3)(c) or (5); or
- (d) Lloyd's intermediary who-
 - (i) contravenes or fails to comply with a provision of section 23(1) or 42(1); or
 - (ii) fails to observe any prohibition imposed upon such intermediary under a provision of this Act; or
- (e) insurance agent who contravenes or fails to comply with a provision of section 18(1) or (2); or
- (f) insurance broker or reinsurance broker who contravenes or fails to comply with a provision of section 18(1) or (2), 54(2) or 55,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$150 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

69 Penalty for failure to submit certain documents or to furnish certain information

(1) Any person who fails-

- (a) to submit or furnish to the Registrar any statement, report, return or other document or information; or
- (b) to notify the Registrar of any name, address, change of name or address, date, appointment, termination of appointment or other particulars,

in accordance with a requirement of this Act within the period determined by or under this Act or, if that period has been extended by the Registrar under section 7, within the extended period, shall be liable to a fine of N\$1 000 for each day during which such failure continues.

(2) Any amount of penalty payable in terms of subsection (1) shall constitute a debt due to the State by the person concerned and may be recovered by the Registrar by means of proceedings instituted in any competent court.

(3) Notwithstanding the provisions of subsections (1) and (2), the Registrar may waive the payment of or refund the whole or any part of a fine payable in terms of subsection (1) if the Registrar is satisfied that the failure of the person concerned to comply with a requirement contemplated in subsection (1) was not due to willful conduct or the want of reasonable care on the part of such person.

(4) In this section "person" includes a registered insurer, reinsurer, insurance agent, insurance broker, reinsurance broker, Lloyd's representative, Lloyd's intermediary and Lloyd's broker.

70 Penalty for failure to comply with certain financial requirements

(1) A registered insurer or reinsurer which fails to comply with a provision of-

- (a) section 20 in that the amount of its margin of solvency falls short of that required in terms of that section; or
- (b) section 26 or 27 in that the amount of its assets falls short of that required in terms of any of those sections,

shall be liable to an immediate fine of N\$25 000 or one per cent of the amount of the shortfall, whichever is the greater amount, and in addition thereto to a fine of N\$25 000 or one per cent of the amount of the shortfall for each month or part of a month, reckoned from the end of the financial year during which the shortfall occurred until the date on which the auditor of the registered insurer or reinsurer issues a certificate to the effect that the shortfall has been remedied, during which the shortfall continues to exist, whichever is the greater amount.

(2) Any amount of penalty payable in terms of subsection (1) shall constitute a debt due to the State by the registered insurer or reinsurer concerned and may be recovered by the Registrar by means of proceedings instituted in any competent court.

(3) Notwithstanding the provisions of subsections (1) and (2), the Registrar may waive the payment of or refund the whole or any part of a fine payable in terms of subsection (1) if the Registrar is satisfied that it will be in the interests of policyholders to do so.

(4) A registered insurer or reinsurer which, while a shortfall contemplated in subsection (1) exists in respect of its short-term insurance business, pays any dividend to its shareholders shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$150 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

71 Regulations

(1) The Minister may, after consultation with the advisory committee, make regulations not inconsistent with the provisions of this Act relating to-

- (a) the periods within which policies and amended policies are to be issued;
- (b) the payment by insurance agents, insurance brokers and reinsurance brokers and by Lloyd's intermediaries to registered

- insurers and reinsurers and to underwriters at Lloyd's of premiums received by such insurance agents, insurance brokers, reinsurance brokers and Lloyd's intermediaries in respect of short-term insurance business placed with registered insurers and reinsurers and with underwriters at Lloyd's;
- (c) the payment of maximum levels of remuneration by registered insurers and reinsurers and by underwriters at Lloyd's to insurance agents, insurance brokers, reinsurance brokers and Lloyd's intermediaries and to any other person for rendering services towards effecting, maintaining or servicing any short-term insurance policy;
 - (d) the returns and information to be supplied by insurance agents, insurance brokers and reinsurance brokers to persons on whose behalf such insurance agents, insurance brokers and reinsurance brokers have placed short-term insurance business with registered insurers and reinsurers;
 - (e) the regulation and control of methods of obtaining or negotiating short-term insurance business;
 - (f) the prohibition of certain classes of differentiation, the giving of inducements or the granting of credit for premiums in respect of policies;
 - (g) the classes of business which shall be deemed not to be short-term insurance business for the purposes of this Act;
 - (h) the manner in which any amount, security or bank guarantee deposited with the Treasury is to be dealt with, including the payment of interest accrued to such deposit;
 - (i) the carrying on of short-term insurance business by Lloyd's intermediaries;
 - (j) limiting the amount which and the extent to which a registered insurer and reinsurer may invest-
 - (i) outside Namibia;
 - (ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;
 - (k) any matter which in terms of this Act is required or permitted to be prescribed; and
- (1) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.
 - (2) A regulation made under subsection (1) may prescribe a penalty, not exceeding that prescribed by sections 68 and 69, for any contravention of or failure to comply with any provision thereof.

