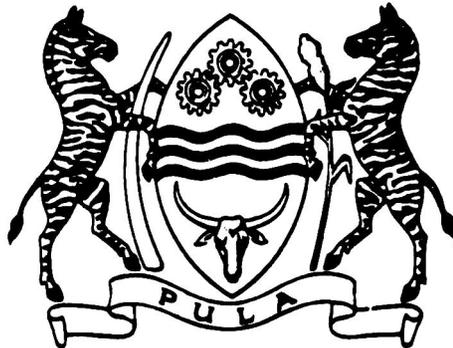


REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

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STATE OF TEXAS



GOVERNMENT OF TEXAS

COMMISSIONERS OF THE GENERAL LAND OFFICE

San Antonio, Texas

Dear Sir:

Very truly yours,
Commissioners of the General Land Office

Bill No. 6 of 1987

PENSION AND PROVIDENT FUNDS BILL, 1987

(Published on 13th March, 1987)

A draft of the Act which it is proposed to present to the National Assembly is set out below.

2. The proposed Insurance Industry Bill inter alia regulates any pension or provident fund that may be established as an insurance company administered scheme. There is however, no law at present in Botswana to govern the regulation of pension funds and provident funds established and run as a self administered scheme by any body of persons other than an insurance company. The present Bill seeks to provide for this lacuna.

3. The Bill Requires all pension and provident funds, other than those established and managed exclusively by an insurance company, to be registered. Upon registration such a fund becomes a corporate body to be administered in accordance with the document establishing it and its rules as approved by a Registrar of Pension and Provident Funds. Just as in the case of insurance companies registered under the Insurance Industry Bill, this Bill empowers the Registrar to supervise the funds with a view to maintaining their financial security and protecting the members. This Bill provides for the regulation by the Minister of investment of the monies of the fund. It provides for the investigation of the finances of such funds by the Registrar and empowers him to place a fund he finds in an unsound financial condition in trust or to cancel its registration and wind it up. Appeals from the Registrar's decisions lie to the Minister.

4. The Registrar is required to make an annual report to the Minister which the Minister in turn is required to lay before the National Assembly.

P.S. MMUSI,
*Vice-President and Minister of
Finance and Development Planning.*

ARRANGEMENT OF SECTIONS

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A BILL

—entitled—

An Act to provide for the registration, incorporation, regulation and dissolution of pension and provident funds and for matters incidental to or connected with the foregoing.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana

PART I *Preliminary*

1. This Act may be cited as the Pension and Provident Funds Act, 1987, and shall come into operation to such extent and on such dates as the Minister may, by notice published in the Gazette, appoint.

Short title
and
commen-
cement

2. (1) In this Act, unless the context otherwise requires, —
“actuary” means —

Inter-
pretation

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

“appointed day” means the date fixed in terms of section 1 as the date upon which this Act shall come into operation;

“associated” in relation to an application for registration of a fund includes —

- (a) any company in which that fund has a managerial interest;
- (b) any person who is an employee or manager of that fund; or
- (c) if the fund is a company —
 - (i) any director of that company;
 - (ii) any subsidiary of that company;
 - (iii) any director or employee of any such subsidiary;

“Botswana member” means a member who is resident in Botswana;

“court”, in relation to any offence under this Act, includes a magistrates court having jurisdiction in respect of that offence;

“employee” includes a director of a company whose time, in the opinion of the Registrar, is wholly or almost wholly occupied in the service of the company;

“existing funds” means a fund which was established and has been approved by the Commissioner of Taxes in terms of the Income Tax Act;

Cap. 52:01

“external fund” means a fund which has a head office outside Botswana;

“fund” means any scheme or arrangement, other than an insurance company scheme but including a trust fund, the principal object of which is to provide benefits for persons who are or have been members of the scheme or arrangement upon their retirement on account of age or ill-health, or upon a person completing a fixed period of service, whether or not such scheme or arrangement —

- (a) also provides benefits for dependants or nominees of deceased members; or
- (b) continues to admit members or to receive contributions; and includes any fund established by or in terms of any enactment:

Provided that a scheme or arrangement which is established to benefit only one member or his dependants shall not be regarded as a fund;

“head office”, in relation to a fund, means the office at which the main records of the fund are kept;

“insurance company scheme” means a scheme which provides for the establishment and administration of a fund exclusively by an insurer;

“insurer” means a person registered to transact long term insurance business in terms of the Insurance Industry Act, 1987;

“internal fund” means a fund which has its head office in Botswana;

“life insurer” means an insurer which carries on long term insurance business as defined in the Insurance Industry Act, 1987;

“member”, in relation to a fund, means any person who is a member of that fund in terms of the rules thereof;

“Minister” means the Minister to whom the President may from time to time assign the administration of this Act;

“officer”, in relation to a fund, means any person who is employed by that fund or is otherwise concerned in the management of that fund;

“participating employer”, in relation to a fund means any employer who contributes to that fund in terms of the rules thereof or who participates in the administration of that fund not being an insurance company scheme;

“pension” includes an annuity acquired through a fund and a commuted lump sum not exceeding thirty four percent of the pension to which the person would be entitled on retirement;

“pension fund” means any fund the principal object of which is to provide for the payment of a pension to a person, who is or has been a member of the fund, on his retirement;

“principal officer”, in relation to a fund, means a person appointed in terms of section 13 to be the principal officer of that fund;

“provident fund” means a fund which is not a pension fund;

“provisionally registered”, in relation to a fund, means provisionally registered in terms of this Act;

“registered”, in relation to a fund, means registered in terms of this Act;

“registered office”, in relation to a fund, means the registered office of that fund referred to in section 12;

“Registrar” means the Registrar of Pension and Provident Funds appointed in terms of section 3;

“retirement” means the attainment of retiring age, whether or not there is a termination of employment;

“retiring age” means that age, at which the member is, under the rules of the fund, expected to retire from employment;

“return” includes —

- (a) all accounts required by section 15; and
- (b) any report by the actuary or auditor of a fund; and
- (c) any document which a fund is required by or in terms of this Act to furnish to the Registrar; and
- (d) any other information which the Registrar requires a fund to submit to him;

“rules”, in relation to a fund, means the rules applicable to that fund, including —

- (a) any document by or in terms of which the fund is established; and
- (b) those provisions relating to the conduct of the business of the fund, the benefits which may be granted from the fund and the contributions which are payable to the fund;

“self-administered fund” means a fund which is not an insurance company scheme.

(2) For the purposes of this Act, a member of a partnership whose time, in the opinion of the Registrar, is wholly or almost wholly occupied in the service of the partnership may be regarded as an employee, in which case the partnership shall be regarded as his employer.

3. (1) There shall be a Registrar of Pension and Provident Funds (in this Act referred to as “the Registrar”) who shall be a public officer appointed by the Minister.

(2) The Registrar shall, subject to the direction of the Minister, be responsible for the general administration of this Act.

(3) A person shall not be qualified to be appointed as the Registrar, or if already appointed shall become disqualified if —

- (a) he or his spouse or dependant child is or becomes a director, officer or employee, whether directly or indirectly, of a Botswana registered pension or provident fund;
- (b) he is adjudicated bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

(4) Notwithstanding subsection (3), no act or omission by the Registrar done or omitted bona fide for the purposes of or in pursuance of this Act shall be invalidated by reason only of any defect in his appointment.

(5) There shall be appointed such other staff as may be necessary for the efficient administration of this Act.

(6) The expenses of and incidental to the administration of this Act shall be paid out of monies provided by Parliament for that purpose.

Appoint-
ment and
functions
of Registrar

(7) The Registrar may, in relation to any function or matter or class of functions or matters, by writing under his hand, delegate any of his powers and functions under this Act (except this power of delegation), so that the delegated powers and functions may be exercised by the delegate with respect to the function or matter or class of functions or matters specified in the instrument of delegation.

(8) Every delegation under subsection (7) shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Registrar.

(9) No legal proceedings shall be instituted in any court against the Minister or the Registrar for anything done or intended to be done in good faith under this Act.

(10) No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Minister or the Registrar or any person authorised by the Minister or Registrar under this Act.

(11) Subject to the provisions of this Act, the functions and duties of the Registrar shall include —

- (a) the registration and superintendence of the conduct of pensions and provident funds;
- (b) the formulation and enforcement of standards in the conduct of the business of pensions and provident funds with which the management of such funds must comply;
- (c) the recommendation to the Minister of regulations for the carrying out of Government policies relating to funds;
- (d) such other functions as are assigned to the Registrar by this Act or regulations made hereunder or such other duties as the Minister may assign to him.

(12) The Registrar shall, as soon as reasonably practical after each year ending on 31st December, furnish to the Minister a report on the working of the Act during that year together with copies or summaries and documents deposited with him under this Act during that year; and the Minister shall lay the report before the National Assembly as soon as reasonably practicable thereafter.

PART II Registration and matters incidental thereto

Funds to be registered
Registration or provisional registration of fund

4. No person shall establish or carry on the business of a fund unless that fund is registered or provisionally registered.

5. (1) Any person who wishes to apply for the registration or provisional registration of a fund shall submit to the Registrar —

- (a) an application for registration in the prescribed form; and
- (b) if the application is for registration, two copies of printed, duplicated or typed rules providing for the matters referred to in section 7:

Provided that in the case of an application by an existing fund which is provisionally registered, one copy of the rules of the fund which has been approved by the Commissioner of Taxes may be submitted, together with any amendment for approval in terms of section 8.

- (2) If, on receipt of an application in terms of subsection (1) —
 - (a) for registration, after considering the application, the rules accompanying such application and such further information as he may require, the Registrar is satisfied that —
 - (i) the rules are not inconsistent with the provisions of this Act; and
 - (ii) the fund is or will be based on sound financial principles; he shall register the fund;
 - (b) for provisional registration, the Registrar is satisfied that the fund is or will be based on sound financial principles, he may provisionally register the fund.
- (3) The period of provisional registration of a fund in terms of paragraph (b) of subsection (2) shall not exceed six months unless, in the case of any particular fund, the Registrar has, by notice in writing, extended the period of provisional registration of that fund, and any such fund shall cease to be provisionally registered when it is registered in terms of paragraph (a) of subsection (2).
- (4) A fund which is provisionally registered in terms of paragraph (b) of subsection (2) shall, before its provisional registration lapses, submit an application, together with the rules, in terms of subsection (1) to the applicant for reconsideration or amendment;
- (5) The Registrar
 - (a) may at any time return the rules submitted in terms of subsection (1) to the applicant for reconsideration or amendment;
 - (b) shall, on the registration of a fund in terms of paragraph (a) of subsection (2) —
 - (i) return to the fund a copy of the rules endorsed by him;
 - (ii) issue to the fund a certificate of registration; and
 - (iii) if the fund was provisionally registered, require the return of the certificate of provisional registration;
 - (c) shall, on the provisional registration of a fund in terms of paragraph (b) of subsection (2), issue to the fund a certificate of provisional registration.
- (6) On the provisional registration of a fund in terms of paragraph (b) of subsection (2), the provisions of section 6 shall, *mutatis mutandis*, apply in relation thereto and the provisions of this Act shall, *mutatis mutandis*, apply in relation to the provisionally registered fund as they apply in relation to a registered fund.

B.22

Effect of
registration
of fund

6. (1) On registration in terms of paragraph (a) of subsection (2) of section 5 —

- (a) a fund shall, under the name by which it is so registered, become a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary or incidental to the exercise of its powers or the performance of its functions in terms of its rules;
- (b) all the assets, rights, liabilities and obligations pertaining to the business of the fund shall, notwithstanding anything to the contrary contained in any law or in the memorandum, articles of association, constitution or rules of any body, corporate or unincorporate, having control of the business of the fund, be deemed to be assets, rights liabilities and obligations of the fund to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund;
- (c) the assets, rights, liabilities and obligations of the fund, including any assets held by any person in trust for the fund, as existing immediately before its registration, shall vest in and devolve upon the fund without any formal transfer or cession.

(2) Every director, manager, controller and principal officer of a fund shall be under the same civil liability, in relation to the administration of the affairs of the fund, as if he had been a trustee under a trust for the administration of the fund and as if the members of the fund had been beneficiaries of such a trust, unless the director, manager, controller or principal officer proves that the act causing pecuniary loss to the fund was not done by him and that he had no knowledge of the intention to do such act and that the exercise of due diligence by him did not or would not have made him aware of it.

Rules of
a fund

7 (1) The rules of a fund —

- (a) shall state the name of the fund; and
 - (b) shall comply with such requirements as may be prescribed.
- (2) Requirements prescribed for the purposes of paragraph (b) of subsection (1) may relate to —

- (a) the membership of the fund;
- (b) the contributions to be paid to the fund whether compulsory or otherwise;
- (c) the benefits to be payable from the fund;
- (d) the commutation of any pension;
- (e) the appointment or election of trustees to administer the fund and their powers and duties;

- (f) the dissolution of the fund, including the appointment and powers of a liquidator;
- (g) the amendment or replacement of the rules.
- (3) Subject to the provisions of this Act, the rules of a registered fund shall be binding on —
 - (a) the fund;
 - (b) any participating employer and the members and officers of the fund; and
 - (c) any person who claims under the rules or whose claim is derived from a person claiming under the rules of the fund.

