

## CHAPTER 24:07

# INSURANCE ACT

*Act 27/1987, 19/1998 (s. 14), 22/2001 (s. 4), 3/2004*

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**AN ACT to regulate the carrying on of insurance business in Zimbabwe; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 1st August, 1988.]

PART I

PRELIMINARY

**1 Short title**

This Act may be cited as the Insurance Act [*Chapter 24:07*].

**2 Application of Act**

This Act shall not extend or apply to—

- (a) an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependants, commonly called a friendly society, which does not at any time after the appointed day employ a person whose main remunerated occupation consists of inducing persons to become members of the association or collecting from members of the association contributions or subscriptions towards the association's funds; or
- (b) any person registered in terms of any enactment relating to benefit societies; or
- (c) a person or class of persons declared by the Minister, by statutory instrument, to be exempt from this Act; or
- (d) a class of insurance business declared by the Minister, by statutory instrument, to be exempt from this Act.

**3 Interpretation**

In this Act—

“actuary” means a person who is a member or fellow of an institute, faculty, society or association of actuaries approved by the Commissioner for the purposes of this Act;

“appointed day” means 1st August, 1988;

“approved securities” means—

- (a) securities issued by the State, a statutory body or a local authority;
- (b) such other securities as the Minister may approve from time to time for the purposes of this Act;

“auditor” means a person registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] who is approved by the Commissioner for the purposes of this Act;

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

“child”, in relation to any person, includes any child adopted by that person in terms of any law, including customary law;

“class of insurance business” means a class of insurance business prescribed in terms of section *sixty-three*;  
“Commissioner” means the Commissioner of Insurance and Pension and Provident Funds appointed in terms of section 19 of the Insurance and Pensions Commissions Act [*Chapter 24:21*] (Act No. 7 of 2000);  
[Definition amended by Act 3 of 2004]

“contingent obligation dependent on human life” means—

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

“co-operative insurance society” means a co-operative society registered under the Co-operative Societies Act [*Chapter 24:05*] which, by its constitution, is formed to carry on insurance business and of which all policy owners are members thereof;

“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;

“executor” has the meaning accorded to it in terms of the Administration of Estates Act [*Chapter 6:01*];

“financial year”, in relation to a person, means a period at the end of which the balance of the accounts of the person are struck, whether or not that period is a year;

“former insurance law” means the Insurance Act [*Chapter 196 of 1974*] or any law repealed by that Act;

“funeral policy” means a policy whereby the insurer assumes, in return for a premium or the promise of premium, an obligation to provide, on the death of any person, benefits, not exceeding in value a total of one thousand two hundred dollars, which consist principally of provision for the funeral of that person or the grant to another person of some other non-monetary benefit, whether or not the policy provides for—

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

“group life insurance scheme” means a scheme under a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide benefits on the disablement or death of the members of any group of persons, including the employees of any one employer or of a combination of employers, or members of the families of such employees, or the members of any group of persons carrying on the same occupation, but does not include a personal accident policy;

“insolvency” shall be construed in accordance with the Insolvency Act [*Chapter 6:04*];

“insurance agent” means a person who, on behalf of a registered insurer or registered insurers—

- (a) initiates insurance business; or
- (b) does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;

but does not include an employee of a registered insurer who receives a salary;

“insurance broker” means a person who, on behalf of any other person, negotiates insurance business with insurers, and includes a person who negotiates reinsurance business on behalf of any other person, but does not include an employee of a registered insurer who receives a salary;

“insurance business” means the business of assuming the obligations of an insurer in any class of insurance business whatsoever, whether defined in this section or not, which is not declared to be exempt from this Act in terms of paragraph (d) of section *two*, and includes reinsurance business;

“insurer” means a person, including a society, carrying on insurance business otherwise than as an insurance agent or as an insurance broker, who is not a person or a member of a class of persons declared to be exempt from this Act in terms of paragraph (c) of section *two*;

“life insurance business” means the business of assuming the obligations of an insurer under life policies, funeral policies or sinking fund policies;

“life insurance fund” means the fund into which the receipts and from which the payments of an insurer in respect of his life insurance business are paid;

“life policy” means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money or the promise of a periodical payment of a certain premium, a con-

tingent obligation dependent on human life, and includes any contract of insurance customarily regarded as a life insurance contract, but does not include a funeral policy, a personal accident policy, a sinking fund policy or any insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy;

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

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

“personal accident policy” means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money and otherwise than incidentally to an insurance effected by means of some other class of policy, an obligation to pay a certain sum or certain sums of money to, or provide any other benefit for, a particular person in the event of an accident or sickness causing the death or injury or disability of a person;

“policy” means a written insurance contract, whatever the form in which the rights and obligations of the parties to the contract are expressed or created, and includes a sinking fund policy, but does not include an insurance contract in which—

(a) a person or a member of a class of persons declared to be exempt from the provisions of this Act in terms of paragraph (c) of section *two* assumes the obligations of an insurer; or

(b) a person assumes the obligations of an insurer in a class of insurance business declared to be exempt from this Act in terms of paragraph (d) of section *two*;

“prescribed” means prescribed by regulations made in terms of section *eighty-nine*;

[Definition inserted by Act 3 of 2004]

“prescribed securities” means—

(a) stocks, bonds or other like securities issued by the State, a statutory body, or a local authority, and includes, in relation to non-life insurers and the class of insurance business carried on by them, treasury bills, or similar short-term bills issued by a statutory body or local authority; and

(b) investments approved or prescribed by the Minister from time to time for the purposes of this definition;

“principal officer” means the principal officer of a registered insurer or registered insurance broker appointed in terms of section *seventy-four*;

“registered insurance brokers” means an insurance broker registered in terms of Part VIII;

“registered insurer” means an insurer registered in terms of Part III or Part IV;

“reinsurance” means the insurance of any class of insurance business;

“sinking fund policy” means a contract whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment or the promise of the payment from time to time of a certain sum of money by the other party to the contract;

“society” means a mutual insurance society as described in subsection (2) of section *eleven*;

“trustee”, in relation to an insolvent estate, means a trustee as defined in the Insolvency Act [*Chapter 6:04*].

## PART II

### SPECIAL RESPONSIBILITIES AND PRINCIPAL FUNCTIONS OF COMMISSIONER

#### 4 Performance of functions by Commissioner

In performing his functions in terms of this Act, the Commissioner shall act in consultation with the Insurance and Pensions Board established in terms of section 5 of the Insurance and Pensions Commissions Act [*Chapter 24:21*] (Act No. 7 of 2000).

[Section as substituted by Act 3 of 2004]

#### 5 Special responsibilities of Commissioner

In the performance of the functions conferred upon him by this Act, the Commissioner shall at all times have regard to the need to attain the following objects, namely—

- (a) the protection of the rights, benefits and other interests of policy owners and of any beneficiaries of policies;
- (b) the alignment of the activities of persons carrying on insurance business in Zimbabwe with the economic, financial and social policies, objectives and interests of the State;
- (c) the monitoring of the solvency of insurers and the maintenance of sound insurance principles and practices in the conduct of insurance business in Zimbabwe;
- (d) the regulation and strengthening of the insurance market in Zimbabwe.

## 6 Functions of Commissioner

The functions of the Commissioner shall be the following—

- (a) the registration of insurers in terms of Parts III and IV;
- (b) the supervision of the activities of registered insurers, insurance agents and insurance brokers;
- (c) the formulation of standards for that conduct of insurance business with which registered insurers may be required to comply in terms of this Act;
- (d) upon application made in that behalf by registered insurers, the approval of—
  - (i) conditions which shall apply to policies of any specified class of insurance business; and
  - (ii) the rates of premiums and monetary benefit which apply in respect of policies in any class of insurance business, other than life insurance;
- (e) the submission to the Minister of recommendations on any matter affecting the insurance sector of the national economy of Zimbabwe; and
- (f) the performance of any other functions conferred upon him in terms of this Act or any other enactment.

## PART III

### REGISTRATION OF INSURERS OTHER THAN MUTUAL INSURANCE SOCIETIES

## 7 Insurers to be registered

(1) Subject to subsection (2), any person who carries on any class of insurance business in Zimbabwe without being registered as an insurer in that class of insurance business shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as substituted by Act 22 of 2001]

(2) This Part shall not apply to—

- (a) a society; or
- (b) an insurance agent; or
- (c) an insurance broker; or
- (d) the carrying on by a person whose registration as an insurer in a class of insurance business has been cancelled under this Act or the former insurance law of business relating to policies in that class of insurance business which—
  - (i) were issued by him before the date of the cancellation of his registration as an insurer in that class of insurance business; or
  - (ii) were issued by him after that date with the permission in writing of the Commissioner.

## 8 Persons disqualified to be registered as insurers

(1) The Commissioner shall not register a person as an insurer if the name under which the person is to carry on insurance business—

- (a) is identical with the name of an insurer already registered under this Act or is likely to be confused with the name of such an insurer; or
- (b) is likely to mislead members of the public as to the nature of the insurance business; or
- (c) is likely to mislead members of the public as to the person's corporate structure or nature.

(2) The Commissioner shall not register a person as an insurer if the person does not have unencumbered capital of the nature and amount prescribed.

(3) The Commissioner shall not register a body corporate or an association as an insurer unless at least half the directors, trustees or other individuals who have administrative control over the body corporate or association are either—

- (a) citizens of Zimbabwe who are ordinarily resident in Zimbabwe; or
- (b) permanent residents of Zimbabwe.

(4) The Commissioner shall not register as an insurer a body corporate that is not a company registered under the Companies Act [*Chapter 24:03*] unless he is satisfied that its corporate structure or nature is suitable for carrying on the insurance business that it intends carrying on.

[Section as substituted by Act 22 of 2001]

## 9 Application for registration as an insurer

(1) An application to be registered as an insurer in a class of insurance business shall be made to the Commissioner in the prescribed form and shall be accompanied by such documents as may be prescribed.

(2) Subject to subsections (3) and (4), if the Commissioner is satisfied—

- (a) that the applicant for registration as an insurer is not disqualified in terms of subsection (1) of section eight to be registered as an insurer in the class of insurance business with respect to which application for registration is made; and
- (b) that sound insurance principles have been and will be applied to the applicant's insurance business in Zimbabwe;

the Commissioner shall register the applicant as an insurer in the class of insurance business with respect to which application for registration is made and shall issue the registered insurer a certificate of registration in the prescribed form.

(3) Subject to subsection (5), if, in relation to an application made in terms of subsection (1), the Commissioner is not satisfied as provided in subsection (2), he shall notify the applicant in writing that he proposes to reject the application for registration and of his reasons for so doing.

(4) Notwithstanding anything contained in subsection (2), if the Commissioner is of the opinion that it would be in the interests of prospective policy owners to approve an application for registration in any class or classes of insurance business, he shall notify the applicant in writing that he proposes to reject the application for registration and of his reasons for so doing.

(5) Notwithstanding anything contained in subsection (2), if the Commissioner is satisfied that it would be in the interests of prospective policy owners to register an applicant as an insurer in a class or classes of insurance business with respect to which application for registration is made subject to such conditions as the Commissioner may consider desirable to impose, the Commissioner shall notify the applicant in writing of the conditions which he considers desirable to impose and if, within thirty days of such notification, the applicant—

(a) accepts the conditions proposed by the Commissioner, the Commissioner shall register him subject to such conditions;

(b) does not accept the conditions proposed by the Commissioner, the Commissioner shall notify the applicant in writing that he proposes to reject the application for registration.

(6) If an applicant who has been notified of the Commissioner's proposal to reject his application fails to lodge with the Commissioner a request for his case to be submitted to the Minister for review as is provided in subsection (1) of section *seventy-one* within the period mentioned in that subsection, or, having lodged such a request within that period, withdraws the request before the Minister gives his decision in the case, the Commissioner shall reject the application and notify the applicant in writing accordingly.

## 10 Registration to be published

The Commissioner shall cause a notice of the registration of an insurer to be published in the *Gazette* and in one or more such newspapers circulating in Zimbabwe as the Commissioner may determine.

## PART IV

### REGISTRATION OF MUTUAL INSURANCE SOCIETIES AND SPECIAL PROVISIONS RELATING TO SUCH SOCIETIES

## 11 Interpretation in Part IV

(1) In this Part—

“existing society”, in relation to an applicant for registration as an insurer in terms of this Part, means an applicant which is, at the date of its application for registration, carrying on insurance business in Zimbabwe;

“insurance company”, for the purpose of section *twenty-one*, means a company registered in terms of the Companies Act [*Chapter 24:03*] which is also a registered insurer;

“local society” means a society whose head office is in Zimbabwe;

“member”, in relation to a society, means a member of that society;

“proposed society”, for the purpose of section *twenty-one*, means a society proposed to be formed in terms of that section.

