

LONG-TERM INSURANCE ACT 5 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
Long-term Insurance Amendment Act 2 of 2011

ACT

To regulate the carrying on of long-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 long-term insurance business
- 3 Limitation of insurance business and policies

PART II
ADMINISTRATION OF ACT

- 4 Registrar of long-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 LONG-TERM INSURANCE BUSINESS AND REGISTRATION AND
CANCELLATION OF REGISTRATION OF INSURERS AND REINSURERS

- 13 Classes of long-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 LONG-TERM INSURANCE BUSINESS

- 18 Use and change of registered name
- 19 Principal office and principal officer
- 20 Capital and reserves
- 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 long-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 unmaturing domestic policy liabilities

PART V
AMALGAMATION, TRANSFER, JUDICIAL MANAGEMENT AND WINDING-UP OF LONG-TERM
INSURANCE BUSINESS OF REGISTERED INSURERS AND REINSURERS

- 36 Amalgamation of registered insurers and reinsurers and transfer of long-term insurance business
- 37 Registered insurers and reinsurers not to be judicially managed or wound up otherwise than in accordance with this Act
- 38 Determination by Court on application for judicial management or winding-up
- 39 Judicial management
- 40 Winding-up
- 41 Application of certain laws to winding-up

PART VI
SPECIAL PROVISIONS RELATING TO VARIOUS POLICIES

- 42 Certain minors may effect life policies

- 43 Life policies effected by married persons
- 44 Special provision relating to persons married in community of property
- 45 Life policy on own life: protection afforded during life
- 46 Life policy on own life: protection afforded on death
- 47 Protection afforded in respect of life policies ceded to or effected in favour of spouses or children
- 48 Selection for realization of life policies in respect of which protection is afforded
- 49 Partial realization of life policies in respect of which protection is afforded
- 50 Provision relating to life policies ceded or trust policies not kept up
- 51 Provisions relating to life policies ceded or premiums paid with intent to benefit someone at expense of creditors
- 52 Application of certain provisions of Act to funeral policies
- 53 Provisions relating to sinking fund policies
- 54 Miscellaneous provisions relating to domestic and other policies

PART VII

PROVISIONS GOVERNING THE CARRYING ON OF LONG-TERM INSURANCE BUSINESS BY INSURANCE AGENTS, INSURANCE BROKERS AND REINSURANCE BROKERS

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

PART VIII

MISCELLANEOUS PROVISIONS

- 61 Restriction upon use of certain names
- 62 Prohibition of certain conditional transactions
- 63 Registrar's certificate on certain copies
- 64 Inspection of documents kept by Registrar
- 65 Publication of statements of authorized, subscribed and paid-up capital
- 66 Prohibition of transacting certain business with or securing certain business for unregistered concern

- 67 Misleading, false and deceptive statements
 - 68 Restriction upon acquisition of shares or other interest
 - 69 General offences and penalties
 - 70 Penalty for failure to submit certain documents or to furnish certain information
 - 71 Penalty for failure to comply with certain financial requirements
 - 72 Regulations
 - 73 Repeal of laws, and saving
 - 74 Interpretation of certain expressions
 - 75 Short title and commencement
- Schedule 1 - Kinds of Assets to be Held by Registered Insurers and Reinsurers
- Schedule 2 - 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 Long-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;

"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;

"disability event" means the event of the functional ability of the mind or body of a person or an unborn becoming impaired;

"disability insurance business" means the business of providing or undertaking to provide policy benefits under disability policies;

"disability policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event, and includes a reinsurance policy in respect of such a contract;

"domestic policy" means a policy issued in Namibia and which is payable in Namibia in the currency of Namibia, and includes a policy which was issued anywhere by an existing insurer in the course of carrying on long-term insurance business in Namibia-

- (a) on or after 21 March 1990 but before the commencement of this Act, other than such a policy in respect of which the owner thereof has before such commencement in writing requested the existing insurer concerned that it not be made payable in Namibia in the currency of Namibia; or
- (b) before 21 March 1990 and which policy has after the date of issue thereof been made payable in Namibia in the currency of Namibia at the request of the owner thereof;

"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 instalment of a premium, the commencement date of the period in respect of which the instalment is payable;

"existing insurer" means a person who at any time before the commencement of this Act carried on long-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;

"fund" means-

- (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act 25 of 1956);
- (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act 24 of 1956);
- (c) a medical aid fund registered under the Medical Aid Funds Act, 1995 (Act 23 of 1995);
- (d) a permanent fund established for the purposes of providing benefits to its members in the event of sickness, accident or unemployment, or of providing benefits to surviving spouses, children, dependants or nominees of deceased members, or mainly for these purposes; or
- (e) any other prescribed person, arrangement or business;

"fund insurance business" means the business of providing or undertaking to provide policy benefits under fund policies;

"fund policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purposes of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund, and includes a reinsurance policy in respect of such a contract;

"funeral insurance business" means the business of providing or undertaking to provide policy benefits under funeral policies;

"funeral policy" means a contract in terms of which a person, in return for a premium, undertakes to provide on the death of a particular person policy benefits, not exceeding such amount as may be prescribed, consisting mainly of the provision of a funeral for the deceased person or the granting to another person of some other non-monetary benefit, whether or not the policy provides for-

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

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

"health event" means an event relating to the health of the mind or body of a person or an unborn;