8. (1) Subject to the provisions of this section, the rules of a fund may be amended or repealed and replaced at any time in accordance with such procedure as is provided for in the rules:

Amendment
of rules
of a fund

Provided that no such amendment or replacement shall be valid until it has been approved by the Registrar and registered in terms of subsection (3).

(2) Where a resolution has been passed approving the amendment or replacement of the rules of a fund, the principal officer of a fund shall, within one month of the passing of the resolution, submit two copies thereof to the Registrar, together with —

- (a) a certificate signed by the principal officer certifying that the rules of the fund applicable to the amendment or replacement have been complied with;
- (b) a statement setting out the reasons for the amendment or replacement; and
- (c) if the amendment or replacement affects the financial position of the fund, a certificate in connection with the financial soundness thereof by the actuary or, if the fund has no actuary, by the auditor.

(3) If the Registrar is satisfied that an amendment or replacement referred to in subsection (1) is not inconsistent with the provisions of this Act, he shall register such amendment or replacement and return to the principal officer of the fund a copy of the resolution with the date of registration endorsed thereon:

Provided that if any such amendment or replacement has the effect of reducing any benefit that has accrued to a member in respect of his service prior to the amendment or replacement, the Registrar may refuse to approve the amendment or replacement if he is of the opinion that it is unjust to any member or group of members or that it has not been approved by a majority of the members of the fund either in writing or at a meeting called for the purpose by the trustees administering the fund or the participating employers, as the case may be.

(4) If at any time the Registrar considers that the rules of a fund require to be amended for the purpose of ensuring compliance with the provisions of this Act, he shall direct the fund to effect

such amendment within such period as he may specify and the fund shall comply with such direction.

Conclu-
siveness
of certificate
of
registration

9. A certificate of registration of a fund shall, upon its mere production, in the absence of proof of fraud, be conclusive evidence that all the requirements of this Act in respect of registration and all matters precedent and incidental thereto have been complied with and that the fund is duly registered.

Dissolution
of registered
fund

10. (1) Subject to the provisions of this section, a registered fund —

- (a) may be dissolved in accordance with the provisions of the rules of the fund; and
- (b) shall be dissolved where so directed by the Registrar in terms of section 19.

(2) Where the Registrar has in terms of section 19, directed that a registered fund be dissolved, a liquidator approved by the Registrar shall be appointed in the manner provided in the rules of the fund and the following provisions shall apply —

- (a) the liquidator, with the approval of the Registrar, shall determine the date of liquidation and the period of back-dating, if any, for the purpose of including in the calculations in connection with the liquidation those members who during that period resigned or were discharged solely because of the impending winding-up or liquidation of the business operations of a participating employer and who shall be deemed to be members for the purposes of the liquidation;
- (b) until the liquidation is completed, the provisions of this Act shall, as far as practicable, continue to apply to the fund as if the liquidator were the principal officer of the fund;
- (c) the liquidator shall, as soon as possible, lodge with the Registrar a list of the assets and liabilities of the fund certified by him as correct and a scheme setting out the manner in which he proposes to realize the assets of the fund, to discharge the liabilities to persons other than members and beneficiaries and to meet the expenses of liquidation;
- (d) the actuary shall submit to the liquidator a report showing the proportion of the amount available for distribution that the actuary recommends should be applied for the benefit of each beneficiary:

Provided that if the fund in terms of section 14 has not appointed an actuary the amount to be applied for the benefit of each beneficiary shall be determined by the liquidator;

- (e) the liquidator shall submit the report in terms of paragraph

- (d) to the Registrar with his estimate of the total amount available for distribution and his recommendation as to the manner in which the amount to be applied for the benefit of each member or beneficiary should be applied;
- (f) the documents submitted by the liquidator in terms of paragraph (e) shall lie open at the registered office of the fund for inspection by interested parties for a period of one month;
- (g) the Registrar shall, at the expense of the fund, cause to be published in the Gazette and in a newspaper circulating in the district in which the registered office of the fund is situated a notice which —
- (i) specifies the period during which and the places at which the documents referred to in paragraph (f) shall lie open for inspection in terms of that paragraph; and
 - (ii) calls upon every interested person who has any objection to the method of distribution recommended by the liquidator to lodge his objection in writing with the Registrar within such period as may be specified in the notice, being not less than one month from the last day on which the documents lie open for inspection;
- (h) if no objection is lodged with the Registrar in terms of paragraph (g), he shall direct the liquidator to complete the liquidation in accordance with the scheme recommended;
- (i) if any objection is lodged with the Registrar in terms of paragraph (g), the Registrar shall consider the objection and shall direct the liquidator to complete the liquidation in accordance with the scheme as recommended or as amended by the Registrar in such manner as he thinks fit after considering the objections received;
- (j) the Registrar may give to the liquidator such directions relating to the liquidation as he thinks fit and such directions shall, subject to the provisions of paragraph (k), be binding upon the liquidator;
- (k) within one month of receiving any direction from the Registrar in terms of paragraph (j), the liquidator shall post a copy thereof to every member, beneficiary and creditor of the fund and the liquidator or any person aggrieved by any such direction from the Registrar may apply by motion to the High Court within two months after the direction has been communicated to the liquidator for an order setting aside the direction or to make such other order as it thinks fit;
- (l) the Registrar shall direct the liquidator to complete the liquidation in accordance with his directions in terms of paragraph (j) or with any court order in terms of paragraph (k), as the case may be;

- (m) within one month after the completion of the liquidation of the fund, the liquidator shall lodge with the Registrar a final account signed and certified by him as correct showing the manner in which the assets of the fund have been realised and distributed;
- (n) every claim against the fund shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the High Court and the liquidator may require any claim to be made on affidavit.

Cancellation of registration

11. (1) Where the Registrar has reasonable grounds for believing that —

- (a) a body which was registered as a fund was registered in error; or
- (b) a registered fund has ceased to exist or has been dissolved in terms of section 10;

he shall, if possible, serve notice on the fund concerned at its registered office that he proposes to cancel its registration, or where that is not possible he shall publish the same notice in three issues of the Gazette.

(2) If no appeal is lodged within one month of his compliance with subsection (1) the Registrar shall forthwith cancel the registration of the fund.

PART III Management and Administration

Registered office

12. (1) Every registered fund shall have a registered office in Botswana, the address of which shall be notified by the fund in writing to the Registrar —

- (a) in the case of an existing fund, within one month after the appointed day;
- (b) in the case of any other fund, within one month after the registration of the fund.

(2) Any change in the address of the registered office of a registered fund shall be notified by the fund in writing to the Registrar within one month after the date of such change of address.

Principal officer

13. (1) Every registered fund shall have a principal officer appointed in terms of its rules who shall be ordinarily resident in Botswana:

Provided that an external fund may instead appoint a person who is a responsible official of a participating employer and who is ordinarily resident in Botswana to be its representative.

(2) A registered fund shall notify the Registrar in writing of the name and address of its principal officer or a representative appointed in terms of subsection (1) —

- (a) in the case of an existing fund, within one month after the appointed day;

(b) in the case of any other fund, within one month after its registration;
and shall notify the Registrar in writing of any change in the name or address of the principal officer or the representative within one month after such change.

(3) Where anything is required by or in terms of this Act to be done —

- (a) by a fund, it shall be the duty of the principal officer or representative appointed in terms of subsection (1) to ensure that the thing so required to be done is in fact done;
- (b) by the principal officer, it may be done by the representative appointed in terms of subsection (1).

14. Every registered fund shall appoint in terms of its rules —

- (a) an auditor who shall not be an officer of the fund; and
- (b) an actuary;

Appoint-
ment
of auditor
and actuary

Provided that it shall not be obligatory for a fund which has been exempted in terms of subsection (3) of section 16 from compliance with the provisions of subsection (1) of that section to appoint an actuary.

PART IV *Financial requirements*

15. (1) Every registered fund shall maintain such books of account and other records as may be necessary for the purposes of the fund.

Accounts and
holding of
assets

(2) A registered fund shall, within six months after the end of its financial year, submit to the Registrar audited accounts and such other statements and reports as may be prescribed.

(3) If the Registrar is not satisfied with any audited accounts, statements or report submitted in terms of subsection (2), he shall reject the document or documents concerned and direct the fund to provide such explanation or do such other thing as he thinks fit, and the fund shall, within two months of receiving any such direction, comply with the terms thereof.

(4) All the assets of a registered fund, including any policy of insurance, shall be controlled and held in the name of —

- (a) the fund; or
- (b) a nominee which is a company registered under the Financial Institutions Act, 1986.

Act 28
of 1986

16. (1) Subject to the provisions of this section, a registered fund shall cause its financial condition to be investigated and reported upon by an actuary at such period and in such manner as may be prescribed and shall, within one month of receiving any report from the actuary, submit a copy thereof to the Registrar.

Investi-
gations by
actuary

(2) An actuarial report in terms of subsection (1) shall be lodged with the fund within one year of the date specified in that report as the actuarial valuation date.

(3) If the Registrar is satisfied that the financial methods adopted by a registered fund are such as to render periodical investigations by an actuary unnecessary, he shall, if so requested by the fund in writing, exempt the fund from compliance with the provisions of subsection (1), subject to such conditions as he thinks fit.

(4) The Registrar may at any time vary any conditions fixed in terms of subsection (3) or cancel any exemption granted in terms of that subsection.

(5) A registered fund shall be exempted from compliance with the provisions of subsection (1) if the rules thereof provide for the payment of a lump sum benefit, based on a return of contributions with interest and a share of profits which may be applied to the purchase of a pension from an insurer.

Investments

17. (1) Save with the prior express consent in writing of the Registrar, no fund shall invest or otherwise lend monies belonging to the fund outside Botswana.

(2) The provisions of subsection (1) shall not apply in relation to an external fund which has less than ten Botswana members.

Minister
may
regulate
investments

18. (1) The Minister may by regulation —

(a) prohibit a fund from making investments of a certain class or description;

(b) require any one or all funds to realise the whole or part of a particular investment within a specified period;

(c) require any one or all funds to invest such percentage of monies belonging to the fund or funds, as the case may be, accruing from contributions made in Botswana in Botswana Government securities or such other securities in Botswana as may be specified by him; an investment made under this subsection may prescribe different percentages of such funds to be invested according to whether the fund is a local or external fund.

(2) Subject to the provisions of subsection (6), no registered fund shall invest whether by way of loans or otherwise —

(a) more than five per cent of the aggregate cost value of its assets in Botswana in the business of a participating employer or of an associate of a participating employer:

Provided that the Registrar may exempt, either wholly or in part, any fund established by a local authority or a statutory body from provisions of this subsection;

(b) its assets in any business referred to in paragraph (a) unless the return on such investment is reasonable and the investment is not prejudicial to the fund.

(3) A registered fund may, if its rules so provide, grant to a member a loan secured by a first mortgage of immovable property on which a dwelling-house has been or is to be erected for the personal residence of the member:

Provided that the loan shall not exceed —

- (a) the amount of the benefit to which the member would be entitled if he resigned voluntarily on the date on which the loan was granted, together with seventy five per cent of the market value of the property; or
- (b) if the employer of the member guarantees the fund that he will meet any shortfall between the amount referred to in paragraph (a) and the market value of the property, the market value of the property.

(4) A registered fund may, if its rules so provide, contribute to any other registered fund that is conducted for the benefit of the employees of the first-mentioned fund.

(5) No registered fund shall engage in or carry on —

- (a) any business undertaking for which a licence is required in terms of the Trade and Liquor Licencing Act, 1986; or
- (b) any form of business not referred to in paragraph (a) unless the form of business has been prescribed for the purposes of this subsection or the Registrar has agreed in writing that such fund may carry on the business concerned and any terms and conditions fixed from time to time by the Registrar are complied with.

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of 1986

(6) Notwithstanding anything to the contrary in this section, if on the appointed day a fund does not comply with the provisions of sections 17 or 18 it shall be allowed a period of three years from the appointed day within which to comply with the provisions of sections 17 or 18, as the case may be:

Provided that the Registrar may extend such three year period in any case where he considers that there are good reasons for so doing.

(7) The Minister may, by statutory instrument, order the Registrar to himself take or require a fund to take such action as appears to the Registrar appropriate to protect the members of the fund against the risk that the fund may be unable to meet its liabilities or fulfill the reasonable expectation of its members.