(2) In this Act, a mutual insurance society means an association of persons formed in pursuance of any law and by whatever name it may be called that is established solely or principally for the purpose of carrying on any class of insurance business in which—

(a) all members of the society—

(i) qualify as such by virtue of their being owners of policies issued by the society as an insurer, and

(ii) are entitled to participate at general meetings for the control of the society and in the election or appointment of the directors of the society; and

(b) the profits of the business of the society are distributed to owners of policies issued by the society as an insurer.

## 12 Societies to be registered

(1) Subject to this section, any society that carries on any class of insurance business in Zimbabwe without being registered as an insurer in that class of insurance business shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as substituted by Act 22 of 2001]

(2) Within ninety days of its formation or, in the case of an existing society, within ninety days of the appointed day, a society shall lodge with the Commissioner an application for registration in terms of this Part.

(3) This section shall not apply to the carrying on by an existing society whose registration as an insurer in a class of insurance business has been cancelled under this Act or the former insurance law of business relating to policies in that class of insurance business which—

- (a) were issued by the society before the date of the cancellation of its registration as an insurer in that class of insurance business; or
- (b) were issued by the society after that date with the permission in writing of the Commissioner.

### **13 Application for registration of society as insurer**

(1) An application for registration of a society as an insurer in a class of insurance business shall be made to the Commissioner in the prescribed form within ninety days after the society's formation, and shall be accompanied by—

- (a) the constitution of the society; and
- (b) any by-laws of the society; and
- (c) such other documents as may be prescribed from time to time.

[Subsection as amended by Act 22 of 2001]

(2) The Commissioner shall register the applicant society as an insurer in any class of insurance business with respect to which application for registration is made and shall issue to it a certificate of registration if the Commissioner is satisfied that such applicant society—

- (a) is composed of no fewer than seven members; and
- (b) subject to section *fourteen*, is a local society; and
- (c) provides at the time of application a bank guarantee or other similar security acceptable to the Commissioner of a value of not less than one million dollars to be secured against any liability in respect of its operation as an insurer; and
- (d) otherwise complies with this Act.

(3) If, in relation to an application made in terms of subsection (1), the Commissioner—

- (a) is not satisfied as provided in subsection (2); or
- (b) is of the opinion that it would not be in the interests of prospective policy owners to approve an application for registration in any class or classes of insurance business;

he shall notify the applicant society in writing that he proposes to reject its application for registration and of his reasons for so doing.

(4) Notwithstanding subsection (2), if the Commissioner is satisfied that it would be in the interests of prospective policy owners to register an applicant society as an insurer in a class or classes of insurance business with respect to which application for registration is made subject to such conditions as the Commissioner may consider desirable to impose, the Commissioner shall notify the applicant society in writing of the conditions which he considers desirable to impose and if, within thirty days of such notification, such applicant—

- (a) accepts the conditions proposed by the Commissioner, the Commissioner shall register it subject to such conditions;
- (b) does not accept the conditions proposed by the Commissioner, the Commissioner shall notify it in writing that he proposes to reject its application for registration.

(5) If an applicant society which has been notified of the Commissioner's proposal to reject its application fails to lodge with the Commissioner a request for its case to be submitted to the Minister for review as is provided in subsection (1) of section *seventy-one* within the period mentioned in that subsection or, having lodged such a request within that period, withdraws the request before the Minister gives his decision in the case, the Commissioner shall reject the application and notify the applicant society in writing accordingly.

(6) Upon the registration of a society as an insurer in terms of this Part, section *ten* shall apply in relation to the registration.

### **14 Special provisions relating to foreign societies**

A society that is not a local society shall, for the purposes of paragraph (b) of subsection (2) of section *thirteen*, be deemed to be a local society if the Commissioner is satisfied that—

- (a) the society concerned carries on its insurance business in Zimbabwe under the control of a board of directors—
  - (i) who are not disqualified to be elected or appointed or to hold office as directors in terms of section *seventeen* and whose composition complies with section *eighteen*; and
  - (ii) whose powers include the power to determine, subject to the requirements of this Act relating to assets to be held by registered insurers, the manner in which the funds held by the society in Zimbabwe in respect of its insurance business in Zimbabwe shall be invested; and
- (b) in respect of its insurance business in Zimbabwe—
  - (i) no owners of policies other than policies forming part of the insurance business carried on by the society concerned in Zimbabwe; and

(ii) no creditors, other than creditors in respect of the insurance business carried on by the society concerned in Zimbabwe; have any claim to the assets held by the society in Zimbabwe.

## 15 Effect of registration and prohibition of registration as or conversion into company

(1) From the date of registration of a society in terms of this Part, such society shall be a body corporate by the name under which it is registered and shall, in its registered name, be capable of suing and being sued, acquiring property and disposing of it and, subject to its constitution and of this Act, of performing all such acts as bodies corporate may by law perform.

(2) Subject to section *ninety-one*, no society registered in terms of this Part shall register or be registered as a company in terms of the Companies Act [*Chapter 24:03*].

(3) Except in accordance with section *thirty-three*, a society that is registered in terms of this Act shall not be converted into a body corporate different in nature from a mutual society.

[Subsection as amended by Act 22 of 2001]

## 16 Constitution of society

(1) The constitution of every society shall, *inter* provide for the following matters—

- (a) the name of the society and the situation in Zimbabwe of its head or principal office; and
- (b) the principal objects of the society and the class or classes of insurance business it intends to offer to its members; and
- (c) the designation as members of the society of those persons who—
  - (i) own life policies issued by the society and any other class of policy as the constitution shall specify;
  - (ii) contribute to any pension fund or annuity fund or provident fund of the society; and the conditions for the continuance or cessation of such membership:  
Provided that where a person contracts with a society in respect of a group life insurance scheme, pension fund or provident fund, that person may be designated as a member to the exclusion of those persons on whose behalf he contracted; and
- (d) the rights, privileges and obligations of members; and
- (e) the manner of calling annual general meetings and special general meetings of members, the quorum necessary for the transaction of business at such meetings, and the manner of voting thereat; and
- (f) the right of voting at meetings of the society; and
- (g) the manner of electing, appointing, removing and fixing the remuneration of directors, their qualifications, powers and duties, and the manner of appointing, removing and fixing the remuneration of other officers of the society, including members of local boards or committees of the society; and
- (h) the manner of appointment of an auditor of the society, the periodic audit of the accounts of the society and the making available to members of the auditor's reports; and
- (i) the manner of amending the constitution and of making, altering and rescinding any by-laws of the society; and
- (j) the winding up of the society and the equitable distribution of the assets and liabilities of the society among its members, with due regard to their respective interests as policy owners:  
Provided that a society may, with the consent of the Commissioner, omit to provide for this matter in its constitution; and
- (k) such other matters as may be prescribed from time to time.

(2) The Commissioner shall register the constitution and any by-laws of a society at the time of its registration, and such registered constitution and by-laws and any amendments thereto registered in terms of subsection (4) shall be binding on the society and the members and officers thereof, and on all persons claiming under the constitution or by-laws or whose claims are derived from members.

(3) Subject to subsection (4), a society may, in the manner directed by its constitution or by-laws, amend its constitution or by-laws, but no such amendment shall be valid if—

- (a) it purports to affect the rights of a creditor of a society who is not a member thereof; or
- (b) it is directed against any particular individual; or
- (c) it purports to alter the rights of members in a winding up.

(4) Two copies of every resolution for the amendment of any provision of the constitution or by-laws in terms of subsection (3) shall be signed by the principal officer and one director of the society or, if the society has at any time no principal officer or director, by such other person having control over the business of the society as the Commissioner may specify, and such resolution shall be transmitted to the Commissioner who, if he is satisfied that the amendment proposed is in conformity with this Act and is not contrary to the interests of members, shall register the resolution and return one of the copies to the society, with the date of registration endorsed thereof, being the date from which the amendment shall take effect.

(5) Every society shall make a copy of its constitution and any by-laws available at every branch and agency of the society for inspection by members of the public during the normal business hours of the society.

(6) A society that contravenes subsection (5) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection inserted by Act 22 of 2001

## **17 Persons disqualified to be elected or appointed as directors of societies**

(1) A person shall be disqualified for election or appointment, or to hold office, as a director of a society if that person—

- (a) is not a citizen of Zimbabwe ordinary resident in Zimbabwe or a permanent resident of Zimbabwe:  
Provided that the Commissioner may grant exemptions from this paragraph for such periods as he may specify; or
- (b) is not a member of the society concerned; or
- (c) is, on the day of his proposed election or appointment as a director, an employee, agent, auditor or director of any other society; or
- (d) is a minor or otherwise under any legal disability; or
- (e) is an unrehabilitated insolvent; or
- (f) has at any time been convicted within or outside Zimbabwe of an offence involving fraud or dishonesty and sentenced by a court to imprisonment without the option of a fine; or
- (g) is a body corporate.

(2) If the Commissioner is in possession of any information which, in his opinion, indicates that a person elected or appointed as a director of a society is disqualified to hold office as a director of the society in terms of subsection (1), the Commissioner shall unless the person concerned sooner resigns his office—

- (a) enquire into the matter, and furnish to the society a report of the enquiry; and
- (b) if the inquiry referred to in paragraph (a) confirms the disqualification of the person concerned, declare the office of director of that person to be vacant, and notify the society in writing accordingly.

(3) A society notified of a vacancy in terms of paragraph (b) of subsection (2) may fill the vacancy in the manner directed by its constitution or by-laws and in accordance with the provisions of this Part.

## **18 Composition of boards of directors of societies**

(1) The board of directors or other governing body of a society, by whatever name it may be called, shall be composed of not fewer than three and not more than eighteen persons, or such other number of persons as may be prescribed from time to time, elected or appointed in the manner directed by its constitution or by-laws.

(2) A society shall, at the time it applies for registration as an insurer in terms of this Part, notify the Commissioner in writing of the names of its directors, and if a registered society elects or appoints new directors, whether to fill vacancies or otherwise, the society shall notify the Commissioner in writing of the names of the new directors as soon as the election has been held or the appointment has been made.

(3) A society that contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001

## **19 Limitation of liability of members of societies**

The liability of a member of a society in relation to the society and in respect of the acts or omissions of the society shall be limited to the amount of any premium or contribution payable but unpaid by him in respect of any financial year at any time after the date on which such premium or contribution fell due.

## **20 Restriction of use of the word “mutual”**

No insurer, other than a society which is—

- (a) registered under this Part; or
- (b) awaiting the outcome of registration proceedings, including any review in terms of section *seventy-one*; shall carry on insurance business under a name or title of which the word “mutual” is a part:

Provided that the use of the word “mutual” in a name, unaccompanied by the word “society”, shall not be construed for the purposes of this section or paragraph (c) of subsection (1) of section 8 as indicating that an insurer is a mutual insurance society.

[Subsection inserted by Act 22 of 2001

## **21 Conversion of insurance companies into societies**

(1) Subject to this section, an insurance company may convert itself, or such part of it that is engaged in the life insurance business, into a society.

(2) If it is intended to convert into a society an insurance company or part thereof specified in subsection (1), the directors of the insurance company concerned shall—

- (a) lodge with the Commissioner a copy of the constitution of the proposed society; and
- (b) lodge with the Commissioner and post to the registered or last known address of every existing policy owner of the insurance company concerned a scheme setting forth the manner in which it is proposed to

convert into a society the insurance company or part thereof specified in subsection (1), which scheme shall incorporate—

- (i) a statement of the assets and liabilities of the proposed society, supported by copies of the reports of the auditor and, in respect of the life insurance business to be transferred to the society, the actuary of the insurance company concerned; and
  - (ii) a statement of the cost of buying out the existing shareholders and of the manner in which it is intended to buy them out, supported separately or inclusively by copies of the reports referred to in subparagraph (i);
- (c) as soon as practicable after lodging with the Commissioner the documents referred to in paragraphs (a) and (b), publish in the *Gazette* a notice of intention to effect the conversion, which notice shall specify—
- (i) that copies of the documents referred to in paragraphs (a) and (b) shall be open for inspection by existing policy owners and shareholders at the offices of the Commissioner and the insurance company concerned for a period of twenty-one days from the date of publication of the notice;
  - (ii) that any objections by existing policy owners and shareholders to the proposed conversion shall be made in writing to both the Commissioner and the insurance company concerned within the period specified in subparagraph (i).

(3) Upon the expiration of the period referred to in subparagraph (i) of paragraph (c) of subsection (2), the Commissioner shall make a report to the Minister setting forth his opinion as to—

- (a) the soundness of the scheme referred to in paragraph (b) of subsection (2); and
  - (b) any objections received from existing policy owners and shareholders in terms of subparagraph (ii) of paragraph (c) of subsection (2); and
  - (c) whether the proposed society would otherwise qualify to be registered in terms of section *thirteen*;
- together with his recommendation to the Minister to sanction or reject the proposed conversion, or to sanction it subject to such modifications to the scheme referred to in paragraph (b) of subsection (2) as the Commissioner shall specify.

