

INSURANCE ACT, 2003

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"financial year" in relation to an insurer means -

- (a) each period of twelve months at the end of which the balance of the accounts of the insurer is struck, and includes a lesser period; or
- (b) if no balance is struck, a calendar year;

"fire insurance" means the business of effecting and carrying out, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies;

"friendly society" means an association of persons established with no share capital for the purpose of aiding its members or their dependants, where the association does not employ any person whose main occupation is the canvassing of other persons to become members of the association or the collection of contributions or subscriptions towards the fund of the association from its members;

"general insurance business" means insurance business, other than life assurance business and long term insurance business;

"industrial life assurance business" means the business of life assurance where -

- (a) the insurer assumes a contingent obligation dependent on human life;
- (b) the insurer expressly or tacitly undertakes to send a person to the policy holder or to his or her residence or place of work to collect the premium;
- (c) the frequency of payment of premium is not less than twelve times a year at intervals not exceeding a calendar month; and

(d) the sum assured, or the amount of the annuity *per annum* does not exceed such sum as may be notified in the *Gazette* by the Bank with the approval of the Secretary of State;

"insurance agent" means a person appointed and authorised by an insurer to solicit applications for insurance or negotiate for insurance coverage on behalf of the insurer and to perform such other functions as may be assigned to him or her by the insurer;

"insurance broker" means a person who, as an independent contractor and for commission or other compensation and not being an agent of the insurer, solicits or negotiates insurance business on behalf of an insured or prospective insured, other than itself;

"insurance business" means the business of assuming the obligations of an insurer in any class of insurance business and includes assurance and re-insurance;

"insurance institution" means an insurer, a reinsurer, insurance broker or a loss adjuster registered under this Act;

"insurer" means a person carrying on an insurance business otherwise than as an insurance agent or insurance broker;

"life assurance business" includes industrial life assurance business and means the business of effecting and carrying out contracts of insurance on human life, including a contract whereby the payment of money is assured on death (except policies for death by accident only) or the happening of any contingency dependent on human life or which is subject to payment of premiums for a term dependent on human life and includes –

- (a) the granting of disability and double or multiple indemnity accident benefits, if so provided in the contract of insurance;
- (b) the granting of annuities payable out of any funds applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of those persons;

"life assurance fund" or "life fund" means the fund to which receipts of an insurer in respect of its life assurance business are paid and from which payments in respect of that business are made;

"long term insurance business" includes the business of-

- (a) sinking fund, capital redemption or bond investment;
- (b) indemnifying for loss of income as a result of disability by accident or sickness;
- (c) indemnifying for cost of hospitalisation as a result of disability by accident or sickness;
- (d) insuring the payment on the happening of the contingencies of birth, marriage or failure of issue either single or in combination,

but excludes business comprising insurance contracts which are made for a term not exceeding twelve months;

"loss adjuster" means a person who for money or other valuable consideration acts for or on behalf of an insurer or person in adjusting claims arising from all non-life assurance business, excluding motor claims, but including insurance valuations, risk surveys and claims, provided the person has

satisfied the conditions set out in this Act for registration as a loss adjuster;

"marine insurance business" means the business of effecting and carrying out contracts of insurance-

- (a) on vessels or aircraft, or on the machinery, tackle, furniture or equipment of vessels or aircraft;
- (b) on goods, merchandise or property of any description whatever on board vessels or aircraft;
- (c) on the freight of, or any other interest in or relating to, vessels or aircraft, including third party risks;
- (d) against risks incidental to the construction, repair or docking of vessels, including third party risks;
- (e) against transit risks, whether the transit is by sea, inland water, land or air, or by a combination thereof, including warehouse risks or similar risks in addition to or incidental to the use of vessels or aircraft and transit risks from the commencement of the transit to the ultimate destination covered by the insurance;
- (f) against other risks of insurance which are customarily undertaken in conjunction with, or incidental to, the undertaking of the business as falls within this definition by virtue of any of the foregoing paragraphs;

"motor insurance business" means the business of effecting and carrying out contracts of insurance against loss of, or damage to or arising out of or in connection with the use of, motor vehicles, including third party risks;

"mutual company" means an insurance company without share capital which is owned by and operated in the interest of its policy holders or members only and the affairs of which are directed by the Board of Trustees or Directors elected by the members;

"personal accident insurance" means the business of effecting and carrying out contracts of insurance against risks of the person insured dying or becoming disabled or incapacitated as the result of an accident or disease, not being contracts which by the terms thereof are not, without renewal, to be of more than one year's duration;

"policy" means a writing by which a contract of insurance is made or agreed to be made;

"policy holder" means the person who for the time being has the legal title to a policy and includes a person to whom a policy is for the time being assigned;

"registered" means registered for the purposes of this Act;

"Secretary of State" means the Secretary of State responsible for Finance;

"workmen's compensation insurance business" means the business of effecting and carrying out contracts of insurance against the liability of employers to pay compensation or damages to workmen in their employment or dependants of the workmen but does not include any business carried on as incidental only to some other class of insurance business.