"health insurance business" means the business of providing or undertaking to provide policy benefits under health policies;

"health policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, and includes a reinsurance policy in respect of such a contract;

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

- (a) solicits long-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 long-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 comprises commission;

"life event" means the event of the life of a person or an unborn-

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

"life insurance business" means the business of providing or undertaking to provide policy benefits under life policies;

"life policy" means a contract in terms of which a person, in return for a premium, undertakes to-

- (a) provide policy benefits upon, and solely for the reason of, a life event; or
- (b) pay an annuity for a period,

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

"long-term insurance business" means the business of providing or undertaking to provide policy benefits under long-term policies, but does not include-

- (a) the activities of an association of persons established for the purposes of rendering aid to its members or their dependants, commonly called a friendly society, which is registered under the Friendly Societies Act, 1956 (Act 25 of 1956), or which is exempted in terms of section 3(2) of that Act from the requirement to be so registered, 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) the activities of a pension fund, a provident fund or a retirement annuity fund as defined in section 1 of the Income Tax Act, 1981 (Act 24 of 1981), which is registered as a pension fund organization under the Pension Funds Act, 1956 (Act 24 of 1956), or which is exempted in terms of section 2(3)(a)(i) of that Act from the requirement to be so registered, if and so far as it acts in accordance with the provisions of that Act;

- (c) any activity connected with and subsidiary to any business other than insurance or reinsurance, which in the opinion of the Registrar is not long-term insurance business as ordinarily understood;
- (d) any such business as may be prescribed which shall be deemed not to be long-term insurance business for the purposes of this Act;

"long-term policy" means a disability policy, fund policy, funeral policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of these policies;

"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 contract, irrespective of the form in which the rights and obligations of the parties thereto are expressed or created;

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

"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 long-term insurance business;

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

"Registrar" means the registrar of long-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 obligations under any long-term policy;

"sinking fund insurance business" means the business of providing or undertaking to provide policy benefits under sinking fund policies;

"sinking fund policy" means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money on a fixed or determinable future date as policy benefits, and includes a reinsurance policy in respect of such a 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;

"unborn" means a human fetus, conceived but not born, and for the purposes of this Act the life of an unborn is deemed to begin at conception;

"unimpaired reserves" means funds which have been set aside, and which are disclosed as such in the balance sheet of a registered insurer or reinsurer, or which are included in the funds set aside and attributed to policyholders by the registered insurer or reinsurer in its balance sheet, otherwise than for the purposes of meeting its net liabilities under unmaturing domestic policies, as calculated in terms of section 35, or any other particular known or determinable obligation for which the registered insurer or reinsurer is or expects to become liable;

"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 long-term insurance business

(1) No person shall, after the expiry of 90 days from the commencement of this Act, carry on long-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 long-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 long-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 long-term policy in terms of which such first-mentioned person undertakes to provide policy benefits; or
- (b) in relation to a long-term 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 long-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 long-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 long-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 long-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 and reinsurance broker at all times maintains a sound financial position with regard to any long-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 or reinsurance 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 or reinsurance 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 Long-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 long-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 long-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 LONG-TERM INSURANCE BUSINESS AND** **REGISTRATION AND CANCELLATION OF REGISTRATION OF INSURERS AND** **REINSURERS (ss 13-17)**

13 Classes of long-term insurance business

- (1) The classes of long-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-

- (i) disability insurance business;
- (ii) fund insurance business;
- (iii) funeral insurance business;
- (iv) health insurance business;
- (v) life insurance business;
- (vi) sinking fund insurance business.

(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 long-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.

14 Registration of existing insurers

(1) Every person who immediately before the commencement of this Act was lawfully carrying on any particular class of long-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 long-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 long-term insurer or reinsurer in any particular class of long-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 long-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), in circumstances other than the circumstances contemplated in subsection (7), notifies the Registrar that such person does not intend to continue to carry on business as a long-term insurer or reinsurer in any particular class of long-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.

(7) Where a person referred to in subsection (1) intends to continue to carry on any particular class of long-term insurance business but is disqualified from being registered as an insurer or a reinsurer solely by reason of the fact that such person is not a public company, as required in terms of section 16(1)(a), such person shall, within 30 days after the commencement of this Act, in writing notify the Registrar accordingly and state in that notice which of the arrangements contemplated in subsection (9) such person intends to make.

(8) Upon receipt of a notice referred to in subsection (7), the Registrar shall by written notice to the person concerned and by notice in the *Gazette* prohibit such person, with effect from a date specified in those notices, from-

- (a) issuing policies or policies relating to any particular class of long-term insurance business; and
- (b) varying, in whatever way, domestic policies issued by such person, which variation has the effect of increasing the liabilities of such person in respect of domestic policies.

(9) Where the Registrar prohibits a person in terms of subsection (8) from issuing and varying policies, the Registrar shall require such person to make proper arrangements for ensuring that such person's liabilities under policies or policies relating to the particular class of long-term insurance business, as the case may be, issued by such person will be met, either-

- (a) by the transfer, notwithstanding the provisions of section 36, but subject to the written approval of the Registrar and to the provisions of subsection (10), of such person's long-term insurance business in Namibia to a registered insurer or reinsurer, as the case may be; or
- (b) by continuing, subject to the prohibition imposed in terms of subsection (8) and to such conditions as may be determined by the Registrar, to carry on any particular class of long-term insurance business only-
 - (i) in respect of the domestic policies issued by such person before the date as from which such person is prohibited from issuing policies; and
 - (ii) until such person's liabilities under the policies referred to in subparagraph (i) have been met,

and until such person's liabilities have been met in terms of this subsection, such person shall be deemed to have been registered to carry on long-term insurance business subject to the provisions of this Act.