(4) For the purpose of making a report in terms of subsection (3), the Commissioner may appoint an auditor or an actuary or both such auditor and actuary to report independently to him on the matters required to be specified in terms of subparagraphs (i) and (ii) of paragraph (b) of subsection (2).

(5) The Minister, after considering the report of the Commissioner made in terms of subsection (3), may sanction or reject the proposed conversion, or sanction it subject to any modifications specified in terms of subsection (3):

Provided that where the insurance company concerned refuses to accept the modifications as specified, the proposed conversion shall, subject to subsection (6), be deemed to have been rejected.

(6) The decision of the Minister to reject a proposed conversion, or to sanction it subject to modifications in terms of subsection (5), shall be final unless the Minister permits life insurance company concerned to make further proposals in regard to the matter, in which case subsections (2) and (3) shall apply, *mutatis mutandis*, to any alternative scheme or modification thereto.

(7) Where the Minister sanctions a proposed conversion, or sanctions it subject to modifications which have not been rejected in terms of subsection (5), the directors of the insurance company concerned shall—

- (a) publish a notice in the *Gazette* to the appropriate effect, specifying the modifications, if any, made and accepted in terms of subsection (5); and
- (b) apply to have the proposed society registered in terms of section *thirteen*.

(8) Notwithstanding subsection (1) of section *sixteen*, the constitution of a proposed society may—

- (a) suspend the voting rights of members wholly or in respect of certain specified matters for a period not exceeding three years;
- (b) provide for the appointment by the directors or shareholders of the insurance company concerned of a board of directors of the society for a term not exceeding three years, or, additionally or alternatively for the appointment of specified directors of the society for a term not exceeding five years.

(9) Nothing in this section shall affect the rights of existing policy owners held or accrued in terms of their policies.

## PART V

### CANCELLATION OF REGISTRATION OF INSURERS

#### **22 General provisions with respect to cancellation of registration of insurers**

(1) The Commissioner shall notify a registered insurer in writing that he proposes to cancel his registration as an insurer in any class or classes of insurance business in which he is registered and of his reasons for so doing if at any time—

- (a) the Commissioner is satisfied that—

- (i) the certificate of registration of the insurer was obtained by fraud or material mistake on the part of such registered insurer; or
  - (ii) such registered insurer, after notice from the Commissioner that he has contravened any of the provisions of this Act, wilfully continues or repeats such contravention; or
  - (iii) such registered insurer misrepresents the facilities which he offers to the public; or
  - (iv) such registered insurer is engaging in insurance business which, in the opinion of the Commissioner, is not appropriate to the class or classes of insurance business in which that insurer is registered and has refused, after notice in writing from the Commissioner, to rectify the situation either by applying for registration in a class of insurance business appropriate to the case or by other means acceptable to the Commissioner; or
  - (v) such registered insurer would, if he were an applicant for registration as an insurer, be disqualified in terms of section *eight* to be registered as an insurer in the class or classes of insurance business in which he is registered; or
  - (vi) a class or classes of insurance business in which such insurer is registered is not being carried on by that insurer in accordance with sound insurance principles; or
  - (vii) such registered insurer has failed to comply with a provision of this Act which relates to the maintenance of a life insurance fund or to the holding in trust of insurance premiums; or
  - (viii) such registered insurer has failed to comply with a condition subject to which he was registered as an insurer; or
  - (ix) such registered insurer has failed to comply with any condition imposed by the Commissioner in terms of subsection (5) of section *nine*, or the proviso to subparagraph (ii) of paragraph (b) of subsection (1) of section *twenty-four* or any condition imposed by the Minister in terms of subsection (6) of section *sixty-seven*; or
  - (x) such registered insurer has not carried on or has ceased to carry on, insurance business in Zimbabwe;
  - (b) such registered insurer is convicted of an offence in terms of section *eighty-eight*; or
  - (c) such registered insurer or any employee thereof has been convicted of an offence in terms of section 5 of the Prevention of Discrimination) Act [*Chapter 8:16*] and an appeal against the conviction has not been brought or, if brought, has been abandoned or dismissed; or
- [Paragraph as amended by section 14 of Act 19 of 1998]
- (d) a judgment is obtained against such registered insurer in any court in Zimbabwe and remains unsatisfied for twenty-one days and an appeal from the judgment is not brought or, if brought, is abandoned or dismissed; or
  - (e) such registered insurer, having admitted liability under any policy, is unable to meet the liability in full in Zimbabwe.

(2) If a registered insurer who has been notified of the Commissioner's proposal to cancel his registration as an insurer fails to lodge with the Commissioner a request to submit his case for review by the Minister as is provided in subsection (1) of section *seventy-one* within the period mentioned in that subsection or, having lodged such request within that period, withdraws the request before the Minister gives his decision in the case, the Commissioner shall cancel his registration and notify the insurer in writing accordingly.

(3) Subject to subsection (4), the Commissioner may, at the request of a registered insurer or his liquidator, trustee or judicial manager, cancel his registration in any or all of the classes of insurance business carried on by him in Zimbabwe:

Provided that before cancelling such registration, the Commissioner shall satisfy himself that—

- (a) in any case where the insurer is a society—
  - (i) the members thereof have had notice, by means acceptable to the Commissioner, of a proposal to request the cancellation; and
  - (ii) the proposal to request the cancellation received the approval of the members thereof;
- (b) in all cases, all liabilities of the insurer under policies have elapsed, have been met, or other provision has been made for them by means acceptable to the Commissioner.

(4) The Commissioner shall transmit any request lodged with him in terms of subsection (3) to the Minister, and the Minister, after considering the request and such representations as may be made by policy owners and shareholders of the registered insurer concerned and by other persons whom he considers are entitled to be heard, may sanction the cancellation of the registration and give such directions to the Commissioner as he considers to be necessary or desirable in the circumstances.

### **23 Cancellation of registration to be published**

The Commissioner shall cause a notice of the cancellation of the registration of an insurer to be published in the *Gazette* and in one or more such newspapers circulating in Zimbabwe as the Commissioner may determine.

## PART VI

### SPECIAL FINANCIAL REQUIREMENTS AS TO THE CARRYING ON OF INSURANCE BUSINESS BY REGISTERED INSURERS

#### **24 Margin of solvency sufficient for the purposes of carrying on insurance business**

(1) Subject to subsection (2), an insurer shall be treated as having a margin of solvency sufficient for the purposes of carrying on—

- (a) insurance business, other than life insurance business, if the total value of his assets in respect of such business exceeds the amount of his liabilities in respect of such business by—
  - (i) one million dollars; or
  - (ii) twenty-five *per centum* of his net premium income in his last preceding year in respect of such business;

whichever is the greater amount;

- (b) life insurance business if the total value of his assets in respect of such business exceeds the amount of his liabilities under unmaturing life policies by—
  - (i) one million dollars; or
  - (ii) such amount as the Commissioner may determine after consultation with the insurer's actuaries and which, in his opinion, provides adequate protection to policy owners:

Provided that the Commissioner may impose such conditions upon the insurer as he may consider fit to further protect the interests of policy owners;

- (c) both life insurance business and other insurance business, if—
  - (i) in respect of his insurance business, other than life insurance business, he has a margin of solvency referred to in paragraph (a); and
  - (ii) in respect of his life insurance business, he has a margin of solvency referred to in paragraph (b).

(2) Notwithstanding paragraph (b) of subsection (1), an insurer who carries on life insurance business for funeral policies only shall be treated as having a margin of solvency sufficient for the purposes of carrying on such life insurance business if the total value of his assets in respect of such life insurance business exceeds the amount of his liabilities under unmaturing funeral policies by at least ten thousand dollars:

Provided that, if the total value of the assets of the insurer in respect of such life insurance business does not exceed the amount of his liabilities under unmaturing funeral policies by ten thousand dollars, the Commissioner may impose such conditions upon the insurer as he considers fit and the insurer shall comply with all such conditions so imposed within such period as may be specified by the Commissioner.

(3) In calculating the margin of solvency referred to in paragraph (a) of subsection (1)—

- (a) all contingent and prospective liabilities of the insurer in respect of his insurance business, other than life insurance business, but not his liabilities in respect of share capital, shall be taken into account in assessing the amount of his liabilities in respect of such business;
- (b) the premium income of the insurer in respect of his insurance business, other than life insurance business, in any financial year shall be assessed as the net amount, after deduction of any premiums paid by him in reinsurance, of the premiums received by him in that financial year in respect of all such insurance business carried on by him in that financial year.

#### **25 Insurers to maintain assets in Zimbabwe**

(1) Every registered insurer who carries on life insurance business shall, in respect of life policies, maintain in Zimbabwe in the life insurance fund referred to in subsection (2) of section *twenty-nine* unimpaired assets of an aggregate value of not less than the sum of the liabilities of the insurer in Zimbabwe as determined by an actuary in terms of section *thirty-nine*:

Provided that the Commissioner may authorize a registered insurer to maintain assets of a lesser aggregate value subject to such conditions as he may impose.

(2) Every registered insurer who carries on insurance business other than life insurance business shall maintain in Zimbabwe in the insurance fund referred to in subsection (2) of section *twenty-nine* unimpaired assets of an aggregate value of not less than the sum of the liabilities of the insurer in Zimbabwe in respect of—

- (a) unexpired premium reserves; and
- (b) net outstanding claims; and
- (c) provision for net claims incurred, but not reported:

Provided that the Commissioner may exempt a registered insurer whose business consists solely of reinsurance business from this subsection or may, in respect of any such insurer, impose such other conditions as to the maintenance of assets in Zimbabwe as he considers fit.

(3) A registered insurer who carries on both life insurance business and other insurance business shall maintain in Zimbabwe unimpaired assets of not less than the sum of the amounts as determined, subject to the provisos thereto, by reference to subsections (1) and (2).

(4) A registered insurer who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **26 Insurers may hold shares in their holding or subsidiary companies**

(1) An insurer may hold shares in the insurer's holding company or in any other subsidiary company of that holding company:

Provided that the shares so held, excluding shares held in a company which is a subsidiary of the insurer, shall not exceed ten *per centum* in value of the insurer's total holding of shares.

(2) Section 143 of the Companies Act [*Chapter 24:03*] shall apply in determining whether or not a company is an insurer's holding company or subsidiary company for the purposes of this section.

[Section substituted by Act 22 of 2001]

## **26A Insurers to hold funds in certain securities**

(1) An insurer may hold part of any insurance fund referred to in subsection (2) of section *twenty-nine* in the form of shares in the insurer's holding company or in any other subsidiary of that holding company:

Provided that the shares—

(a) shall be deemed to be held by the insurer on behalf of the owners of policies of the class of insurance business for which the insurance fund was established, and any moneys payable to the insurer on account of those shares or on their realisation shall be paid into the insurance fund concerned; and

(b) shall be held by the insurer subject to such terms and conditions as the Commissioner may fix; and

(c) shall not confer any right on the insurer to vote at any meeting of members of the holding company, notwithstanding anything to the contrary in the holding company's articles of association.

(2) Any part of an insurer's insurance fund which is not held in the form of shares referred to in subsection (1) shall be held in prescribed securities as specified for the time being by the Minister in terms of subsection (3).

(3) The Minister may from time to time specify the prescribed securities that shall be held in insurance funds for the purposes of subsection (2) and the relative amounts of each class of such prescribed securities that shall be so held.

(4) Section 143 of the Companies Act [*Chapter 24:03*] shall apply in determining whether or not a company is an insurer's holding company or subsidiary company for the purposes of this section.

[Section inserted by Act 22 of 2001]

## **PART VII**

### **GENERAL PROVISIONS GOVERNING THE CARRYING ON OF INSURANCE BUSINESS BY REGISTERED INSURERS**

## **27 Registered insurers to notify Commissioner of changes in certain matters**

(1) A registered insurer shall, within six months of the end of each financial year, notify the Commissioner in writing of any change which occurred in that year in any matter prescribed in relation to the insurer for the purposes of this section.

(2) A registered insurer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **28 Publication of authorized capital, etc., of registered insurers**

(1) A registered insurer shall not publish a statement or issue a document on which is printed a statement—

(a) of his authorized capital, unless the statement also sets forth the amount of his subscribed capital and of his paid-up capital;

(b) of his subscribed capital, unless the statement also sets forth the amount of his paid-up capital.

(2) A registered insurer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **29 Insurers to keep separate accounts for different classes of insurance business and maintain insurance funds**

(1) Every insurer who carries on insurance business in two or more classes of insurance business shall keep a separate account of all receipts in respect of each class of insurance business carried on by him.

(2) The receipts in respect of each class of insurance business referred to in subsection (1) shall be carried to and form an insurance fund to be called a life insurance fund in the case of life insurance business and by the appropriate name by reference to the class of insurance business in the case of insurance business other than life insurance business.

