

The following Bills, which will in due course be presented to Parliament for enactment, are published for general information.

INSURANCE COMPANIES BILL

EXPLANATORY MEMORANDUM

This Bill seeks to give effect to recommendations made from time to time for the better investigation and control of the activities of insurance companies both corporate and unincorporate in Nigeria by registration of insurers. The main feature of the bill is that there shall be a margin of solvency as the test for registration, since any other control by way of deposit, for example, would tie up capital unduly.

In general terms, the Bill envisages that there should be no discrimination between Nigerian or United Kingdom insurers and foreign insurers; and while insurers are required to meet obligations undertaken, the requirements of the law should not be so onerous as to create hardship in complying with them.

Government intends also to introduce a bill setting out a code of marine insurance based on that of the United Kingdom, since this present bill relates to insurance in general terms.

Insurance business undertaken by the Government of a Region and not extending beyond that Region is excluded by *clause 3 (a)*, and provision is made for exemption of insurers or insurance business by *clauses 3 (c) and 24*.

Both companies and associations of underwriters may be registered since different principles will apply, and provision is also made in *clauses 7, 8 and 9* for the review of registration and for persons aggrieved by refusal of registration or cancellation of registration to appeal to the Governor-General.

The use of the word "insurance" or its grammatical variations will, after a lapse of time, be an offence in special cases, and *clause 36* seeks to provide accordingly.

Certain Acts of the Parliament of the United Kingdom, being statutes of general application and in force in Nigeria are to be repealed, and *clause 45* will give effect to the repeal.

ZANA BUKAR DIPCHARIMA,
Minister of Commerce and Industry

INSURANCE COMPANIES BILL

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.

PART I—PRELIMINARY

2. Interpretation.
3. Application of Act.

PART II—REGISTRATION

4. Margin of solvency.
5. Registrar of Insurance.
6. Insurance business prohibited in certain cases.

Clause

7. Registration.
8. Review of applications in certain cases.
9. Cancellation of registration.

PART III—INSURERS OTHER THAN ASSOCIATIONS OF UNDERWRITERS

10. Application of Part III to certain insurers.
11. Principal office, etc., of insurer.
12. Notification of changes, etc.
13. Amended accounts, etc.
14. Records of external insurers.
15. Restriction on insurer with other business.
16. Periodical investigations of insurance business.
17. Amalgamation, etc., of insurance businesses.
18. Notification to Registrar of amalgamation, etc.

PART IV—ASSOCIATIONS OF UNDERWRITERS

19. Application of Part IV to Associations of Underwriters.
20. Premiums received to be held in trust.
21. Audit where constituted outside of Federation.
22. Certificates of auditor.
23. Additional information for Registrar.

PART V—MISCELLANEOUS

24. Power to exempt persons, etc.
25. Registration if share-capital less than prescribed.
26. Extension of time for registration, etc.
27. Classification of insurance business.
28. Audit of accounts of certain insurers.
29. Audit of accounts of external insurers.
30. Publication of authorised capital, etc.
31. Production of documents, etc.
32. Documents, etc., produced to be translated.
33. Investigations.
34. Winding-up petition.
35. Copies of balance sheet, etc., on request.
36. Use of word "insurance" restricted.
37. Service of process.
38. Enforcement of rights of policy-owners.
39. Inspection of documents, etc.
40. Copies where documents produced to Registrar.
41. False documents.
42. Penalties.
43. Regulations.
44. Policy to be issued by registered insurer.
45. Repeals.

SCHEDULE

A BILL

FOR

AN ACT TO PROVIDE FOR INSURANCE BUSINESS BY THE REGISTRATION OF INSURERS AND FOR OTHER PURPOSES CONNECTED THEREWITH.

Title.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows—

Enactment.

1. (1) This Act may be cited as the Insurance Companies Act, 1961, and shall come into operation on a day to be appointed by the Governor-General by notice in the *Gazette*.

Short title,
etc.

(2) This Act shall be of Federal application.

PART I—PRELIMINARY

Interpreta-
tion

2. In this Act, unless the context otherwise requires,

“association of underwriters” means the underwriters at Lloyds, and includes any association of individual underwriters organized in accordance with the system known as Lloyds whether within or outside of the Federation, in which every underwriting member becomes liable for a specified proportion of the sum insured by a policy ;

“chairman” means the person for the time being presiding over the board of directors or other governing body of an association of persons corporate or unincorporate ;

“company” means a body corporate and includes an association of underwriters ;

“contingent obligation dependent on human life” means an obligation to pay to a particular person certain sums of money at specified intervals or to pay a certain sum of money or to provide for a particular person a certain other benefit—

(i) on the death of a particular person or the birth of a child to a particular person at any time or within a specified period, or

(ii) in the event of a particular person continuing to live throughout a specified period or specified periods,—

and includes an obligation assumed,—

(i) until the death of a particular person, or

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

“director” means the director of an insurance company and includes all persons having the direction of any insurance business of a company whether under the name of directors, managers, committee of management or under any other name ;

“external insurer” means an insurer carrying on business within or outside of the Federation whose head office is not in the Federation ;

“financial year”, in relation to an insurer means,—

(a) each period of twelve months at the end of which the balance of the accounts of the person is struck, and includes any lesser period, or

(b) where no such balance is struck, the period of twelve months ending the 31st day of March in any year ;

“Gazette” means the Federation of Nigeria Official Gazette ;

“industrial insurance policy” means a policy whereby the insurer assumes a contingent obligation dependent on human life, in an amount not exceeding the sum of one hundred pounds, in return for a premium or the promise of a premium payable at intervals not exceeding two months, if the insurer has expressly or tacitly undertaken to send a person from time to time to the policy holder or to his residence or place of work to collect the premiums ;

“insurance” includes assurance ;

“insurance business” includes re-insurance ;

"insurer" means any person not otherwise exempted who is registered under this Act and carries on insurance business (otherwise than as a broker or an agent for brokers or an insurance agent) and includes an association of underwriters ;

"life insurance business" means the business of assuming the obligations of an insurer under any life policy, industrial policy or sinking fund policy ;

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

"life insurer" means any insurer carrying on life insurance business ;

"life policy" includes any policy not foreign to the business of life insurance ;

"local insurer" means an insurer whose head office is within the Federation ;

"local policy" means a policy issued in the Federation and includes a life policy of insurance issued outside the Federation and subsequently made payable in the Federation at the request of the policy holder if the policy holder has agreed in writing that it shall be treated as a local policy for the purpose of this Act, but does not include a policy of assurance made payable, after the date of its issue, outside the Federation at the request of the policy holder if the policy holder has agreed in writing that it shall not be treated as a local policy for the purposes of this Act ;

"long term business" means insurance business of all or any of the following classes namely, life insurance business, industrial insurance business and bond investment business, and includes in relation to any company, insurance business carried on by the company as incidental only to any such class of business ;

"marine insurance" includes sea insurance ;

"Minister" means the Federal Minister charged with responsibility for insurance ;

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

"registered" and cognate expressions mean registered for the purposes of this Act ;

"Registrar" means the Registrar of Insurance under this Act ;

"sinking fund policy" means a policy whereby one party to the contract assumes the obligation to pay during a specified period of time or after the expiration of an agreed period of time a sum or sums certain in money to a particular person in return for the payment or promise of payment from time to time of a sum certain in money by the other party to the contract but does not include annuity business, life insurance business, or industrial insurance business ;

"underwriting liabilities" in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the committee of the association and approved—

(a) in the case of an association constituted in the Federation, by the Registrar, or

(b) in the case of an association constituted outside the Federation, by the appropriate authority in whom is vested the administration of the insurance law relating to such association of underwriters, and of which due notice is given on behalf of the association of underwriters to the Registrar ;

"workmen's compensation insurance business" means the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation however awarded or authorised or damages to workmen in their employment, but does not include any business carried on as incidental only to marine, aviation and transit insurance business.

3. This Act shall apply to all insurance business and insurers other than—

(a) insurance business undertaken by the Government of a Region where the insurance business does not extend beyond the limits of such Region :

(b) an association of persons (sometimes called a friendly society) established with no share capital for the purpose of aiding its members or their dependents where such association does not employ any person whose main occupation is the canvassing of other persons to become members of the association or the collecting of contributions or subscriptions towards the funds of the association from its members :

(c) any person or class of persons or insurance business exempted by the Minister under this Act.

PART II—REGISTRATION

4. (1) For the purpose of this Part, "margin of solvency"—

(a) in relation to any local insurer carrying on insurance business solely within the Federation (not being an association of underwriters) means,—

(i) as to life insurance only, that the liabilities under unmaturing life, industrial and sinking fund policies do not exceed the amount of the life insurance fund of the local insurer;

(ii) as to any insurance other than life insurance, that the value of the assets of the local insurer in respect of the classes of insurance business carried on by the local insurer exceed the liabilities in respect of those classes of insurance business by the amount of £25,000 (or its equivalent in other currency) or one-tenth of the premium income in the last preceding financial year whichever is the greater amount ; and

(iii) as to any insurance including life insurance, that in addition to the provisions of subparagraph (i) of this paragraph, the value of the assets of the local insurer in respect of all classes of insurance business carried on by the local insurer exceeds the amount of the life insurance fund together with all his liabilities (not being liabilities in respect of unmaturing life, industrial insurance and sinking fund policies) by the amount of £25,000 (or its equivalent in other currency) or one-tenth of the premium income (not being life insurance premium income) in the last preceding financial year, whichever is the greater amount :

(b) in relation to any local insurer carrying on insurance business within and outside the Federation or outside the Federation, or in relation to any external insurer (where the local insurer or the external insurer as the case may be is not an association of underwriters) means—

(i) as to life insurance only, that the liabilities under unmaturing life, industrial and sinking fund policies do not exceed the amount of the life insurance fund of the insurer.