(8) In this section —

“assets in Botswana”, in relation to any fund, means the amounts paid to that fund after the appointed day in respect of Botswana members (including, in the case of an existing fund, the assets of that fund which were realisable in Botswana on the appointed day) less the amounts paid on or after the appointed day from that fund in Botswana currency in respect of Botswana members and former Botswana members, with the income and profits and losses derived from the amounts so paid to that fund and such assets;

“local authority” means a district, city or town council;

“Market value”, in relation to immovable property referred to in subsection (3), means the market value of the property

concerned at the time of the grant of the loan in terms of that subsection, if a dwelling-house is to be erected on that property or has been erected but is to be improved, at the time of the completion of the erection or improvement, as the case may be;

“statutory body” means any body established directly by a law in force in Botswana for the purposes specified in that law.

Fund in
unsound
financial
condition

19. (1) If, after examining any return or report in terms of this Act in respect of a registered fund, the Registrar is of the opinion that the fund is not in a financially sound condition and a satisfactory scheme for bringing the fund into a sound financial condition within a reasonable time has not been submitted to him —

- (a) the Registrar shall direct the fund to submit a scheme setting out arrangements for the purpose of bringing the fund into financially sound condition within a period which he considers to be reasonable in the circumstances; and
 - (b) the fund shall deposit such scheme with the Registrar within three months from the date directed by the Registrar in terms of paragraph (a), together with a report on the scheme by the actuary or, if in terms of section 14 the fund has not appointed an actuary a report on the scheme by the auditor.
- (2) After considering a scheme deposited in terms of subsection (1), the Registrar may —
- (a) approve the scheme either unconditionally or subject to such conditions as he thinks fit; or
 - (b) reject the scheme in which case the fund shall submit a new scheme in accordance with the directions of the Registrar, together with a report thereon by the actuary or auditor who reported on the scheme which has been rejected.
- (3) If the Registrar is of the opinion that the financial condition of a registered fund is such that it is not possible or practicable to bring the fund into a financially sound condition within a reasonable time, he may direct that the whole or any part of the business of the fund shall be wound-up and that the provisions of section 10 shall apply, subject to such modifications as the Registrar considers it reasonable to impose in the circumstances.

PART V *Inquiries by and other powers of Registrar*

Inquiries

20. (1) The Registrar may at any time call for any documents and any other information from a registered fund or an officer of a registered fund in relation to any matter connected with the business or transactions of that fund.

(2) Within one month, or such further period as the Registrar may allow, of receiving any inquiry in terms of subsection (1), the fund or officer to whom the inquiry is made shall reply in writing thereto and shall furnish any document called for.

21. (1) If at any time the Registrar, from information in his possession, is of the opinion that it is necessary or desirable to do so, he may investigate the affairs or any part of the affairs of a registered fund.

Investigation of affairs of registered fund

(2) In making an investigation in terms of this section, the Registrar may —

(a) require from the fund the production of any of its securities, books or documents; and

(b) examine on oath, which the Registrar may administer, any person in relation to the business of the fund.

(3) The Registrar shall have the same powers, rights and privileges as conferred upon a Commissioner by the Commissions of Inquiry Act.

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(4) The Registrar may, with the approval of the Minister, recover from the fund concerned all or part of the expenses necessarily incurred in connection with the investigation.

22. (1) The Registrar may, at any time before or during the course of an investigation under section 21, require a fund to transfer all or a specified portion of its assets into a trust to be administered by a person nominated by the Registrar.

Trusteeship of assets

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

23. (1) The Registrar may, by notice in writing, require any person whom he has reason to suspect is carrying on the business of a fund which is not registered or provisionally registered to transmit to him, within such period as may be specified in the notice, a copy of the rules, if any, in terms of which the business concerned is being operated, together with a copy of the last annual accounts recorded by that person in relation to that business, and such other information in relation to the business carried on by that person as the Registrar may require.

Registrar may require unregistered fund to provide information

(2) If any person who has been required in terms of subsection (1) to transmit any document or information fails to comply with the terms of the notice within the period specified therein, the Registrar may investigate the affairs or any part of the affairs of that person, and the provisions of subsections (2) to (4) of section 21 shall, *mutatis mutandis*, apply in relation to such investigation.

(3) If it appears from inquiries in terms of subsection (1) or an investigation in terms of subsection (2) that the person concerned

is carrying on the business of a fund which is not registered, the Registrar —

- (a) shall inform the person concerned accordingly by notice in writing sent by registered post; and
- (b) may, if an application for registration of the fund is not received within one month of the sending of such notice, direct that the business of the fund shall be wound-up and that the provisions of section 10 shall, *mutatis mutandis*, apply as though the fund were a registered fund.

Minister may grant exemptions

24. Notwithstanding anything to the contrary in this Act, the Minister may by statutory instrument in the public interest exempt any fund from all of any of the requirements of this Act subject to such terms and conditions as he may think fit.

Extension of time

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

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

PART VI *General*

Right to obtain copies of or to inspect documents

26. (1) A registered fund shall deliver to any member or pensioner on demand by that member or pensioner a copy of —

- (a) the rules of the fund;
- (b) the last audited income and expenditure accounts and balance sheet of the fund.

(2) A member or pensioner of a registered fund shall be entitled at all reasonable times to inspect, without charge, at the registered office of the fund and to make extracts from —

- (a) the rules of the fund;
- (b) the last audited income and expenditure accounts and balance sheet of the fund;
- (c) the last report, if any, by an actuary in terms of section 16;
- (d) any scheme being carried out by the fund in accordance with the provisions of section 19.

Amalgamation and transfers

27. (1) Subject to the provisions of this section —

- (a) two or more registered funds may, with the approval of the Registrar, amalgamate and become one registered fund;
- (b) registered fund may, with the approval of the Registrar, transfer all or any of its assets and liabilities to another registered fund.

(2) Notice of any proposed amalgamation or transfer referred to in subsection (1) and the terms thereof, together with a copy of the scheme setting out details of the proposed amalgamation or

transfer, including a copy of every actuarial or other statement taken into account for the purposes of the scheme, shall be submitted to the Registrar with the request for his approval for the purposes of subsections (1) and the Registrar may thereafter require such additional particulars, including any special report by an actuary or auditor, as he thinks fit.

(3) If, on receipt of the notice and other information required by or in terms of subsection (2), the registrar is satisfied —

- (a) that the proposed amalgamation or transfer would be in the interests of the members of the funds concerned;
- (b) that the proposed amalgamation or transfer would not render any fund that is a party thereto and which will continue to exist if the proposed amalgamation or transfer is completed unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a fund that is not in a sound financial condition, to attain such a condition within a period deemed by the Registrar to be satisfactory; and
- (c) that the provisions of any rules of a fund that is a party to the proposed amalgamation or transfer which are applicable to the proposed amalgamation or transfer have been complied with or that adequate arrangements have been made to ensure that such provisions will be complied with at the appropriate time,

he shall forward a certificate to the funds concerned to the effect that the requirements of this subsection have been satisfied and that the funds concerned may amalgamate or transfer the assets and liabilities concerned, as the case may be.

(4) Upon the completion of an amalgamation in terms of this section of two or more funds —

- (a) the funds amalgamated shall be deemed to be dissolved;
- (b) the Registrar shall thereupon cancel their registration and shall register the new fund in terms of this Act; and
- (c) the assets of the funds so amalgamated shall vest in the new fund and the new fund shall assume the liabilities of the funds so amalgamated.

(5) Upon the completion of the transfer of all the assets and liabilities of a registered fund to another registered fund in terms of this section —

- (a) the former fund shall be deemed to be dissolved and the Registrar shall cancel its registration; and
- (b) if any change in the latter fund has been agreed upon, the Registrar shall enter such new name in his records in place of the former name and shall issue a certificate of registration to the fund concerned under its new name; and
- (c) the assets of the former fund shall be transferred to the latter

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fund and the latter fund shall assume the liabilities of the former fund.

(6) The amalgamation of two or more registered funds or the transfer of assets and liabilities in terms of this section shall not affect the rights of any creditor of a party to the transaction otherwise than in his capacity as a member of such party.

(7) The provisions of this section shall not apply to any transfer of assets and liabilities between two registered funds which is made by virtue of a change in employment of any member of a registered fund.

Effect of
certificate
of Registrar
on
documents

28. Any document that purports to have been certified by the Registrar to be a document lodged with him in terms of this Act or to be a copy of such a document shall be prima facie presumed to be such a document or copy thereof and every copy which purports to be so certified shall be admissible in evidence as if it were the original document.

Service of
process

29. (1) Service of process in any legal proceedings against a registered fund may be effected at the principal office of the fund in Botswana.

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

Appeals from
Registrars
decisions

30. (1) A person aggrieved by a decision of the Registrar under this Act may, within one month from the date on which the decision is intimated to him, appeal therefrom, by petition in writing, to the Minister who may, subject to such terms and conditions as he may consider necessary, uphold, reverse, revoke or vary that decision.

(2) Except as hereinafter provided, the decision of the Minister on appeal made to him under subsection (1) shall be transmitted in writing within two months of receipt of the petition of appeal and shall except on a question of law, be final and conclusive.

(3) A person aggrieved by a decision of the Minister made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the High Court.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding of fact.

Improper
use of
certain
designations

31. No person shall, without the approval of the Registrar in writing, apply to any business carried on by him in Botswana a name which includes the words "pension fund", "provident fund" or "retirement annuity fund", or a name which indicates that he carries on the business of a fund unless the fund concerned is registered.

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

Offences relating to false statements or entries

- (2) No person shall, with intent to defraud or deceive —
- (a) destroy, mutilate, alter or falsify any books, papers or securities or other record maintained for or by any electronic retrieval system belonging to a registered fund; or
 - (b) make or be a party to the making of any false or fraudulent entry in any register, book of account or other document or other record maintained for or by any electronic retrieval system belonging to a registered fund.

33. (1) Any person who —

Offences and penalties

- (a) contravenes the provisions of section 8, 10, 12, 13, 14 or 26; or
 - (b) fails to make a return or to transmit or deposit any scheme, report, account, statement or other document when required to do so in terms of this Act; or
 - (c) fails or refuses to furnish information, or to produce documents or accounts, to lodge securities or to render other assistance to the Registrar when called upon to do so in terms of this Act; or
 - (d) fails to comply with any terms and conditions fixed or direction given by the Registrar in terms of this Act; or
 - (e) contravenes the provisions of section 4, 15, 16, 17, or 31; or
 - (f) contravenes the provisions of section 32; shall be guilty of an offence.
- (2) Any person who is guilty of an offence referred to in —
- (a) paragraph (a) of subsection (1) shall be liable to a fine not exceeding one thousand pula;
 - (b) paragraph (b) of subsection (1) shall be liable to a fine not exceeding two thousand Pula;
 - (c) paragraph (c) of subsection (1) shall be liable to a fine not exceeding three thousand Pula;
 - (d) paragraph (d) or (e) of subsection (1) shall be liable to a fine not exceeding five thousand Pula;
 - (e) paragraph (f) of subsection (1) shall be liable to a fine not exceeding ten thousand Pula; or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (3) If any person is convicted of an offence in terms of subsection (1) and thereafter continues to commit the offence, he shall be liable to a fine not exceeding two hundred Pula for each day that he continues to commit the offence or to imprisonment for a period not exceeding two years.

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Regulatory
powers
of Minister

34. (1) The Minister may make regulations prescribing anything which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Regulations in terms of subsection (1) may provide for —

- (a) the form of any document referred to in this Act and the manner in which it shall be prepared, executed, registered, transmitted or delivered;
- (b) the fees to be charged in respect of any act, matter or thing to be done by or in relation to the Registrar;
- (c) the matters to be included in the document submitted with an application for the registration of a fund and the conditions and the procedures for such registration;
- (d) the appointment of an actuary or auditor and the matters to be included in any report by an actuary or auditor;
- (e) the submission to the Registrar of financial statements, reports, statistics, accounts and other documents;
- (f) the fees for the inspection of any documents;
- (g) the deduction by an employer from the emoluments payable to his employee of contributions to be paid to a registered fund;
- (h) the maximum benefits that may be payable by a registered fund or funds;
- (i) the prohibition or control of the cession, pledging or hypothecation of benefits payable by a registered fund and the protection of such benefits on assignment or from attachment or execution under a judgment or order of a court;
- (j) the withholding of any benefits payable by a registered fund where the member concerned —
 - (i) has borrowed and not fully repaid money from the fund or from his employer and has pledged his rights to benefits from the fund as security therefor; or
 - (ii) has been discharged because of dishonesty which has resulted in his employer suffering loss,

and the person to whom such benefits or portion thereof may be paid.

Provisional
registration
of existing
funds

35. (1) Subject to the provisions of this section, every existing fund shall be provisionally registered by the Registrar with effect from the appointed day.

(2) The period of provisional registration of an existing fund shall not exceed two years unless, in the case of any particular fund, the Registrar has, by notice in writing, extended the period of provisional registration of that fund, and such fund shall cease to be provisionally registered when it is registered in terms of paragraph (a) of subsection (2) of section 5.

(23) On the provisional registration of an existing fund, the provisions of section 6 shall, *mutatis mutandis*, apply in relation to the provisionally registered fund as they apply in relation to a registered fund.