- (3) The insurance fund of each class of insurance business referred to in subsection (2)
  - (a) shall be held in security for the claims of owners of policies of that class of insurance business;
  - (b) shall not be applied directly or indirectly to any purposes other than those of the class of insurance business for which the insurance fund was established.
- (4) An insurer who contravenes—
  - (a) subsection (1) or (2), shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
  - (b) subsection (3), shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted Act 22 of 2001]

### **30 Accounts and balance sheets, etc., of registered insurers to be submitted to Commissioner**

(1) Subject to subsection (3), a registered insurer shall, within six months of the end of each financial year, prepare and furnish to the Commissioner in the appropriate forms prescribed—

- (a) a certificate as to the solvency of the insurer, certified, in the case of a life insurer, by an actuary;
- (b) a balance sheet showing the financial position of the insurance business of the insurer at the close of that financial year;
- (c) a profit and loss account in respect of the insurance business carried on by the insurer in that year;
- (d) a revenue account in respect of life insurance business, if any, carried on by the insurer in that year;
- (e) a statement of life insurance business, other than business in connection with funeral policies and sinking fund policies, if any, carried on by the insurer in that year;
- (f) a revenue account in respect of insurance business, other than life insurance business, carried on by the insurer in that year;
- (g) such other documents and information relating to the accounts and balance sheet referred to in this subsection as may be prescribed.

(1a) A registered insurer who, without just cause, fails to furnish a document to the Commissioner in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) A registered insurer shall furnish to the Commissioner with the documents referred to in subsection (1) a copy of any report on the affairs of the insurer submitted to the policy owners or shareholders of the insurer in respect of the financial year to which those documents relate.

(3) Paragraph (c) of subsection (1) shall not apply to a registered insurer who—

- (a) carries on only one class of insurance business and no business other than insurance business; or
- (b) has no share capital.

(4) If, in the opinion of the Commissioner, an account or balance sheet furnished by a registered insurer in terms of subsection (1) is incorrect or is not prepared in accordance with the provisions of this Act, the Commissioner may, by notice in writing, call upon the insurer to make appropriate amendments to the account or balance sheet.

(5) A registered insurer who fails to comply with a notice referred to in subsection (4) shall be regarded, for the purposes of subsection (1a), as having failed to furnish the document concerned in terms of subsection (1).

[Subsection as substituted by Act 22 of 2001]

(6) An account or balance sheet amended by the Commissioner or by a registered insurer in terms of this section shall be treated as having been submitted to the Commissioner in its amended form.

(7) If the account or balance sheet of a registered insurer has been rejected by the Commissioner in terms of subsection (5), the insurer shall be treated as having failed to comply with the provisions of subsection (1) in relation to that account or balance sheet, unless and until he has furnished another account or balance sheet in accordance with the directions of the Commissioner.

(8) A registered insurer liable under a life policy, funeral policy or sinking fund policy shall, at the request of the owner of such policy, furnish him free of charge with a copy of the revenue account, profit and loss account or balance sheet prepared by the insurer in terms of subsection (1) in respect of the last preceding financial year.

(9) A registered insurer who, without just cause, fails to furnish a policy-holder with a document referred to in subsection (8) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

### **31 Audit of accounts of insurers**

(1) The accounts of a registered insurer shall be audited annually by an auditor who shall not be an employee, manager or director of the insurer.

(2) The auditor of a registered insurer shall satisfy himself that the accounts of the insurer have been properly repaired in accordance with the books and records of the insurer.

(3) The auditor shall make a report containing statements as to whether, in his opinion, the accounts, balance sheet and statements are properly drawn up so as to give a true and fair view of the state of affairs of the registered insurer as at the end of the financial year.

(4) The auditor shall include in his report statements which, in his opinion, are necessary if—

- (a) he has not obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;
- (b) so far as appears from his examination, proper books of account have not been kept by the registered insurer;
- (c) proper returns adequate for the purpose of his audit have not been received;
- (d) the accounts, balance sheet and statements of the registered insurer are not in agreement with the books of account.

(5) In the event of the auditor being unable to make such a report, or to make it without further qualification, he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.

### **32 Insurers to comply with requirements as to compulsory reinsurance**

An insurer shall, in respect of the insurance business carried on by him in Zimbabwe, comply with the applicable provisions of the Zimbabwe Reinsurance Corporation Act [*Chapter 24:17*] relating to compulsory reinsurance.

### **33 Amalgamation or transfer of insurance business and conversion of society to company**

(1) No registered insurer shall—

- (a) amalgamate with one or more other insurers; or
- (b) transfer his insurance business or part of his insurance business to another insurer;

unless the Minister gives his consent in accordance with this section.

(2) No society registered as an insurer shall be converted into a body corporate with share capital unless—

- (a) it is converted into a public company incorporated as such under the Companies Act [*Chapter 24:03*]; and
- (b) the Minister has given his consent in accordance with this section.

(3) An application for the Minister's consent referred to in subsection (1) shall be made to the Minister by the directors of all the registered insurers concerned.

(4) Before an application is made to the Minister in terms of subsection (3)—

- (a) the directors of the registered insurers concerned shall cause notice to be published in the *Gazette* of their intention to make the application; and
- (b) where life insurance business is involved in the proposed transaction, the directors of the registered insurers concerned—

(i) shall cause a statement of the nature of the transaction together with—

- A. an abstract containing the material facts embodied in the agreement or scheme under which the transaction is proposed to be effected; and
- B. copies of the actuarial reports upon which the agreement or scheme referred to in subparagraph A is founded, including a report by an actuary approved by the Commissioner;

to be posted to the Commissioner and, if the Commissioner so directs, to be published in one or more newspapers circulating in Zimbabwe; and

(ii) shall cause a statement, approved by the Commissioner and—

- A. setting out the nature of the proposed transaction and the material facts concerning it; and
- B. specifying the offices where the agreement or scheme and the actuarial reports referred to in subparagraph B of subparagraph (i) will be open for inspection in terms of paragraph (d);

to be posted to the registered or last-known address of every owner of a life policy issued by each registered insurer concerned; and

(c) where insurance business other than life insurance business is involved in the proposed transaction, the directors of the registered insurers concerned shall notify the policy owners concerned, in such manner as the Commissioner may direct, of the nature of the proposed transaction; and

(d) copies of the agreement or scheme under which the transaction is proposed to be effected, together with copies of any actuarial reports referred to in subparagraph B of subparagraph (i) of paragraph (b), shall be kept open for inspection by policy owners and shareholders at the offices of the registered insurers concerned for at least twenty-one days after the notice was published in terms of paragraph (a).

(5) After considering an application under subsection (3) and any representations that may have been made by policy owners and shareholders of the registered insurers concerned and by any other person whom the Minis-

ter considers should be heard in the matter, the Minister may sanction the transaction to which the application relates if he is satisfied that there is no sufficient objection to it.

(6) A scheme giving effect to a transaction for the conversion of a society into a body corporate with share capital may make provision for—

- (a) the allotment, issue or transfer of shares in the body corporate or in any holding company of the body corporate;
- (b) the cessation of membership in the society;
- (c) the date of commencement of all or any of the provisions of the scheme, which date may be before or after the date on which the Minister sanctions the transaction;

and, if the Minister sanctions the transaction in terms of subsection (5), those provisions shall have full effect.

(7) A registered insurer may—

- (a) initiate and apply for the Minister's sanction of any transaction referred to in subsection (1) or (2); and
- (b) conclude and give effect to any transaction referred to in subsection (1) or (2), if it has been sanctioned by the Minister;

notwithstanding anything to the contrary in the memorandum of association or other document by which the insurer is constituted or in any articles or rules by which the insurer is managed.

(8) If a transaction referred to in subsection (1) or (2) has taken place in accordance with this section, the owner of a policy shall no longer have a claim against the original insurer but, instead, his claim shall be against the registered insurer with whom the business has been amalgamated or to whom the business has been transferred or into which the original insurer has been converted, as the case may be.

[Section as substituted by Act 3 of 2004]

### **34 Statement in case of amalgamation or transfer of insurance business**

Within three months of the date of completion of a transaction referred to in subsection (10) or (2) of section *thirty-three*, the combined registered insurer or, as the case may be, the registered insurer to whom the business or into which the society has been converted, shall deposit with the Commissioner—

- (a) certified copies of statements of the assets and liabilities of the registered insurers concerned in the transaction, together with a statement of the nature and terms of the transaction; and
- (b) a certified copy of the agreement or deed under which the transaction was effected; and
- (c) certified copies of the actuarial reports or other reports upon which the agreement or deed was founded; and
- (d) a declaration under the hand of the chairman of each registered insurer concerned that—
  - (i) to the best of their knowledge and belief, every payment made or to be made to any person whatsoever on account of the transaction is therein fully set forth and no other payments, except those set forth, have been made or are to be made, either in money, policies, bonds, valuable securities or other property; and
  - (ii) due notice of the transaction was given to the shareholders, if any, and policy owners of each registered insurer concerned in the transaction.

[Section as amended by Act 22 of 2001]

## **PART VIII**

### **PROVISIONS GOVERNING THE CARRYING ON OF BUSINESS BY INSURANCE BROKERS**

### **35 Insurance brokers to be registered**

(1) Any person who carries on the business of an insurance broker in Zimbabwe without being registered as such in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as substituted by Act 22 of 2001]

(2) An application for registration as an insurance broker shall be made to the Commissioner in the prescribed form and shall be accompanied by such documents as may be prescribed.

(3) If the Commissioner is satisfied that an applicant in terms of this section—

- (a) is not seeking to register under a name identical with the name of a person registered in terms of this Act, or so nearly resembling the name of such person as to be mistaken for it; or
- (b) has not, under any law of any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside; or
- (c) has not been convicted by any court wheresoever situate of any offence involving dishonesty, or of an offence in terms of this Act for which he was imprisoned without the option of a fine; or

(d) has not entered into an agreement relating to the preferential offer of insurance business with any person carrying on insurance business so as to impair his impartiality in placing insurance business; or  
(e) is authorized, if he negotiates insurance business, other than life insurance business, to act as correspondent of brokers who are authorized by insurers in any country to place business with any such insurers;  
the Commissioner shall register the applicant as an insurance broker and shall issue him a certificate of registration.

(4) Notwithstanding anything contained in subsection (3), if the Commissioner is of the opinion that it would not be in the public interest to approve an application for registration as an insurance broker, he shall reject the application and notify the applicant in writing accordingly.

### **36 Insurance brokers to hold investments in approved securities and maintain professional indemnity**

(1) Every registered insurance broker shall hold and maintain an unencumbered investment in approved securities of not less than the prescribe amount.

[Subsection as amended by Act 3 of 2004]

(2) Every registered insurance broker shall effect and maintain a professional indemnity insurance, with a limit of liability of not less than—

(a) the prescribed amount; or

(b) fifty *per centum* of his net brokage income in his last preceding year;

whichever is the greater amount.

(3) Every policy of insurance of the type referred to in subsection (2) shall be issued in Zimbabwe and the limit of liability, the premium and every other sum of money mentioned in the policy shall be stated in the currency of Zimbabwe.

(4) A registered insurance broker who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001 and as amended by Act 3 of 2004]

### **37 Insurance brokers to submit annual returns**

(1) Every registered insurance broker shall, within six months of the end of each financial year, submit to the Commissioner in such form as may be prescribed, a statement setting out the details of insurance business placed by the insurance broker and such other additional information as may be prescribed.

(2) A registered insurance broker who, without just cause, fails to submit a statement to the Commissioner in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as substituted by Act 22 of 2001]

### **38 Cancellation of registration of insurance brokers**

(1) The Commissioner shall notify a registered insurance broker in writing that he proposes to cancel his registration as an insurance broker and of his reasons for so doing if at any time he is satisfied that if the registered insurance broker were an applicant for registration in terms of section *thirty-five* he would not be qualified for being so registered.

(2) If a registered insurance broker who has been so notified of the Commissioner's proposal to cancel his registration as an insurance broker fails to lodge with the Commissioner a request to submit his case for review by the Minister as is provided in subsection (1) of section *seventy-one* within the period mentioned in that subsection or, having lodged such request within that period, withdraws the request before the Minister gives his decision in the case, the Commissioner shall cancel his registration and notify the insurance broker in writing accordingly.

(3) The Commissioner may, at the request of a registered insurance broker or his liquidate, trustee or judicial manager, cancel his registration as an insurance broker:

Provided that before cancelling such registration the Commissioner shall satisfy himself that all the liabilities of the insurance broker in respect of his business have been met or other provision has been made for them by means acceptable to the Commissioner.

## **PART IX**

### **SPECIAL PROVISIONS RELATING TO LIFE AND OTHER POLICIES**

### **39 Periodical investigations to be made into financial position of life insurers**

(1) A life insurer shall, at least once in every three years, cause an investigation to, be made by an actuary into the financial position of his life insurance business, which investigation shall include a valuation of the liabilities in respect of such life insurance business.

(1a) A life insurer who, without just cause, contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) A life insurer whose financial position is investigated in terms of subsection (1) shall prepare and furnish to the Commissioner in the appropriate forms prescribed, within six months of the date on which his accounts are made up for the purposes of the investigation, an abstract of the report of the actuary by whom the investigation was made and a statement of his insurance business at that date.