(1) Subject to the provisions of subsection (2), the laws mentioned in Schedule 3 are hereby repealed to the extent indicated in the third column thereof.

(2) Any policy relating to short-term insurance business issued and any other thing done under a provision of any law repealed by subsection (1), and which could have been issued or done under a provision of this Act, shall be deemed to have been issued or done under the corresponding provision of this Act.

73 Interpretation of certain expressions

Subject to the provisions of this Act, a reference in any law in force immediately before the commencement of this Act to-

- (a) an insurer registered in terms of any law repealed by this Act, shall be construed as a reference to a registered insurer registered in terms of this Act;
- (b) a reinsurer registered in terms of any law repealed by this Act, shall be construed as a reference to a reinsurer registered in terms of this Act;
- (c) the registrar of insurance, shall be construed as a reference to the Registrar of Short-term Insurance designated in terms of section 4;
- (d) an auditor appointed in terms of any law repealed by this Act, shall be construed as a reference to an auditor referred to in section 23(1); and
- (e) a valuator appointed in terms of any law repealed by this Act, shall be construed as a reference to a valuator referred to in section 24(1).

74 Short title and commencement

This Act shall be called the Short-term Insurance Act, 1998, and shall come into operation on a date to be fixed by the Minister by notice in the Gazette.

Schedule 1: CLASSES OF SHORT-TERM INSURANCE BUSINESS

(Section 13(1))

1 Fire

- (a) Fire and natural forces
Effecting and carrying out short-term insurance contracts against loss of or damage to property other than property referred to in items 2(a), 3(a), 4(a), 6(d) and 7(a), (b), (c) and (d) as a result of fire or natural forces.
- (b) Miscellaneous financial loss
Effecting and carrying out short-term insurance contracts against any of the following risks, namely-
 - (i) risks of loss to the person insured attributable to interruptions of the carrying on of business by such person or to reduction of the scope of business so carried on;
 - (ii) risks of loss to the person insured attributable to the incurring of unforeseen expenses;

- (iii) risks neither falling within the ambit of sub-item (b)(i) or (ii) nor being of such a kind that the carrying on of the business of effecting and carrying out short-term insurance contracts against the risks constitutes the carrying on of short-term insurance business of some other class.

2 Marine

(a) Ships

Effecting and carrying out short-term insurance contracts upon vessels used at sea or on inland waters or upon the machinery, tackle, furniture, equipment or cargo of such vessels.

(b) Liability for ships

Effecting and carrying out short-term insurance contracts against damage arising from or in connection with the use of vessels at sea or on inland waters, including third party risks and carriers liability, and against the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including costs of litigation).

3 Aviation

(a) Aircraft

Effecting and carrying out short-term insurance contracts upon aircraft or upon the machinery, tackle, furniture or equipment of the aircraft.

(b) Liability for aircraft

Effecting and carrying out short-term insurance contracts against damage arising from or in connection with the use of aircraft, including third party risks, carriers liability and aerodrome liability, and against the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including costs of litigation).

4 Vehicles

(a) Land vehicles

Effecting and carrying out short-term insurance contracts against loss of or damage to vehicles used on land, including motor vehicles, but excluding railway rolling stock.

(b) Liability for motor vehicles

Effecting and carrying out short-term insurance contracts against damage arising from or in connection with the use of motor vehicles other than railway rolling stock on land, including third party risks, carrier's liability and the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including cost of litigation).

5 Guarantee

Effecting and carrying out guarantee insurance business, including-

- (a) contracts of short-term insurance against risks of loss to the person insured attributable to such person having to perform contracts of guarantee entered into by him or her; and

- (b) contracts of fidelity bonds, performance bonds, administration bonds, bail bonds or custom bonds or similar contracts of guarantee.

6 Miscellaneous

- (a) Personal accident
Effecting and carrying out short-term insurance contracts providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured-
 - (i) sustaining injury as a result of any accident or an accident of a specific class;
 - (ii) dying as a result of any accident or an accident of a specific class;
 - (iii) becoming incapacitated as a result of any disease or a disease of a specific class, including contracts relating to industrial injury and occupational disease, but excluding contracts referred to in sub-item (b).