PART II – ADMINISTRATION AND SUPERVISION OF INSURANCE BUSINESS

Role of the
Central Bank

3. (1) In pursuance of section 161 of the Constitution of The Republic of The Gambia, the Bank shall ensure the effective administration, supervision,

regulation and control of insurance business in The Gambia.

(2) There shall be a Commissioner of Insurance who shall be appointed by the Bank and shall exercise all the powers and functions of the Commissioner under this Act.

Functions of the
Commissioner

4. (1) The functions of the Commissioner include –

- (a) ensuring strict compliance with the provisions of this Act and regulations made under it and any other enactment relating to insurance;
- (b) with the approval of the Bank, the registration of insurers, insurance agents, insurance brokers and loss adjusters who transact insurance business in The Gambia;
- (c) the formulation of standards for the conduct of insurance business for compliance by insurers, insurance agents, insurance brokers and loss adjusters;
- (d) the inspection of insurers as provided for in this Act;
- (e) with the approval of the Bank, the authorisation of standard conditions to apply to policies of insurance;
- (f) with the approval of the Bank, the determination of rates of insurance premium in respect of all classes or any class of insurance;
- (g) the supervision of the conduct of insurance agents, insurance brokers, loss adjusters and agencies which specialize in the handling of insurance claims;

- (h) the formulation of proposals for the promotion of sound and efficient insurance market in The Gambia; and
- (i) such other functions as are assigned to the Commissioner by this Act or by regulations made under it.

(2) The Commissioner may, with the approval of the Bank, make rules requiring insurance institutions to establish -

- (a) standards for corporate governance of insurers, including standards that prescribe the roles and responsibilities of their boards of directors, and distinguish between standards to be met by locally incorporated insurance institutions and branch operations of insurance institutions incorporated in other jurisdictions;
- (b) internal control to ensure compliance with legal and prudential requirements;
- (c) standards affecting the assets of insurers the require diversification by type, basis for valuation of assets, requirement for safekeeping, appropriate matching of assets and liabilities, and liquidity;
- (d) limits, disclosure requirements and monitoring obligations with respect to the use of derivatives and off-balance sheet items;
- (e) standards relating to the use of reinsurance, including the obligation to assess the financial condition of reinsurers;
- (f) formal procedures to recognize potential suspicious transactions, including money laundering activities, and to require that

they be reported in accordance with any existing money laundering legislation.

PART III - REGISTRATION OF INSURERS

Registration of insurers.

5. (1) Subject to the provisions of this Part of this Act, no person shall commence or carry on any class of insurance business in The Gambia unless the person is registered under this Act to transact that class of insurance business.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

Prohibition of insurance business by certain persons
Cap 95:01

6. No person, other than-

- (a) a company incorporated under the Companies Act;
- (b) a society registered under the Co-operative Societies Act;
- (c) a corporation established under any law for the time being in force in The Gambia;
- (d) a body corporate incorporated under the laws of any country outside The Gambia not being of the nature of a private company or subsidiary of a private company; or
- (e) a mutual insurance company registered for any class of insurance business in The Gambia,

Cap. 50:02

shall be registered for any class of insurance business in The Gambia.

Application for registration

7. An application for registration under this Act shall be made to the Commissioner and shall be accompanied by the following documents -

- (a) the proposed Memorandum and Articles of Association of the prospective insurance company;
- (b) in the case of a co-operative society or a mutual insurer, a copy of its proposed by-laws or other rights of membership;
- (c) the name and permanent residence of every person who intends to subscribe for any shares that the proposed company intends to issue and the subscribers to the Memorandum and Articles of Association;
- (d) in the case of a co-operative society or a mutual insurer the names of all the members who intend to apply for registration;
- (e) the address of the place of business where the applicant proposes to locate and any other proposed branches;
- (f) full particulars of the business the applicant proposes to carry on;
- (g) the amount of the applicant's proposed capital and the assurances and evidence of the capital;
- (h) if an external company, evidence that it is duly registered under the Companies Act;
- (i) evidence of the applicant's capability to comply with section 14;
- (j) a copy of each policy of insurance which the applicant proposes to issue; and
- (k) such additional information as the Commissioner may prescribe.