Application
of Act.

Margin of
solvency.

(ii) as to any insurance other than life insurance that the value of the assets of the insurer in respect of the classes of insurance business carried on exceed the liabilities in respect of those classes of insurance business by the amount of £50,000 (or its equivalent in other currency) or one-tenth of the premium income in the last preceding financial year of the insurer whichever is the greater amount; and

(iii) as to any insurance including life insurance, that in addition to the provisions of subparagraph (i) of this paragraph, the value of the assets of the insurer in respect of all classes of insurance business carried on exceeds the amount of the life insurance fund together with all liabilities (not being liabilities in respect of unmatured life, industrial insurance and sinking fund policies) by the amount of £50,000 (or its equivalent in other currency) or one-tenth of the premium income (not being life insurance premium income) in the last preceding financial year of the insurer, whichever is the greater amount.

(2) In calculating the value of assets for the purposes of subsection (1), the assessment of liabilities shall take into account all contingent and prospective liabilities of an insurer, other than liabilities in respect of share capital; and in assessing for the purposes of subsection (1) an insurer's premium income in any financial year no account shall be taken of life insurance business, and the premium income shall be treated as the net amount remaining of the premiums received by the insurer in his last preceding financial year in respect of his other insurance business after deducting premiums paid by way of re-insurance.

5. (1) There may from time to time be appointed a fit person to be Registrar of Insurance and such other persons to be Assistant Registrars or other officers as may be necessary for the administration of the Act.

Registrar of Insurance.

(2) An Assistant Registrar shall have and may exercise in the Region for which he is appointed and subject to the general direction and control of the Registrar, all the powers conferred upon the Registrar by the Act.

6. (1) Subject to the provisions of this Part of this Act no insurer shall commence or carry on insurance business in the Federation unless the insurer is registered for the purpose of this Act.

Insurance business prohibited in certain cases.

(2) Where on the coming into operation of this Act any insurer is carrying on insurance business in the Federation, the insurer may apply within three months thereafter to be registered; and nothing in subsection (1) shall apply unless prior to the expiration of twelve months from the date of the coming into operation of this Act, the insurer is notified of the rejection of its application by the Registrar.

7. (1) Application for registration of an insurer shall be made in the prescribed form and be accompanied by such other documents as the Registrar may direct or require.

Registration.

(2) If the Registrar is satisfied—

(a) that the class of insurance business is or will be conducted in accordance with sound insurance principles, and

(b) that the margin of solvency is adequate, and

(c) that the applicant being a body corporate operating outside of the Federation is duly constituted under the laws of the country in which the head office of the applicant is situated, and that the paid up capital

is not less than £50,000 or that the applicant being a body corporate, constituted and operating solely in the Federation, has a paid up capital of not less than £25,000, and

- (d) that in the case of the applicant being an association of underwriters, the requirements of this Act as to association of underwriters are provided for in the regulations of the association, and that if constituted outside of the Federation, the association was duly constituted not less than five years before the date of application for registration under this Act and is lawful in the country of origin,—

he shall register the applicant as an insurer and notify the insurer in writing accordingly. Notice of the registration shall be published in the *Gazette*.

(3) If the Registrar is not satisfied as to any of the matters referred to in subsection (2) on which he is required to be satisfied, he shall give notice in writing to the applicant of his intention to reject the application.

Review of
application
in certain
cases.

8. (1) Any person aggrieved by the proposal of the Registrar to reject an application for registration as an insurer may, within sixty days after the date of the notice of intention to reject the application, lodge with the Registrar a notice of appeal to the Governor-General. Any notice under this subsection may at any time be withdrawn by the person aggrieved before the appeal is dealt with by the Governor-General.

(2) The notice of appeal under subsection (1) shall be in writing setting out the grounds on which it is made, and the Registrar shall transmit the notice with any other relevant documents to the Governor-General within fourteen days after the date of its receipt by the Registrar.

(3) The Registrar shall, unless the appeal is withdrawn, give notice in writing to the applicant of the decision of the Governor-General; and if the appeal is allowed shall register the person as an insurer and notify him in writing accordingly. Notice of the registration, or of disallowance of the appeal, as the case may be, shall be published in the *Gazette*.

Cancel-
lation of
registration.

9. (1) If, in the case of any registered insurer, the Registrar is satisfied,—

- (a) that the class of insurance business of the insurer is not being conducted in accordance with sound insurance principles, or
- (b) that the margin of solvency of the insurer is inadequate, or
- (c) that the insurer has ceased to carry on the insurance business in the Federation, or
- (d) that the insurer in writing requests cancellation of registration, or
- (e) that a judgment obtained in any court in Nigeria against the insurer remains unsatisfied for 30 days,—

the Registrar shall give notice in writing to the insurer of his intention to cancel the registration of the insurer, and the provisions of section 8 with all changes necessary to give effect thereto, shall apply to any such notice of intention to cancel registration as if it were a notice of intention to reject an application.

(2) It shall be an offence for any insurer to carry on insurance business in the Federation after the expiration of twelve months from the date of cancellation of registration or after the expiration of such extended time as the Minister as a special case may in writing approve.

PART III

INSURERS OTHER THAN ASSOCIATIONS OF UNDERWRITERS

10. The provisions of this Part shall apply to insurers registered for the purposes of this Act who are not associations of underwriters.

Application of Part III to certain insurers.

11. (1) An insurer shall maintain a principal office in the Federation and appoint a principal officer in the Federation and shall notify the Registrar in writing of the location of its principal office and the name of its principal officer.

Principal office, etc., of insurer.

(2) If the insurer changes the location of its principal office in the Federation or appoints a new principal officer, the insurer shall, within twenty-one days of the change of location or of the appointment as the case may be, give notice thereof to the Registrar in writing.

12. (1) Subject to the provisions of this section an insurer shall, within six months after the end of each financial year of the insurance business of the insurer, notify the Registrar in writing of any change during that year in any matter prescribed for the purposes of this Act.

Notification of changes, etc.

(2) An insurer shall, within such period of six months also prepare and furnish to the Registrar, in the prescribed forms,—

(a) a certificate as to the solvency of the insurer, signed in the case of a life insurer, by an actuary,

(b) a balance sheet duly audited showing the financial position of the insurance business of the insurer at the close of that year together with a copy of the relevant profit and loss account,

(c) a certified copy of the revenue account in respect of life insurance business, if any, carried on by the insurer in that year,

(d) a statement of life insurance business, other than business in connection with industrial and sinking fund policies, if any, carried on by the insurer in the Federation in that year,

(e) a certified copy of the revenue account in respect of insurance business, (not being life insurance business) carried on by the insurer in that year, and

(f) such other documents and information relating to the relevant accounts and balance sheet (including copies of reports on the affairs of the insurer for the financial year as submitted to the policy holders or shareholders of the insurer) as the Registrar may from time to time require.

13. (1) Where the Registrar is of opinion that an account or balance sheet furnished by an insurer under section 12 is incorrect or is not prepared as prescribed, he may, by notice in writing, direct the insurer to amend the account or balance sheet or supply copies of the account or balance sheet as the case may be, prepared as prescribed by this Act. If after notice the Registrar is not satisfied, he may amend the account or balance sheet, and give the insurer particulars of the amendments, or may reject the account or balance sheet. An account or balance sheet amended by an insurer under this subsection shall be treated as if it had been originally submitted to the Registrar in its amended form.

Amended accounts, etc.

(2) If the Registrar amends an account or balance sheet, the insurer shall have the right of appeal to the Minister, whose decision shall be final. The appeal shall be lodged in writing with the Registrar within thirty days after receipt by the insurer of the notice of intention to make the amendment ; and notice of the decision of the Minister shall be given to the insurer.

(3) If the account or balance sheet of a registered insurer is rejected by the Registrar under this section, the insurer shall, to that extent, be deemed to have failed to comply with the requirements of this Act.

Records of
external
insurers.

14. An external insurer shall, within the Federation, keep—

(a) a record of all local policies issued by it showing its rights and obligations thereunder ;

(b) a record of the premiums received on all local policies issued by it ; and

(c) documentary evidence of its assets in the Federation.

Restriction
on insurer
with other
business.

15. (1) Where an insurer transacts other business besides that of insurance or transacts more than one class of insurance business, a separate account shall be kept of all receipts in respect of the life insurance business of the insurer, and the receipts in respect of the life insurance business shall be carried to and form a separate life insurance fund with an appropriate name : Provided that nothing in this subsection shall require the investments of the life insurance fund to be kept separate from the investments of any other fund of the company.

(2) The life insurance fund shall be as absolutely the security of the policy holders as though it belonged to a company carrying on no other business than insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life insurance ; and the fund shall not be applied, directly or indirectly, for any purposes other than those of the class of business to which the fund is applicable.

(3) Nothing in this section shall apply to marine, aviation or transit insurance.

Periodical
investigation
of insur-
ance
business.

16. (1) Every long term business insurer shall, not less than once in every five years cause an investigation to be made into its financial position by an actuary.

(2) The investigation made under the provisions of subsection (1) shall include a valuation of the liabilities in respect of the whole of the insurance business.