36. Notwithstanding anything to the contrary contained in this Act, where an authority by which a fund was established or which is responsible for the administration of a fund is required in terms of subsection (4) of section 8 to amend the rules of the fund in so far as they affect the rights of members or former members, that authority may, in making such amendment, limit its application to persons who become members of the fund after the date on which the amendment was required and the Registrar shall not regard the rules as so amended as being inconsistent with the provisions of this Act by reason only of the fact that the amendment so made does not apply to persons who were members of the fund before the said date.

Saving in
respect
of existing
funds

Bill No. 7 of 1987

INSURANCE INDUSTRY BILL, 1987
(Published on the 13th March, 1987)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. Experience has shown that the terms of the existing legislation are inadequate to control the fast developing insurance industry in Botswana. It is with the view of introducing more effective controls and financial stability that the present Bill has been drafted.

3. It should be borne in mind that insurance companies, unlike other forms of trading, do not provide a service or product at the time of purchase but rather promise to pay the policyholder in the future in the event of the occurrence of a particular event.

4. It is proposed to require all companies providing insurance cover to register with the Registrar of Insurance and to empower the Registrar to investigate and close down any unregistered insurer. This is to prevent potential defrauding of small savers.

5. The average policy seeker deals through an insurance broker, or agent, who assists in preparing the documentation to be forwarded to the insurer and in the collection of premium. In order to ensure greater responsibility in an insurer for its agents, provision is made for agency agreements to be entered into between insurers and agents and to restrict agents to acting for one insurer only. Brokers in turn are made subject to a code of conduct and tighter financial controls. The overall result will be to improve the supervision of insurance intermediaries with a view to ensuring greater security for the policyholder.

6. Presently there is nothing to prevent an insurer doing life insurance and general insurance business. This could result in abuse of the rights of life policyholders savings by such savings being transferred as dividend to shareholders of the insurer rather than as bonuses to the life policyholders. It is therefore provided in the new legislation that no insurer may transact both life and general insurance business. This will ensure that life policyholders receive the benefit of income earned by the investment of the life funds.

7. An insurance broker is technically the agent of the policy-seeker. However, in Botswana just now, the very close connection both in ownership and management between major insurers and brokers have created a conflict of interest in the broker's position which puts the interests of the policyholders in serious jeopardy; the interest of the public at large and the policyholder in particular have been secondary to the interests of the "Insurance Group". For example the largest insurer in Botswana and the most influential broker are majority owned and directed by the same two organisations. The present Bill, following the example set by Lloyds of London, requires the separation of insurers and brokers; it permits existing companies a reasonable period within which to divest themselves of one interest or the other.

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8. Provision is made for the requirement of a solvency margin by all insurers so as to ensure that insurers retain a capital amount over and above that necessary to cover its estimated liability. This will in turn ensure that the occurrence of an unexpected major loss does not result in the insolvency of the company with its tragic consequences to policyholders.

9. This Bill introduces stricter operating limitations to bring the financial affairs of the insurer into a state consistent with the security of the company and the policyholders. It is proposed that life insurers should not, without Gazette notification, retain more than 10% of the profit from life funds; at present they can keep all the profits. The publication of the fact of the retention of over 10% would bring market pressure to bear on the insurer to desist in so doing.

10. It is also proposed that loans to staff, and dealings with associated companies be clearly identifiable in the accounts and be done on a commercial basis and not on specially favourable terms at the expense of the life policyholder.

11. Control will be exercised by the Registrar through the medium of annual returns and audited accounts tendered to him by each insurer and broker. The law permits him to call for and receive any additional information he may require. He is also empowered to examine the affairs of any insurer who may be in financial trouble with a view to reorganising its affairs; his approval is required to the winding up of any insurer. The Registrar is required to prepare an annual report for the Minister which the Minister in turn will place before the National Assembly; this report will set out the financial status of each insurer, their investments and the bonuses enjoyed by policyholders. Such a report when published should result in commercial pressure upon insurers to improve their services.

P.S. MMUSI,
*Vice-President and Minister of
Finance and Development Planning.*

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FIRST SCHEDULE
SECOND SCHEDULE

A BILL
—entitled—

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

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana

PART I Preliminary

Short title
and
commence-
ment
Interpre-
tation

1. This Act may be cited as the Insurance Industry Act, 1987, and shall come into operation to such extent and on such dates as the Minister may, by notice published in the Gazette, appoint.

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

“actuary” means —

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

“agent” means the same as “insurance agent” herein described;

“agent for broker” means a person who transacts insurance business on behalf of a registered insurance broker;

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

“associate”, in relation to an applicant for registration as an insurer or broker include —

- (a) the spouse or minor son or daughter of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person; or
- (d) if that person is a company —
 - (i) any director of that company
 - (ii) any subsidiary of that company
 - (iii) any director or employee of any such subsidiary;

“association of underwriters” means underwriters at Lloyd’s of London;

“broker” means the same as “insurance broker” herein described;
 “chairman”, in relation to an association of persons, includes the individual presiding over the board of directors or other governing body of the association;

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

“contingent obligation dependant on a human life” means —

(a) an obligation to pay to a particular person certain sums of money or to provide for a particular person certain other benefits —

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

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

(b) an obligation assumed —

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

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

“controller” in relation to an applicant for registration as an insurer or broker means —

(a) a Managing Director or Chief Executive of the applicant or of a body corporate of which the applicant is a subsidiary; or

(b) a person in accordance with whose directions or instructions the director of the applicant or of a body corporate of which the applicant is a subsidiary are accustomed to act; or

(c) a person who either alone or with an associate or associates is entitled to exercise, or control the exercise of one-third or more of the votes at any general meeting of the applicant or of any body corporate of which the applicant is a subsidiary.
 “controller” of a person or body corporate, other than in relation to an applicant for registration as an insurer or broker means —

(a) a Managing Director or Chief Executive of a body corporate which is a subsidiary of the person or body corporate, or

(b) a person in accordance with whose directions or instructions the directors of a body corporate which is a subsidiary of the person or body corporate are accustomed to act; or

(c) a person who either alone or with an associate or associates is entitled to exercise, or control the exercise of, fifteen (15) percent or more of the votes at any general meeting of, or of a subsidiary of, a person or body corporate.

- “dependant”, in relation to any person includes his surviving spouse and any parent, child and grandchild of his;
- “deposit” means a deposit of money or anything having a monetary value which by virtue of the regulations made under this Act may be accepted as a deposit;
- “deposit administration policies” means a contract whereby —
- (a) an insurer maintains a fund to which —
 - (i) is credited all amounts paid by the insured to the fund;
 - (ii) is debited all amounts withdrawn from the fund to provide benefits in terms of the rules of the fund and such administrative and other expenses as are agreed upon between the insured and the insurer from time to time; and
 - (iii) such investment income and capital profits or losses as are agreed upon between the insured and the insurer as being for the account of the fund; and
 - (b) the liability of the insurer to the insured, at any given time, is limited to the amount standing to the credit of the fund;
- “director” includes an individual occupying the position of director or alternate director of an association of persons or a member or alternate member of a committee of management or of any other governing body of an association of persons, by whatever name he may be called;
- “financial year”, in relation to an insurer, means each period of twelve months at the end of which the balance of the accounts is struck, and includes any lesser or greater periods as the Registrar shall approve;
- “friendly society” means an association of person established with no share capital for the purpose of aiding its members or their dependants, where such association does not employ any person whose main occupation is the canvassing of other persons to become members of the association or the collecting of contributions or subscriptions from its members towards the fund of the association;
- “funeral policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide, on the death of any person, benefits, not exceeding in value a total of two thousand Pula (P2000), which consist principally of provision for the funeral of that person or the grant to another person of some non-monetary benefit, whether or not the policy provides for —
- (a) the payment at the option of the insurer or any other person of a sum of money instead of provision of a funeral or the grant of a non-monetary benefit; or
 - (b) the payment of a sum of money in addition to the provision of a funeral or the grant of some non-monetary benefit;

- “gross profit” means the chargeable income of the insurer as ascertained under Part 6 of the Income Tax Act;
- “insolvency” has the meaning assigned to it by the Insolvency Act;
- “insurance agent” means a person who solicits applications for insurance, collects monies by way of premiums and acting in accordance with his agency agreement may bind the registered insurer for whom he acts in the issue of insurance cover;
- “insurance broker” means, persons who acting with complete freedom as to their choice of undertaking, and for commission or other compensation and not being an agent of the insurer, bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance, and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;
- “insurance business” includes assurance and reinsurance;
- “insurer” means a person carrying on an insurance business, otherwise than as a broker or agent, and includes an association of underwriters;
- “life insurance business” means the business of assuming the obligations of an insurer classified under section 37 herein as transacting long term business
- “life insurance fund” means the fund established under section 70 to which the receipts of an insurer in respect of his life insurance business are carried;
- “life policy” means any contract of insurance made or agreed to be made by an insurer classified under section 37 herein as transacting long term business;
- “management expenses” means expenses incurred in the administration of an insurer which are not commission payable and, in the case of general insurance business, are not incurred in claims paid, claims outstanding, expenses for settling claims and expenses for settling claims outstanding;
- “manager”, in relation to an applicant for registration as an insurer or broker shall include any employee of the applicant (other than a controller), who, under the immediate authority of a director or chief executive of the applicant exercises managerial functions or is responsible for maintaining accounts or other records of the applicant not exclusively related to business conducted from a place of business outside Botswana;

- “member of the insurance industry” includes an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster and claims settlement agent, whether registered under this Act or not;
- “Minister” means the Minister responsible for insurance;
- “minor” means a person who, by reason of his youth, is under a legal disability;
- “owner”, in relation to a policy, means the person who for the time being has the legal title to the policy;
- “policy” includes every writing whereby any contract of insurance is made or agreed to be made;
- “prescribed” means prescribed by regulations made under section 131;
- “principal officer” means the person for the time being responsible for the daily management of the principal office in Botswana of the insurer or broker;
- “Registrar” means the Registrar of Insurance provided for in section 3;
- “stock insurance company” means an insurance company with permanent share capital owned and controlled by its shareholders and includes a statutory corporation carrying on insurance business;
- “trustee”, in relation to an estate in insolvency, includes an assignee or, as the case may be, a trustee in a deed of arrangement of the person having the conduct of an order of composition;
- “underwriter” includes any person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by the policy or contract;
- “underwriter’s liabilities”, in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the responsible body at Lloyds of London vested with the administration of the relevant insurance law.

PART II *Administration*

Appoint-
ment and
qualifica-
tion of
Registrar

3. (1) There shall be a Registrar of Insurance (hereinafter in this Act referred to as “the Registrar”) who shall be a public officer appointed by the Minister.

(2) The Registrar shall, subject to any directions of the Minister, be responsible for the general administration of this Act.

(3) A person shall not be qualified to be appointed as the Registrar, or if already appointed shall become disqualified if —

- (a) he or his spouse or dependent child is or becomes a director, officer, employee or shareholder, whether directly or indirectly, of a Botswana registered insurer, broker or agent; or
 - (b) he is adjudicated bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.
- (4) Notwithstanding subsection (3), no act or omission by the Registrar done or omitted bona fide for the purposes of or in pursuance of this Act shall be invalidated by reason only of any defect in his appointment.
- (5) There shall be appointed such other staff as may be necessary for the efficient administration of this Act.
- (6) The expenses of and incidental to the administration of this Act shall be paid out of monies provided by Parliament for that purpose.
- (7) The Registrar may, in relation to any particular function or matter or class of functions or matters, by writing under his hand, delegate any of his powers and functions under this Act (except this power of delegation), so that the delegated powers and functions may be exercised by the delegate with respect to the function or matter or class of functions or matters specified in the instrument of delegation.
- (8) Every delegation under subsection (7) shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Registrar.
- (9) No legal proceedings shall be instituted in any court against the Minister or the Registrar or any person authorised by the Minister or the Registrar for anything done or intended to be done in good faith by the Minister or Registrar or any person authorised by the Minister or Registrar under this Act.

4. (1) Subject to the provisions of this Act, the functions and duties of the Registrar shall include —

- (a) the registration and superintendence of the conduct of insurers, insurance brokers and agents;
- (b) the formulation and enforcement of standards in the conduct of the business of insurance with which a member of the insurance industry must comply;
- (c) the recommendation to the Minister of regulations for the carrying out of Government policies relating to insurance;
- (d) affording guidance to insurers on —
 - (i) the standardization of contracts of compulsory insurance;
 - (ii) the deletion or amendment of obscure or ambiguous terms in contracts of insurance;

Registrar's
functions
and duties

- (iii) the deletion or amendment of items and conditions in contracts of insurance which are unfair or oppressive to policyholders;
- (iv) the simplification or clarification of terms and conditions in contracts of insurance;
- (e) such other functions as are assigned to the Registrar by this Act or regulations made hereunder or such other duties as the Minister may assign to him.