Approval of
application,
registration and
issuance of
licence

8. (1) If the Commissioner is satisfied that -

- (a) the class of insurance business in respect of which the application is made is or will be conducted in accordance with sound insurance principles;
- (b) the applicant is not a person whose registration is prohibited under section 6;
- (c) the relevant capital requirements for insurers specified in Part IV and in regulations made under this Act have been complied with;
- (d) the margin of solvency of the insurer is adequate having regard to any regulations made in relation thereto under section 12;
- (e) the management and administration of the applicant assures the safety and protection of the interests of policy holders and the public;
- (f) the proposal forms and the terms and conditions of the policies are in order and acceptable;
- (g) where the applicant is an external company and it is duly registered under the Companies Act of The Gambia,

it shall deliver to the Registrar of Companies the approved Memorandum and Articles of Association or the approved by-laws or rules in the case of a Co-operative Society or a mutual insurer.

(2) Notwithstanding anything in the Companies Act or any other enactment, the Registrar of Companies or any other person shall not incorporate or register a company or an association -

- (a) under a name that includes the word “insurance” or any of its derivatives in any language; or
- (b) has as its objects or one of its objects as the carrying on of insurance business,

unless the application is received from and is approved by the Commissioner.

(3) A company or an association shall, on being incorporated or registered, provide the Commissioner with certified copies of the Memorandum and Articles of Association as registered.

(4) On receiving the Memorandum and Articles of Association pursuant to subsection (3), the Commissioner shall, with the approval of the Bank, grant the application for registration as an insurer and issue a licence to the applicant.

(5) A notice of the issue of a licence shall be published in the *Gazette*.

(6) An insurer shall notify the Commissioner in writing, within thirty days of any amendment of its Memorandum of Association and Articles of Association or other instrument under which it is incorporated.

Appeal to the
Secretary of State
on refusal of
application

9. (1) A person aggrieved by a decision the Bank to refuse to grant an application for registration as an insurer may, within sixty days after the date of the notification of the refusal to grant the application, lodge a notice of appeal to the Secretary of State and send a copy the Commissioner.

(2) A notice of appeal shall be in writing, setting out the grounds on which it is made.

(3) A notice of appeal may be withdrawn by the person aggrieved before the appeal is dealt with by the Secretary of State.

(4) The Secretary of State shall, on receipt of a notice of appeal, consider the appeal and the grounds thereof and any other facts or considerations placed before him or her by the person aggrieved or by the Bank and shall decide whether to uphold or disallow the appeal.

(5) The Secretary of State shall, unless the appeal is withdrawn, give notice in writing to the applicant for registration of his or her decision on the appeal.

(6) If the appeal is upheld, the Commissioner shall register the applicant and issue a licence, accordingly .

Cancellation
of registration.

10. (1) If, in the case of a registered insurer, the Bank is satisfied that-

- (a) the insurer is not conducting its insurance business in accordance with sound insurance principles;
- (b) the insurer fails to comply with the requirements of this Act or regulations, rules or orders made under it;
- (c) the insurer has ceased to carry on insurance business in The Gambia; or
- (d) a judgment obtained in a Court in The Gambia against the insurer under a policy of insurance issued by it remains unsatisfied for thirty days after the date of judgment unless an appeal against the judgment is pending,

the Bank shall give notice in writing to the insurer of its intention to cancel the registration of the insurer, and the provisions of section 9, with such appropriate modifications, shall apply to the notice of intention to cancel the registration as if it was a

refusal to grant an application for registration.

(2) The Commissioner may cancel the registration of a registered insurer if the insurer requests in writing that the registration be cancelled.

(3) A request under subsection (2) for the cancellation of the registration of an insurer shall be published in the *Gazette*.

(4) Every cancellation of the registration of an insurer shall take effect on the date on which notice of the cancellation is published in the *Gazette*.

(5) When a registration is cancelled, the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before the cancellation takes effect shall continue as if the cancellation had not taken place.

PART IV - CAPITAL AND OTHER REQUIREMENTS

Requirements as to capital

11. (1) No person shall be registered, or remain registered as an insurer under this Act, unless the person has and maintains in The Gambia at all times while that person carries on that business, in the case of-

- (a) a company limited by shares, a paid-up capital;
- (b) a company limited by guarantee, a contribution by the subscribers to the Memorandum of Association and Articles of Association to the general fund of the company; or
- (c) a mutual company, a surplus of assets over liabilities,

of not less than such amount as may be prescribed by regulations.