(10) Before a transfer of long-term insurance business in terms of subsection (9)(a) is approved by the Registrar-

- (a) a statement setting out the nature of the proposed transfer together with-
 - (i) an abstract containing the terms and conditions of the scheme for the proposed transfer; 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 a valuator, approved by the Registrar,

shall, within 60 days after the commencement of this Act, 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;

- (b) the scheme for the proposed transfer, 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; and
- (c) the Registrar shall satisfy himself or herself that the scheme for the proposed transfer will not be detrimental to the interests of policyholders and will not be contrary to the public interest.

(11) The provisions of subsections (7) and (9) of section 36 shall apply *mutatis mutandis* in respect of a transfer of long-term insurance business in terms of subsection (9)(a), and for that purpose any reference in those subsections to the High Court shall be construed as a reference to the Registrar.

(12) Notwithstanding anything to the contrary in any law contained, no tax, or transfer or stamp duty, or registration, licence or other fees, shall be payable upon the effecting or recording of the transfer of any property, mortgage, other right, appointment or licence in terms of subsection (9)(a).

15 Application for registration of new insurers and reinsurers

(1) Any person who intends to carry on business as a long-term insurer or reinsurer in any particular class of long-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 long-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 long-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 percent 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 funeral insurance business only, N\$100 000; or

(ii) in the case of a person applying for registration in respect of any one class of-

(aa) long-term insurance business other than funeral insurance business and reinsurance business, N\$1 000 000; or

(bb) reinsurance business, N\$5 000 000; or

(iii) in the case of a person applying for registration in respect of any two or more classes of-

- (aa) long-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 funeral insurance business only, N\$50 000; or
 - (ii) in the case of a person applying for registration in respect of any one class of-
 - (aa) long-term insurance business other than funeral insurance business and reinsurance business, N\$100 000; or
 - (bb) reinsurance business, N\$500 000; or
 - (iii) in the case of a person applying for registration in respect of any two or more classes of-
 - (aa) long-term insurance business other than reinsurance business, N\$200 000; 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 carry on any particular class of long-term insurance business;
- (b) the manner in which the applicant intends to carry on long-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 regulations of 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 long-term insurance business;
 - (ii) to carry on long-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 long-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 long-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 long-term insurance business or any particular class of long-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 long-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 long-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 long-term insurance business or any particular class of long-term insurance business in respect of which it is registered; or
- (ii) ceased to carry on long-term insurance business or any particular class of long-term insurance business in respect of which it is registered, or that the volume of business it transacts in any particular class of long-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 long-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 long-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 long-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 long-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 long-term insurance business or the particular class of long-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 long-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 long-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 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 long-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 long-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 38 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 long-term insurance business which is not appropriate to any class of long-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 long-term insurance business or by any other means acceptable to the Registrar;
- (e) any class of long-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 long-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 long-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 long-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 long-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 long-term insurance business to, another registered insurer or reinsurer, as the case may be, in accordance with the provisions of section 36; or
 - (ii) wound up in accordance with the provisions of section 38; or
- (b) any class of long-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 36,

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 long-term insurance business that has been transferred with effect from a date specified in those notices.

PART IV

MANNER OF CARRYING ON LONG-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 Capital and reserves

Every registered insurer and reinsurer shall make proper arrangements for ensuring that its net liabilities will at all times be met and shall in addition have and maintain in Namibia in respect of its long-term insurance business capital, and additionally or alternatively unimpaired reserves, amounting in the aggregate to not less than-

(a) in the case of an insurer registered to carry on funeral insurance business only, N\$100 000; or

(b) in the case of an insurer or a reinsurer registered to carry on any one class of-

(i) long-term insurance business other than funeral insurance business and reinsurance business, N\$1 000 000; or

(ii) reinsurance business, N\$5 000 000; or

(c) in the case of an insurer or a reinsurer registered to carry on any two or more classes of-

(i) long-term insurance business other than reinsurance business, N\$4 000 000; or

(ii) reinsurance business, N\$10 000 000.

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 long-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 long-term insurance business in respect of which it is registered;
 - (ii) a consolidated account for that year in respect of all its long-term insurance business;
 - (iii) unless it has no share capital, a profit and loss account for that year in respect of its long-term insurance business;
 - (iv) a balance sheet showing its financial position at the end of that year; and
 - (v) 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 and duly evaluated and attested by its valuator, together with a written report by that auditor and by that valuator.