(3) An insurer whose financial position is investigated under this section, shall prepare and furnish to the Registrar in the prescribed forms within six months of the date to which its accounts are made up for the purposes of the investigation, an abstract of the report of the actuary by whom the investigation was made, and a statement of the insurance business of the insurer at that date.

(4) The provisions of this section shall apply at any time an investigation into the financial position of a life insurer is made with a view to a distribution of profits :

Provided that where the financial position of an insurer is investigated with a view to a distribution of profits, it shall not be required to furnish to the Registrar a statement of its insurance business as prescribed by this section more than once in every three years.

(5) Nothing in this section shall apply to marine, aviation or transit insurance business.

Amalgamation, etc., of insurance businesses.

Cap. 37.

17. (1) Subject to the provisions of this section, no local insurer shall—

(a) amalgamate with any other insurer whether registered or not carrying on long term business or workmen's compensation insurance business; or

(b) transfer to or acquire from any other insurer any such insurance business or any part of any such insurance business,—

unless the transaction is sanctioned by the High Court in accordance with the provisions of this section. For the removal of doubts the High Court shall have jurisdiction to hear and determine the case, and the procedure to the extent necessary shall, subject to this section, be as nearly as may be in accordance with the winding up provisions by the Court under section 135 of the Companies Ordinance.

(2) If any class of insurance business within subsection (1) is intended to be amalgamated with any other insurance business, where all or any are local insurers, or any such class of insurance business is intended to be transferred in whole or in part, where one or both are local insurers, the directors of the insurers concerned may apply to the High Court to sanction the proposed amalgamation or transfer, as the case may be.

(3) Before an application to the High Court is made under this section, a notice of intention to make the application shall be published in the *Gazette*, and a copy of the notice and a statement of the nature of the proposal shall be posted to the registered or last known address of each interested policy holder in the Federation and to each insurer and the Registrar. The proposal statement shall be accompanied by an abstract of the deed or agreement relating to the amalgamation or transfer and by copies of the actuarial reports on which the proposal is based.

(4) The deed or agreement under which an amalgamation or transfer, as the case may be, is proposed to be effected shall be available for inspection without payment of any fee by policy holders and share-holders at all reasonable times in the offices of the insurers in the Federation, for a period of twenty-one days after the publication of the notice in the *Gazette*.

(5) The High Court in its discretion may sanction the arrangement if it is satisfied that no sufficient objection has been established by those entitled to be heard. It shall be a sufficient objection for the purposes of this subsection if it appears to the High Court that policy holders representing one-fifth or more of the total amount insured by any of the insurers carrying on the insurance business concerned, dissent from the amalgamation or transfer, as the case may be.

(6) If an amalgamation or transfer under this section is sanctioned by the High Court, no policy holder shall be regarded as having abandoned any claim which he would have had against the original insurer or to have accepted in place thereof the liability of another insurer, unless he or his agent has signed a written document abandoning that claim and accepting in place thereof the liability of that other insurer.

18. Within three months after the date of the completion of the amalgamation or transfer of any insurance business under section 17, the insurer shall deposit with the Registrar—

Notification to Registrar of amalgamation, etc.

(a) a sealed copy of the order of the High Court,

(b) a certified copy of the statement or statements of the assets and liabilities of the insurers concerned in the amalgamation or transfer, and of the nature and terms of the amalgamation or transfer,

(c) a certified copy of the deed or agreement relating to the amalgamation or transfer,

(d) certified copies of the actuarial or other reports upon which the deed or agreement was founded, and

(e) a declaration under the hand of the chairman of each insurer and of the principal officer of each insurer,—

(i) that to the best of their knowledge and belief, the record of every payment made or to be made to any person on account of the amalgamation or transfer as set out in the declaration is true and correct and that no other payments have been made or are to be made, either in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the amalgamation or transfer, and

(ii) that notice of the proposal was duly given as prescribed by section 17 to all persons concerned.

PART IV—ASSOCIATIONS OF UNDERWRITERS

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

20. All premiums received by each member of an association of underwriters shall be held in trust in the names of trustees for the payment of the underwriting liabilities attached thereto of each member and the expenses of his insurance business.

21. An association of underwriters constituted outside of the Federation shall furnish evidence to the satisfaction of the Registrar that the accounts of each member of the association of underwriters are subject to an annual audit by an independent auditor.

22. (1) The auditor of a member of an association of underwriters shall certify to the committee of the association whether the underwriting assets held by the member at the close of each financial year were sufficient to cover the underwriting liabilities attached at that time to the member's underwriting accounts.

(2) A copy of the certificate shall be delivered by the committee to the Registrar within one month of its issue by the auditor.

23. (1) An association of underwriters constituted in the Federation shall furnish annually to the Registrar such returns relating to the insurance business carried on by each of the members of the association as the Registrar may require.

(2) An association constituted outside of the Federation shall furnish annually to the Registrar,—

(a) a certified copy of the returns of insurance business carried on by the members of the association and furnished in each year to the appropriate authority in the country where constituted, and

(b) a certificate signed by the chairman of the association and by the appropriate authority in the country where constituted that the members have in respect to the preceding year complied with the requirements of the insurance law so far as it relates to associations of underwriters.

Application of Part IV to associations of underwriters.

Premiums received to be held in trust.

Audit where constituted outside of Federation.

Certificates of auditor.

Additional information for Registrar.

PART V—MISCELLANEOUS

24. (1) The Minister may by order and on such terms as he thinks fit, exempt any person or class of persons or class of insurance business either wholly or partly from the provisions of this Act.

Power to exempt persons, etc.

(2) Every exemption shall have effect on publication in the *Gazette*.

25. Notwithstanding the requirements of Part II as to paid-up share capital, any person (not being an association of underwriters) who was, on the coming into operation of this Act, carrying on the business of an insurer with less than the prescribed paid-up share capital may apply for registration under this Act. The Registrar shall refer the application to the Minister, and if the Minister is satisfied, the Registrar shall register the applicant as an insurer, subject to any conditions the Minister may impose.

Registration if share-capital less than prescribed.

26. (1) If an insurer or an applicant for registration is, under this Act, required or entitled to do or refrain from doing anything within a specified period of time, the Registrar may on application in writing and if he thinks fit extend such time for not more than four weeks.

Extension of time for registration, etc.

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

27. (1) Subject to the provisions of this Act and to such conditions as he may impose, the Registrar may on application in writing by an insurer approve the classification of the insurance business of the insurer or alter its classification.

Classification of insurance business.

(2) Nothing in this section shall authorise the approval or alteration as the case may be of the classification of the insurance business where it appears to the Registrar that the approval or alteration will be detrimental to the interest of any other person.

27A. The Minister may if he thinks fit and notwithstanding any other provision of this Act, require any insurance company to invest in Nigeria a percentage of the profits of the insurance company accruing in respect of its business in Nigeria, and not exceeding three per cent in any financial year of the insurance company.

28. (1) The accounts of a local insurer and of a member of an association of underwriters constituted in the Federation shall be audited annually by an auditor approved by the Registrar. No auditor shall be approved by the Registrar if he is an employee, manager or director of the local insurer or member as the case may be.

Audit of accounts of certain insurers.

(2) When making the audit, the auditor shall satisfy himself that the accounts of the local insurer or of the member as the case may be have been properly prepared in accordance with the relevant books and records, and shall in his certificate set out the source of his information, and in particular,—

(a) whether he has obtained adequate information from the books and records,

(b) whether the accounts are in accordance with the information given to him for the purposes of his audit, and

(c) whether the balance sheet and profit and loss account respectively give a true and fair view of the financial position and profit and loss.

29. An external insurer shall furnish evidence to the satisfaction of the Registrar that its accounts are subject to an annual audit by an independent auditor.

Audit of accounts of external insurers.

Publication
of
authorised
capital, etc.

30. No insurer shall publish any statement, or issue any document on which is printed a statement—

(a) of the authorised capital of the insurer unless the statement shows in addition the amount of the subscribed capital and the paid-up capital, or

(b) of the subscribed capital of the insurer unless the statement shows in addition the amount of the paid-up capital.

Production
of
documents,
etc.

31. (1) The Registrar may, for the purpose of this Act, require the production of any document or information relating to or concerning the insurance business of the insurer, or of the applicant for registration as the case may be.

(2) The failure to comply with the requirements of this section shall be an offence against this Act.

Documents,
etc., pro-
duced to be
translated.

32. Where any document or information in writing is required for the purposes of this Act, it shall be accompanied by a translation in the English language in any proper case, unless the Registrar otherwise directs.

Investiga-
tions.

33. If an insurer or applicant for registration fails to comply with the requirements of this Act or to produce any document or information when required, the Registrar may in any proper case and with the approval of the Minister, apply to the Governor-General for leave to investigate the affairs of the insurer, or of the applicant, as the case may be. If leave is granted under this section the Registrar, or such other person as the Governor-General may in writing direct, shall be deemed to be a commissioner appointed for the purposes of the inquiry under the Commissions of Inquiry Ordinance and the provisions of that Ordinance shall have effect accordingly. The cost of the investigation if certified to by a law officer and lodged with the Chief Registrar shall be deemed to be costs awarded to the Crown in a civil action in the High Court, and be recoverable.

Cap. 36.

Winding up
petition.

Cap. 37.

34. (1) A petition for the winding up by the High Court of an insurance company, as a company unable to pay its debts, may be presented under this Act by the Minister with the leave of the High Court; and for such purposes the provisions of sections 135 and 136 of the Companies Ordinance (which relate to such inability and provide for failure in certain cases to comply with a creditor's demand or to satisfy execution or other process) shall have effect, subject to this section, as if the petition were one presented under the Companies Ordinance.