(2) No person shall carry on life assurance business and long term insurance business together with any other class of insurance business unless that person maintains in The Gambia at all times while that person carries on these businesses together, an amount not less than twice the amount of that required in relation to that person under subsection (1).

Margin of solvency

12.(1) The Secretary of State may make regulations prescribing margins of solvency for an insurer carrying on insurance business in The Gambia, or carrying on insurance business in and outside The Gambia.

(2) Without prejudice to subsection (1), the margins of solvency may be prescribed in respect of -

- (a) life assurance business;
- (b) any insurance business, including life assurance business; and
- (c) insurance business, other than life assurance business.

(3) Regulations made under this section may prescribe the method of calculating the assets of an insurer for the purposes of this section.

(4) If the margins of solvency of an insurer fall below the levels prescribed under subsection (1), the Commissioner may impose on the insurer such restrictions, including prohibiting the insurer from issuing new or renewing existing policies, and limiting the kind of policies the insurer may issue.

Deposit

13. Every registered insurer shall deposit in trust with the Bank, the securities of not less than such amount in value as may be prescribed and shall keep the securities so deposited for so long as the insurer carries on business in The Gambia.

Reservation of deposits

14. (1) A deposit made under section 13 shall be deemed to be part of the assets of the insurer but shall not be –

- (a) susceptible to any assignment or charge;
- (b) available for the discharging of any liabilities of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any of the liabilities remain undischarged; or
- (c) liable for attachment in execution of any decree except a decree obtained under any policy issued by the insurer in respect of a debt due on a policy which debt could not be realised in any other way.

(2) A deposit made in respect of life assurance business shall not be liable for the discharge of any liability of the insurer other than liabilities arising out of policies of life assurance issued by the insurer.

Refund of deposit

15. Where an insurer has ceased to carry on in The Gambia a class of insurance business in respect of which a deposit has been made under section 13 and its liabilities in The Gambia in respect of business of that class have been satisfied or otherwise provided for, the Bank may, on the application of the insurer, return to the insurer so much of the deposit as does not relate to the class of insurance business, if any, which the insurer continues to carry on.

Power to require investment of insurance fund

16. (1) The Secretary of State may make regulations requiring that all registered insurers or a registered insurer of a particular class or description specified in the regulations, shall invest a percentage of the insurance funds of the insurers or insurer, as the case may be, accruing in respect of their or its business in The Gambia in The Gambian Government securities and other securities in The Gambia, as may be prescribed in the regulations.

(2) Regulations made under subsection (1) may prescribe different percentages of the insurance funds as aforesaid to be so invested according to the class of insurance business or description of an insurer.

PART V – RECORDS, ACCOUNTS, STATEMENTS AND RETURNS OF INSURERS

Records to be kept

17. A registered insurer shall keep in The Gambia such records of its business transacted in or outside The Gambia as may be prescribed.

Separation of accounts and reserve funds

18. (1) Where a registered insurer carries on more than one class of insurance business, it shall keep a separate revenue account for each of the following -

- (a) life assurance business;
- (b) each class and sub-class of long term insurance business;
- (c) fire insurance business;
- (d) marine insurance business;
- (e) motor insurance business;
- (f) employers liability and workmen's compensation insurance business.

(2) There shall also be kept one revenue account in respect of all other classes of insurance business other than those referred to in subsection (1).

Life Assurance Fund

19. (1) Where an insurer carries on life assurance business together with any other class of insurance business, the insurer shall keep a separate account of all receipts in respect of the life assurance business which shall be carried to and form a separate Life Assurance Fund, the assets of which shall be kept free from all encumbrances and distinct and separate from all other assets of the insurer.

(2) The Life Assurance Fund shall be invested separately from the investment of any other fund of the insurer.

(3) The Life Assurance Fund shall -

- (a) be absolutely the security of the life policy holders as though it belonged to an insurer carrying on no other business than life assurance business;
- (b) not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life assurance; and
- (c) not be applied directly or indirectly for any purpose other than that of life assurance business.

Accounts, etc.
to be furnished
to the Bank

20. An insurer shall, in respect of the insurance business carried on by it in The Gambia, prepare in the form prescribed, at the end of each financial year with reference to that year, and furnish to the Bank within three months after the end of the year to which they relate, respectively -

- (a) a certificate as to the solvency of the insurer, signed, in the case of a life insurer, by an actuary;
- (b) a balance sheet duly audited, showing the financial position of the insurance business;
- (c) a profit and loss account;
- (d) a certified copy of the revenue account in respect of each class of insurance business carried on by the insurer in that year;

- (e) a statement of the life assurance business, if any, carried on by the insurer in The Gambia in that year;
- (f) copies of board and management reports on the affairs of the insurer for the financial year as submitted to the policy holders or shareholders of the insurer duly signed and certified; and
- (g) such other documents and information relating to the relevant accounts and balance sheet as the Bank may require.