(2) The accounts, balance sheet and statement referred to in subsection (1) shall be prepared by the registered insurer or reinsurer 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, 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) Every registered insurer and reinsurer shall, subject to the written approval of the Registrar, appoint, and at all times 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 end of each financial year of the registered insurer or reinsurer-

(a) examine-

(i) the actuarial assumptions upon which domestic policies have been based, including the rates of premium to be charged and the benefits undertaken to be granted by the registered insurer or reinsurer under any such policy, in order to satisfy himself or herself that the terms of such policies are actuarially sound; and

(ii) the nature of the assets held by the registered insurer or reinsurer, and the spread of those assets over the different forms in which they are held, in order to satisfy himself or herself that such

nature and spread of assets are proper and suitable in the light of the nature and maturity terms, of the various liabilities of the registered insurer or reinsurer under the different policies issued by it; and

- (b) in order to satisfy himself or herself that-
- (i) the particulars contained in the statement of assets of the registered insurer or reinsurer referred to in section 28 reflect correctly the assets of the registered insurer or reinsurer, evaluate and examine those assets; and
 - (ii) the particulars contained in the statement of liabilities of the registered insurer or reinsurer referred to in section 33 reflect correctly the liabilities of the registered insurer or reinsurer, evaluate the obligations of the registered insurer or reinsurer to policyholders,

and shall, if he or she is so satisfied, attest such statements to that effect, or, if he or she cannot so satisfy himself or herself, attest such statements subject to such qualifications as he or she may deem necessary and-

- (aa) furnish the registered insurer or reinsurer with a written report on his or her findings, together with any recommendation which he or she may wish to make in relation to the calculation of such rates of premium, benefits, assets or liabilities; and
- (bb) 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.

(4) The valuator of a registered insurer or reinsurer shall, at the cost of the registered insurer or reinsurer, undertake such other 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.

(5) 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.

(6) 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 long-term insurance business

(1) Every registered insurer and reinsurer shall, in carrying on its long-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 long-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 equal to the capital, and additionally or alternatively unimpaired reserves, that the registered insurer or reinsurer is required to have and maintain in terms of section 20.

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) the amount contemplated in paragraph (b) of section 26.

(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 1.

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 and duly attested by its valuator, together with a written report by that auditor and by that valuator.

(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 its valuator 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), the assets shall not include-

- (a) any amount representing any payments made in advance in respect of expenses of administration, organization or business extension;
- (b) the purchase price of any business (except the value of any property belonging thereto) or any goodwill;
- (c) any debt (other than a debt which is a kind of asset specified in Schedule 1) owing to a registered insurer or reinsurer;
- (d) 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 instalment of a premium.

(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 long-term insurance business in Namibia and those relating to any long-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,

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 and duly attested by its valuator, together with a written report by that auditor and by that valuator.

(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; and
 - (ii) 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)(ii) 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 unmatured domestic policy liabilities

(1) In calculating the liabilities of a registered insurer or reinsurer under unmatured domestic policies in a particular class of long-term insurance business, the registered insurer or reinsurer shall adopt any reasonable valuation basis which its valuator considers, according to generally accepted actuarial standards and principles, actuarially sound and which places a proper and adequate value on such liabilities having regard to-

- (a) the expected income from premiums payable to and investments made by the registered insurer or reinsurer;
- (b) the expected expenses and benefits payable by the registered insurer or reinsurer in respect of the carrying on of its insurance business; and
- (c) the expected rates of mortality and morbidity among the various persons whose lives are insured under policies issued by the registered insurer or reinsurer.

(2) In the calculation of liabilities in terms of subsection (1)-

- (a) no policy shall be treated as an asset;
- (b) the capitalized value of any bonuses standing to the credit of the owner of an unmatured domestic policy on the date of calculation, and the capitalized value of any reduction of premiums which has been granted as a bonus or which has been obtained by the surrender of a bonus or

by the giving of any valuable consideration or in any other way, shall be included in the liability of the registered insurer or reinsurer under such policy.

PART V
AMALGAMATION, TRANSFER, JUDICIAL MANAGEMENT AND WINDING-UP OF
LONG-TERM INSURANCE BUSINESS OF REGISTERED INSURERS AND
REINSURERS (ss 36-41)

36 Amalgamation of registered insurers and reinsurers and transfer of long-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 long-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 a valuator, 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 long-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 long-term insurance business concerned become the property of the registered insurer or reinsurer with whom the long-term insurance business concerned has been amalgamated or to whom the long-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 long-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 long-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 long-term insurance business or to the registered insurer or reinsurer to whom the long-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, licence or other fees, payable upon the effecting or recording of the transfer of any property, mortgage, other right, appointment or licence in terms of this section.

37 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.

38 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.

39 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 long-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 38(3)(b), or with a direction issued by the Court in terms of this section.

40 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 section 41 and of the following subsections of this section.

(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 the liquidator of a 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.

41 Application of certain laws to winding-up

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 38(3)(c), or with a direction issued by the Court under section 40.

PART VI

SPECIAL PROVISIONS RELATING TO VARIOUS POLICIES (ss 42-54)

42 Certain minors may effect life policies

(1) A minor who has attained the age of 18 years may, without the consent of his or her guardian-

- (a) effect a life policy on his or her own life;
- (b) pay any premium due under the life policy with money which he or she has earned or with any other money at his or her disposal;
- (c) give an undertaking to maintain the life policy for a specified period and cede his or her present or future earnings as security for such undertaking; and
- (d) cede, pledge or surrender the life policy.

(2) If any money becomes payable to a minor who has attained the age of 18 years under a life policy effected by himself or herself on his or her own life, the registered insurer or reinsurer who is liable under the life policy shall pay that money to the minor himself or herself, and the minor may deal therewith as he or she thinks fit without the consent of his or her guardian.

(3) Any discharge given by a minor to a registered insurer or reinsurer with regard to a payment made in terms of subsection (2), shall be of full force and effect.