Cap. 37.

(2) In the application of this section, the Companies Ordinance shall be read as if there were included in section 136, the following additional paragraph—

No. of
1960.

“(d) if the value of the assets of the insurance company does not exceed the margin of solvency as defined in section 4 of the Insurance Companies Act 1960.”

Copies of
balance sheet,
etc. on
request.

35. An insurer liable under a local policy of insurance shall supply to a policy holder on request in writing, a copy of the balance sheet and of the revenue account and profit and loss account in respect to the preceding financial year of the insurer.

36. (1) No person other than a registered insurer shall, after the expiry of twelve months from the coming into operation of this Act, use the word "insurance" or a derivative as part of the name of the registered insurer.

Use of word
"Insurance"
restricted.

(2) The failure to comply with the requirements of this section shall be an offence against this Act.

37. Service of process in any legal proceedings against an insurer, who is not an association of underwriters, may be effected at the principal office of the insurer in the Federation. If there is no principal office in the Federation or the principal office has ceased to exist, process in any legal proceedings against the insurer may be served at the office of the Registrar, and service upon the Registrar, in any such case, shall be deemed to be service upon the insurer.

Service
process.

38. (1) The holder of a local policy shall, notwithstanding any contrary provision in the policy or in any agreement relating to the policy, be entitled to enforce his rights under the policy against the insurer liable under the policy in any court of competent jurisdiction in the Federation :

Enforce-
ment of
rights of
policy
owners.

Provided that nothing in this subsection shall preclude the determination of the amount of liability by arbitration in accordance with the law in any Region if the policy so authorises or allows.

(2) If any question of law arises in any action under a local policy instituted by the policy holder against the insurer, it shall, unless precluded by this Act or any Law, be decided in accordance with the law of the Region in which the action is brought.

(3) For the purposes of this section, "Region" includes Lagos.

39. (1) Any person may, on payment to the Registrar of the prescribed fee, inspect or make copies of any document or obtain certified copies of any documents in the custody of the Registrar under this Act.

Inspection
of docu-
ments, etc.

(2) No fee shall be paid to the Registrar for information supplied by him as to the principal officer in the Federation of an insurer and the address of the principal office in the Federation of an insurer.

40. (1) Where an original document is produced to the Registrar it shall be accompanied by two copies duly certified as true copies for retention by the Registrar unless the Registrar dispenses with production of the copies, or any copy.

Copies
where
documents
produced to
Registrar.

(2) Where a copy only of a document is produced, the Registrar may require production of further evidence to account for the absence of the original. If he is satisfied, two copies shall be prepared, and when duly certified on behalf of the insurer, shall be retained by the Registrar unless the Registrar dispenses with their production.

(3) For the purposes of this section a document shall be deemed to be duly signed or certified if it appears to be signed on behalf of the insurer by the principal officer in the Federation of the insurance company or is issued under seal, or as the case may be is signed by some person approved by the Registrar.

41. Any person issuing a document for the purposes of section 40 knowing it to be false in any material respect commits an offence against this Act.

False
documents.

Penalties.

42. Any person who commits an offence under this Act shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding two years, or to both.

Regulations.

43. (1) The Governor-General may make regulations generally for the purposes of this Act.

(2) Regulations made under this section may—

(a) make different provision for different classes of insurers and of insurance business ;

(b) from time to time prescribe the percentage of profits of insurance companies to be invested in Nigeria.

Policy to be
issued by
registered
insurer.
Cap. 126

No. of
1960.

Repeals.

44. Paragraph (a) of subsection (1) of section 6 of the Motor Vehicles (Third Party Insurance) Ordinance is amended by substituting for all words after "insurer" the words "registered under the Insurance Companies Act, 1961".

45. To the extent to which they are in force in the Federation, the enactments of the United Kingdom mentioned in the Schedule are hereby repealed.

SCHEDULE

Section 45

Enactments repealed

<i>Session and Chapter</i>	<i>Short Title</i>
33 & 34 Vict. c. 61	The Life Assurance Companies Act 1870
34 & 35 Vict. c. 58	The Life Assurance Companies Act 1871
35 & 36 Vict. c. 41	The Life Assurance Companies Act 1872

THE MARINE INSURANCE BILL

EXPLANATORY MEMORANDUM

The general control of insurance companies and others as envisaged for Nigeria requires as a necessary concomitant the introduction of a code of marine insurance in terms somewhat similar to those of the Marine Insurance Act 1906 (U.K.), which for convenience is referred to herein as "the Act of 1906". The law as it is at present in Nigeria in relation to marine insurance is difficult to ascertain and interpret for the reason that the common law of England, unless otherwise modified, is in operation here, as are certain statutes of general application enacted in the United Kingdom and in force before 1st January, 1900. The above Act of 1906 which preserves the operation of the rules of the common law where they are not inconsistent with that Act, is not in force in Nigeria; so the net effect is that the common law in its application to marine insurance, as well as certain statutes of general application indicated in the repeal provisions to this Bill, have the force of law here.

Because of the doubtful application of marine insurance law in Nigeria, Government considers that opportunity should now be taken to introduce a separate code of marine insurance; and this the Bill seeks to do.

In general, the Bill is an adaptation of the Act of 1906 of the United Kingdom and includes the Marine Insurance (Gambling Policies) Act 1909 which in substance is an amendment of the Act of 1906; and as such it will enact a code of law largely made up so far as Nigeria is concerned, of Court decisions and the unwritten law of England. Certain Acts had however been in operation as statutes of general application and these were repealed in the United Kingdom by the passing of the Act of 1906. To the extent to which they continued to operate in Nigeria they have not been repealed, and opportunity is taken by this Bill to effect the repeal.

For the purposes of comparison, a Table is set out hereunder which shows the corresponding sections of the Act of 1906 and 1909 and the clauses of the Bill itself.

COMPARATIVE TABLE

<i>1906 Act Section</i>	<i>Bill Clause</i>	<i>1906 Act Section</i>	<i>Bill Clause</i>
1	3	17	19
2	4	18	20
3	5	19	21
4	6	20	22
5	7	21	23
6	8	22	24
7	9	23	25
8	10	24	26
9	11	25	27
10	12	26	28
11	13	27	29
12	14	28	30
13	15	29	31
14	16	30	24
15	17	31	32
16	18	32	33

COMPARATIVE TABLE—*continued*

1906 Act Section	Bill Clause	1906 Act Section	Bill Clause
33	34	67	68
34	35	68	69
35	35	69	70
36	37	70	71
37	38	71	72
38	39	72	73
39	40	73	74
40	41	74	75
41	42	75	76
42	43	76	77
43	44	77	78
44	45	78	79
45	46	79	80
46	47	80	81
47	48	81	82
48	49	82	83
49	50	83	84
50	51	84	85
51	52	85	86
52	53	86	87
53	54	87	88
54	55	88	2 (2)
55	56	89	89
56	57	90	2 (1)
57	58	91	91 (2)
58	59	(repealed 92	91 (1)
59	60	(repealed 93	not replaced
60	61	94	1
61	62		
62	63		
63	64	1909 Act	Bill
64	65	Section	Clause
65	66	1	90
66	67	2	—

Z. B. DIPCHARIMA,
Federal Minister of Commerce
and Industry

THE MARINE INSURANCE BILL

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.

PRELIMINARY

2. Interpretation.
3. Marine insurance defined.
4. Mixed sea and land risks.
5. Marine adventure and maritime perils defined.

INSURABLE INTEREST

6. Avoidance of wagering or gaming contracts.
7. Insurable interest defined.
8. When interest attaches.
9. Defeasible or contingent interest.
10. Partial interest.
11. Re-insurance.
12. Bottomry.
13. Master's and seamen's wages.
14. Advance freight.
15. Charges of insurance.
16. Quantum of interest.
17. Assignment of interest.

INSURABLE VALUE

18. Measure of insurable value.

DISCLOSURE AND REPRESENTATIONS

19. Insurance is *uberrimae fidei*.
20. Disclosure by assured.
21. Disclosure by agent effecting insurance.
22. Representations pending negotiation of contract.
23. When contract deemed to be concluded.

THE POLICY

24. Contract to be embodied in policy.
25. What policy must specify.
26. Signature of insurer.
27. Voyage and time policies.
28. Designation of subject-matter.
29. Valued policy.
30. Unvalued policy.
31. Floating policy by ship or ships.
32. Premium to be arranged.

DOUBLE INSURANCE

33. Double insurance.

WARRANTIES, ETC.

Clause

34. Nature of warranty
35. When breach of warranty excused.
36. Express warranties.
37. Warranty of neutrality.
38. No implied warranty of nationality.
39. Warranty of good safety.
40. Warranty of seaworthiness of ship.
41. No implied warranty that goods are seaworthy.
42. Warranty of legality.

THE VOYAGE

43. Implied condition as to commencement of risk.
44. Alteration of port of departure.
45. Sailing for different destination.
46. Change of voyage.
47. Deviation.
48. Several ports of discharge.
49. Delay in voyage.
50. Excuses for deviation or delay.

ASSIGNMENT OF POLICY

51. When and how policy is assignable.
52. Assured who has no interest cannot assign.

THE PREMIUM

53. When premium payable.
54. Policy effected through broker.
55. Effect of receipt on policy.

LOSS AND ABANDONMENT

56. Included and excluded losses.
57. Total and partial loss.
58. Actual total loss.
59. Missing ship.
60. Effect of transshipment, etc.
61. Constructive total loss defined.
62. Effect of constructive total loss.
63. Notice of abandonment.
64. Effect of abandonment.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL
AVERAGE AND PARTICULAR CHARGES)

- Particular average loss.
- Salvage charges.
- General average loss.