Amendment
of insurer
accounts
etc

21. (1) If, in the opinion of the Bank, a document furnished by an insurer under section 20 is incorrect or is not prepared in accordance with the provisions of this Act, it may, by notice in writing, call on the insurer to amend the document or to furnish a correct document or, as the case may be, a document prepared in accordance with the provisions of this Act.

(2) If an insurer fails to comply with a notice referred to in subsection (1) to the satisfaction of the Bank, the Bank may itself either amend the document in question, giving the insurer particulars of the amendments, or reject the document.

(3) A document amended by an insurer or the Bank under this section shall be treated as if it has been originally submitted in its amended form.

(4) If a document of an insurer is rejected by the Bank under subsection (2), the insurer shall, to that extent, be deemed to have failed to comply with the provisions of this Act.

Audit of
accounts of
insurer

22. (1) The accounts and balance sheet of every insurer shall be audited annually by an auditor approved by the Bank.

(2) The auditor shall not be an employee, manager or director of the insurer.

(3) The auditor shall satisfy himself or herself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(4) The auditor shall certify whether-

- (a) he or she has obtained adequate information from the books and records of the insurer;
- (b) the accounts of the insurer accord with the information given to him or her by the insurer for the purpose of his or her audit; and
- (c) the balance sheet and profit and loss account, respectively, of the insurer give a true and fair view of the insurer's financial position and profit or loss.

Auditor's report to be furnished to bank

23. A report of the auditor of the insurer made in pursuance of section 22 shall be signed by him or her and furnished to the Bank at the same time as the other documents required to be furnished under section 20.

Minimum basis of valuation of liabilities

24. The basis and the method of calculation of liabilities in respect of life assurance business may be prescribed and, in that case, no insurer shall cause the actuarial liability of any policy in respect of life assurance business to be less than the liability worked out on the basis and method so prescribed.

Revaluation of liability

25. (1) If it appears to the Bank that an investigation or valuation to which section 24 applies does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, it may, after giving notice to the insurer and giving the insurer an opportunity of being heard, cause an investigation or valuation as at the date as the Bank may specify to be made at the expense of the insurer by an actuary appointed by the insurer for the purpose and approved by the Bank.

(2) An insurer shall place at the disposal of the actuary so appointed and approved under subsection (1) all the material required by the actuary for the purpose of the investigation and valuation within such period as the Bank may specify.

(3) The abstract and statement prepared as a result of an investigation under this section shall be furnished by the date the Bank may specify.

Furnishing of information to the Bank

26. A registered insurer shall supply to the Bank all essential information concerning its capitalization, its reserves, the classes of insurance business it carries on and the other information concerning its structure as the Bank may require.

Notification of certain changes and particulars.

27. A registered insurer shall, within three months after the end of its financial year, notify the Bank in writing of any change which occurred in that financial year and of any particulars relating thereto required to be so notified by regulations made under this Act.

Authentication of documents.

28. Any account, balance sheet, abstract, statement or return required by the provisions of this Act to be furnished by an insurer to the Bank shall be made in four copies one of which shall be signed by two Directors, the Principal Officer and the Company Secretary of the insurer.

PART VI – AMALGAMATIONS, TRANSFER AND WINDING-UP

Sanction of scheme for transfer of life assurance and long term insurance business

29. (1) Where it is proposed to carry out a scheme under which the whole or part of the life assurance business or long term insurance business carried on by an insurer ("the transferor insurer") is to be transferred to another insurer ("the transferee insurer"), the transferor or transferee insurer shall apply to the Court, by petition, for an order sanctioning the scheme.

(2) The Court shall not entertain an application under this section unless the petition is accompanied

by a report on the terms of the scheme by an independent actuary and the Court is satisfied that the requirements of subsection (3) have been complied with.