43 Life policies effected by married persons

Notwithstanding anything to the contrary in any law contained, including those relating to community of property or donations between spouses, but subject to the provisions of this Part, a married person-

- (a) may effect and own a life policy;
- (b) may hold and, by way of gift or otherwise, acquire from or dispose of to any person, including a spouse, any right or interest in a life policy;
- (c) shall become the owner of-
 - (i) any moneys paid by a registered insurer or reinsurer in respect of any right or interest held by that person in a life policy or any assets acquired with those moneys;
 - (ii) any moneys or assets acquired in respect of the disposal of any right or interest held by that person in a life policy or any assets acquired with those moneys;
- (d) may dispose of to any person, including a spouse, by way of gift or otherwise, any moneys or assets referred to in paragraph (c),

in all respects as if that person were a single person of full age and capacity, and any such policy, right, interest, assets or money shall be excluded from any joint estate, whether or not it was effected, acquired or paid before or during the marriage.

44 Special provision relating to persons married in community of property

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

45 Life policy on own life: protection afforded during life

(1) A life policy effected by a person, whether married or not, on his or her own life which has endured for a period of at least three years from the date of the payment of the first premium and which-

- (a) is attached in execution of a judgment or an order of any court at the instance of a judgment creditor of that person; or
- (b) becomes part of that person's insolvent estate,

during the lifetime of that person shall, to the extent specified in subsection (2), be protected against any creditor of that person and against any claim in connection with the attachment or the insolvency, as the case may be.

(2) The protection afforded in respect of a life policy referred to in subsection (1) shall extend to so much of the realizable value of the life policy as does not exceed the amount of N\$50 000: Provided that-

- (a) where there are two or more such life policies, the protection shall extend only to the first N\$50 000 of the aggregate realizable value thereof; and
- (b) where any such life policy is pledged or ceded in security for any liability, the realizable value thereof, which forms the security for the liability in respect of which such life policy was pledged or ceded, shall not be included as part of the amount of N\$50 000 protected in terms of this section.

(3) Where a life policy is afforded protection in the circumstances contemplated in subsection (1)(b), the trustee of the insolvent estate shall notify the registered insurer or reinsurer who is liable under such policy in writing thereof, whereupon the registered insurer or reinsurer shall issue an endorsement to such policy to the effect that during the time that the owner of such policy remains an unrehabilitated insolvent, such policy may only be dealt with with the permission of such trustee or, if there is no trustee, of any competent court.

(4) For the purposes of this section-

- (a) a life policy issued by a registered insurer or reinsurer in exchange for or in consideration of the surrender of another life policy under which the registered insurer or reinsurer was previously liable, shall, if no payment other than-
 - (i) the value of the surrendered life policy; and

- (ii) any premium or premiums that would have become payable under that policy if it were not surrendered,

was received by the registered insurer or reinsurer as consideration for the new life policy, be deemed to have been effected on the date on which the surrendered life policy was issued;

- (b) a life policy issued by a registered insurer or reinsurer in terms of section 49(3), shall be deemed to have been effected on the date on which the old life policy for which it is substituted, was issued.

46 Life policy on own life: protection afforded on death

(1) If-

- (a) a person has effected a life policy on his or her own life which at the date of that person's death has endured for a period of at least three years from the date of the payment of the first premium; and
- (b) on the death of that person, and subject to the provisions of subsection (2), his or her liabilities exceed his or her assets, whether or not that person has been declared an insolvent; and
- (c) that person has left a surviving spouse, child or parent,

any moneys payable to the deceased estate of that person under any such life policy shall be paid to that estate and such moneys shall, to the extent that they do not in the aggregate exceed N\$50 000-

- (i) devolve upon the surviving spouse, child or parent in accordance with the provisions of a valid testamentary disposition of that person or, if there is no valid testamentary disposition, by right of intestate succession; and
- (ii) not be liable to be attached in execution of a judgment or an order of any court at the instance of a judgment creditor of that person or of any other person.

(2) In calculating whether the liabilities of a deceased person exceed his or her assets, any life policy effected by the deceased person on his or her own life and which has endured for a period of at least three years from the date of the payment of the first premium, shall not be included to the extent that the realizable value of such life policy or the aggregate realizable value of all such life policies does not exceed the amount of N\$50 000.

47 Protection afforded in respect of life policies ceded to or effected in favour of spouses or children

(1) If a person cedes a life policy effected on his or her own life to, or effects a life policy on his or her own life or on the life of his or her intended spouse (whom he or she thereafter married) or spouse in favour of, his or her intended spouse (whom he or she thereafter married) or spouse, and additionally or alternatively to or in favour of his or her child or children (including an unborn child), or to or in favour of any of them, or nominates any such spouse or child as the beneficiary of such policy, such policy or moneys becoming due thereunder shall, subject to the provisions of this section and to the terms and conditions on which that person may have ceded or effected such policy or may have made the nomination-

- (a) not be liable to be attached in execution of a judgment or an order of any court at the instance of a judgment creditor of the person to whom such life policy was ceded or in whose favour it was effected or who has been nominated as beneficiary thereof;
- (b) not become part of the insolvent estate of the person to whom such life policy was ceded or in whose favour it was effected or who has been nominated as beneficiary thereof:

Provided that-

- (i) the protection afforded in terms of this section shall, together with the protection afforded in respect of life policies in terms of any other provision of this Act, not exceed the amount of N\$50 000; and
- (ii) where any such life policy is pledged in security for any liability, the realizable value thereof, which forms the security for the liability in respect of which such life policy was pledged, shall not be included as part of the said amount of N\$50 000.