MEASURE OF INDEMNITY

Clause

68. Extent of liability of insurer for loss.
69. Total loss.
70. Partial loss of ship.
71. Partial loss of freight.
72. Partial loss of goods, merchandise, etc.
73. Apportionment of valuation.
74. General average contributions and salvage charges.
75. Liabilities to third parties.
76. General provisions as to measure of indemnity.
77. Particular average warranties.
78. Successive losses.
79. Suing and labouring clause.

RIGHTS OF INSURER ON PAYMENT

80. Right of subrogation.
81. Right of contribution.
82. Effect of under insurance.

RETURN OF PREMIUM

83. Enforcement of return.
84. Return by agreement.
85. Return for failure of consideration.

MUTUAL INSURANCE

86. Modification in case of mutual insurance.

SUPPLEMENTAL

87. Ratification by assured.
88. Implied obligations varied by agreement or usage.
89. Slip as evidence.
90. Gambling on loss by maritime perils prohibited.
91. Repeals and savings.

SCHEDULES

A BILL
FOR

AN ACT TO PROVIDE FOR MARINE INSURANCE AND TO PROHIBIT GAMBLING
ON LOSS BY MARITIME PERILS.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows—

Enactment.

1. (1) This Act may be cited as the Marine Insurance Act, 1961, and shall come into operation on a day to be appointed by the Governor-General by notice in the *Gazette*.

Short title,
etc.

(2) This Act shall be of Federal application.

PRELIMINARY

Interpreta-
tion.

2. (1) In this Act unless the context otherwise requires,—

“action” includes counter-claim and set off ;

“freight” includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money ;

“moveables” means any moveable tangible property other than the ship and includes money, valuable securities and other documents ;

“policy” means a marine policy ;

“prescribed form” means the form of Policy in the First Schedule.

(2) For the purposes of this Act, where there is a reference to—

(a) reasonable time, or

(b) reasonable premium, or

(c) reasonable diligence,—

the question of what is reasonable shall be a question of fact.

Marine
Insurance
defined.

3. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

Mixed sea
and land
risks.

4. (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto ; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined in section 3.

Marine
adventure
and maritime
perils
defined.

5. (1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where—

(a) any ship goods or other moveables are exposed to maritime perils, such property being referred to in this Act as insurable property ;

(b) the earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils ;

(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

(3) For the purposes of this section, “maritime perils” means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

INSURABLE INTEREST

6. (1) Every contract of marine insurance by way of gaming or wagering is void.

Avoidance of wagering or gaming contracts.

(2) A contract of marine insurance shall be deemed to be a gaming or wagering contract—

(a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest ; or

(b) where the policy is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term :

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

7. (1) Subject to the provisions of this Act every person has an insurable interest who is interested in a marine adventure.

Insurable interest defined.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or damage thereto, or by the detention thereof, or may incur liability in respect thereof.

8. (1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected :

When interest attaches.

Provided that where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

9. (1) A defeasible interest shall be insurable, as also shall be a contingent interest.

Defeasible or contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

10. A partial interest of any nature shall be insurable.

Partial interest.

11. The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it ; but unless the policy otherwise provides, the original assured shall have no right or interest in respect of such reinsurance.

Reinsurance.

12. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

Bottomry.

13. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

Master's and seamen's wages.

14. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

Advance freight.

Charges of insurance.

15. The assured has an insurable interest in the charges of any insurance which he may effect.

Quantum of interest.

16. (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

Assignment of interest.

17. (1) When the assured assigns or otherwise parts with his interest in the subject-matter insured, he shall not thereby transfer to the assignee his rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect.

(2) Nothing in this section shall affect a transmission of interest by operation of law.

INSURABLE VALUE

Measure of insurable value.

18. Subject to the express provision or valuation in the policy, the insurable value of the subject-matter insured shall be ascertained as follows—

(a) in insurance on ship, the insurable value which, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade, is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy plus the charges of insurance upon the whole:

(b) in insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:

(c) in insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole:

(d) in insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

DISCLOSURE AND REPRESENTATIONS

Insurance is *uberrimae fidei*.

19. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith is not observed by either party, the contract may be avoided by the other party.

Disclosure by assured.

20. (1) Subject to the provision of this section, the assured shall disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured shall be deemed to know every

circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:—

(a) any circumstance which diminishes the risk;

(b) any circumstance which is known or presumed to be known to the insurer, and for the purposes of this paragraph, the presumption shall extend and apply to matters of common notoriety or knowledge, and to matters which an insurer in the ordinary course of his business, as such, ought to know;

(c) any circumstance as to which information is waived by the insurer;

(d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

(4) For the purposes of this section, "circumstance" includes any communication made to, or information received by, the assured; and whether any particular circumstance which is not disclosed, is material or not is, in each case a question of fact.

21. Subject to the provisions of section 20 (which refers to circumstances not requiring to be disclosed by an assured), where an insurance is effected for the assured by an agent, the agent shall disclose to the insurer—

Disclosure
by agent
effecting
insurance.

(a) every material circumstance which is known to the agent, who shall be deemed to know every circumstance which, in the ordinary course of business, ought to be known by or to have been communicated to the agent; and

(b) every material circumstance which the assured is bound to disclose unless it comes to the knowledge of the assured too late to communicate it to the agent.

22. (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded must be true; and if untrue the insurer may avoid the contract.

Representations
pending
negotiation
of contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to matter of fact is true, if it is substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation is material or not is, in each case, a question of fact.

When contract deemed to be concluded.

23. A contract of marine insurance shall be deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not; and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract.

THE POLICY

Contract to be embodied in policy.

24. (1) Subject to the provisions of any statute, a contract of marine insurance shall not be admissible in evidence unless it is embodied in a marine policy in accordance with the form in the First Schedule to this Act or to the like effect. The policy may be executed and issued either at the time when the contract is concluded, or afterwards; and subject to the provisions of this Act and unless the context of the policy otherwise requires, the terms and expressions mentioned in the said First Schedule shall be construed as having the scope and meaning in that Schedule assigned to them.

(2) Nothing in this section shall affect the operation of a contract for such insurance as is mentioned in section 388 of the Merchant Shipping Act 1961.

What policy must specify.

25. A marine policy shall specify the name of the insured, or of some person who effects the insurance on his behalf.

Signature of insurer.

26. (1) A marine policy shall be signed by or on behalf of the insurer, or if the insurer is a corporation, the corporate seal may be sufficient.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary is expressed, shall constitute a distinct contract with the assured.

(3) Nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

Voyage and time policies.

27. Where the contract is to insure the subject-matter "at and from," or from one place to another or others, the policy, is called a voyage policy; and where the contract is to insure the subject-matter for a definite period of time the policy is called a time policy. A contract for both voyage and time may be included in the same policy.

Designation of subject-matter.

28. (1) The subject-matter insured shall be designated in a marine policy with reasonable certainty; but the nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(2) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(3) In the application of this section, regard shall be had to any usage regulating the designation of the subject-matter insured.

29. (1) A policy may be either valued or unvalued, and for the purposes of this section, a valued policy is a policy which specifies the agreed value of the subject-matter insured.

Valued
policy.

(2) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss is total or partial.

(3) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purposes of determining whether there has been a constructive total loss.

30. An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner specified in section 19.

Unvalued
policy.

31. (1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

Floating
policy by
ship or ships.

(2) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declarations shall be made in the order of dispatch or shipment. In the case of goods, they shall comprise all consignments within the terms of the policy, and the value of the goods or other property shall be honestly stated; but any omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy shall be treated as an unvalued policy as regards the subject-matter of that declaration.

32. (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium shall be payable.

Premium
to be
arranged.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium shall be payable.

DOUBLE INSURANCE

33. (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

Double
insurance.

(2) Where the assured is over-insured by double insurance—

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he shall not be entitled to receive any sum in excess of the indemnity allowed by this Act.

(b) where the policy under which the assured claims is a valued policy, the assured shall give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;

(c) where the policy under which the assured claims is an unvalued policy he shall give credit, as against the full insurable value, for any sum received by him under any other policy ;

(d) where the assured receives any sum in excess of the indemnity allowed by this Act, he shall be deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

WARRANTIES, ETC.

Nature of
warranty.

34. (1) For the purposes of this section and of sections 35 to 42 (which relate to warranties) a warranty means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty within the meaning of this section may be express or implied, and is a condition which shall be exactly complied with, whether it is material to the risk or not. If it is not so complied with, then, subject to any express provision in the policy, the insurer shall be discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

When breach
of warranty
excused.

35. (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the fact that the breach has been remedied and the warranty complied with before loss shall be no defence to the assured; but a breach of warranty may be waived by the insurer.

Express
warranties.

36. (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty shall be included in or written upon the policy, or be contained in some document incorporated by reference into the policy.

(3) An express warranty shall not exclude an implied warranty, unless it is inconsistent therewith.

Warranty
of
neutrality.

37. (1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

No implied
warranty of
nationality.
Warranty of
good safety.

38. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

39. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

40. (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

Warranty of seaworthiness of ship.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

41. (1) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.

No implied warranty that goods are seaworthy.

(2) In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy.

42. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

Warranty of legality.