(2a) A life insurer who, without just cause, fails to furnish the Commissioner with an abstract or statement referred to in subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) Notwithstanding subsections (1) and (2), the Commissioner may, subject to subsection (4), require a life insurer whom he suspects is not conducting his life insurance business in accordance with sound insurance principles to prepare and furnish, within six months commencing on the date the Commissioner calls upon him in writing to do so, a valuation of the liabilities in respect of the whole life insurance business and an abstract and statement referred to in subsection (2).

(4) The Commissioner shall not require a life insurer to prepare and furnish the document referred to in subsection (3) more than once in any year.

(5) A life insurer who, without just cause, fails to comply with a requirement of the Commissioner in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

#### **40 Reinsurance contracts of life insurers**

No life insurer shall enter into a contract of reinsurance against any liability in respect of his life insurance business otherwise than—

- (a) with a life insurer; or
- (b) with an insurer other than a life insurer, subject to the approval of the Commissioner; or
- (c) with the Zimbabwe Reinsurance Corporation established by the Zimbabwe Reinsurance Corporation Act [Chapter 24:17].

#### **41 Restriction of payment on death of children under fourteen years of age**

(1) No insurer shall insure the life of a child who is under the age of fourteen years for any sum of money which exceeds or which, when added to any amount which, to his knowledge, is payable on the death of that child by any other insurer, exceeds—

- (a) if the child dies before attaining the age of six years, fifty dollars;
- (b) if the child dies on or after attaining the age of six years, one hundred dollars:

Provided that this section shall not prohibit the issue of a policy providing for the payment, on the death of any child, of a sum not exceeding the appropriate amount in terms of paragraph (a) or (b) and, in addition, the aggregate of all the premiums paid in respect of the policy, plus interest on each premium at a rate not exceeding five *per centum* per annum compounded yearly.

(2) An insurer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

#### **42 Life policies effected by married persons**

(1) Notwithstanding any enactment to the contrary, but subject to this Part—

- (a) a married woman may—
  - (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—
    - A. any moneys paid by the insurer in respect of any interest held by her in a life policy or any assets acquired by her with those moneys;
    - B. any moneys or assets acquired by her in respect of the disposal of any interest held by her in a life policy or any assets acquired by her with those moneys;
  - (iv) dispose of to any person, including her husband, by way of gift or otherwise, any moneys or assets referred to in subparagraph (iii);in all respects as if she were a single woman of full age and capacity;
- (b) a married man may, by way of gift, acquire from or dispose of to his wife—
  - (i) any interest in a life policy;

- (ii) any moneys paid by the insurer in respect of any interest in a life policy or any assets acquired with those moneys;
  - (iii) any moneys or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those moneys;
- in all respects as if he were a single man of full age and capacity.
- (2) Paragraph (a) of subsection (1) shall apply in relation to—
- (a) a life policy effected by a married woman before her marriage;
  - (b) any interest in a life policy acquired by a married woman before her marriage;
  - (c) any moneys—
    - (i) due or paid to a married woman before her marriage in respect of a life policy referred to in paragraph (a) or any interest in a life policy referred to in paragraph (b); or
    - (ii) acquired by her before marriage in respect of the disposal of any interest in a life policy;
  - (d) any assets acquired by a married woman before her marriage with moneys referred to in paragraph (c);
- as if the policy, interest, moneys or assets was or were effected or said to or acquired by her or became due during her marriage.

#### **43 Life policy on own life: protection afforded during life**

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

- (a) is attached in execution of a judgment or order of any court at the instance of a creditor of that person; or
- (b) becomes part of that person's estate in insolvency; during his lifetime, the policy shall, to the extent specified in subsection (2), be protected against his creditors and against any claim in connection with the attachment or the insolvency.

(2) The protection afforded by subsection (1) in respect of any life policy referred to in that subsection shall extend to so much of the realisable value of such life policy as does not exceed the amount of fifty thousand dollars:

Provided that—

- (i) where there are two or more such life policies the protection shall extend only to the first fifty thousand dollars of the aggregate of their realizable value;
- (ii) where any such policy is pledged, the realizable value thereof which forms the security for the liability in respect of which such policy was pledged shall not be included as part of the maximum fifty thousand dollars protected by subsection (1).

(3) Where a life policy is afforded protection in terms of paragraph (b) of subsection (1) the trustee shall notify the insurer concerned, who shall issue an endorsement to the policy to the effect that during the time that the policy owner remains an unrehabilitated insolvent the policy may only be dealt in with the permission of the trustee or, if there is no trustee, of the Master of the High Court.

(4) In 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 surrendered policy as consideration for the new policy;
- (b) a life policy which an insurer issues in terms of subsection (3) of section *forty-eight* shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.

#### **44 Life policy on own life: protection afforded on death**

(1) If—

- (a) on the death of any person his liabilities exceed his assets, whether or not he has been declared an insolvent; and
- (b) such person has effected a life policy on his own life which has endured for a period of at least three years from the date of the payment of the first premium; and
- (c) such person has left a surviving spouse, child or parent; any moneys payable to his estate under any such policy shall be paid to his estate and such moneys, not exceeding fifty thousand dollars in the aggregate, shall devolve upon such surviving spouse, child or parent in accordance with the provisions of any valid testamentary disposition of such person, or if there is no valid testamentary disposition, by right of succession *ab intestatio*, and shall not be liable to be attached at the instance of a creditor or other person.

(2) In calculating for the purposes of paragraph (a) of subsection (1) whether the liabilities of a deceased person exceed his assets, any life policy effected by that person on his own life which has endured for a period of at least three years from the date of the payment of the first premium shall not be included to the extent that such life policy or the aggregate of all such life policies does not exceed fifty thousand dollars.

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

(1) If a person cedes to or effects in favour of his intended spouse, his spouse or his children, including children to be born to him, or to any of them a life policy on his life or on the life of his spouse, or nominates such spouse or child as beneficiary of such policy, the policy or moneys due thereunder shall not, subject to the provisions of this section and to the terms and conditions on which he ceded or effected the policy or made the nomination—

- (a) be liable to be attached in execution of a judgment or order of any court at the instance of a creditor of the person to whom the policy was ceded or in whose favour the policy was effected or who has been nominated as beneficiary of the policy; or
- (b) form part of the estate in insolvency of the person to whom the policy has ceded or who has been nominated as beneficiary under the policy:

Provided that the protection afforded by this section shall not, together with the protection afforded in respect of life policies elsewhere in this Act, exceed fifty thousand dollars.

(2) A benefit conferred or purported to be conferred by virtue of any of the circumstances referred to in subsection (1) upon a spouse or child under a life policy referred to in that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject to the terms and conditions on which the policy was ceded or effected or the nomination was made, as the case may be, 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 that the spouse or child has not accepted the benefit and is not a party to the contract of insurance.

#### **46 Special provisions relating to persons married in community of property**

(1) If a premium paid under a life policy effected by a spouse married in community of property or in which a spouse married in community of property holds any interest is paid out of moneys which belong to the joint estate and the liabilities of the spouses continuously exceed the value of their assets from the time the payment of any 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 and holds any interest in a life policy earns or otherwise acquires any money without utilizing for the purpose any assets belonging to the joint estate, she may, without her husband's consent, use that money for the purpose of paying any premium due under the policy.

(3) 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 to do so.

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

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

If—

- (a) two or more life policies in respect of which protection is afforded by section *forty-three*, *forty-four* or *forty-five*, being the property of one person, are attached in execution of a judgment or order of any court at the instance of a creditor; or
- (b) the owner of two or more life policies in respect of which protection is afforded by section *forty-three*, *forty-four* or *forty-five* is adjudged or otherwise declared insolvent;

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

#### **48 Partial realization and partial conversion of life policies**

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

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

- (3) On receipt of a life policy delivered to him in terms of subsection (1) or (2), the insurer shall—
- (a) at the request of the judgment creditor or trustee referred to in subsection (1) pay to him a sum equal to the part of the realizable value of the policy to which he is entitled;
  - (b) at the request of the owner of the policy, issue to him a new policy of the same class, but for a sum insured equal to the difference between—
    - (i) the full sum insured under the old policy, including any bonus which may have accrued in connection therewith; and
    - (ii) an amount which bears the same ratio to the full sum insured under the old policy, including any bonus, as the amount paid by the insurer to the judgment creditor or trustee referred to in subsection (1) bears to the full realizable value at the time of the old policy.

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

#### **49 Provisions in case life policy ceded or trust policy cannot be kept up**

(1) Subject to subsection (2), 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 premium on the policy;

is or has been unable to pay the premiums, that person may agree with the insurer liable under the policy—

- (i) to exchange the policy for a paid-up policy of a value equal to that of the original policy according to the current tariff of the insurer, 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; or
- (ii) to borrow from the insurer upon security of the policy such sums as may be necessary to keep the policy in force or to revive it; or
- (iii) to apply the value of 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.

(2) A person referred to in subsection (1) may not act under that subsection without—

- (a) the consent of each person who has an interest in the policy;
- (b) if any person referred to in paragraph (a) is a minor, the consent of his guardian or, failing such consent, of the Master of the High Court;
- (c) if an unborn child would on his birth have an interest in the policy, the consent of the Master of the High Court.

#### **50 Life policies ceded or premiums paid with intent to benefit someone at the expense of a creditor**

(1) Nothing contained in this Part shall be construed as derogating from the power of a competent court to set aside, in terms of any 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 competent court may order the owner of the policy to pay a sum equal to the aggregate of all premiums so paid, with interest at the rate of six *per centum* 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 or the premiums were 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 in terms of 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.

#### **51 Proof of age**

If—

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

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

## 52 Age incorrectly stated

(1) If after the issue of a life policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the sum insured and other benefits under the policy shall, subject to subsection (2), be the same as those which the premiums payable under the policy would have secured had the policy been based upon a correct statement of the age of that person.

(2) If the Commissioner is satisfied that the actuarial nature of life policies of any kind is such as to render the application of the provisions of subsection (1) inadequate, he may direct an insurer to apply, in relation to policies of that kind, such other method of making adjustments in respect of incorrect age as may appear to the Commissioner to be equitable.

## 53 Death of insured by his own act

(1) No life policy in which it is provided that the policy shall be void in the event of the insured, whether sane or insane, dying by his own act within a stipulated period shall be void for that reason if the insured dies by his own act after the expiration of that period.

(2) A life policy in which no provision such as is 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 at any time after the issue of the policy.

## 54 Lost or destroyed life policies

(1) If a life policy is lost or destroyed and the loss or destruction is proved and advertised in the manner prescribed, the insurer liable under the policy shall, at the request of the policy owner and on payment by the policy owner to the insurer of the prescribed fee, issue to the policy owner—

- (a) a correct and certified copy of the policy upon which is 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 in terms of 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.

## 55 Life policy may include disability benefits

(1) If a registered insurer by notice in writing—

- (a) informs the Commissioner that he intends to issue life policies which provide benefits—
  - (i) on the total or partial permanent disablement 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 a particular disease; and
- (b) requests the Commissioner 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 after notification to the Commissioner in terms of this subsection shall, subject to the approval of the Commissioner and the provisions of subsection (2), be treated, for the purposes of this Act, as a life policy only.

(2) A policy referred to in paragraph (a) of subsection (1) shall not be treated, for the purposes of this Act, as a life policy only if the value of the benefits referred to in subparagraph (i) or (ii), as the case may be, of that paragraph which it provides exceeds an amount equal to the aggregate of the premiums payable under the policy in respect of the period of the disability, together with—

- (a) in the case of a policy other than a deferred annuity policy—
  - (i) a monthly benefit, payable during the period of the 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 one and one quarter *per centum* of the sum payable under the policy on the death of the person; or
  - (ii) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures;
- (b) 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 annuity.

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

(4) Where a life policy referred to in subsection (1) was immediately before the appointed day treated under the former insurance law as a life policy only or as both a life policy and a personal accident policy, it shall continue to be treated as such for the purposes of this Act.

(5) Where a registered insurer had, before the appointed day, issued life policies referred to in subsection (1) and requested that such policies be treated as life policies only in accordance with the provisions of the former insurance law, he may, subject to the provisions of subsection (2), continue to issue such life policies which shall be treated, for the purposes of this Act, as life policies only.

### **56 Discrimination between life policies, etc., prohibited**

(1) No insurer shall make or permit to be made any discrimination in respect of the rate of premiums charged or the rate of bonuses granted between life policies which are of the same kind and under which 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; or
- (b) are for large sums at preferential rates in accordance with the current tariff of the insurer concerned; or
- (c) insure at preferential rates the lives of persons under a group life insurance scheme; or
- (d) are of a class prescribed.

(3) No insurer or insurance broker and no director or employee or agent of an insurer or insurance broker shall pay, allow or give or offer to pay, allow or give, directly or indirectly—

- (a) a rebate of the premium payable on a life policy; or
- (b) an advantage in the nature of a rebate of the premium payable on a life policy; or
- (c) preferential treatment in connection with a bonus or other benefit under a life policy;

as an inducement to insure.