(2) A benefit conferred or purported to be conferred upon a spouse or child under a life policy in any of the circumstances contemplated in subsection (1) shall, notwithstanding any agreement to the contrary between the registered insurer or reinsurer liable under such policy and the person by whom such policy was effected and notwithstanding the fact that the spouse or child has not accepted that benefit and is not a party to the long-term insurance contract, but subject to the terms and conditions on which such policy was ceded or effected or the nomination was made, as the case may be, be enforceable against such insurer or reinsurer at the instance of the spouse or child or the legal representative of the spouse or child.

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

If-

- (a) two or more life policies in respect of which protection is afforded in terms of section 45, 46 or 47, being the property of one person, are attached in execution of a judgment or an order of any court at the instance of a judgment creditor of the owner of those life policies; or
- (b) the estate of the owner of two or more life policies referred to in paragraph (a) is sequestrated,

and a part only of the aggregate realizable value of those life policies is so protected, such creditor or the trustee of the insolvent estate of such owner, as the case may be, may determine which life policy or policies shall be realized wholly or partly in order to make available to such creditor or trustee so much of the aggregate realizable value as is not so protected.

49 Partial realization of life policies in respect of which protection is afforded

(1) A judgment creditor of the owner of a life policy or the trustee of the insolvent estate of such owner who is entitled to a part of the realizable value of the life policy may, if such creditor or trustee is in possession of the life policy, deliver that policy to the registered insurer or reinsurer who is liable thereunder for the purposes of the payment to such creditor or trustee of the amount to which such creditor or trustee is entitled.

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of a life policy in respect of which such creditor or trustee is entitled to a part of the realizable value thereof, the owner of the life policy or any other person in possession thereof shall, at the request of such creditor or trustee, deliver the life policy to the registered insurer or reinsurer who is liable thereunder for the purposes of the payment to such creditor or trustee of the amount to which such creditor or trustee is entitled.

(3) On receipt of a life policy delivered to a registered insurer or reinsurer in terms of subsection (1) or (2), the registered insurer or reinsurer shall-

- (a) at the request of the judgment creditor or trustee referred to in subsection (1), pay to such creditor or trustee an amount equal to the part of the realizable value of the life policy to which such creditor or trustee is entitled; and
- (b) pay the remaining part of the realizable value to the owner of the life policy or, if at that time the full realizable value of the life policy is less than the full sum insured thereunder, including any bonus which may have accrued in connection therewith, shall, at the request of such owner, issue to him or her a new life policy with the same provisions, but for a sum insured equal to the difference between-
 - (i) the full sum insured under the old life policy, including any bonus which may have accrued in connection therewith; and
 - (ii) an amount which bears the same ratio to the full sum insured under the old life policy, including any bonus which may have accrued in connection therewith, as the amount paid by the registered insurer or reinsurer to such creditor or trustee bears at that time to the full realizable value of the old life policy,

whereupon the old life policy shall lapse.

50 Provision relating to life policies ceded or trust policies not kept up

If a person who-

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

is or has been unable to pay the premiums, that person may, with the consent of any person who holds or has acquired any right or interest in such policy (or if the last-mentioned person is a minor, with the consent of that minor's guardian or of the Master of the High Court) agree with the registered insurer or reinsurer liable under such policy-

- (i) to convert such policy into a paid-up life policy of a value determined in accordance with the current tariff of the registered insurer or reinsurer payable, at the time and in the manner specified in the original policy, to the person entitled to the sum insured by the original policy; or
- (ii) to borrow from the registered insurer or reinsurer upon security of such policy such sums of money as may be necessary to keep such policy in force or to revive it; or

- (iii) to apply the value of any bonus which may have accrued in connection with such policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

51 Provisions relating to life policies ceded or premiums paid with intent to benefit someone at expense of creditors

(1) Nothing contained in this Part shall be construed as derogating from the power of the High Court to set aside in terms of any law relating to insolvency a cession of a life policy made with intent to benefit any person at the expense of a creditor of the cedent.

(2) If a premium under a life policy was paid with intent to benefit any person at the expense of a creditor of the person making the payment, the High Court may order the person so benefiting to pay an amount equal to the aggregate of all premiums so paid, with interest on the amount of each premium so paid as from the date of its payment, to the creditor to whose detriment one or more premiums were paid or, if the estate of that creditor is sequestrated, to the trustee of the insolvent estate of that creditor.

(3) An order of the Court contemplated in subsection (2) shall have the effect of pledging, in security for payment of the amount payable under such order, the life policy in question to the creditor entitled to the payment until the payment is made, and while the life policy is so pledged that creditor shall be entitled to possess the life policy.

52 Application of certain provisions of Act to funeral policies

The provisions of sections 42 to 51, inclusive, shall apply *mutatis mutandis* in respect of funeral policies.