THE VOYAGE

43. (1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded; but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure is not so commenced the insurer may avoid the contract.

Implied condition as to commencement of risk.

(2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

44. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk shall not attach.

Alteration of port of departure.

45. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk shall not attach.

Sailing for different destination.

46. (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

Change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

Deviation.

47. (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy—

(a) where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(b) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; and if there is a deviation in fact the insurer is discharged from his liability under the contract.

Several ports of discharge.

48. (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she shall proceed to them or such of them as she goes to, in the order designated by the policy; and if she does not, there is a deviation.

(2) Where the policy is to "ports of discharge" within a given area and they are not named, the ship shall, in the absence of any usage or sufficient cause to the contrary, proceed to them or such of them as she goes to, in their geographical order; and if she does not, there is a deviation.

Delay in voyage.

49. In the case of a voyage policy, the adventure insured shall be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer shall be discharged from liability as from the time when the delay became unreasonable.

Excuses for deviation or delay.

50. (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused—

(a) where authorised by any special term in the policy; or

(b) where caused by circumstances beyond the control of the master and his employer; or

(c) where reasonably necessary in order to comply with an express or implied warranty; or

(d) where reasonably necessary for the safety of the ship or subject-matter insured; or

(e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) where caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship shall resume her course, and prosecute her voyage with reasonable dispatch.

ASSIGNMENT OF POLICY

51. (1) A marine policy shall be assignable unless it contains terms expressly prohibiting assignment; and a marine policy may be assigned either before or after loss.

When and how policy is assignable.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy shall be entitled to sue thereon in his own name; and the defendant shall be entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

52. (1) Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy shall be inoperative.

Assured who has no interest cannot assign.

(2) Nothing in this section shall be construed so as to effect the assignment of a policy after loss.

THE PREMIUM

53. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions; and the insurer shall not be bound to issue the policy until payment or tender of the premium.

When premium payable.

54. (1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

Policy effected through broker.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

55. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.

Effect of receipt on policy.

LOSS AND ABANDONMENT

56. (1) Subject to the provisions of this Act and unless the policy otherwise provides, the insurer shall be liable for any loss proximately caused by a peril insured against, but, subject, as aforesaid, he shall not be liable for any loss which is not proximately caused by a peril insured against.

Included and excluded losses.

(2) In particular,—

(a) the insurer shall not be liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he shall be liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew ;

(b) unless the policy otherwise provides, the insurer on ship or goods shall not be liable for any loss proximately caused by delay, although the delay be caused by a peril insured against ;

(c) unless the policy otherwise provides, the insurer shall not be liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Total and
partial loss.

57. (1) A total loss may be either an actual total loss, or a constructive total loss ; and any loss other than a total loss, is a partial loss.

(2) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual total loss.

(3) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(4) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

Actual total
loss.

58. (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

Missing
ship.

59. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

Effect of
tranship-
ment, etc.

60. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment to justify the master in landing and re-shipping the goods or other moveables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment.

Constructive
total loss
defined.

61. (1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss—

(a) where the assured is deprived of the possession of his ship or goods by a peril insured against and,

(i) it is unlikely that he can recover the ship or goods as the case may be, or

(ii) the cost of recovering the ship or goods as the case may be would exceed their value when recovered : or

(b) in the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired; and for the purposes of this paragraph, in estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations, and of any future general average contributions to which the ship would be liable if repaired: or

(c) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

62. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

Effect of constructive total loss.

63. (1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he shall give notice of abandonment; and if he fails to give notice of abandonment, the loss shall be treated as a partial loss.

Notice of abandonment.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment shall be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured shall not be prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer, but the mere silence of the insurer after notice shall not be construed as an acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable, and the acceptance of the notice shall be construed as conclusive admission of liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment shall be unnecessary where, at the time when the assured receives the information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

64. (1) Where there is a valid abandonment the insurer shall be entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

Effect of abandonment.

(2) Upon the abandonment of a ship, the insurer thereof shall be entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer shall be entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL AVERAGE AND PARTICULAR CHARGES)

Particular
average loss.

65. (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges, and are not included in particular average.

Salvage
charges.

66. (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) For the purposes of this section, "salvage charges" means the charges recoverable under maritime law by a salvor independently of contract, but does not include expenses of services in the nature of salvage which are recoverable, if properly incurred, as particular charges or general average loss, as the case may be, where rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against.

General
average loss.

67. (1) A general average loss is a loss caused by or directly consequential on a general average act, and includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls shall be entitled, subject to the conditions imposed by maritime law, to a rateable contribution, called a general average contribution, from the other parties interested.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer shall not be liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

MEASURE OF INDEMNITY

68. (1) Where there is a loss recoverable under the policy, the insurer, or each insurer if there are more insurers than one, shall be liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

Extent of liability of insurer for loss.

(2) For the purposes of this section "measure of indemnity" means the sum which the assured may recover in respect of a loss on a policy by which he is insured, being in the case of a valued policy the full extent of the value fixed by the policy, and in the case of an unvalued policy, the full extent of the insurable value.

69. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured,—

Total loss.

(a) if the policy is a valued policy, the measure of indemnity shall be the sum fixed by the policy:

(b) if the policy is an unvalued policy, the measure of indemnity shall be the insurable value of the subject-matter insured.

70. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, shall be as follows,—

Partial loss of ship.

(a) where the ship has been repaired, the assured shall be entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(b) where the ship has been only partially repaired, the assured shall be entitled to the reasonable cost of such repairs, computed as above, and be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above:

(c) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured shall be entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

71. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity shall be such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

Partial loss of freight.

72. (1) Where there is a partial loss of goods, merchandise or other moveables, the measure of indemnity, subject to any express provision in the policy, shall be as follows,—

Partial loss of goods, merchandise, etc.

(a) where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity shall be such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy:

(b) where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity shall be the insurable value of the part lost, ascertained as in case of total loss:

(c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity shall be such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.

(2) For the purposes of this section—

“gross value” means the wholesale price or, if there is no such price, the estimated value, with in either case, freight, landing charges, and duty paid before-hand, provided that, in the case of goods or merchandise customarily sold in bond, the bonded price shall be deemed to be the gross value;

“gross proceeds” means the actual price obtained at a sale where all charges on sale are paid by the sellers.

Apportionment of valuation.

73. (1) Where different species of property are insured under a single valuation, the valuation shall be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy; and for the purposes of this subsection, the insured value of any part of a species shall be such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2) Where a valuation is to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods are not ascertainable, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

General average contribution and salvage charges.

74. (1) Subject to any express provision in the policy, where the assured has paid, or is liable for any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value. If the subject-matter is not insured for its full contributory value, or if only part of it is insured, the indemnity payable by the insurer shall be reduced in proportion to the under insurance; and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount shall be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability shall be determined on the like principle.

Liabilities to third parties.

75. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

General provisions as to measure of indemnity.

76. (1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provision of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

77. (1) Where the subject-matter insured is warranted free from particular average, the assured shall not recover for a loss of part other than a loss incurred by a general average sacrifice, unless the contract contained in the policy is apportionable; but, if the contract is apportionable, the assured may recover for a total loss of any apportionable part.

Particular
average
warranties.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer shall nevertheless be liable for salvage charges; and the insurer shall also be liable for particular charges for and other expenses of averting a loss insured against, where properly incurred pursuant to the provisions of a suing and labouring clause to the like effect as set out in the prescribed form, if contained in the policy.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss shall not be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured, and particular charges and the expenses of and incidental to ascertaining and proving the loss shall be excluded.

78. (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer shall be liable for successive losses, even though the total amount of such losses may exceed the sum insured.

Successive
losses.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured may recover in respect only of the total loss.

(3) Nothing in this section shall affect the liability of an insurer under a suing and labouring clause in the prescribed form or to the like effect if contained in the policy.

79. (1) Where the policy contains a suing and labouring clause in the prescribed form or to the like effect, the agreement thereby entered into shall be deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

Suing and
labouring
clause.

(2) General average losses and contributions and salvage charges, as defined by this Act, shall not be recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy shall not be recoverable under the suing and labouring clause.

(4) It shall be the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

RIGHTS OF INSURER ON PAYMENT

Right of
subrogation.

80. (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he shall thereupon become entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and shall thereby be subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he shall acquire no title to the subject-matter insured, or such part of it as may remain, but shall thereupon be subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

Right of
contribution.

81. (1) Where the assured is over-insured by double insurance, each insurer shall be bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he shall be entitled to maintain an action for contribution against the other insurers, and be entitled to the like remedies as a surety who has paid more than his proportion of the debt.

Effect of
under-
insurance.

82. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he shall be deemed to be his own insurer in respect of the uninsured balance.

RETURN OF PREMIUM

Enforcement
of return.

83. Where the premium or a proportionate part thereof is, by this Act declared to be returnable,—

(a) if already paid, it may be recovered by the assured from the insurer and

(b) if unpaid, it may be retained by the assured or his agent.

Return by
agreement.

84. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, shall thereupon be returned to the assured.

Return for
failure of
considera-
tion.

85. (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium shall thereupon be returned to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium shall, under the like conditions, be returned to the assured.

(3) In particular—

(a) Where a policy is void, or is avoided by the insurer as from the commencement of the risk, the premium shall be returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium shall not be returnable:

(b) where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, shall be returnable; provided that where the subject matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium shall not be returnable unless, at such time, the insurer knew of the safe arrival:

(c) where the assured has no insurable interest throughout the currency of the risk, the premium shall be returnable, but nothing in this paragraph shall be construed to apply to a policy effected by way of gaming or wagering:

(d) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium shall not be returnable:

(e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium shall be returnable.