(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 shall accept any proposal or application for a life policy in respect of which—

- (a) a promissory note, bill of exchange or other instrument, not being a cheque payable on the date of issue; or
  - (b) an acknowledgement of debt, not being stop order; in favour of the insurer or any person whatsoever has been given for the first year's premium or any part thereof.
- (6) A person who contravenes—
- (a) subsection (1), shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment;
  - (b) subsection (3) (4) or (5), shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

### **57 Application of Part to sinking fund policies**

(1) Sections *forty-one* to *fifty* shall apply, *mutatis mutandis*, to sinking fund policies.

### **58 Application of Part to funeral policies and other provisions in regard thereto**

(1) Sections *forty-one* to *fifty-one* shall apply, *mutatis mutandis*, to funeral policies.

(2) If after the issue of a funeral policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the benefits under the policy shall not be affected thereby, but the premiums payable under the policy from the date on which the person became insured shall be deemed to be those which would have been required had the age been correctly stated, and the insurer liable under the policy shall—

- (a) be entitled to recover from the owner of the policy any resultant shortfall in the premium actually paid; or, as the case may be;
- (b) refund to the owner of the policy any resultant over-payment of premiums.

(3) A funeral policy—

- (a) shall provide that the owner of the policy shall, at his option, be entitled to a sum of money instead of each funeral or other non-monetary benefit for which provision is made in the policy;
- (b) may provide that the insurer liable under the policy shall likewise have the option to pay the sum of money referred to in paragraph (a) instead of providing for each funeral or other non-monetary benefit for which provision is made in the policy.

(4) An option referred to in subsection (3) and the sum of money to which it relates shall be stated expressly and clearly in the funeral policy and in every premium receipt book issued in connection therewith, in printed or typed letters no smaller than, and as legible as, the letters of the policy.

(5) If the Commissioner is of the opinion that a sum of money stated in a funeral policy in terms of subsection (4) does not approximate to the value of the funeral or other non-monetary benefit for which provision is made in the policy, he shall declare the amount of money which is, in his opinion, equal to the value of the funeral or other benefit provided for in the policy.

(6) In a funeral policy the amount declared by the Commissioner in terms of subsection (5), or if no amount is so declared, the sum of money stated in the policy in terms of subsection (4), shall be deemed to be the sum insured.

### **59 Days of grace, paid-up policies and non-forfeiture provisions: life and sinking fund policies**

(1) Subject to subsection (2), if a premium under a life policy or sinking fund policy has not been paid on its due date the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full sum insured without the payment of a further premium for a period of one month as from the due date of the first unpaid premium and if the premium is paid within the month the insurer shall renew the policy.

(2) the premiums under a life policy or sinking fund policy are payable at monthly intervals, or at intervals of less than one month, subsection (1) shall have effect as if the references in that subsection to "one month" and "month" were references to "fifteen days".

(3) If a claim under a life policy or sinking fund policy arises during the period of grace provided for in this section, the insurer liable under the policy shall be entitled to deduct the amount of the unpaid premium from the claim.

(4) If a premium under a policy which is—

(a) a life policy under which at least three years' premiums have been paid; or

(b) a sinking fund policy under which at least three years' premiums have been paid;

has not been paid within the period specified in subsection (1) or, as the case may be, subsection (2), the insurer liable under the policy shall, in accordance with the rules made by him and approved by the Commissioner, either issue, in return for and instead of the policy, a paid-up policy which shall be free from the obligation to pay any premiums thereunder or, unless the policy is a sinking fund policy, apply the non-forfeiture value of the policy in maintaining the policy in force for a period and by a method to be determined in accordance with the rules referred to in this subsection.

(5) The owner of a policy referred to in subsection (4) may in writing waive the rights conferred upon him by that subsection.

(6) The rules referred to in subsection (4) shall specify the basis on which and the methods by which the amount of the non-forfeiture value and the amount of the paid-up policy are to be calculated and whether a paid-up policy such as is referred to in that subsection shall entitle the owner to any future bonuses thereon.

(7) Subsection (4) shall not apply in connection with any particular kind of life policy which an insurer has issued or proposes to issue if the Commissioner is satisfied that the actuarial nature of that kind of policy prevents the insurer from accumulating, in respect of policies of that kind, sufficient funds to enable him to grant any substantial benefit of the kind described in that subsection.

(8) If a life policy under which at least three years' premiums have been paid lapses or is dealt with as is provided in subsection (4) and the owner of the policy informs the Commissioner—

(a) within thirty days of the date on which he is notified by the insurer liable under the policy that the policy has lapsed or has been dealt with in terms of subsection (4); or

(b) if he is not so notified, within six months of the date on which the policy lapsed or has been dealt with in terms of subsection (4);

that he received no written notice from the insurer a reasonable time beforehand to the effect that the policy was due to lapse or to be dealt with in terms of subsection (4), the Commissioner may, unless the insurer satisfies him that the notice was duly dispatched to the owner at his last known residence or place of work a reasonable time before the policy was due to lapse or to be dealt with in terms of subsection (4), require the insurer to revive the policy on payment of the premium required within a period to be fixed by the Commissioner.

(8a) An insurer who, without just cause, fails to comply with a requirement of the Commissioner in terms of subsection (8) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(9) A policy shall be revived in terms of subsection (8) without any alterations in its conditions with effect from the date of the payment of the premium required.

### **60 Days of grace, paid-up policies and non-forfeiture provisions: funeral policies**

(1) If a premium under a funeral policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full value of the benefits—

(a) if the insurer is bound by an express or tacit undertaking to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums, for a period of one month as from the due date of the first unpaid premiums;

(b) if the provisions of paragraph (a) do not apply, for a period expiring on the date specified for that purpose in a written notice which the insurer has served on the owner of the policy at least fourteen days before that date.

(2) If a premium referred to in subsection (1) is paid within the relevant period specified in paragraph (a) or (b), as the case may be, of that subsection, the insurer liable under the policy shall renew the policy, and if a claim under the policy arises during that period, the insurer shall be entitled to require the owner of the policy to pay the amount of the premium.

(3) If in the case of a funeral policy which is issued on or after the 1st March, 1957, and in respect of which premiums have been paid for five years or more, a premium is not paid within the period specified in subsection (1), the policy shall, subject to this section, nevertheless remain in force for the appropriate period fixed in terms of subsection (6) for the full sum insured without payment of further premiums.

(4) If an insurer's liability under a funeral policy is contingent upon the death of two or more persons and the policy provides for a benefit on the death of a person who is under the age of twenty-one years and who is not the owner of the policy or his wife or her husband, no benefit shall be claimable under that policy on that person's death if it occurs after he or she has attained the age of twenty-one years.

(5) If an insurer's liability under a funeral policy is contingent upon the death of one person only, who was under nine years of age when the policy was issued, the period fixed in terms of subsection (6) shall be computed as if the policy had been issued on the anniversary of the date of its issue when that person was between nine and ten years of age.

(6) A funeral policy referred to in subsection (2) shall remain in force for the appropriate period specified in the first column of the Schedule in accordance with the number of years for which premiums were paid under the policy specified opposite thereto in the second column of the Schedule.

#### **61 Grant of more favourable terms than those specified in section 59 or 60 not precluded**

Nothing contained in section *fifty-nine* or *sixty* shall preclude an insurer from granting to an owner of a policy of the kind referred to in either such section more favourable terms than those specified for that kind of policy in section *fifty-nine* or, as the case may be, *sixty*.

### **PART X**

FUNCTIONS OF THE MASTER AND THE COMMISSIONER UNDER THIS PART AND OF AN INSPECTOR APPOINTED IN TERMS OF THIS PART

#### **62 Commissioner may extend certain periods specified under this Act**

(1) If a registered insurer or an applicant for registration as an insurer is required or entitled, in terms of this Act, to perform an act within a specified period, the Commissioner may, at his request, extend the period from time to time.

(2) The Commissioner may extend the period within which a registered insurer or an applicant for registration as an insurer is required or entitled, in terms of a provision of this Act, to perform any act after the period specified in that provision has expired.

#### **63 Commissioner may classify insurance business**

(1) At the request of an insurer the Commissioner may, subject to subsection (2) and to such conditions and limitations as the Commissioner may fix, determine that any insurance business of any particular class which the insurer carries on or intends to carry on shall be treated, for the purposes of this Act, as insurance business of another class.

(2) The Commissioner shall not accede to a request referred to in subsection (1) unless he has satisfied himself that his determination shall not be detrimental to the interest of any person and will not defeat the objects and purposes of this Act.

(3) The Commissioner shall prescribe classes of insurance business for the purposes of this Act.

#### **64 Commissioner may demand information**

(1) The Commissioner may, for the purposes of carrying out the provisions of this Act, demand from a registered insurer or registered insurance broker or an applicant for registration as an insurer or insurance broker, as the case may be, any document or information relating to any matter connected with his business or transactions, whether insurance business or transactions or otherwise.

(2) If the Commissioner has reason to believe that any person who is not registered under this Act is carrying on business as an insurer or insurance broker, as the case may be, he shall direct that person by notice in writing to submit to him within a period stated in the notice or within such further period as he may allow, any document or information concerning such business and that person shall comply accordingly.

(3) A person who, without just cause, fails to comply with a demand or requirement of the Commissioner in terms of this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## 65 Commissioner may alter or adapt prescribed forms

On the application of, or with the consent of, a registered insurer or an applicant for registration as an insurer, the Commissioner may alter any prescribed form for the purpose of adapting the form to meet the circumstances of the registered insurer or applicant.

## 66 Commissioner may require information to be supplied in English

The Commissioner may require any person who furnishes to the Commissioner, in terms of this Act, any statement, other documents whatsoever in a language other than the English language to provide a translation of that statement, certificate or other document in the English language at that person's expense.

## 67 Investigation of the affairs of an insurer

(1) If—

- (a) an insurer, having failed to furnish the Commissioner with any document or information required by or under a provision of this Act within the period specified, has not furnished that document or information within a period of thirty days, commencing on the date upon which the Commissioner reminded him in writing of his failure; or
- (b) an insurer having furnished incorrect or incomplete information to the Commissioner, has not furnished correct or complete information within a period of thirty days, commencing on the date upon which the Commissioner called upon him in writing to correct or complete the information; or
- (c) an insurer has not within a period of thirty days, commencing on the date upon which the Commissioner demanded from him in writing any document or information which the Commissioner was entitled, in terms of this Act, to demand from him, furnished that document or information to the satisfaction of the Commissioner; or
- (d) any document or information furnished by an insurer to the Commissioner shows that the insurer has failed to comply with the provisions of this Act; or
- (e) the auditor or actuary of an insurer has informed the insurer of an irregularity that requires correction and the insurer has not corrected that irregularity within a period of thirty days, commencing on the date upon which the Commissioner called upon him in writing to correct the irregularity; or
- (f) an insurer has failed to comply with any or all of the conditions imposed by the Commissioner in terms of paragraph (b) or (c) of subsection (1) of section *twenty-four* to the satisfaction of the Commissioner; or
- (g) the Commissioner has reasonable cause to believe that an offence has been committed in terms of this Act, other than the failure to produce any document or information required by or under a provision of this Act within the period specified; or
- (h) the Commissioner has reasonable cause to believe that the rights of any class of policy owner are being prejudiced by an insurer;

the Commissioner or an inspector appointed by the Minister may investigate the affairs or any part of the affairs of the insurer.

(2) For the purposes of making an investigation in terms of subsection (1), the Commissioner or an inspector referred to in subsection (1) shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the powers to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of this section and to any person summoned to give evidence or giving evidence at that investigation.

(3) If, in the opinion of the Commissioner, it would be in the interests of existing and prospective policy owners to do so, the Commissioner may, for the period of an investigation in terms of this section, prohibit an insurer being investigated from—

- (a) initiating any new insurance business or class of insurance business as the Commissioner shall specify;
- (b) disposing of any property connected with the insurance business concerned, for which purpose the Commissioner or inspector referred to in subsection (1) may, to such extent as the Commissioner shall specify, prevent the insurer from operating any account with any bank, building society or financial institution.

(3a) An insurer who, without just cause, fails to comply with a requirement of the Commissioner in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(4) On the completion of an investigation made in terms of this section, the Commissioner, or an inspector referred to in subsection (1), shall furnish to the Minister a report of the investigation and send to the insurer whose affairs are investigated a copy of the report.

(5) An insurer to whom a copy of a report has been sent in terms of subsection (4) may, within thirty days, submit to the Minister representations on any matter contained in the report.

(6) The Minister may, following consideration of the report submitted to him in terms of subsection (4) and the representations of the insurer, if any, submitted to him in terms of subsection (5), impose such conditions as he may consider fit in the interests of policy owners,

(7) The Minister may recover from an insurer whose affairs are investigated in terms of this section all expenses necessarily incurred in connection with the investigation.