(2) The Minister may by regulation establish an Insurance Advisory Board to assist the Registrar in the performance of his functions under this Act.

(3) The Registrar shall, as soon as reasonably practicable after each year ending on 31st December, furnish to the Minister a report on the working of the Act during that year together with copies or summaries and documents deposited with him under Parts IV and V during that year; and the Minister shall lay the report before the National Assembly as soon as reasonably practicable thereafter.

PART III *Capital and other requirements for insurers other than associations of underwriters*

Applica-
tion of
Part III
Insurer to
be a resident
company

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

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

Restrictions
on general
and long
insurers

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

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

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

Separation
of insurers
and broker

8. (1) No insurer shall register the transfer of more than five percent of its shares to any person or body of persons directly or indirectly, wholly or partly owned or controlled by a Botswana registered insurance broker or to any person or body of persons directly or indirectly by itself or through any nominee holding, at that time, any legal or equitable interest in any Botswana registered broker or any person or body of persons associated with either.

(2) No insurer shall directly or indirectly acquire or hold any legal interest or any equitable interest in excess of 5% in any Botswana registered insurance broker or in any company or partnership directly or indirectly by itself or through any nominee holding, at that time, any legal or equitable interest in any Botswana registered broker or in any company or partnership associated with any such broker.

(3) No Botswana insurer or person or body of persons directly or indirectly by itself or through any nominee holding, at that time, any legal or equitable interest in any Botswana registered insurer, or any person or body of persons associated with either, to acquire or hold more than a five percent interest in its business as a broker.

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

(a) any Botswana registered insurance broker; or

(b) any Botswana registered insurer,

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

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

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

Capital
requirements

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

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

(a) to the paid-up share capital of the insurer; or

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

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

Provided also that the Capital Reserve Account shall

be wholly utilized not less frequently than every five years to increase the paid-up share capital of the insurer.

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

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

Margin of solvency

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

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

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

Statutory Reserve Solvency Account

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

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

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

(3) The Statutory Reserve Solvency Account shall neither be reduced nor encumbered:

Provided, that the Registrar may by notice in writing to the insurer specify circumstances in which it may be reduced or encumbered.

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

PART IV *Provisions governing insurers other than associations of underwriters*

12. This Part shall apply only to insurers who are not associations of underwriters. Application of Part IV
13. (1) Subject to the provisions of this Part, no person resident in Botswana shall commence or carry on insurance business unless he is registered as an insurer under this Act. Registration of an insurer
- (2) An insurer resident in Botswana carrying on insurance business immediately before the commencement of this Act may, within three months after such commencement, make an application for registration under this Act, and may, until the grant or refusal of its application continue to carry on its insurance business.
14. The provisions of this Act shall not apply to Burial Societies, registered under the Societies Act, which do not afford benefits exceeding P2000, (two thousand Pula), in the event of the death of a member. Exclusion of burial societies
15. (1) Every insurer applying to the Registrar for registration or renewal of registration shall apply in the prescribed form and shall provide such additional documentation and information as the Registrar may require. Application for Registration
- (2) The Registrar may stipulate such amendments as he considers necessary to such documentation to ensure that they comply with the requirements of the Act.
16. An insurer seeking registration shall satisfy the Registrar that — Registration requirements
- (a) it is a company registered under the Companies Act;
 - (b) it has principal office in Botswana;
 - (c) its controller, manager, principal officer and directors who handle the day to day management of the company are all resident in Botswana; and that
 - (d) its controller, manager and principal officer are persons with sufficient business and insurance knowledge and experience.
17. No insurer may employ as its manager, controller or principal officer any person who — Restriction on insurers whose officers are deemed unsuitable
- (a) has been adjudged an undischarged bankrupt in any country; or
 - (b) has made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside; or
 - (c) has been convicted by any court in any country of an offence involving dishonesty; or
 - (d) is in the opinion of the Registrar an unfit person to hold the office.

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Grant of application

- 18.** (1) If the Registrar is satisfied that —
- (a) the class or classes of insurance business in respect of which the application is made will be conducted in accordance with sound insurance principles;
 - (b) the relevant capital requirement for insurers is adequate and having regard to any regulations made in relation thereto under section 9 have been complied with by the applicant;
 - (c) the margin of solvency of the insurer is adequate having regard to any regulations made in relation thereto under section 10; and
 - (d) the applicant complies with the requirements of Parts III and IV of this Act,

the Registrar may grant the application for registration as an insurer and issue the prescribed registration certificate.

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

Display of certificate of registration

19. A copy of the certificate of registration issued under section 18 shall be prominently displayed to the public at each office of the insurer.

Cancellation of registration

- 20.** If in the case of any insurer, the Registrar is satisfied that —
- (a) the insurance business of the insurer is not being conducted in accordance with sound insurance principles;
 - (b) the insurer has ceased to carry on insurance business in Botswana;
 - (c) the insurer has requested in writing the cancellation of the registration;
 - (d) a final judgement obtained in any court in Botswana against the insurer remains unsatisfied for 30 (thirty) days after the date of judgement, or
 - (e) the insurer is acting or has acted in contravention of any of the provisions of this Act,

the Registrar may give notice in writing to the insurer of his intention to cancel the registration of the insurer.

Prohibition on cancellation of registration

21. No insurer shall effect any new insurance policy or renew any expiring insurance policy after the expiration of a period of three months from the date of receipt of the Registrar's notification in writing of the cancellation of the registration of such insurer, or after the expiration of such extended time, not exceeding a further six months, as the Minister may, in a special case, in writing approve.

Notice of intention to refuse or cancel registration

22. If in the case of any application for registration as an insurer the Registrar is not satisfied as to the matters referred to in section 18 on which he is required to be satisfied before granting an application he shall notify the applicant in writing of his intention to refuse to grant the application.

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

Retention
and
reinsurance

(a) restricting the gross premiums received by an insurer to a specified maximum in any one financial year; or

(b) restricting the gross premiums less gross reinsurances payable by an insurer to a specified maximum;

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

(a) in the opinion of the Registrar the arrangements for reinsurances in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business are not favourable to the economy or the insurance industry or are not in the public interest; or

(b) in the opinion of the Registrar the gross or nett retention limits are too low or too high.

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

24. (1) No transfer, sale, amalgamation, takeover or other similar arrangement may be entered into by a registered insurer without the prior written approval of the Registrar;

Amalgama-
tions, sales
and transfers

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

(3) Special considerations contained in section 67 shall apply to insurers transacting long term business requiring approval under subsection (1) above.

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

Preservation
of records

(a) in the case of life policy, after the maturity, cancellation, surrender or realisation of the policy or after the death of the insured;

(b) in all other cases after the maturity, cancellation or realisation of the policy or date of loss.

26. (1) If, in the opinion of the Registrar, an account or balance sheet furnished by a registered insurer under sections 15 or 31 is incorrect or is not prepared as prescribed, the Registrar may, by notice in writing, call upon the insurer to amend such account or balance sheet, to furnish a correct account or balance sheet, or as the case may be, an account or balance sheet prepared as prescribed under sections 15 or 31.

Amendment
of accounts,
etc

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

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

Audit of accounts of insurers

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

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

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

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

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

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

(a) by notice in the Gazette require insurers to limit their management expenses to an amount contained in the notice;

(b) by notice in writing to an insurer allow dispensation from the provisions of subsection (3) (a) to any other amount and for any period as the Registrar shall consider reasonable save that such period shall not exceed two consecutive years.

Valuation of assets and liabilities

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

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

(3) For the purpose of this section the Minister may make separate regulations for the determination of the value of assets

and the amount of liabilities of general and long term insurers.

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

Change of financial year

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

Annual returns to the registrar

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

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

Providing that an insurer shall be liable to pay to the Registrar a penalty of P50 (fifty Pula) for every day during which it is in default beyond such extended time granted by the Registrar.

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

32. An insurer shall not publish or issue a document on which is printed a statement —

Publication of authorized capital

- (a) of its authorized share capital, unless the statement also sets forth the amount of its subscribed capital and of its paid-up capital; or
- (b) of its subscribed capital, unless the statement also sets forth the amount of its paid-up capital.

33. (1) The Minister may by regulation —

Powers re restriction and instruction on insurers

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

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

(3) An insurer may —

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

except that where it mortgages or charges assets —

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

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

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

Trusteeship
of assets

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

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

Preferred
creditors of
an insurer

35. Notwithstanding any law to the contrary, in the event of the liquidation, insolvency or bankruptcy of a registered insurer —

- (a) the owners of life policies and other classes of long term business issued by the insurer shall have preference against all other creditors of the insurer in respect of the life insurance and long term business funds maintained by it; and

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

36. (1) The Minister may by regulation set out a code of practice and a guide for insurers in the conduct of their business; provided that an insurer may in the interest of prudent underwriting, and in specific cases, undertake practices discouraged by the code, but shall submit his reasons for so doing, in writing, to the Registrar as soon as practicable thereafter.

Insurers code
of practice

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

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

Classifica-
tion

- (a) “long term business” means insurance of any of the classes specified in Schedule 1 to this Act; and
(b) “general business” means insurance business of any of the classes specified in Schedule 2 to this Act.

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

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

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

PART V *Association of underwriters registered as insurers*

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

Application
of Part V

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

Registrar to
determine
conditions
for
registration

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

- (a) classes of business underwritten;

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

Association of underwriters to deposit sums or securities

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

Premiums received to be held in trust

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

Audit of accounts of an association of underwriters

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

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

(3) Annually an association of underwriters shall furnish to the Registrar —

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

PART VI *Third Party (Rights Against Insurers)*

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

43. (1) Where under any contract of insurance a person (hereinafter referred to as the insured), is insured against liabilities to third parties which he may incur, then —

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or

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

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

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

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties hereunder upon the happening to the insured of any of the events specified in paragraphs (a) or (b) of subsection (1) or upon the making of an order under the Insolvency Act in respect of his estate, the contract shall be of no effect.

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

(a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Part shall affect the rights of the insured against the insurer in respect of the excess; and

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

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

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

Duty to give necessary information to third parties

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

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

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

Settlement between insurers and insured persons

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

rights transferred to the third party under this part of the Act, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

PART VII Provisions governing insurance brokers, insurance agents and agents for brokers

46. (1) No person shall act in Botswana as an insurance broker, insurance agent or agent for an insurance broker unless he is registered as such in accordance with the provisions of this Part.

Insurance Brokers, Agents and agents for brokers to be registered

(2) Nothing in subsection (1) shall apply to a person who has acted in Botswana as an insurance broker on or after the commencement of this Act if —

- (a) immediately before such commencement he was acting in Botswana as a registered insurance broker; and
- (b) within twelve months after such commencement he applies for and is granted a licence as a registered insurance broker.

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

(4) An employee of a registered insurance agent or agent for an insurance broker may —

- (a) accept over the counter insurance business at the permanent office of such agent without being registered provided that the compensation of such employee is not related to the volume of business so handled;
- (b) accept insurance business elsewhere than at the permanent office of such agent without being registered provided that such employee carries an identity card issued in accordance with the provisions of subsection (3) of section 49 and provided he accepts only such insurances as are compulsorily required under any other law of Botswana.

47. No insurance agent or agent for an insurance broker may act —

Agents to act for one principal only

- (a) for more than one insurer or broker registered under this Act;
- (b) outside the terms of an approved agency agreement.

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

Insurer's and broker's responsibility for Agents

(2) In so far as it affects a policyholder or potential policyholder, all premiums paid to an agent or an employee of an agent shall be

deemed to have been paid to the insurer or broker for whom he is the agent.

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

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

Registration
of agents

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

(2) An insurer or broker employing an agent shall issue to that agent a form of agency agreement approved by the Registrar.

(3) Every insurer and broker shall issue to each employee of an agent identity cards of a type approved by the Registrar stating the name of the insurer or broker, the class or classes of business the agent or employee of the agent is empowered to transact, whether he is empowered to effect insurance cover and collect premiums, and the name, address and a photograph of the agent, or employee of an agent approved by the insurer or broker as eligible to undertake business as defined under subsection (4) (b) of section 46.

(4) Insurers and brokers shall maintain —

(a) records of all agency agreements issued in accordance with subsection (2); and

(b) duplicate copies of all identity cards issued in accordance with subsection (3).

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

Brokers
application
for
registration

50. (1) Every insurance broker applying to the Registrar for registration or renewal of registration shall apply in the prescribed form and shall provide such additional documentation and information as the Registrar may require.

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

Restriction
on broker's
officers

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

(a) has been adjudged an undischarged bankrupt in any country; or

(b) has made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside; or

- (c) has been convicted by any court in any country of an offence involving dishonesty; or
- (d) is in the opinion of the Registrar an unfit person to hold the office.