(3) The requirements to be complied with under subsection (2) are -

(a) that a notice has been published in the *Gazette* stating that the application is to be made and giving the addresses of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) will be made available as required by that paragraph;

(b) except where the Court has otherwise directed, that a statement-

(i) setting out the terms of the scheme, and

(ii) containing a summary of the report mentioned in subsection (2) sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the life assurance and long term insurance policy holders of the insurers concerned,

has been sent to each of the policy holders;

(c) that a copy of the petition and of the report mentioned in subsection (2) and of every statement sent out under paragraph (b) has been served on the Bank and that a period of not less than twenty-one days has elapsed since the date of service; and

(d) that copies of the petition and of the report mentioned in subsection (2) have been open to inspection at the offices in The Gambia of the insurers concerned for

a period of not less than twenty-one days beginning with the date on which the notice mentioned in paragraph (a) of this subsection was published as required by that paragraph.

(4) On a petition under this section, the Bank and a person who alleges that he or she would be adversely affected by the carrying out of the scheme, shall be entitled to be heard.

(5) The Court shall not make an order sanctioning the scheme if the Commissioner is not satisfied that the transferee insurer is, or immediately after the making of the order will be able to carry on in The Gambia life assurance business and long term insurance business of the class or classes to be transferred under the scheme.

(6) No transfer as is mentioned in subsection (1) shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this section, and no order shall be made under section 202 or 204 of the Companies Act (compromises and arrangements between a company and its creditors or members) in respect of so much of any compromise or arrangement as involves the transfer.

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Provisions
supplementary
to section 29.

30. (1) Where a Court makes an order under section 29 sanctioning a scheme, the Court may, either by that order or by a subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee insurer of the whole or part of any undertaking and the property or liabilities of the transferor insurer;
- (b) the allotting or appropriation by the transferee insurer of any shares, debentures, policies or other like interests in that insurer which under the scheme are to be allotted or appropriated by that insurer to or for any person;

- (c) the continuation by or against the transferee insurer of any legal proceedings pending by or against the transferor insurer;
- (d) the dissolution, without winding-up, of the transferor insurer;
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(2) Where an order provides for the transfer of property or liabilities, that property shall by virtue of the order, be transferred to and vest in, and those liabilities shall by virtue of the order be transferred to and become the liabilities of, the transferee insurer, and in the case of any property, if the order so directs, freed from any mortgage or charge which by virtue of the scheme ceases to have effect.

(3) For the purposes of any provision requiring the delivery of any instrument of transfer as a condition for the registration of a transfer of any property (including in particular section 75 of the Companies Act) an order which by virtue of this section operates to transfer any property shall be treated as an instrument of transfer.

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(4) Where a scheme is sanctioned by an order of the Court under section 29, the transferee insurer shall, within ten days from the date on which the order is made or such longer period as the Bank may allow, furnish two copies of the order to the Bank.

(5) In this section -

"property" includes property, rights and powers of every description;

"liabilities" includes duties; and

"shares", and "debentures" have the same meanings as in the Companies Act.

Restriction on
change in control

31. (1) The Commissioner shall, with the approval of the Bank, pass upon transactions that transfer the control of an insurer without a merger or an amalgamation.

(2) No transaction relating to a change in control of an insurer or to a merger or an amalgamation of insurers shall be effected without the prior approval of the Bank.

(3) The Bank shall, before giving an approval under subsection (2) -

- (a) require the transferee or resulting entity to satisfy all licensing criteria;
- (b) ensure that the transaction does not have a substantial adverse effect on competition, unless the adverse effect is outweighed by public benefit that will result from the transaction; and
- (c) conduct an analysis of the possible effects of the merger or amalgamation.

(4) The Commissioner shall, with the approval of the Bank, pass upon a transaction -

- (a) which involves the sale of controlling block of shares that transfer control of an insurer without merger or amalgamation; or
- (b) if an analysis conducted under subsection (3) shows that the merger or amalgamation would have adverse effect on competition.

Scheme of amalgamation or transfer not involving life assurance and long term insurance businesses

32. In any other scheme of amalgamation or transfer, not being a scheme mentioned in section 29, the transferee insurer shall apply to the Bank for approval and shall furnish to the Bank -

- (a) a certified copy of the agreement or deed under which the scheme is effected; and
- (b) certified copies of any other reports on which that agreement or deed is founded.

Insolvency
Cap.95:01

33. (1) An insurer shall be deemed for the purposes of sections 214 and 215 of the Companies Act (which authorizes the Court to wind up a company unable to pay its debts), to be unable to pay its debts if, at any time –

- (a) the life assurance and long term insurance fund, in the case of life assurance and long term insurance businesses; and
- (b) the assets, in the case of other classes of insurance business, other than life assurance and long term insurance businesses,

do not exceed the liabilities by the margin of solvency prescribed by regulations made under section 12.