(4) Subject to the foregoing provisions of this section, where the assured has over-insured by double insurance, a proportionate part of the several premiums shall be returnable:

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium shall be returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium shall be returnable:

MUTUAL INSURANCE

86. (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

Modification
in case of
mutual
insurance.

(2) The provision of this Act relating to the premium shall not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

SUPPLEMENTAL

87. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

Ratification
by assured.

88. (1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negated or varied by express agreement, or by usage, if the usage is such as to bind both parties to the contract.

Implied
obligations
varied by
agreement or
usage.

(2) The provisions of this section shall extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

Slip as
evidence.

89. Where there is a duly stamped policy, reference may be made to the slip or covering note, in any legal proceeding.

Gambling
on loss by
maritime
perils
prohibited.

90. (1) If—

(a) any person effects a contract of marine insurance without having any bona fide interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a bona fide expectation of acquiring such an interest; or

(b) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship and the contract is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term,—

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, and in either case to forfeit to the Crown any money he may have received under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties, if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this section.

(3) Proceedings under this section shall not be instituted without the consent of a Law Officer.

(4) Proceedings shall not be instituted under this section against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this section.

(5) If proceedings under this section are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

(6) For the purpose of giving jurisdiction under this section, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

(7) Any person aggrieved by an order or decision of a court of summary jurisdiction under this section may appeal to High Court.

(8) For the purposes of this section, the expression "owner" includes charterer.

Repeals and
savings.

91. (1) The enactments mentioned in the Second Schedule in so far as they are in force in and form part of the laws of Nigeria, are hereby repealed to the extent specified in that Schedule.

(2) Nothing in this Act or in any repeal effected thereby, shall affect—

(a) the provisions of the Stamp Duties Ordinance or any enactment for the time being in force relating to the revenue ; Cap. 191.

(b) the provisions of the Companies Ordinance or any enactment amending or substituted for the same ; Cap. 37.

(c) the provisions of any statute not expressly repealed by this Act.

(3) The rules of the common law of England, to the extent to which they are in force in Lagos under the Interpretation Ordinance shall, for the purposes of this Act, be in force in all Regions of Nigeria ; and save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance. To give effect to this subsection in any Region, the rules of the common law shall where necessary be deemed to have been duly revived ; and for the removal of doubts, and subject to the provisions of this subsection, the usages of the law merchant in England shall be deemed to be part of the common law and be construed with and form part of this Act. For the purposes of this subsection, "Region" includes Lagos. Cap. 89.

SCHEDULES

FIRST SCHEDULE FORM OF POLICY

BE IT KNOWN THAT.....as well in.....own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause.....and them, and every of them, to be insured lost or not lost, at and from.....

Upon any kind of goods and merchandise, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the.....whereof is

master under God, for this present voyage,.....or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called ; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship,.....

upon the said ship, etc., and so shall continue and endure, during her abode there, upon the said ship, etc. And further, until the said ship with all her ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at.....upon the said ship, etc., until she hath moored at anchor twenty-four hours in good safety ; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage, to proceed and sail to and touch

and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in any place in Nigeria. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

In Witness whereof we, the assurers, have subscribed our names and sums assured in London.

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent., and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent unless general, or the ship be stranded.

RULES FOR CONSTRUCTION OF POLICY

Section 25

1. Where the subject-matter is insured "lost or not lost", and the loss has occurred before the contract is concluded, the risk attaches, unless at such time the assured was aware of the loss, and the insurer was not.
2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.
3. (a) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.

(b) If she be not at that place when the contract is concluded; the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches *pro rata* as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4. Where goods or other moveables are insured "from the loading thereof," the risk does not attach until such goods or moveables are actually on board, and the insurer is not liable for them while in transit from the shore to ship.

5. Where the risk on goods or other moveables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

6. In the absence of any further license or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8. The term "pirates" includes passengers who mutiny and riots who attack the ship from the shore.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

10. The term "arrests, etc., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges".

14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, both does not include passage money.

17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

SECOND SCHEDULE

Section 91

ENACTMENTS REPEALED

<i>Session and Chapter</i>	<i>Title or Short Title</i>	<i>Extent of repeal</i>
19 Geo. 2 c.37	An Act to regulate insurance on ships belonging to the subject of Great Britain and on merchandizes or effects laden thereon.	The whole Act.
28 Geo. 3 c.56	An Act to repeal an Act made in the twenty-fifth year of the reign of his present majesty intituled "An Act for regulating Insurances on Ships and on goods, merchandizes or effects" and for substituting other provisions for the like purpose in lieu thereof.	The whole Act so far as it relates to marine insurance.
and 32 Vict. c.86	The Policies of Marine Assurance Act 1868.	The whole Act.

STAMP DUTIES (AMENDMENT)**EXPLANATORY MEMORANDUM**

The object of this Bill is to provide for a stamp duty on policies of marine insurance for which there is no provision in the Stamp Duties Ordinance. This has been necessitated by the introduction of Marine Insurance Bill.

STAMP DUTIES (AMENDMENT)**ARRANGEMENT OF CLAUSES***Clause*

1. Short title.
2. Definition of policy of marine insurance.
3. Duty on policy of marine insurance.
4. Rate of duty on marine insurance.

A BILL FOR

AN ACT TO AMEND THE STAMP DUTIES ORDINANCE.

[

]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows—

5 1. (1) This Act may be cited as the Stamp Duties (Amendment) Act, 1961, and shall be read as one with the Stamp Duties Ordinance (hereinafter called the Ordinance) and shall come into operation on a day to be appointed by the Governor-General by notice in the Gazette.

Short title,
etc.
Cap. 191.

(2) This Act shall apply to the Federal territory.

2. Section 83 of the Ordinance is amended,—

Definition
of policy
of marine
insurance.

10 (a) in the definition of "policy of insurance" by inserting immediately following the word "writing" the words "other than cover notes, slips, or other instruments usually made in anticipation of the issue of formal policy of marine insurance, and instruments embodying alterations of the terms or conditions of any formal
15 policy of marine insurance," ; and

(b) by deleting the word "and" where it last occurs and inserting at the end of the section, the following definition—

20 "policy of marine insurance" means any formal contract whereby an insurer undertakes to indemnify an assured against losses incident to marine adventure, and includes any contract relating to insurance of a ship or the machinery or fittings belonging to the ship whilst under construction or repair or on trial.

Duty on
policy of
marine
insurance.

Rate of
duty on
marine
insurance.

3. The Ordinance is amended by inserting immediately after section 84 a new section as follows—

“84A. A policy of marine insurance shall be charged with the duty prescribed in the Schedule to this Ordinance”.

4. Whereas by section 114 of the Ordinance the House of Representatives is authorised by resolution to increase, diminish or repeal any duty chargeable under any of the heads specified in the Schedule to the Ordinance :

And whereas to give effect to this Act it is expedient that the duties prescribed hereunder by this section shall have effect notwithstanding the provisions of the said section 114 :

Be it therefore enacted as follows :—

The Schedule to the Ordinance is amended in the head of charge “policy of Insurance”,—

(a) by inserting as a sub-head immediately before the sub-head beginning “Policy of Insurance against Accident”, the words
Symbols

“Policy of Marine Insurance See sections 83-85”; $\begin{matrix} \text{£} & \text{s} & \text{d} \\ 0 & 0 & 6 \end{matrix}$

(b) by adding the following proviso to the sub-head beginning “Policy of Insurance of any kind”,—

“Provided that cover notes, slips or other instruments usually made in anticipation of the issue of a formal policy or marine insurance shall not be taken for the purposes of this sub-head to be policies of insurance.”;

(c) by substituting in the exemption for the words “Policies of Sea Insurance.”, the words “Policies of insurance on baggage or personal and household effects only, if made or executed out of Nigeria.”

CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS)

EXPLANATORY MEMORANDUM

This Bill seeks to prescribe a standard of harmful publications likely to corrupt children and young persons and to impose sundry penalties on distributors of such works where they are likely to fall into hands of such juveniles.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

CHILDREN AND YOUNG PERSONS (HARMFUL PUBLICATIONS)

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Interpretation.
3. Importation of certain books, etc., prohibited.
4. Penalty for printing, publishing, selling books to which this Act applies.
5. Power to search for and dispose of works to which this Act applies and articles for publishing them.

A BILL
FOR

AN ACT TO PREVENT THE DISEMINATION OF CERTAIN PICTORIAL PUBLICATIONS
HARMFUL TO CHILDREN AND YOUNG PERSONS.