52. An insurance broker seeking registration shall satisfy the Registrar —

Registration requirements of insurance brokers

- (a) if it is a limited company that —
 - (i) it is a company registered under the Companies Act;
 - (ii) it has a principal office in Botswana;
 - (iii) its controller, manager, principal officer and directors who handle the day to day management of the company are all resident in Botswana; and
 - (iv) its controller, manager and principal officer are persons with sufficient business and insurance knowledge and experience;
- (a) if an individual person, that —
 - (i) he has a permanently established office in Botswana;
 - (ii) he will be resident in Botswana for more than 200 days per calendar year; and
 - (iii) he is a person with sufficient business and insurance knowledge and experience.

53. If the Registrar is satisfied that —

Grant of broker's application

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

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

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

Brokers capital requirements

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

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

Brokers responsibility and insurance requirements

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

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

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

Brokers records and rights of access

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

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

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

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

Brokers responsibility for premiums

57. (1) A broker shall be liable to a Botswana insurer for all premiums collected by him and all premiums due to the insurer by virtue of insurance effected at the instruction of the broker.

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

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

Provided that the Registrar may accept a guarantee given by a financial institution registered under the Financial Institutions Act, 1986, in lieu of the establishment of a separate trust account, if the guarantee is addressed to the Registrar and cannot be

withdrawn or cancelled except with his written consent and is for a sum equal to not less than fifty percent of the gross premium receipts less commissions received of the broker for the previous financial year or such other greater sum as the Registrar may stipulate.

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

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

Brokers
accounts

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

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

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

59. If in the case of any registered insurance broker, the Registrar is satisfied that —

Cancellation
of
registration

- (a) the business of the insurance broker is not being conducted in accordance with sound business principles;
- (b) the broker has ceased to carry on insurance broking business in Botswana;
- (c) the broker has requested in writing the cancellation of the registration;
- (d) the broker is acting or has acted in contravention of any of the provisions of this Act,

the Registrar may give notice in writing to the insurance broker of his intention to cancel the registration of the said broker.

60. A copy of the certificate of registration issued under section 53 shall be prominently displayed to the public at each office of the insurance broker.

Display of
certificate of
registration

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

Financial
year end
of broker

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

Brokers
amalgamations,
sales and
transfers

(2) The Registrar in deciding whether to grant his approval shall primarily consider whether the terms are in the interest of

the clients, or the economy or the insurance industry or in the public interest.

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

Broker's
annual
returns
to the
Registrar

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

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

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

Providing that an broker shall be liable to pay to the Registrar a penalty of P50 (fifty Pula) for every day during which he is in default beyond such extended time granted by the Registrar.

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

Insurance
brokers code
of conduct

64. (1) The Minister may by regulation set out a code of conduct and a guide for insurance brokers in the conduct of their business; provided that a broker may in an extraordinary case undertake practices discouraged by the code, but shall submit his reasons for so doing, in writing, to the Registrar as soon as practicable thereafter.

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

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

PART VIII *Special provisions relating to long term business*

Life
insurance
tables

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

- (a) a copy of every printed standard policy document and standard endorsements and every table or statement of the

rates of premium which he ordinarily charges and of the benefits including paid-up and surrender values which the insurer ordinarily undertakes to grant in respect of policies insuring normal lives; and

(b) a report from an actuary approved by the Registrar that any table or statement submitted by virtue of subsection (a) is actuarially sound.

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

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

(a) the basis of payment to or remuneration of the insurer is other than by a charge upon the relevant life insurance fund of the management costs actually incurred together with a proportion of any established surplus as provided by in section 75 from that life insurance fund to such insurer; and

(b) the approval of the Registrar has not been sought and obtained in writing to any alternative defined basis or formula of payment to or remuneration of the insurer.

(4) For the purposes of subsection (3) (b).

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

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

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

(a) a parent of a minor or the guardian of a minor but only to the extent as provided by section 77;

(b) a husband, on the life of his wife;

(c) a wife, on the life of her husband;

(d) any person, on the life of another upon whom he is wholly or in part dependant for support or education;

(e) a company or other person, on the life of an officer or employee thereof; and

(f) a person who has pecuniary interest in the duration of the life of another person, in the life of that person to the extent only of that pecuniary interest at the outset.

Insurable
interest
essential
for all
policies

B.70

Amalgamation and transfer of long term business

67. (1) If it is intended to sell or transfer the long term business of any insurer or to amalgamate the long term business of two or more insurers, any one of whom is an insurer registered under this Act, the principal officer of each Botswana insurer shall prior to application to the Registrar under the terms of Section 24 —

- (a) publish in the Gazette notice of his intention to make application to the Registrar;
- (b) post to the registered or last known address of each member or policyholder in Botswana —
 - (i) an abstract containing the material facts embodied in the agreement under which the amalgamation, sale, or transfer is proposed to be effected;
 - (ii) copies of the actuarial reports upon which the agreement under subparagraph (i) is founded, including a report by an actuary previously approved by the Registrar; and
 - (iii) a printed pro-forma letter addressed to the Registrar by completing which with his policy number and name a policyholder or member can indicate whether he approved or disapproved of the proposed amalgamation, sale or transfer;
- (c) open for inspection at the offices of the insurer in Botswana by policyholders and shareholders for a period of one month after the publication in the Gazette the full text of the agreement of amalgamation, sale or transfer.

(2) The Registrar shall not sanction the agreement of amalgamation, sale or transfer if within two months from the date of publication in the Gazette as required by subsection (1) (a), policyholders or members representing one third or more of the total number insured by any of the insurers intending to amalgamate, sell or transfer their long term business indicate their disapproval of the said amalgamation, sale or transfer by forwarding the pro-forma letter to the Registrar.

(3) If an amalgamation, sale or transfer has taken place in accordance with the provisions of this section no life policyholder member 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 statement abandoning that claim and accepting in place thereof the liability of that other insurer.

Transfer powers of Registrar for long term business

68. (1) Where an insurer carrying on long term insurance business has not issued a new policy for a period of twelve months from the date of the issue of the last policy, the Registrar may direct the insurer to frame proposals for transfer or amalgamation of its business to or with another insurer.

(2) Where an insurer fails to comply with a direction under subsection (1), or if the proposals framed by the insurer are in the opinion of the Registrar unsatisfactory, the Registrar may himself frame a scheme for the transfer of the business to another insurer either nominated by the first mentioned insurer and approved by the Registrar or, if the insurer fails to nominate another insurer, to an insurer selected by the Registrar.

(3) Where an insurer fails to implement a scheme framed by the Registrar under subsection (2) and the Registrar considers the continuance in business of that insurer is likely to lead to insolvency, or is otherwise contrary to the interests of the policyholders he may —

- (a) order an investigation of that insurer under section 112; or
- (b) apply to the court for winding up the business of the insurer in terms of section 123.

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

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

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

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

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

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

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

Periodic
actuarial
investiga-
tions

B.72

Establishment of statutory life insurance fund

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

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

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

(3) Where an insurer carries on long term insurance business of more than one class, the Registrar may in writing direct the insurer —

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

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

(5) Where, at any time —

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

the insurer shall forthwith —

- (i) transfer from the first fund to the second fund assets equal to the liability on the policy at that time as ascertained by an actuary approved by the Registrar; and

(ii) transfer from the assets of the insurer to the second fund an amount equivalent to that amount by which the assets accruing to that policy from the first fund are less than the liability on such policy.

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

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

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

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

71. (1) Subject to subsections (2) and (4), the assets representing the life insurance fund or funds maintained by an insurer registered to transact long term business:—

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

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

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

(4) Nothing in subsection (1) shall preclude an insurer from exchanging, at fair market value, assets representing a life insurance fund maintained by the company in respect of its long term business for other assets of the company or a company connected with it.

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

(6) The assets of a life insurance fund maintained by a company in respect of its long term business may not be used for

Application
of assets
of insurer
with long
term
business

the purposes of any other business of the company or of a company connected with it notwithstanding any arrangement for its subsequent repayment out of the receipts of that other business.

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

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

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

Restriction
on
transaction
with
connected
persons

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

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

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

- (a) a person connected with the insurer will owe it money; or
- (b) the insurer acquires shares in a company which is a person connected with it; or
- (c) the insurer undertakes a liability to meet an obligation of a person connected with it or to help such a person to meet an obligation, if the right to receive the money would constitute a long term asset of the insurer, the acquisition is made out of its life insurance funds or the liability would fall to be discharged out of those funds, as the case may be.

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

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

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

(4) In this section “subordinate company”, in relation to any such insurer as is mentioned in subsection (1), means: —

- (a) a company having equity share capital some or all of which is held by the insurer as part of its long term assets where the share capital so held by the insurer: —
 - (i) amounts to more than half in nominal value of that share capital; and
 - (ii) confers on the insurer the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;
- (a) a company having equity share capital some or all of which is held by another company which is itself a subordinate company of the insurer where the share capital held by that other company —
 - (i) amounts to more than half in nominal value of that share capital; and
 - (ii) confers on that other company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;

and for the purposes of this subsection share capital held for any person by a nominee shall (except where that person is connected

only in a fiduciary capacity) be treated as held by that person, and share capital held by a person in a fiduciary capacity or by way of security shall be treated as not held by that person.

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

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

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

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

(7) In this section —

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

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

“liability” includes a contingent liability;

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

“the prescribed percentage” means 5 per cent or such greater percentage as may be defined elsewhere in this Act or prescribed by regulations;

“share” has the same meaning as in the Companies Act;

“son” includes step-son, “daughter” includes step-daughter.

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

Exemption:
Botswana
Development
Corporation

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

Reinsurance
contracts
of long
term
insurers

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

75. (1) Where in the case of an insurer transacting long term business —

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

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

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

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

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

(3) In this section —

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

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

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

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

(5) For the purposes of this section the amount of any bonus payments made in anticipation of an established surplus shall be treated as an amount allocated in respect of the next established

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

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

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

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

Investment
unit
policies

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

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

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

Life
insurance
of minors

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

- (a) no benefit shall be paid other than as a result of death of the minor, a parent or a guardian if the minor has not attained 16 years of age;
- (b) the total sums payable against all life insurance policies outstanding at that time on the life of a minor who dies before he attains the age of 16 years shall not exceed P2000, (two thousand Pula), or the sum of the total of the premiums paid under such policy, whichever is greater, and where there are more policies than one outstanding at

that time a contribution shall be done against each policy to make up the total sum of P2000, (two thousand Pula), or such greater sum as the case may be, in proportion to the sum for which the policy is effected;

- (c) a minor who has attained the age of 16 years may without the consent of his parent or guardian effect a life policy upon his own life and shall be as competent in all respects to be a policy owner and to have and exercise all the powers and privileges of a policyholder in relation to the policy as if he were of adult age, except that he shall not while he is still a minor pledge or cede the policy without the written consent of his parent or guardian.

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

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

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

Value of
certain
assets

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

Life policy
effected
by
married
persons

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

interest in a life policy or any assets acquired with those monies; and

- (iii) any monies or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those monies.

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

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

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

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

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

- (a) is attached in execution of a judgement or order of any court at the instance of a creditor of that person; or
- (b) becomes part of that person's estate in insolvency and, if that person is married in community of property, of the joint estate of the insolvent and surviving spouse,

during the lifetime of that person, the proceeds on realization of the policy shall, to the extent specified in subsection (2), be protected against that person's creditors and against any claim in connection with such attachment or such insolvency.

Life policy on own life: Protection afforded during life

- (2) The protection afforded by the provisions of subsection (1) in respect of a life policy referred to therein —
- (a) shall extend to so much of the proceeds on realization of the policy as does not exceed an amount of P5,000 (five thousand Pula); and
 - (b) shall, subject to the provisions of paragraph (a) of this subsection, extend, if the policy is pledged, to so much of the proceeds on realization of the policy as exceeds the amount of the liability, the payment of which the pledge secures, but no further.
- (3) During a period of five years as from the date upon which any monies become due or have been paid by the insurer under a life policy under subsection (1) or assets acquired with those monies or with those monies and other monies —
- (a) are attached in execution of a judgement or order of any court at the instance of a creditor or a person by whom the policy was effected; or
 - (b) become part of the estate in the insolvency of the person by whom the policy was effected and, if that person is married in community of property, of the joint estate of the insolvent and the surviving spouse, the monies due or paid under the policy or the proceeds on realization of the assets shall, to the extent specified in subsection (4), be protected against that person's creditors and against any claim in connection with the attachment or the insolvency.
- (4) The protection afforded under subsection (3) in respect of monies or assets of a person referred to in that subsection —
- (a) shall extend to those monies or to the proceeds on realization of those assets in so far as those monies and proceeds, together with —
 - (i) all other monies due or paid to that person under life policies under subsection (1);
 - (ii) the value of all other existing assets of that person acquired with monies paid under life policies under subsection (1) or with such monies and other monies; and
 - (iii) the realizable value of all life policies under subsection (1) of which that person is the owner, do not exceed P5,000 (five thousand Pula);
 - (b) shall, subject to the provisions of paragraph (a) of this subsection, extend, in the case of an asset which is pledged or mortgaged, to so much of the proceeds on realization of the assets as exceeds the amount of the liability, the payment of which the pledge or mortgage secures, but no further; and
 - (c) shall not extend to any monies due or paid under a life

policy under subsection (1) on surrender of the policy or to any assets acquired with those monies or with those monies and other monies.