(2) For the purposes of subsection (1) –

- (a) in computing the amount of the liabilities of an insurer, all contingent and prospective liabilities shall be taken into account, but not liabilities in respect of share capital; and
- (b) the general premium income of an insurer in any financial year shall be taken to be the net amount, after deduction of any premiums paid by the insurer for reinsurance, of the premium in respect of

all insurance business, other than life assurance business.

(3) Regulations made for the purposes of this section may require that in every balance sheet prepared by an insurer carrying on general insurance business there shall be included a certificate-

(a) in the form and signed by such persons as may be prescribed by the regulations; and

(b) containing a statement with respect to such assets and liabilities of the insurer as may be so prescribed;

and if the insurer fails to comply with the regulations so made, the value of its assets shall, in any proceedings under this section for the winding up of the insurer, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount specified by the margin of solvency.

(4) In the case of an insurer which carries on life assurance business as well as general insurance business, the amount of the liabilities of its life assurance business at any time shall, for the purposes of this section, be taken to be-

(a) an amount equal to the total amount at that time standing to the credit of the fund or funds maintained by the insurer in respect of its life assurance business; or

(b) the amount of those liabilities at that time as determined in accordance with any applicable valuation regulations,

which ever is greater.

(5) For the purposes of subsection (1), the value of any assets and the amount of any liabilities shall, subject to subsections (3) and (4), be determined in accordance with any applicable regulations.

Power to impose requirements for protection of policy holders

34. If it appears to the Bank that the business of an insurer is being so conducted that there is a risk of the company being insolvent, it may require the insurer to take such action as appears to it appropriate for the purpose of protecting policy holders or potential policy holders of the insurer against the risk that the insurer may be unable to meet its liabilities, or in the case of reinsurance business, to fulfil the reasonable expectations of policy holders or potential policy holders.

Winding up by the Court.
Cap.95:01

35. (1) The Court may order the winding up, in accordance with the Companies Act, of an insurer, and the provisions of that Act shall apply accordingly, subject to the modification that the insurer may be ordered to be wound up on the petition of ten or more policy holders owning policies of an aggregate value of not less than one hundred thousand dalasis.

(2) A petition shall not be presented under subsection (1) except by leave of the Court and leave shall not be granted unless –

- (a) a *prima facie* case has been established to the satisfaction of the Court; and
- (b) security for costs for such amount as the Court may think reasonable has been given.

Bank's powers to petition for winding up of insurers
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36. The Bank may present a petition to the Court for the winding up, in accordance with the Companies Act, of an insurer on the ground that -

- (a) the insurer is deemed to be insolvent within the meaning of this Act;
- (b) the insurer has failed to satisfy an obligation to which it is subject by virtue of this Act;
- (c) the registration of the insurer having been cancelled, a period of more than six months has elapsed since the cancellation; or

(d) the continuance of the insurer is prejudicial to the interest of policy holders.

Commissioner's power to petition for winding-up of insurers

37. If it appears to the Commissioner that it is expedient in the public interest that an insurer be wound up, he or she may, , with the approval of the Bank, unless the insurer is already being wound up by the Court, present a petition for it to be so wound up.

Right of hearing of the Bank

38. Where a petition for the winding up of an insurer is presented by a person, other than the Commissioner, a copy of the petition shall be served on the Bank and the Bank shall be heard on the petition.

Voluntary winding-up of insurers with life assurance business and long term business.

39. Notwithstanding anything contained in the Companies Act, no insurer which carries on life assurance business or long term insurance business shall be wound up voluntarily.

Rules relating to winding up. Cap. 95:01

40. (1) The Court may make rules-

- (a) under section 336 of the Companies Act, to regulate the winding up of insurance companies;
- (b) determining the manner in which the assets and liabilities of an insurer which is being wound up shall be determined;
- (c) determining the manner in which the interests of holders of life assurance policies and long term insurance policies shall be safe-guarded in case the insurer being wound up carries on life assurance and long term insurance businesses either alone or along with other classes of insurance business;
- (d) determining the manner in which the life assurance business and long term insurance business of the insurer being wound up may be carried on with reduced contracts if the Court is of the view that its

continuation would be more in the interest of the policy holders than winding up;

- (e) determining the manner in which the insurer being wound up may be amalgamated with, or its business transferred to, any other insurer.

(2) The Court shall hear the opinion of the Bank in respect of any scheme contemplated under paragraphs (d) and (e) of subsection (1).

Control over liquidators
Cap. 95:01

41 The power of the Registrar under sections 239 and 240 of the Companies Act shall be exercised by the Bank in relation to liquidation of insurance companies.