[]	Commence- ment.
1	2	3
4	5	6
7	8	9
10	11	12
13	14	15
16	17	18
19	20	21
22	23	24
25	26	27
28	29	30
31	32	33
34	35	36
37	38	39
40	41	42
43	44	45
46	47	48
49	50	51
52	53	54
55	56	57
58	59	60
61	62	63
64	65	66
67	68	69
70	71	72
73	74	75
76	77	78
79	80	81
82	83	84
85	86	87
88	89	90
91	92	93
94	95	96
97	98	99
100	101	102
103	104	105
106	107	108
109	110	111
112	113	114
115	116	117
118	119	120
121	122	123
124	125	126
127	128	129
130	131	132
133	134	135
136	137	138
139	140	141
142	143	144
145	146	147
148	149	150
151	152	153
154	155	156
157	158	159
160	161	162
163	164	165
166	167	168
169	170	171
172	173	174
175	176	177
178	179	180
181	182	183
184	185	186
187	188	189
190	191	192
193	194	195
196	197	198
199	200	201
202	203	204
205	206	207
208	209	210
211	212	213
214	215	216
217	218	219
220	221	222
223	224	225
226	227	228
229	230	231
232	233	234
235	236	237
238	239	240
241	242	243
244	245	246
247	248	249
250	251	252
253	254	255
256	257	258
259	260	261
262	263	264
265	266	267
268	269	270
271	272	273
274	275	276
277	278	279
280	281	282
283	284	285
286	287	288
289	290	291
292	293	294
295	296	297
298	299	300
301	302	303
304	305	306
307	308	309
310	311	312
313	314	315
316	317	318
319	320	321
322	323	324
325	326	327
328	329	330
331	332	333
334	335	336
337	338	339
340	341	342
343	344	345
346	347	348
349	350	351
352	353	354
355	356	357
358	359	360
361	362	363
364	365	366
367		

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

5	<p>1. This Act may be cited as the Children and Young Persons (Harmful Publications) Act, 1961, and shall apply to the Federal territory.</p>	<p>Short title, etc.</p>
---	---	------------------------------

2. (1) In this Act, unless the context otherwise requires,—

"child" and "young person" have the meanings assigned to them respectively by section 2 of the Children and Young Persons Ordinance;

Interpretation.

Cap. 32.

"magazine" includes any medley published at intervals of not more than three months ;

"photographic film" includes photographic plate :

15 “photographic plate” means any plate so treated as to reproduce or be intended to reproduce an image of a subject when photographed;

"plate" except where it occurs in the expression photographic plate includes any block, mould matrix and stencil.

(2) This Act applies to any book or magazine which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying—

- (a) the commission of crimes ; or
(b) acts of violence or cruelty ; or
(c) incidents of a repulsive or horrible nature ;

25 in such a way that the work as a whole would tend to corrupt a child
or young person into whose hands it might fall.

Importation
of certain
books, etc.,
prohibited.

Penalty for
printing,
publishing,
selling books
to which
this Act
applies.

Power to
search for
and dispose
of works to
which this
Act applies
and articles
for publish-
ing them.

3. No person shall import any book or magazine to which this Act applies or any plate prepared for the purpose of printing copies of any such book or magazine or any photographic film prepared for that purpose.

4. (1) Any person who prints, publishes, sells or lets on hire any book or magazine to which this Act applies, or has any such book or magazine in his possession for the purpose of selling the book or magazine or letting the book or magazine on hire, shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term of six months or to a fine of one hundred pounds, or to both.

(2) It shall be a defence for any person charged under this section to prove that he had not examined the contents of the book or magazine and had no reasonable cause to suspect that the book or magazine was one to which this Act applies.

(3) A prosecution for an offence under this section shall not be instituted except by, or with the consent of, a Law Officer.

5. (1) Where, upon an information being laid before a magistrate that a person has, or is suspected of having, committed an offence under section 4 of this Act with respect to any book or magazine to which this section applies the magistrate issues a summons directed to that person requiring him to answer to the information or issues a warrant to arrest that person, the magistrate or any other magistrate if satisfied by information substantiated on oath that there is reasonable ground for suspecting that the person charged or suspected has in his possession or under his control,—

(a) copies of any book or magazine to which this section or this Act applies ; or

(b) any plate prepared for the purpose of printing copies of any book or magazine to which this section or this Act applies or any photographic film prepared for that purpose ;

may grant a search warrant authorising any constable named therein to enter (if necessary by force) any premises specified in the warrant and any vehicle or stall used by the said person for the purposes of trade or business and to search the premises, vehicle or stall and seize any of the following things which the constable finds therein or thereon, that is to say :—

(i) any copies of the book or magazine to which this section applies and any copies of any other book or magazine which the constable has reasonable cause to believe to be a book or magazine to which this Act applies ; and

(ii) any plate which the constable has reasonable cause to believe to have been prepared for the purpose of printing copies of any book or magazine as is mentioned in paragraph (i) of this subsection and any photographic film which he has reasonable cause to believe to have been prepared for that purpose.

(2) The court by or before which a person is convicted of an offence under section 4 of this Act with respect to a book or magazine may order any copies of the book or magazine and any plate prepared for the purpose of printing copies of the book or magazine or photographic

film prepared for that purpose, being copies which have, or a plate or film which has, been found in his possession or under his control, to be forfeited.

- 5 (3) No order made under subsection (2) of this section by a magistrates' court or, on appeal from a magistrates' court, by the High Court shall take effect until the expiration of the ordinary time within which an appeal may be lodged (whether by giving notice of appeal or applying for a case to be stated for the opinion of the High Court) or, where
10 such an appeal is duly lodged, until the appeal is finally decided or abandoned.

(Bills 734)

OBSCENE PUBLICATIONS

EXPLANATORY MEMORANDUM

This Bill seeks to prescribe a test of obscenity and to make the publication of obscene matter an offence.

T. O. ELIAS,
*Attorney-General of the Federation
and Minister of Justice*

OBSCENE PUBLICATIONS

ARRANGEMENT OF CLAUSES

Clause

1. Short title, etc.
2. Interpretation.
3. Test of obscenity.
4. Prohibition of publication of obscene matter.
5. Power of search and seizure.
6. Defence of public good.
7. Repeals.

A BILL

FOR

AN ACT TO AMEND THE LAW RELATING TO THE PUBLICATION OF OBSCENE MATTER; TO PROVIDE FOR THE PROTECTION OF LITERATURE; AND TO STRENGTHEN THE LAW CONCERNING PORNOGRAPHY.

[

]

Commence-
ment.

BE IT ENACTED by the Legislature of the Federation of Nigeria in this present Parliament assembled and by the authority of the same as follows :—

5 1. This Act may be cited as the Obscene Publications Act, 1961, and shall apply to the Federal territory.

Short title,
etc.

2. In this Act,—

Interpreta-
tion.

“article” means anything capable of being or likely to be looked at and read or looked at or read, and includes any film or record of a picture or pictures, and any sound records;

10 “distributes” includes circulates, lends, sells, lets on hire or offers for sale or on hire;

“projects” in relation to an article to be looked at or heard includes shows or plays.

15 3. (1) An article shall be deemed to be obscene for the purposes of this Act if its effect taken as a whole is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

Test of
obscenity.

20 (2) The provisions of this section shall extend to any article of two or more distinct items the effect of any one of which is such as to tend to deprave and corrupt; but nothing in this section shall apply to exhibitions in private houses to which the public are not admitted or to anything done in the course of television or sound broadcasting.

Prohibition
of publica-
tion of
obscene
matter.

4. (1) Subject to the provisions of this Act, any person who, whether for gain or not, distributes or projects any article deemed to be obscene for the purposes of this Act, commits an offence punishable on conviction by a fine not exceeding two hundred pounds or by imprisonment for a term not exceeding three years or by both.

(2) A person shall not be convicted of an offence against this section if he proves that he had not examined the article in respect of which he is charged and had no reasonable cause to suspect that it was such that his publication of it would make him liable to be convicted of an offence against this section.

(3) In any proceedings against a person under this section the question whether an article is obscene shall be determined without regard to any publication by another person unless it could reasonably have been expected that the publication by the other person would follow from publication by the person charged.

(4) No prosecution for an offence against this section shall be commenced more than two years after the commission of the offence.

Power of
search and
seizure.

5. (1) Subject to the provisions of this Act, if a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that articles deemed to be obscene for the purposes of this Act are, or are from time to time, kept for publication for gain in any premises or on any stall or vehicle in the Federal territory the magistrate may issue a warrant under his hand empowering any constable to enter (if need be by force) and search the premises, or to search the stall, or vehicle, within fourteen days from the date of the warrant, and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles for the purposes of this Act and to be kept for publication for gain.

(2) A warrant under subsection (1) of this section shall, if any obscene articles are seized under the warrant, also empower the seizure and removal of any documents found in the premises or, as the case may be, on the stall or vehicle which relate to a trade or business carried on at the premises or from the stall or vehicle.

(3) Articles seized under subsection (1) of this section may be brought before the magistrate who issued the warrant or before any other magistrate, and the magistrate before whom the articles are brought may thereupon issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before a magistrates' court to show cause why the articles or any of them should not be forfeited. If the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited; but no order shall be made under this subsection in default of appearance by the person summoned unless service of the summons is proved.

(4) In addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(5) Where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the High Court; and no such order shall take effect until the expiration of fourteen days after the day on which the order is made, or, if before the expiration thereof notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(6) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.

(7) For the purposes of this section the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

(8) Nothing in this section shall be construed to preclude the making of any order for the purposes of section 263 of the Criminal Procedure Ordinance (which relates to disposal of property produced before a court).

Cap. 43.

6. (1) No person shall be convicted of an offence against this Act, and no order for forfeiture shall be made if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern.

Defence of public good.

(2) It is hereby declared that the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground.

7. (1) To the extent that the Obscene Publications Act, 1857 of the United Kingdom is in force in the Federal territory as a statute of general application that Act shall cease to have effect and is hereby repealed.

Repeals.
20 and 21
Vict. C83.

(2) Without prejudice to the operation of the Interpretation Ordinance, section 232 of the Schedule to the Criminal Code Ordinance (which imposes penalties for obscene publications and exhibitions) is hereby repealed.

Cap. 89.
Cap. 42.

(Bills 766)