- (b) Sickness
Effecting and carrying out short-term insurance contracts providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of loss to the person insured attributable to sickness or infirmity.

- (c) General liability
Effecting and carrying out short-term insurance contracts against risks other than risks referred to in items 2(b), 3(b) and 4(b) of the person insured incurring liability to third parties.

- (d) Damage to property
Effecting and carrying out short-term insurance contracts against loss of or damage to property other than property referred to in items 1(a), 2(a), 3(a), 4(a), 6(e) and 7(a), (b), (c) and (d) as a result of any event.

- (e) Goods in transit
Effecting and carrying out short-term insurance contracts against loss of or damage to merchandise, baggage or any other goods in transit by any means of conveyance, excluding conveyance referred to in item 2(a).

- (f) Credit
Effecting and carrying out short-term insurance contracts against risks of loss to the person insured attributable to the insolvency of any debtor of such person or from the failure (otherwise than through insolvency) of any such debtor to pay his or her debt when due and payable.

- (g) Railway rolling stock

Effecting and carrying out short-term insurance contracts against loss of or damage to railway rolling stock.

- (h) Legal expenses
Effecting and carrying out short-term insurance contracts against risks of loss to the person insured attributable to the incurring of legal costs (including costs of litigation).
- (i) Expropriation and confiscation of property
Effecting and carrying out short-term insurance contracts against loss of or damage to property or risks of loss as a result of expropriation or confiscation.

7 Personal

Effecting and carrying out short-term insurance contracts primarily designed to cover the interests of any natural person against-

- (a) loss of or damage to property other than property referred to in sub-items (b) and (d) as a result of fire, explosion, storm, water and certain natural forces, excluding the risks of riot, strike, war and nuclear energy;
- (b) loss of or damage to any motor vehicle used on land, including liability risks arising from the use of such vehicle, third party risks, passengers liability and the risk of pecuniary loss to the person insured attributable to the incurring of legal costs (including costs of litigation);
- (c) loss of or damage to property other than property referred to in sub-items (b) and (d) as a result of any event other than those mentioned in sub-item (a);
- (d) loss of or damage to specified property other than property referred to in sub-items (a) and (c) as a result of any accidental incident;
- (e) risks other than risks referred to in sub-item (b) of the person insured incurring liability to third parties;
- (f) risks of the person insured-
 - (i) sustaining injury as a result of any accident or an accident of a specific class;
 - (ii) dying as a result of any accident or an accident of a specific class;
 - (iii) becoming incapacitated as a result of any accident or disease and providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both).

8 Co-insurance business

Effecting and carrying out short-term co-insurance contracts in respect of one or more of the other classes of short-term insurance business specified in this Schedule.

Schedule 2: KINDS OF ASSETS TO BE HELD BY REGISTERED INSURERS AND REINSURERS

(Section 27(2))

1. Cash on hand in a currency which is legal tender in Namibia.
2. A credit balance in a current or savings account with, or a deposit (including a negotiable deposit) accepted by, a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act 23 of 1965), or a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act 2 of 1986), or money market instruments in terms of which such banking institution or building society is liable, including the paid-up shares of a building society or deposits in the Post Office Savings Bank.
3.
 - (a) Bills, bonds or securities issued by or loans to the Government of Namibia.
 - (b) Bills, bonds, securities or loans guaranteed by the Government of Namibia.
4. Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by any statutory body or local authority in Namibia approved by the Registrar.
5. Bills, bonds or securities issued by or loans to any institution in Namibia, which bills, bonds, securities or loans the Registrar has approved subject to such conditions as he or she may determine, and also bills, bonds or securities issued by or loans to an institution, which institution the Registrar has likewise approved.
6. Bills, bonds or securities issued by the government of or any local authority in a country other than Namibia which the Registrar has approved subject to such conditions as he or she may determine, and also bills, bonds or securities issued by any institution in such an approved country, which institution the Registrar has likewise approved.
7. Loans to and non-convertible debentures of associates and associated companies.
8. Loans or advances on the sole security of domestic policies under which a registered insurer or reinsurer is liable.
9. Outstanding premiums (including premiums debited to insurance agents, insurance brokers or reinsurance brokers) in respect of domestic policies under which a registered insurer or reinsurer is liable and which have been outstanding for more than four months since the date on which they became due and payable.
10. Claims secured-
 - (a) by mortgage bonds on immovable property; or
 - (b) by listed or unlisted debentures, but excluding convertible debentures, in Namibia.
11. Any other secured claims against companies or other associations incorporated in Namibia or natural persons resident in Namibia.
12. Any stocks or shares in any company, banking institution, building society or other institution incorporated in Namibia in terms of the laws of Namibia or units in a unit trust scheme as defined in section 1 of the Unit Trust Control Act, 1981 (Act 54 of 1981).
13. Immovable property in Namibia.