53 Provisions relating to sinking fund policies

(1) Subject to the provisions of subsection (3), no registered insurer or reinsurer shall in respect of a sinking fund policy-

- (a) undertake to provide, or provide, any policy benefit under such policy;
- (b) undertake to provide, or provide, any consideration upon the surrender of such policy;
- (c) undertake to grant, or grant, a loan in respect of or on security of such policy,

within a period of five years, or such shorter period as may be determined by the Minister by notice in the *Gazette*, after the only or first premium under such policy has been received by the registered insurer or reinsurer.

(2) Where the premium under a sinking fund policy is payable in two or more amounts, no registered insurer or reinsurer shall in respect of such policy agree to accept, or accept, in any premium period a total amount of premium which exceeds by a rate of more than 20 percent, or such other percentage as may from time to time be determined by the Minister by notice in the *Gazette*, the total amount of premiums received by the registered insurer or reinsurer under such policy during the preceding premium period.

(3) Subsection (1) shall not apply in the event of-

- (a) the death, or the placement under curatorship or sequestration of the estate, of a policyholder who is a natural person; or

- (b) the winding-up, liquidation, placement under curatorship or judicial management, by order of court, of a policyholder which is a juristic person.

(4) In subsection (2) "premium period" means one of a succession of periods, each of 12 months' duration, the first of which commences on, and ends 12 months after, the first day of the month during which the first premium is received by a registered insurer or reinsurer under a sinking fund policy.

54 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 thereunder 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 such policy at the time of its issue or of any reinstatement or renewal thereof.

(2) A 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.

(3) Interest on an unpaid premium, or on a loan or advance made by a registered insurer or reinsurer on the sole security of a policy under which the registered insurer or reinsurer is liable, shall not cease to accrue when that interest has accumulated to an amount equal to the amount of that unpaid premium, loan or advance.

(4) In the case of a policy issued after 31 December 1973, a debt arising out of an unpaid premium, or out of a loan or advance referred to in subsection (3), shall not become prescribed before the liability of the registered insurer or reinsurer under that policy becomes prescribed.

PART VII

PROVISIONS GOVERNING THE CARRYING ON OF LONG-TERM INSURANCE BUSINESS BY INSURANCE AGENTS, INSURANCE BROKERS AND REINSURANCE BROKERS (ss 55-60)

55 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 of any other person registered in terms of this Act or a name so closely resembling the name of any such person as to be mistaken for it; and
 - (ii) is not an unrehabilitated insolvent; and
 - (iii) has not been convicted by any court of any offence involving dishonesty, or of an offence in terms of this Act, for 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 long-term insurance business with any other person carrying on long-term insurance business so as to impair his or her impartiality in placing long-term insurance business,

the Registrar shall, subject to the provisions of section 56(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.

56 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 percent of his or her brokerage income from long-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 percent 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.

57 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.

58 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 long-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 long-term insurance business solicited or negotiated by him or her and such other information as the Registrar may require.

59 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 55(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.

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

The provisions of sections 18, 66 and 67 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 61-75)

61 Restriction upon use of certain names

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

- (a) "assurer", "assurance", "insure", "insurer" or "insurance"; 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.

62 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 therefor 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.

63 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.

64 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.

65 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.

66 Prohibition of transacting certain business with or securing certain business for unregistered concern

(1) No person shall transact long-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.

67 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) wilfully 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.

68 Restriction upon acquisition of shares or other interest

(1) No acquisition of shares or any other interest in the long-term insurance business of a registered insurer or reinsurer resulting in the holding of 25 percent 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 long-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 share-holding or other interest or the exercising of that person's voting rights as the Registrar may deem necessary.

69 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) or (4), 55(1), 61(1), 66 or 68(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), 36(1), 61(2) or 65; or
 - (ii) fails to observe any prohibition imposed upon such insurer or reinsurer under a provision of this Act; or

- (c) insurance agent who contravenes or fails to comply with a provision of section 18(1) or (2); or
- (d) insurance broker or reinsurance broker who contravenes or fails to comply with a provision of section 18(1) or (2), 56(2) or 57,

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.

70 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 wilful 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 and reinsurance broker.

71 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 capital and unimpaired reserves 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 percent of the amount of the shortfall, whichever is the greater amount, and in addition thereto to a fine of N\$25 000 or one percent 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 long-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.

72 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 to registered insurers and reinsurers of premiums received by such insurance agents, insurance brokers and reinsurance brokers in respect of long-term insurance business placed with registered insurers and reinsurers;
- (c) the payment of maximum levels of remuneration by registered insurers and reinsurers to insurance agents, insurance brokers and reinsurance brokers and to any other person for rendering services towards effecting, maintaining or servicing any long-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 long-term insurance business with registered insurers and reinsurers;
- (e) the regulation and control of methods of obtaining or negotiating long-term insurance business;
- (f) the action which shall or may be taken by a registered insurer and reinsurer when the premium under any life policy or funeral policy has not been paid on due date, including provision for the maintenance of policies in force for specified periods, the issue of paid-up policies and the application of non-forfeiture rules;
- (g) the issue by registered insurers and reinsurers of certified copies of lost policies;
- (h) the restriction of sums insurable in respect of the lives of minors;
- (i) the prohibition of certain classes of differentiation, the giving of inducements or the granting of credit for premiums in respect of policies;

- (j) the payment of money in the stead of non-monetary benefits under funeral policies and the determining of monetary limits to which non-monetary benefits may be subject;
- (k) conditions regarding proof of the age of an insured person and the procedure to be followed when it is found that a policy has been based on an incorrect statement of the age of the person insured thereunder;
- (l) the classes of business which shall be deemed not to be long-term insurance business for the purposes of this Act;
- (m) 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;
- (n) the minimum or maximum or both minimum and maximum amounts which a registered insurer or reinsurer may invest-
 - (i) in or 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 amount shall be determined and defining the kinds or categories of assets to which the amount applies;

[Para (n) substituted by sec 1(a) of Act 2 of 2011.]