### **68 Deposit of approved securities by life insurers under investigation**

(1) The Minister may, before an investigation is made or in the course of an investigation into the affairs of a life insurer in terms of section *sixty-seven*, require the life insurer to deposit with the Commissioner such approved securities as the Minister may consider sufficient to meet the liabilities under policies of his life insurance business.

(2) The Minister may require a life insurer who has been registered in terms of subsection (5) of section *nine* or who has been notified by the Commissioner in writing in terms of section *twenty-two* that the Commissioner proposes to cancel his registration as an insurer, to deposit with the Commissioner such approved securities as the Minister may consider sufficient to meet the liabilities under policies of his life insurance business.

(3) An insurer who, without just cause, fails to comply with a requirement of the Minister in terms of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

### **69 Investigation of the affairs of an insurance broker**

(1) If the Commissioner is in possession of information which, in his opinion, calls for an investigation into the affairs of an insurance broker and the insurance broker has failed to furnish within a period of thirty days, commencing on the date when the Commissioner called upon him in writing to do so, a satisfactory explanation of any matter which forms grounds for the Commissioner's opinion, the Commissioner or an inspector who shall be appointed by the Minister for the purpose may investigate the affairs or any part of the affairs of the insurance broker.

(2) In conducting an investigation in terms of subsection (1), section *sixty-seven* shall apply, *mutatis mutandis*.

### **70 Annual reports by Commissioner**

(1) The Commissioner shall, in each calendar year, submit to the Minister a report in regard to insurance business in Zimbabwe during the previous calendar year.

(2) The Minister shall lay a copy of a report submitted to him in terms of subsection (1) before Parliament on one of the fourteen days on which Parliament sits next after he has received it.

## **PART XI**

### **GENERAL**

### **71 Decisions of Commissioner subject to review by Minister**

(1) A person, including a society, who is aggrieved by the decision of the Commissioner—

(a) to reject his application for registration as an insurer or insurance broker; or

(b) to impose conditions in terms of subsection (5) of section *nine* or subsection (4) of section *thirteen* or paragraph (b) of subsection (1) or subsection (2) of section *twenty-four* or the proviso to paragraph (b) of subsection *ninety-two*; or

(c) to cancel his registration as an insurer or insurance broker,

may, within thirty days of the date of the notice informing him of the Commissioner's decision, request the Commissioner to submit his case to the Minister for review.

(2) A request lodged in terms of subsection (1) shall be in writing and shall specify in detail the grounds on which it is made.

(3) The Commissioner shall transmit to the Minister a request lodged with him in terms of subsection (1).

(4) On receipt of a request transmitted to him in terms of this section, the Minister shall, in his discretion—

(a) confirm the decision of Commissioner; or

(b) if he considers that the decision of the Commissioner should be varied or set aside, give such directions to the Commissioner as he considers to be necessary or desirable in the circumstances.

(5) The Commissioner shall give notice in writing to a person who has requested a review of his case under this section of the Minister's decision in the case and of the Minister's reasons for the decision.

(6) If in giving effect to the decision of the Minister in a case reviewed under this section the Commissioner registers an applicant as an insurer or insurance broker, either with or without conditions, or cancels the registration of an insurer or insurance broker or imposes conditions in terms of paragraph (b) of subsection (4), he shall notify the applicant or, as the case may be, the insurer or insurance broker in writing accordingly:

Provided that in giving effect to a decision of the Minister in a case reviewed under this section, the Commissioner shall not register an applicant referred to in subsection (5) of section *nine* or subsection (3) of section *ninety-two* subject to any conditions or permit an insurer or insurance broker to remain registered subject to any conditions, unless the applicant agrees in writing to be so registered.

## **72 Restriction of placement of insurance business outside Zimbabwe**

(1) In this section—

“Zimbabwean insurance business” means insurance business in respect of a risk arising in Zimbabwe.

(2) Unless authorised to do so in terms of subsection (4), no registered insurer or insurance broker shall place Zimbabwean insurance business with an insurer who carries on business outside Zimbabwe and who is not registered under this Act.

(3) Any insurer or insurance broker who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) The Commissioner may authorise an insurer or insurance broker to place any Zimbabwean insurance business with an insurer who carries on business outside Zimbabwe and who is not registered under this Act:

Provided that the Commissioner shall not grant authority unless he has satisfied himself that there is no registered insurer who is able to provide adequate insurance cover in respect of the risk or class of risk concerned.

(5) The Commissioner may impose such conditions or limitations on any authority in terms of subsection (4) as he considers appropriate in the public interest.

[Section as substituted by Act 22 of 2001]

## **73 Change of name unauthorized except with the permission of the Commissioner**

(1) A registered insurer or registered insurance broker may, with the consent in writing of the Commissioner, alter the name under which he is registered.

(2) No registered insurer or registered insurance broker shall use or refer to himself in writing by—

(a) a name other than the name under which he is registered; or

(b) an abbreviation of the name under which he is registered;

unless the Commissioner has consented in writing to the use of such name or abbreviation.

(2a) A registered insurer or insurance broker who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) Nothing contained in subsection (2) shall prevent an insurer or insurance broker, with the written consent of the Commissioner, from using or referring to himself in conjunction with his registered name by the name of a business or undertaking with which he has been amalgamated or, in the case of a change of name authorized in terms of subsection (1), by the name by which he was previously known.

(4) Whenever the Commissioner authorizes a change of name of an insurer or insurance broker in terms of subsection (1), he shall cause a notice of such change of name to be published in the *Gazette* and in one or more such newspapers circulating in Zimbabwe as the Commissioner may determine.

## **74 Registered insurers and insurance brokers to maintain principal office and appoint principal officer**

(1) A registered insurer or registered insurance broker shall maintain a principal office in Zimbabwe and shall appoint a principal officer in Zimbabwe.

(2) A registered insurer or registered insurance broker shall notify the Commissioner in writing of the situation of his principal office and the name of his principal officer.

(3) If a registered insurer or registered insurance broker—

(a) changes the situation of his principal office in Zimbabwe; or

(b) appoints a new principal officer; he shall—

(i) in respect of paragraph (a) notify the Commissioner in writing before such change takes place;

(ii) in respect of paragraph (b), notify the Commissioner in writing as soon as the appointment has been made.

(4) A registered insurer or insurance broker who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **75 Action by policy owners against insurers**

(1) The owner of a policy shall, notwithstanding any contrary provisions in the policy or in any agreement relating against insurers, to the policy, be entitled to enforce his rights under the policy against the insurer liable under the policy in any competent court in Zimbabwe.

(2) Any question of law arising in any action under a policy which is instituted by the owner against the insurer liable under the policy shall, subject to this Act, be decided in accordance with the law in force in Zimbabwe.

(3) Notwithstanding subsection (1), a policy may validly provide that the amount of any liability under the policy shall be determined in accordance with the Arbitration Act [*Chapter 7:02*].

## **76 Certificate of deposit of approved securities**

(1) The Commissioner shall, at the request of an insurer who has deposited approved securities with the Commissioner in terms of this Act, furnish the insurer once each year with a certificate specifying the approved securities deposited by the insurer and their face value.

(2) An insurer who has deposited approved securities with the Commissioner in terms of this Act shall be entitled to the income derived from the approved securities.

(3) An insurer may at any time substitute for an approved security deposited by him with the Commissioner in terms of this Act any other approved security of like face value.

(4) If the registration of an insurer who has deposited approved securities in terms of this Act is cancelled, the Minister may cause the approved securities deposited by the insurer to be realized to meet the liabilities of the insurance business of the insurer under any policies.

(5) Where the Minister is satisfied that the liabilities of the insurance business under any policies of an insurer referred to in subsection (4) have been met, the Minister shall direct the Commissioner to return to the insurer such of the approved securities deposited by the insurer as have not been realized to meet those liabilities.

(6) If an insurer has deposited approved securities with the Commissioner as a condition of registration in terms of this Act, the Minister shall direct the Commissioner to return the approved securities to the insurer as soon as the Minister is satisfied that the insurer has fulfilled the condition of his registration against which the approved securities were deposited.

(7) If the registration of a life insurer who has deposited approved securities in terms of subsection (1) or (2) of section *sixty-eight* is cancelled, the Minister shall direct the Commissioner to return the approved securities to the life insurer at such time as the Minister may specify having regard to the financial position of the life insurer.

## **77 Inspection of documents, etc.**

(1) A person may, on payment to the Commissioner of the appropriate prescribed fee—

(a) inspect; or

(b) inspect and make a copy of;

any document furnished to the Commissioner in terms of section *nine, thirteen, thirty, thirty-five* or *thirty-nine*.

(2) The Commissioner shall, on payment of the prescribed fee, furnish, at the request of any person, a certified copy of or abstract from any document furnished to the Commissioner in terms of section *nine, thirteen, thirty, thirty-five* or *thirty-nine*.

(3) The Commissioner shall, without charge, furnish, at the request of any person, the name of the principal officer in Zimbabwe of a registered insurer or registered insurance broker and the address of the principal officer in Zimbabwe of a registered insurer or registered insurance broker.

## **78 Display of certain information where business is conducted**

(1) The Commissioner may, if he considers it to be in the public interest and after consultation with the appropriate advisory committee established in terms of paragraph (f) of subsection (2) of section *eighty-nine*, require every registered insurer to display at all times when open for business, in a conspicuous place in every place in Zimbabwe in which he carries on business, such information as he may determine.

(2) Every insurance agent shall, in respect of every registered insurer for which he is an agent, maintain a record of the information required to be displayed by such insurer in terms of subsection (1), and shall, on request, make such information available for inspection by any person without charge.

(3) Any—

(a) registered insurer who fails to comply with a requirement of the Commissioner in terms of subsection (1); or

(b) insurance agent who fails to maintain a record in terms of subsection (2)

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section inserted by Act 22 of 2001]

## **79 Effect of Commissioner's certification of documents**

A document purporting to be certified by the Commissioner as a document furnished to the Commissioner in terms of this Act or to be a copy of such document shall, *prima facie*, be deemed to be such a document, or a copy thereof, and shall be admissible in evidence as if it were the original document.

## **80 Documents furnished to Commissioner in terms of this Act to be signed and accompanied by copies**

An insurer or insurance broker shall be regarded as having failed to comply with a provision of this Act requiring an insurer or insurance broker to furnish documents or copies of documents to the Commissioner, unless—

- (a) in the case of a document prepared by the insurer or insurance broker which is not in a form prescribed—
  - (i) the document is signed—
    - A. by the principal officer and one director of the insurer or insurance broker or, if the insurer or insurance broker has at any time no principal officer or director, by such other person or persons having control over the business of the insurer or insurance broker as the Commissioner may specify; and
    - B. by such person other than the persons referred to in subparagraph A as are required by a provision of this Act to sign or certify the document; and
  - (ii) the document is accompanied by one copy;
- (b) in the case of a document prepared by the insurer or insurance broker which is in a form prescribed—
  - (i) the document is signed by the persons specified in the form; and
  - (ii) the document is accompanied by one copy;
- (c) in the case of an original document other than a document referred to in paragraph (a) or (b), the document is accompanied by one copy;
- (d) in the case of a copy of a document, the copy is accompanied by one other copy, and one such copy is certified as correct by the insurer or insurance broker or by an officer of the insurer or insurance broker.

## **81 Sums insured etc., to be stated in currency of Zimbabwe**

(1) In every policy every sum of money mentioned in the policy shall be stated in the currency of Zimbabwe, unless the parties to the policy have, at the time of the issue or subsequent to the time of the issue of the policy, agreed that every sum of money mentioned in the policy shall be stated in some currency other than the currency of Zimbabwe.

(2) If the parties to a policy have agreed that every sum of money mentioned in the policy shall be stated in some currency other than the currency of Zimbabwe, that fact and the currency in question shall be stated or endorsed on the policy in distinct terms in printed or typed letters no smaller than, and as legible as, the letters of the other provisions of the policy.

## **82 Policy not invalid by reason of failure to comply with law**

A policy issued by any person whether before, on or after the appointed day, shall not be invalid merely because that person contravened or failed to comply with any law in force applying to that policy.

## **83 Certain policies to be printed in clearly legible letters, etc.**

(1) No person shall issue—

- (a) a life policy or funeral policy in a form, the printed provisions of which, whatever their nature, are not put in a clear type face in letters of a uniform size of not less than 8 point;
- (b) a policy of a class not specified in paragraph (a), in a form the printed provisions of which, whatever their nature, are not put in a clear type face in clearly legible letters.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **83A Insurer to inform insured of duty to disclose material facts**

(1) Before entering into, renewing, varying or reinstating a policy, an insurer shall inform the insured clearly, in writing, that the insured has a duty to disclose every fact or circumstance that would materially affect—

- (a) the calculation of the risk insured; or
- (b) the decision whether or not to enter into, renew, vary or reinstate the policy, as the case may be;

and that the duty to disclose such a fact or circumstance exists whether or not the insured has been asked about it.