14. Motor vehicles, furniture and office equipment, including computer equipment, used by a registered insurer or reinsurer in the course of its business in Namibia.
15. Such other assets as the Registrar may approve subject to such conditions as he or she may determine.

Schedule 3: LAWS REPEALED

(Section 72(1))

| No. and year of law | Short title | Extent of repeal |
|---------------------|---|---|
| Act 27 of 1943 | Insurance Act, 1943 | The whole, in so far as it relates to short-term insurance business. |
| Act 19 of 1945 | Insurance (Amendment) Act, 1945 | The whole, in so far as it relates to short-term insurance business. |
| Act 73 of 1951 | Insurance (Amendment) Act, 1951 | The whole, in so far as it relates to short-term insurance business. |
| Act 24 of 1956 | Pension Funds Act, 1956 | Section 39, in so far as it relates to short-term insurance business. |
| Act 25 of 1956 | Friendly Societies Act, 1956 | Section 50, in so far as it relates to short-term insurance business. |
| Act 79 of 1959 | Insurance Amendment Act, 1959 | The whole, in so far as it relates to short-term insurance business. |
| Act 10 of 1965 | Insurance Amendment Act, 1965 | The whole, in so far as it relates to short-term insurance business. |
| Act 41 of 1966 | Insurance Amendment Act, 1966 | The whole, in so far as it relates to short-term insurance business. |
| Act 65 of 1968 | Financial Institutions Amendment Act, 1968 | Sections 1 to 3, inclusive, in so far as they relate to short-term insurance business. |
| Act 39 of 1969 | Insurance Amendment Act, 1969 | The whole, in so far as it relates to short-term insurance business. |
| Act 23 of 1970 | Financial Institutions Amendment Act, 1970 | Section 1, in so far as it relates to short-term insurance business. |
| Act 75 of 1970 | Second Financial Institutions Amendment Act, 1970 | Section 1, in so far as it relates to short-term insurance business. |
| Act 91 of 1972 | Financial Institutions Amendment Act, 1972 | Sections 1 to 4, inclusive, in so far as they relate to short-term insurance business. |
| Act 101 of 1976 | Financial Institutions Amendment Act, 1976 | Sections 1 to 15, inclusive, in so far as they relate to short-term insurance business. |
| Act 94 of 1977 | Financial Institutions Amendment Act, 1977 | Sections 1 to 8, inclusive, in so far as they relate to short-term insurance business. |
| Act 80 of 1978 | Financial Institutions Amendment Act, 1978 | Sections 1 to 6, inclusive, in so far as they relate to short-term insurance business. |
| Act 103 of 1979 | Financial Institutions Amendment Act, 1979 | Sections 1 to 12, inclusive, in so far as they relate to short-term insurance business. |

Act 99 of 1980 Financial Institutions Amendment Act, 1980 Sections 1 to 22, inclusive, in so far as they relate to short-term insurance business.

Act 36 of 1981 Financial Institutions Amendment Act, 1981 Sections 1 to 4, inclusive, in so far as they relate to short-term insurance business.

Act 82 of 1982 Financial Institutions Amendment Act, 1982 Sections 1 and 2, in so far as they relate to short-term insurance business.

Act 86 of 1984 Financial Institutions Amendment Act, 1984 Sections 1 to 11, inclusive, in so far as they relate to short-term insurance business.

Act 106 of 1985 Financial Institutions Amendment Act, 1985 Sections 1 to 9, inclusive, in so far as they relate to short-term insurance business.

Act 50 of 1986 Financial Institutions Amendment Act, 1986 Sections 1 to 8, inclusive, in so far as they relate to short-term insurance business.

Act 51 of 1988 Financial Institutions Amendment Act, 1988 Sections 1 and 2, in so far as they relate to short-term insurance business.

Act 53 of 1989 Financial Institutions Amendment Act, 1989 Sections 1 to 7, inclusive, in so far as they relate to short-term insurance business.

Act 54 of 1989 Financial Institutions Amendment Act, 1989 Sections 1 to 19, inclusive, in so far as they relate to short-term insurance business.