- (nA) authorising the registrar to grant conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (n);

[Para (nA) inserted by sec 1(b) of Act 2 of 2011.]

- (o) any matter which in terms of this Act is required or permitted to be prescribed; and
- (p) 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 69 and 70, for any contravention of or failure to comply with any provision thereof.

73 Repeal of laws, and saving

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

(2) Any policy relating to long-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.

(3) Any policy which was issued by an existing insurer in the course of carrying on long-term insurance business in Namibia-

- (a) on or after 21 March 1990, but before the commencement of this Act, and which policy was not at the date of issue thereof or has not after such

date been made payable in Namibia in the currency of Namibia at the request of the owner thereof, shall as from such commencement be deemed to have been made payable in Namibia in the currency of Namibia at the request of the owner thereof unless such owner has before such commencement in writing requested the existing insurer concerned that the policy not be made payable in Namibia in the currency of Namibia;

- (b) before 21 March 1990 and which policy has not after the date of issue thereof, but before the commencement of this Act, been made payable in Namibia in the currency of Namibia at the request of the owner thereof shall, after the expiry of 6 months from such commencement, be deemed to have been made payable in Namibia in the currency of Namibia at the request of the owner thereof unless such owner has within the said period of 6 months in writing notified the registered insurer concerned that the policy shall not be regarded as a domestic policy for the purposes of this Act.

(4) Every registered insurer shall, during the period mentioned in subsection (3)(b) and in such manner as may be determined by the Registrar, either of its own accord or in concert with other registered insurers, make the provisions of that subsection known to the owners of policies to whom they apply.

74 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 Long-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).

75 Short title and commencement

This Act shall be called the Long-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 **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. Immoveable 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 2
LAWS REPEALED
(Section 73(1))

No. and year of law	Short title	Extent of repeal
Act 27 of 1943	Insurance Act, 1943	So much as is unrepealed.
Act 19 of 1945	Insurance (Amendment) Act, 1945	So much as is unrepealed.
Act 73 of 1951	Insurance (Amendment) Act, 1951	So much as is unrepealed.
Act 24 of 1956	Pension Funds Act, 1956	So much of section 39 as is unrepealed.
Act 25 of 1956	Friendly Societies Act, 1956	So much of section 50 as is unrepealed.
Act 79 of 1959	Insurance Amendment Act, 1959	So much as is unrepealed.
Act 10 of 1965	Insurance Amendment Act, 1965	So much as is unrepealed.
Act 41 of 1966	Insurance Amendment Act, 1966	So much as is unrepealed.
Act 65 of 1968	Financial Institutions Amendment Act, 1968	So much of sections 1 to 3, inclusive, as is unrepealed.
Act 39 of 1969	Insurance Amendment Act, 1969	So much as is unrepealed.
Act 23 of 1970	Financial Institutions Amendment Act, 1970	So much of section 1 as is unrepealed.
Act 75 of 1970	Second Financial Institutions Amendment	So much of section 1 as is unrepealed.

	Act, 1970	
Act 91 of 1972	Financial Institutions Amendment Act, 1972	So much of sections 1 to 4, inclusive, as is unrepealed.
Act 101 of 1976	Financial Institutions Amendment Act, 1976	So much of sections 1 to 15, inclusive, as is unrepealed.
Act 94 of 1977	Financial Institutions Amendment Act, 1977	So much of sections 1 to 8, inclusive, as is unrepealed.
Act 80 of 1978	Financial Institutions Amendment Act, 1978	So much of sections 1 to 6, inclusive, as is unrepealed.
Act 103 of 1979	Financial Institutions Amendment Act, 1979	So much of sections 1 to 12, inclusive, as is unrepealed.
Act 99 of 1980	Financial Institutions Amendment Act, 1980	So much of sections 1 to 22, inclusive, as is unrepealed.
Act 36 of 1981	Financial Institutions Amendment Act, 1981	So much of sections 1 to 4, inclusive, as is unrepealed.
Act 82 of 1982	Financial Institutions Amendment Act, 1982	So much of sections 1 and 2 as is unrepealed.
Act 86 of 1984	Financial Institutions Amendment Act, 1984	So much of sections 1 to 11, inclusive, as is unrepealed.
Act 106 of 1985	Financial Institutions Amendment Act, 1985	So much of sections 1 to 9, inclusive, as is unrepealed.
Act 50 of 1986	Financial Institutions Amendment Act, 1986	So much of sections 1 to 8, inclusive, as is unrepealed.
Act 51 of 1988	Financial Institutions Amendment Act, 1988	So much of sections 1 and 2 as is unrepealed.
Act 53 of 1989	Financial Institutions Amendment Act, 1989	So much of sections 1 to 7, inclusive, as is unrepealed.

Act 54 of 1989

Financial Institutions Amendment Act, 1989

So much of sections 1 to 19, inclusive, as is
unrepealed.

© 2005 Juta and Company, Ltd.