- (5) For the purposes of this section —
 - (a) a life policy which an insurer issues in exchange for or in consideration of the surrender of another life policy under which the insurer was previously liable shall be regarded as having been effected on the date on which the surrendered policy was issued if the insurer received no payment other than the value of the surrender policy as a consideration for the new policy; and
 - (b) a life policy which an insurer issues under section 86 shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.

Life policy on own life: protection afforded on death

81. (1) For the purposes of this section “beneficiary” means —

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

the beneficiary shall, in respect of his claim, enjoy the protection afforded under section 80.

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

82. (1) If, —

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

(c) a person effects or cedes for the benefit of his or her children, including children to be born to him or her, a life policy on his or her life or his or her spouse, the policy or monies due or paid thereunder by the insurer or any asset acquired with those monies shall not, subject to the provisions of this section and, in the case of a policy which is ceded, to the terms of the cession, —

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

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

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

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

- (a) is attached in execution of a judgement or order of any court at the instance of her creditors; or
- (b) becomes part of her estate in insolvency, the proceeds on realization of the policy shall, to the extent specified in subsection (2) of section 80, be protected against her creditors and against any claim in connection with the attachment or the insolvency.

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

Protection
afforded in
respect of life
policy
inuring
to wife

B.84

Special provisions relating to persons married in community of property

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

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

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

(4) If the husband of a woman married in community of property has effected or ceded for the benefit of his wife and, additionally or alternatively, children, including unborn children, or any of them, a life policy on his life or on the life of his wife, he shall be obliged during the marriage to pay out of the joint estate any premium under the policy so long as the value of the joint estate exceeds their joint liabilities and, if he fails to make such payment, his wife may, without the husband's consent, make the payment out of monies she may have earned or otherwise lawfully acquired without utilizing for that purpose any assets belonging to her and her husband jointly or which may otherwise be at her disposal.

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

85. If, —

- (a) two or more life policies or assets in respect of which protection is afforded by the provisions of sections 80, 81 and 83, being the property of one person, are attached in execution of a judgement or order of any court at the instance of a creditor; or
- (b) the owner of two or more life policies or assets in respect of which protection is afforded by the provisions of sections 80, 81 and 83 is adjudged or otherwise declared insolvent, and a part only of the aggregate realizable value of the policies or assets is protected, the judgement creditor or the trustee of the estate in insolvency, as the case may be, shall determine which policy or policies or other assets shall be realized, wholly or in

part, in order to make available to him so much of the aggregate realizable value as is not protected.

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

Partial realization and partial conversion of life policies

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

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

(a) at the request of the judgement creditor or trustee referred to in subsection (1) pay to him a sum equal to the part of the realizable value of the policy to which he is entitled; and

(b) at the request of the owner of the policy issue to him a new policy of the same class but for a sum insured equal to the difference between —

(i) the full sum insured under the old policy including any bonus which may have accrued in connection therewith; and

(ii) an amount which bears the same ratio to the full sum insured under the old policy, including any bonus, as the amount paid by the insurer to the judgement creditor or trustee referred to in subsection (1) bears to the full realizable value of the old policy.

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

87. If a person who —

(a) has effected or ceded a life policy for the benefit of his spouse and, additionally or alternatively, children, including unborn children, or any of them; or

(b) holds a life policy in trust for any other person and is obliged to pay the premiums on the policy,

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

(i) to exchange the policy for a paid-up life policy of a value calculated in accordance with tables furnished

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

to the Registrar under section 65 in the case of normal lives and in any other case calculated by reference to the said tables and approved by an actuary, payable at the time and in the manner stipulated in the original policy to the person entitled to the sum insured by the original policy;

- (ii) where the policy so permits to borrow from the insurer upon the security of the policy such sums as may be necessary to keep the policy in force or to revive it; or
- (iii) to apply any bonus which may have accrued in connection with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

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

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

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

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

Power to pay into court

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

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

No deduction in respect of other life policies

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

Proof of age

91. (1) A form of proposal shall be framed so as to require a person making a proposal for a life insurance policy to specify the place and date of birth of the person whose life is proposed to be

insured and the person making the proposal shall supply those particulars to the best of his knowledge and belief.

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

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

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

Where the provisions of this subsection do not apply, the provisions of the section 57 of the Insurance Act 1979 shall continue to apply.

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

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

Age
incorrectly
stated

payable if the policy had been based on the true age and repay to the policy owner the amount of over-payments of premiums less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age:

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

(2) The provisions of subsection (4) of section 91 shall mutatis mutandis apply to this section.

Suicide

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

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

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

Lost or destroyed life policy

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

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

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

- (a) take the place of the policy lost or destroyed; and
 - (b) be the sole evidence of the contract made by the policy.
- (3) From the date upon which this Act comes into force an

insurer shall maintain a register of all copy life policies issued in accordance with subsection (1) and shall allow any member of the public showing reasonable cause access to relevant parts of the register.

- (4) The register referred to in subsection (3) shall contain —
- (a) the full name of the life insured;
 - (b) the full name of the policyowner;
 - (c) the last known address of the policyowner;
 - (d) the date of birth or year of birth of the life insured; and
 - (e) the policy identification number.

95. (1) If an insurer by notice in writing —

- (a) informs the Registrar that he has issued or that he intends to issue life policies which provide benefits —
 - (i) on the total of partial permanent disability of the person whose life such a policy insures; or
 - (ii) on the death of the person whose life such a policy insures as a result of an accident or particular disease; and

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

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

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

Life policy
may include
subsidiary
benefits

Discrimination between life policies, etc. prohibited

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

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

(2) Nothing in subsection (1) shall apply to life policies which —

- (a) are reinsurance contracts;
- (b) are for large sums in excess of P100,000 at preferential rates in accordance with the current tariff of the insurer concerned;
- (c) insure at preferential rates the lives of employees of one employer or a combination of employers or members of the families of such employees or the lives of a group of person carrying on the same occupation; or
- (d) are of a class prescribed.

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

- (a) a rebate of the premiums payable on a life policy;
- (b) an advantage in the nature of a rebate of the premium payable on a life policy;
- (c) preferential treatment in connection with bonus or other benefit under a life policy; or
- (d) any portion of the commission payable to the agent or broker in respect of that policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a policy on which less than one years' premiums have been paid in cash shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than one month after it became due;
- (b) a policy on which not less than one years' premiums have been paid in cash shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than two months after it became due;

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

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

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

Paid up policies

98. (1) A policyholder who desires to discontinue further premium payments on a life policy on which not less than three years' premiums have been paid in cash shall, on application to the insurer, be entitled to receive, in lieu of that policy, a paid-up policy for an amount not less than that determined in accordance with tables approved under section 65.

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

Surrender of policies

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

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

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

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

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

Cancellation of life policy within limited period without penalty

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

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

(4) the insurer shall when delivering the policy to the policyholder include therewith a synopsis of the right of the policyholder under subsection (2) hereof to cancel the policy.

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

Publication of bonus rates and unit values

(a) there is either —

(i) an established surplus in which long term policyholders of any category are eligible to participate; or

(ii) an adjusted unit value in which long term policyholders of that category benefit; and

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

such an allocation made shall —

(i) during the currency of the policy be known for the purposes of this section as “the reversionary bonus”; or

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

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

(a) within one month from the coming into force of this Act; or
(b) upon any alteration of the factor thereafter within one month of the date of the approval by the insurers board of directors with the approval of the actuary,
the amount and effective date of that factor, and on what basis including what continuing basis policyholders eligible to participate benefited by it.

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

(a) within one month from the coming into force of this Act; or
(b) upon any amendment of the value of the unit thereafter within two weeks of the date of such amendment or at least monthly whichever is the more frequent,
the value of each unit and the effective date of each revaluation of the fund from which the unit value is calculated, and on what basis including what continuing basis policyholders eligible to participate are benefited by it.

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

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

Advertisement and projected benefits

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

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

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

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

- (a) of benefits use only the annual average compounded interest growth rate over the effective four year period of the said unit produced from the mean valuations of —
 - (i) the unit value effective as at the first day of the month in which the advertisement or projection is made and of the eleven preceding monthly unit values; and
 - (ii) the unit value effective as at the first day of the month sixty months previous to the month in which the advertisement or projection is made and of the eleven subsequent monthly unit values;
 - (b) use only those unit values for the purposes of paragraph (a) which shall be published in accordance with subsection (3) of section 101; and
 - (c) include in the advertisement or projection if applicable the basis or formula required to be approved by the Registrar under the provisions of subsection (3) of section 65.
- (5) When making an advertisement or projection under this section, an insurer shall —
- (a) not include in the financial projection any reference to any terminal bonus or other distribution except that mention may be made to the existence of such a possible provision; and
 - (b) prominently make mention in all advertisements and projections that such projections are not guaranteed and may vary both upwards and downwards from that stated in the advertisement or projection.

PART IX *Miscellaneous provisions*

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

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

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

Fatal
accidents

Insurances
to be
held with
Botswana
insurers

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

(a) he obtains the prior approval of the Registrar; and

(b) he complies with the provisions of section 105.

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

Compulsory local brokerage

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

Unlimited indemnities prohibited

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

Commissions only to brokers and agents

107. No company or individual not a party to any contract of insurance, except an agent or broker registered under this Act or an employee of an insurer, shall be paid any commission or other payment by any Botswana insurer, agent or broker for the effecting or renewing of any policy of insurance.

Time limit on payment of premiums

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

(2) The Registrar may, in any notice issued under subsection (1), specify differing times for payment of premiums due from brokers, agents and on insurance business placed directly with the insurer or through the offices of an agent or broker.

Days of grace

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

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

Exemption

110. The Minister may, by statutory instrument, in the public interest, exempt any insurer, broker or agent from all or any of the

provisions of this Act subject to such terms and conditions as he may think fit.

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

Extension of time

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

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

Production of documents, information etc.

(2) The Registrar may institute an investigation into the activities of any insurer, broker or agent or of any applicant for registration.

(3) Where any document or information in writing produced under this section is not written in the English language it shall be accompanied by an English translation unless the Registrar otherwise directs.

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

Inspection of balance sheet by policyholder, etc.

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

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

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

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

Restriction on use of words "insurance" and "assurance" No advertisement before registration

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

(2) Any person, body of persons or body corporate acting in contravention of this section shall be liable to a fine of P2,000

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(two thousand Pula) or imprisonment for a period of three months or both such fine and imprisonment.

Service of
Process

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

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

Enforcement
of rights
of policy-
holders

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

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

Appeals from
Registrar's
decision

118. (1) A person aggrieved by a decision of the Registrar under this Act may, within one month from the date on which the decision is intimated to him, appeal therefrom, by petition in writing, to the Minister who may, subject to such terms and conditions as he may consider necessary, uphold, reverse, revoke or vary that decision.

(2) Except as hereinafter provided, the decision of the Minister on an appeal made to him under subsection (1) shall be transmitted in writing within two months of receipt of the petition of appeal and shall, except on a question of law be final and conclusive.

(3) A person aggrieved by a decision of the Minister made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the High Court.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding of fact.

Registrar's
right of
inspection
of
documents

119. (1) The Registrar may require any person, not being a person registered under the provisions of this Act, who he suspects is carrying on any class of insurance as an insurer, broker or agent, to produce such documentation and information as the Registrar thinks necessary and such person shall comply with such requirements within the stipulated time.

(2) The Registrar may institute an investigation into the activities of any person, not being a person registered under the provisions of this Act, who he suspects is carrying on any class of insurance as an insurer, broker or agent.

(3) Failure to provide such information or documentation will constitute an offence under this Act rendering the person so failing to do liable to a fine of P5,000 (five thousand Pula) or imprisonment for a period of one year or both such fine and imprisonment.

(4) Where any document or information in writing produced under this section is not written in the English language it shall be accompanied by an English translation unless the Registrar otherwise directs.

(5) If it appears from information produced in terms of subsection (1) or an investigation under subsection (2) that the person is carrying on the business of an insurer, broker or agent without being registered so to do, the Registrar —

(a) shall inform the person concerned accordingly by notice in writing sent by registered post; and

(b) may, if an application for registration in the case of an insurer or broker or an agency agreement in the case of an agent is not received within one month of the date of posting of such notice, —

(i) in the case of an insurer proceed under sections 123 and 128; or

(ii) in the case of a broker or agent proceed under section 128.

120. For the purposes of an investigation made by him under this Act the Registrar shall be deemed to be a Commissioner under the Commissions fo Inquiry Act.

Commission of inquiry

121. (1) For the purposes of sections 112 and 119, —

(a) 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 he dispenses with production of the copies, or any copy; or

(b) 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; and if he is satisfied by the evidence, two copies shall be prepared and, when duly certified shall be retained by him unless he dispenses with their production.