(2) An insurer who fails to comply with subsection (1) shall not be entitled to avoid any liability under the policy concerned on the ground of non-disclosure of a fact or circumstance referred to in that subsection, unless the non-disclosure was fraudulent.

(3) It shall be sufficient compliance with subsection (1) for an insurer to provide the insured with a clearly legible document in the form prescribed.

(4) For the avoidance of doubt, it is declared that subsections (1) and (2) shall not apply to the entering into, renewal, variation or reinstatement of a policy before the date of commencement of the Insurance Amendment Act, 2004.

[Section inserted by Act 3 of 2004]

### **83B Effect of non-material representation by insured**

(1) In this section—

“domestic policy ” means a policy which has been entered into anywhere on an application made or presented in Zimbabwe to the insurer or to an insurance broker or to an agent of the insurer or insurance broker, and—

- (a) includes a life policy issued outside Zimbabwe but subsequently made payable in Zimbabwe at the request of the owner, where the owner has agreed in writing that it should not be regarded as a domestic policy;
- (b) does not include a life policy issued in Zimbabwe but subsequently made payable outside Zimbabwe at the request of the owner, where the owner has agreed in writing that it should not be regarded as a domestic policy.

(2) Notwithstanding anything to the contrary in the domestic policy concerned or in any document relating to it—

- (a) no domestic policy shall be invalidated; and
- (b) no obligation or liability of an insurer under a domestic policy shall be excluded or limited; and
- (c) no obligation or liability of the owner of a domestic policy shall be increased;

on account of any misrepresentation made to the insurer, whether or not the misrepresentation was warranted to be true, unless its correctness was such as is likely to have materially affected the assessment of the risk insured when the domestic policy was issued, renewed, varied or reinstated.

(3) Subsection (2) shall apply in respect of any domestic policy, whether issued before, on or after the date of commencement of the Insurance Amendment Act, 2004.”

(4) In circumstances where the domestic policy or policy is issued outside Zimbabwe and that policy involves the remittance of foreign currency, any remittances made on that policy shall be made subject to the Exchange Control Act [*Chapter 22:05*] and the Income Tax Act [*Chapter 23:06*].

[Section inserted by Act 3 of 2004]

### **84 False statements, etc.**

(1) If a person issues a document referred to in this Act which is false in any material respect, that person and every other person who took part in the preparation or issue of the document or who signed it shall be guilty of an offence, unless it is proved that the accused, if an individual, or all the persons who acted on behalf of the accused, if the accused is not an individual, had no knowledge of the falsity of the document when it was issued.

(2) A person guilty of an offence specified in subsection (1) shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act 22 of 2001]

### **84A Registered person failing to comply with condition of registration**

A registered insurer or registered insurance broker who contravenes or fails to comply with a provision of this Act with which it is his duty to comply as a condition of his registration or continued registration shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section inserted by Act 22 of 2001]

### **85 Persons acting on behalf of unregistered insurers**

(1) Subject to subsection (2), a person who causes another person to enter into or to make an application to enter into a contract of insurance with a person who is not a registered insurer shall, subject to subsection (2) of section *seven*, be guilty of an offence.

(2) A person who causes another person to enter into a contract of insurance such as is referred to in subsection (1) shall not be guilty of an offence in terms of that subsection if—

- (a) the insurance as a whole is placed by a registered insurance broker; and
- (b) a substantial portion of the risk insured is placed with a registered insurer; and
- (c) the portion of the risk insured which is not placed in accordance with the provisions of paragraph (b) is placed with one or more insurers who do not solicit business, either directly or indirectly, in Zimbabwe or advertise their business in any newspaper or other publication in Zimbabwe; and
- (d) the insurance broker concerned notifies the Commissioner in the manner prescribed of such placing of the insurance business.

(3) On receipt of the notification in terms of paragraph (d) of subsection (2), the Commissioner shall advise the insurance broker—

- (a) of his approval of the placing of the insurance business; or
- (b) that he is not prepared to approve the placing of the insurance business and give such directions to the insurance broker as he may consider fit.

(4) Any—

- (a) person who contravenes subsection (1); or

(b) insurance broker who contravenes or fails to comply with any directions given to him in terms of paragraph (b) of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **86 Certain titles not to be used except by persons registered in terms of this Act**

(1) Save with the consent of the Commissioner, who may impose such conditions as he considers fit, no person other than a person registered in terms of this Act shall use in the description or title under which such person is carrying on business in Zimbabwe the word “assure”, “assurer”, “assurance”, “broker”, “consultant” (when allied to or used in respect of any form of insurance business), “guarantee”, “indemnity”, “insure”, “insurer”, “insurance”, “Lloyds”, “underwriters” or “underwriting”, or a literal translation of any such words or any combination of letters in which “assure”, “assurer”, “assurance”, “broker”, “consultant” (when allied to or used in respect of any form of insurance business), “guarantee”, “indemnity”, “insure”, “insurer”, “insurance”, “Lloyd’s”, “underwriter” or “underwriting” appear.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) The Commissioner may vary or withdraw his consent granted to any person in terms of subsection (1) or may impose new or additional or alternative conditions as he considers fit.

## **87 Prohibition of certain practices or methods of conducting business**

(1) The Commissioner may, by notice in the *Gazette*, declare a specified practice or method of conducting business an irregular or undesirable practice or an undesirable method of conducting business for a class or classes of registered insurer, registered insurance brokers or insurance agents, or for all such insurers, insurance brokers and insurance agents:

Provided that the Commissioner shall not publish such a notice unless he has first referred the practice or method of conducting business which he proposes to make the subject of that notice to the appropriate advisory committee established in terms of paragraph (f) of subsection (2) of section *eighty-nine* and has received and considered the advice of that committee.

(2) An insurer, insurance broker or insurance agent who, after the publication of a notice in terms of subsection (1), continues to employ, or adopts, a practice or method of conducting business specified in that notice, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) After the publication of a notice in terms of subsection (1) the Commissioner may, in writing, direct any person who, before the publication of the notice, employed a practice or method of conducting business which is specified in the notice, to rectify, in such manner or to such extent and within such period as may be specified by the Commissioner, anything which, in the opinion of the Commissioner was caused or arose out of such practice.

(4) Any person who contravenes or fails to comply with any direction given to him under subsection (3) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

## **88 Unregistered person holding himself out to be insurer or insurance broker**

Any person who holds himself out to be an insurer or insurance broker whilst not being registered as such in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as substituted by Act 22 of 2001]

## **89 Regulations**

(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 carrying out or giving effect to this Act.

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

- (a) regulating the payment by registered insurance brokers to registered insurers of moneys received by such insurance brokers in respect of insurance business placed with registered insurers;
- (b) the information and returns to be supplied by registered insurance brokers to persons on whose behalf such insurance brokers have placed insurance business with registered insurers;
- (c) the regulation and control of methods of obtaining or negotiating insurance business;
- (d) the regulation, registration, licensing and control of insurance agents, the training and qualifications of such persons, the cancellation of licences issued to such persons or the withholding of the issue of licences to such persons;

- (e) the fees to be paid for registering persons, including societies, as insurers, for the inspection and copying of documents in terms of section *seventy-seven*, and for the registration and licensing of insurance agents;
- (f) the establishment of advisory committees to advise the Commissioner on all matters relating to insurance and, in particular, to investigate and report to the Commissioner on any complaint or allegation in connection with insurance matters made in relation to an insurance agent, insurance broker, insurance company, society, co-operative insurance society or insurance association;
- (g) the appointment of members to and the procedure at meetings of the advisory committees referred to in paragraph (f) and the functions, rights and privileges of such committees and their members, including the application, *mutatis mutandis*, of sections 9 to 13 and 15 to 19 of the Commissions of Inquiry Act [*Chapter 10:07*] in relation to such committees and the rights and obligations of any person appearing or required to appear before any such committee.
- (h) the form in which an insurer may inform an insured person, in terms of section *eighty-three A*, of his duty to disclose material facts and circumstances.

[Paragraph as substituted by Act 3 of 2004]

(3) Regulations made in terms of subsection (1) may provide for penalties for any breach thereof or non-compliance therewith:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection as substituted by Act 22 of 2001]

## **90 Transitional provision: deregistration as companies of existing societies**

(1) In this section—

“existing society” means an existing society as defined in subsection (1) of section *eleven* that is registered as a company in terms of the Companies Act [*Chapter 24:03*].

(2) An existing society shall cease to be registered in terms of the Companies Act [*Chapter 24:03*] from the date of its registration in terms of section *thirteen*.

(3) An existing society shall, at the time it applies for registration in terms of section *thirteen*, or, at the leave of the Commissioner, within thirty days thereafter, submit for the approval of the Commissioner a scheme setting forth the manner in which it proposes to dispose of its assets and liabilities.

(4) With the agreement of the Minister for the time being charged with the administration of the Companies Act [*Chapter 24:03*], the Minister may, at the request of an existing society which has submitted a scheme referred to in subsection (3), direct by statutory instrument that provisions of the Companies Act [*Chapter 24:03*] shall be modified, suspended or shall not apply in relation to the existing society, as may be appropriate to expedite the disposition of its assets and liabilities.

(5) If the Commissioner is of the opinion that the rights of existing or prospective owners of policies as members of an existing society are in any way prejudiced by a scheme submitted to him in terms of subsection (3), whether in the proposed assignment of the assets and liabilities of the existing society before and after its registration in terms of section *thirteen* or otherwise, the Commissioner may—

- (a) reject the scheme and require the existing society to submit another scheme subject to such conditions as he shall fix; or
- (b) modify the scheme; or
- (c) publish a notice in the *Gazette* setting forth the purport of the scheme and calling for any objection to it from members of the existing society concerned within a period he shall specify, after which period he may approve the scheme or act in terms of paragraph (a) or (b).

(6) If an existing society is aggrieved by a decision of the Commissioner to reject or modify a scheme in terms of subsection (5), the existing society concerned may appeal against such decision to the High Court, which may confirm, vary or set aside the decision of the Commissioner or make such other order in the matter as it deems fit.

(7) Notwithstanding any proceedings in terms of this section, the Commissioner shall not refuse or delay the registration of an existing society if it otherwise qualifies to be registered in terms of section *thirteen*.

## **91 Transitional provisions: registration of insurers registered in terms of Cap.196 of 1974 and savings**

(1) Subsections (2), (3) and (4) of this section shall not apply to societies.

(2) Notwithstanding section *eight* but subject to subsection (3), the Commissioner shall register a person who was registered as an insurer in terms of Part I of the former insurance law as an insurer in the class or classes of insurance business in which such insurer was registered immediately before the appointed day in terms of the former insurance law.

(3) A person registered in terms of subsection (2) shall be registered for a period of five years, at the end of which period the Commissioner shall—

- (a) renew such person's registration if he is qualified to be registered in terms of section *eight*; or
- (b) deregister such person if he is disqualified to be registered in terms of section *eight*:

Provided that if the Commissioner is satisfied—

- (i) that the failure of such person to so qualify has not been due to any intent by him to evade section *eight*; and
- (ii) that such person had taken all reasonable steps in order to so qualify; and
- (iii) that it would be in the interests of policy owners to do so;

the Commissioner may renew such person's registration as an insurer for such further period, and subject to such conditions, as the Commissioner may consider to be necessary to enable such person to comply with section *eight*.

(4) The Commissioner shall show in the report submitted to the Minister in terms of subsection (1) of section *seventy* the number of insurers to whom the provisions of subsections (2) and (3) have been applied and shall report on the overall financial position of such insurers.

(5) Save as is otherwise provided in this Act, this Act shall apply in relation to policies effected or ceded before the appointed day as if they had been effected or ceded on or after the appointed day.

(6) In the case of a policy effected before the appointed day, if it was effected for the benefit of a third party or person named in the policy as a beneficiary, the rights of such person in relation to the policy shall, subject to this Act, be same as they were under the law in force immediately before the appointed day.

(7) Where any matter or thing has been commenced, or any step has been taken, before the appointed day, by any person or authority having power for that purpose under the former insurance law, the matter or thing may be carried on and completed and further steps may be taken by such person or authority on and after the appointed day, and for such purpose this Act shall apply, *mutatis mutandis*, thereto.

(8) Any exemption granted or prohibition made in terms of the former insurance law which was in force immediately before the appointed day shall be deemed to be an exemption granted or prohibition made, as the case may be, under the corresponding provisions of this Act.

### **SCHEDULE (Section 60)**

#### PERIOD FOR WHICH FUNERAL POLICY REMAINS IN FORCE WHERE PREMIUM NOT PAID

<i>Period remains in force</i>	<i>Period for which premiums have been paid</i>
6 months	5 years or over and less than 7 years
9 months	7 years or over and less than 9 years
12 months	9 years or over and less than 11 years
18 months	11 years or over and less than 14 years
24 months	14 years or over and less than 17 years
36 months	17 years or over and less than 21 years
48 months	21 years or over and less than 25 years
60 months	25 years or over.