Copies where documents produced to Registrar

(2) For the purposes of this section a document shall be deemed to be duly signed or certified if it is signed on behalf of the person being investigated by the principal officer in Botswana if the person investigated is an insurer, or is signed by a person approved in writing by the Registrar.

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

Inspection of returns to the Registrar

(2) No fee shall be paid to the Registrar for information

supplied by him to the principal officer in Botswana of a registered insurer or broker.

123. (1) This section shall apply only to an insurer registered under this Act and to any person found, by the Registrar under subsection (5) of section 119, to be a person carrying on insurance business in Botswana without being registered so to do.

(2) Notwithstanding anything to the contrary in the Companies Act an insurer transacting long term business shall not be wound up voluntarily.

(3) Where a petition for the winding up of an insurer is presented by a person other than the Registrar, a copy of the petition shall be served on the Registrar and the Registrar shall be entitled to be heard on the petition.

(4) For the purpose of section 172 of the Companies Act an insurer shall be deemed to be unable to pay its debts if at any time the requirements of section 10 are not observed by the insurer.

(5) (a) The Registrar may, unless the insurer is already being wound up by the court, present an application to the court for the winding up in accordance with the Companies Act of an insurer under any of the following circumstances —

- (i) in terms of section 68 of this Act;
 - (ii) on the ground that the insurer is unable to pay its debts within the meaning of section 172 of the Companies Act;
 - (iii) on the ground that the insurer, having failed to comply with any requirement of this Act, has continued that failure, or having contravened for a period of six months after notice of failure or contravention has been given to the insurer by the Registrar;
 - (iv) on the ground that the insurer is unable to fulfill the reasonable expectations of policyholders or potential policyholders; or
 - (v) on the ground that it is just and equitable in the interests of the policyholders that the insurer should be wound up.
- (b) The court may, after considering the petition presented by the Registrar, order the winding up of the insurer if it is of the opinion that there are sufficient grounds and it is just and equitable for the insurer to be wound up.
- (c) The Registrar shall, in presenting a petition for winding up under this section, be deemed to be a creditor of the insurer.

(6) Where an insurer is a subsidiary of a company which is not an insurer, and the latter holding company is wound up under the provisions of the Companies Act or otherwise the insurer subsidiary shall not be wound up except on the basis of a separate application for winding up.

(7) In any proceedings upon a petition to wind up an insurer presented by the Registrar under subsection 5 (a), evidence that the insurer was insolvent at the close of the period to which the accounts and balance sheet of the insurer last deposited under section 31 relate, or at any date as at which an investigation was last made under section 112 shall be evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

(8) Rules made under section 312 of the Companies Act may regulate the procedure and the practice to be followed in proceedings with respect to the winding up of insurers under this Act.

(9) (a) Subject to any directions which may be given by the court —

- (i) the value of the assets and liabilities shall be ascertained in such manner and upon such basis as the liquidator thinks fit;
- (ii) the liabilities of an insurer in respect of the current policies of long term insurance business shall, as far as practicable, be calculated by the method and upon the basis to be determined by an actuary appointed by the court;
- (iii) the liabilities of an insurer in respect of current policies of general insurance business shall, as far as practicable, be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

(b) The actuary appointed under paragraph (a) shall, in the determination of liabilities, take into account any special directions which may be given to him by the court.

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

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

Continuation of business of insurer in liquidation

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

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

Secondary
companies

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

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

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

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

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

(6) Where an insurer stands in the relation of a principal company to one insurer, and in the relation of a secondary company to another insurer, or where there are several insurers

standing in the relation of secondary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

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

False documents

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

(a) destroy, mutilate, alter or falsify any books, papers or securities or other record maintained for or by any electronic retrieval system belonging to any insurer, broker or agent; or

(b) make or be a party to the making of any false or fraudulent entry in any register, book of account or other document or other record maintained for or by any electronic retrieval system belonging to any insurer, broker or agent.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding P10,000 (ten thousand Pula) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

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

Fees

128. (1) The directors, manager, controller and principal officer of an insurer or a broker acting in contravention of the provisions of sections 8, 17, 21 or 25 shall each be guilty of an offence and shall each be liable to a fine not exceeding P10,000 (ten thousand Pula) to be imposed by and at the discretion of the Registrar.

Offences punishable by registrar

(2) Any person carrying on any insurance business without first being registered as an insurer shall be guilty of an offence and liable to a fine not exceeding P10,000 (ten thousand Pula) to be imposed by and at the discretion of the Registrar, and, where the offender is a company or partnership, every director, manager, controller or principal officer of the partnership shall each be personally liable as if he had himself committed the said offence.

(3) Any person carrying on the business of an insurance agent, broker or agent for a broker without first being registered as an insurance agent, broker or agent for a broker as the case may be, shall be guilty of an offence and shall be liable to a fine not exceeding P1 000 (one thousand Pula) to be imposed by and at the discretion of the Registrar, and, where the offender is a company or a partnership, every director, manager, controller or principal

officer of the company or every partner, manager or principal officer of the partnership shall each be personally liable as if he himself committed the offence.

(4) An insurance agent or agent for a broker acting in contravention of the provisions of section 47 shall, in addition to any offence for which he may be liable under any other law be guilty of an offence and be liable to a fine not exceeding P1,000 (one thousand Pula) to be imposed by and at the discretion of the Registrar.

(5) Any insurer or broker who knowingly employs any person deemed unsuitable by virtue of sections 17 and 51 respectively shall be guilty of an offence and liable to a fine not exceeding P5,000 (five thousand Pula) to be imposed by and at the discretion of the Registrar.

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

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

(8) Notwithstanding any other action taken by the Registrar under this Act, any fine imposed by him under the provisions of this section shall be recoverable as a fine imposed by a court under the provisions of subsections (1) to (4) of section 299 of the Criminal Procedure Code, and an affidavit sworn by the Registrar shall be sufficient proof of the lawful imposition of the fine to enable the court to issue a warrant under those provisions:

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

129. (1) Every insurer which —

(a) fails to comply with the provisions of sections 27 or 31; or
(b) acts in contravention of the provisions of section 11 or 72;
and every broker who fails to comply with the provisions of sections 58 or 63 shall be guilty of an offence.

(2) Every insurer or broker guilty of an offence under this section or under the provisions of sections 9, 10 or 71 shall be liable to a fine not exceeding P25,000 (twenty five thousand Pula), and every director, manager, controller and principal officer of any such insurer shall each be personally liable to a fine not exceeding P10,000 (ten thousand Pula) or imprisonment for a term not exceeding two years or to both such fine and imprisonment, unless such director, manager, controller or principal officer can prove to the satisfaction of the court that he

Offences
punishable
by Court

was unaware of the default and had taken all reasonable steps to keep himself informed of any possibility of such default.

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

130. (1) Every person who acts in contravention of any of the provisions of this Act shall be guilty of an offence and shall, where no punishment has been stipulated by any other section of this Act for that offence, be liable to a fine not exceeding P1,000 (one thousand Pula) to be imposed by and at the discretion of the Registrar.

General
penalty

(2) Where an offence to which this section applies is committed by a body of person, every director, manager, controller and principal officer of any company and every partner, manager or principal officer of any partnership shall be deemed guilty of the offence:

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

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

131. (1) The Minister may, by statutory instrument, make regulations —

Regulations

- (a) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed;
- (b) in relation to any other matter or thing authorized or required by this Act to be done by or in accordance with regulations;
- (c) amending the commencement date or dates from that contained in section 1, of any provision or provisions contained in this Act; and
- (d) generally for the purpose of giving effect to this Act.

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

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

Application
of Act

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

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to such insurer, broker or agent or such class of insurance business, as the case may be.

Repeal of
Cap. 46:01

133. The Insurance Act, is hereby repealed.

FIRST SCHEDULE

CLASSES OF LONG TERM BUSINESS

<i>No.</i>	<i>Description</i>	<i>Nature of Business</i>
I	Life and annuity	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class III below.
II	Marriage birth	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
IV	Permanent health	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that — <ul style="list-style-type: none"> (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time, and (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.
V	Tontines	Effecting and carrying out tontines.
VI	Capital redemption	Effecting and carrying out contracts of — <ul style="list-style-type: none"> (a) capital redemption; or (b) pure endowment and deferred annuity as defined in the Pensions and Provident Funds Act.

- VII Deposit administrations schemes
- Effecting and carrying out —
- (a) contracts to maintain and manage deposit administration policies, or contracts of the kind mentioned in paragraph (a), that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

SECOND SCHEDULE

CLASSES OF GENERAL BUSINESS BUSINESS

<i>No.</i>	<i>Description</i>	<i>Nature of Business</i>
1.	Accident	Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured — (a) sustaining injury as the result of an accident or of an accident of a specified class; or (b) dying as the result of an accident or of an accident of a specified class; or (c) becoming incapacitated in consequence of disease or of disease of a specified class, inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within class 2 below or within class IV in the First Schedule to this Act (permanent health).
2.	Sickness	Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within class IV in the First Schedule to this Act.
3.	Land vehicles	Effecting and carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles, but excluding railway rolling stock.
4.	Railway rolling stock	Effecting and carrying out contracts of insurance against loss of or damage to railway rolling stock.
5.	Aircraft	Effecting and carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
6.	Ships	Effecting and carrying out contracts of insurance upon vessels used on the sea or inland water, or upon the machinery, tackle, furniture or equipment of such vessels.
7.	Goods in transit	Effecting and carrying out contracts of insurance against loss or damage to merchandise, baggage and all

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- other goods in transit, irrespective of the form of transport.
8. **Fire and natural forces** Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
 9. **Damage to property** Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to hail or frost or to any event (such as theft) other than those mentioned in class 8 above.
 10. **Motor vehicle liability** Effecting and carrying out contracts of insurance against damage arising out of or in connection with use of motor vehicles on land, including third party risks and carrier's liability.
 11. **Aircraft liability** Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including third party risks and carrier's liability.
 12. **Liability for ships** Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third party risks and carrier's liability.
 13. **General liability** Effecting and carrying out contracts of insurance against risks of the person insured incurring liabilities to third parties, the risks in question not being risks to which class 10, 11 or 12 above relates.
 14. **Credit** Effecting and carrying out contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.
 15. **Suretyship** Effecting and carrying out —
 - (a) contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;
 - (b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or custom bonds or similar contracts of guarantee.
 16. **Miscellaneous** Effecting and carrying out contracts of insurance against any of the following risks, namely —
 - (a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;
 - (b) risks of loss to the persons insured attributable to their incurring unforeseen expense;
 - (c) risks neither falling within paragraph (a) or (b) above nor being of a kind such that the carrying

on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.

17. Legal expenses

Effecting and carrying out of contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

L2/4/853 I

Bill No. 8 of 1987

RURAL ROADS II PROJECT LOANS (AUTHORIZATION) BILL, 1987
(Published on 13th March, 1987)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to authorize the raising by the Government of the loans of 10 650 000 Units of Account (worth, at the time of writing, approximately P23,81 million) from the African Development Bank and 7 400 000 Units of Account (worth at the time of writing, approximately P15,26 million) from the African Development Fund.

3. The purpose of the loans is to finance the foreign exchange cost of the Rural Roads II Project by both the African Development Bank and the African Development Fund.

P.S. MMUSI,
*Vice-President and Minister of
Finance and Development Planning.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short Title
2. Authorization to raise Loans
3. Loans to be paid into the Development Fund
4. Loans charged upon Consolidated Fund
5. Powers of Minister in connexion with loans

A BILL

—entitled—

An Act to authorize the raising by Government of Loans from the African Development Bank and the African Development Fund for the purpose of financing the foreign exchange cost of the Rural Roads II Project by both the African Development Bank and the African Development Fund.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana:

Short title

1. This Act may be cited as the Rural Roads II Project Loans (Athorization) Act, 1987.

Athorization to raise loans

2. The Minister may raise by loans from the African Development Bank (hereinafter referred to as "the Bank") and the African Development Fund (hereinafter referred to as "the Fund") subject to such terms and conditions as may be agreed between the Minister and both the Bank and the Fund respectively, sums not exceeding in the aggregate the equivalent of the Bank's Units of Account 10 650 000 (ten million six hundred and fifty thousands units of account) and the Fund's Units of Account 7 400 000 (seven million four hundred thousands Units of Account) for the purpose of financing the foreign exchange cost of the Rural Roads II Project by both the Bank and the Fund.

Loans to be paid into the Development Fund

3. The proceeds of the loans authorized to be raised by this Act shall be paid into the Development Fund.

Loans charged upon Consolidated Fund

4. All sums required to repay the loans and to pay the interest and other charges thereon shall be charged upon and paid out of the Consolidated Fund.

Powers of Minister in connexion with loan

5. The Minister is hereby empowered to sign on behalf of the Government and to authorize any public officer so to sign any agreements embodying the terms and conditions of the loans and to do all such things as may be necessary or expedient to effect or facilitate the loans or such agreements.