Appointment of receivers

42. (1) In every case where the registration of an insurer, insurance broker or a loss adjuster is cancelled pursuant to a provision of this Act, the Bank may, unless the insurer, insurance broker or loss adjuster is a body corporate being wound up by the Court, appoint a receiver to immediately –

- (a) take charge of its assets and to collect and gather in all other assets due to the insurer, insurance broker or loss adjuster; and
- (b) administer the assets as expeditiously as possible for the benefit of their policy holders, clients and creditors.

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(2) The receiver shall, as soon as may be after his or her appointment, apply to the Court for the winding up of the insurer, insurance broker or loss adjuster and for this purpose, the provisions of the Companies Act relating to the winding up of companies by the Court shall apply.

(3) The receiver may, immediately after his or her appointment, freeze the accounts of the insurer, insurance broker or loss adjuster and shall take charge of the management and control of the insurer, insurance broker or loss adjuster.

Continuation of
life assurance
business
of Insurer in
liquidation

43. (1) This section has effect in relation to the winding-up of an insurer, carrying on life assurance business.

(2) The liquidator appointed for the winding-up shall, unless the Court otherwise orders, carry on the life assurance business of the insurer with a view to its being transferred as a going concern to another insurer, whether an existing insurer or an insurer registered for that purpose.

(3) In carrying on the business as specified in subsection (2), the liquidator may agree to the variation of any contracts of insurance in existence when the winding-up order is made but shall not effect new contracts of insurance.

(4) The Court may, if it thinks fit and subject to the conditions (if any) as it may determine, reduce the amount of the contracts made by the insurer in the course of carrying on life assurance business.

(5) The Bank may, at any time appoint, and the Court, on the application of a liquidator, may appoint an independent actuary to investigate the life assurance business of an insurer.

(6) The actuary shall report to the authority by whom he or she was appointed under subsection (5), as the case may require, on the life assurance business made in the course of carrying on that business that may be necessary for its successful continuation.

(7) The Bank or the liquidator may petition the Court in the name or on behalf of the insurer.

Powers as to
production of
books, etc.

44. (1) The power conferred on the Bank or the Commissioner by this Act to require an insurer, insurance broker, a loss adjuster or other person to produce books or other documents shall include the power -

(a) if the books or documents are provided to-

- (i) take copies of them or extracts from them, and
 - (ii) require the insurer, insurance broker, loss adjuster or other person, or any person who is or was at any time employed as an officer, auditor or any officer by the insurer, insurance broker or loss adjuster, to provide an explanation of the books or documents;
- (b) if the books or documents are not produced, to require the person who was required to provide them to state, to the best of his or her knowledge and belief, where they are.

(2) In this section, "books" or "documents" include accounts, deeds, writings, registers, ledgers and documents of all descriptions.

PART VII - INSURANCE AGENTS, BROKERS AND LOSS ADJUSTERS

A - INSURANCE AGENTS

insurance agents to be registered and period of registration

45. (1) No person shall act as or carry on business in The Gambia as an insurance agent, unless he or she is registered as an insurance agent under this Act.

(2) An application for registration as an insurance agent shall be made to the Commissioner in the prescribed form and be accompanied by the prescribed fee and the other documents as may be prescribed, from time to time.

(3) If the Commissioner is satisfied that the applicant has the prescribed qualifications, he or she shall, with the approval of the Bank, register the applicant and issue a licence to the applicant in the prescribed form.

(4) The registration of an insurance agent under this section shall be for a period of one year and shall be renewed every year on an application being made in that behalf to the Commissioner within two months from the date of expiry.

(5) The Commissioner may, with the approval of the Bank, register or refuse, on grounds stated in writing, to register an applicant under this section, and the provisions of section 9 shall, with the appropriate modifications, apply to the refusal of the Bank to approve the registration of the insurance agent.

Duties of
insurers and
agents inter se.

46. (1) An insurance agent shall act only as an insurance agent for an insurer named in his or her licence and shall operate under the terms and conditions of that insurer as approved by the Bank.

(2) An insurer who employs the services of an insurance agent and every person who acts for an insurer in that behalf shall maintain a register showing the name and address of every insurance agent and the date on which his or her services were employed and, where applicable, terminated.

(3) Where an insurance business is transacted through an insurance agent, the agent shall immediately pay to the insurer any premium collected by him or her.

Insurance
agents to be
agents
of insurers.

47. (1) Notwithstanding anything to the contrary contained in any contract of insurance, where an agent completes an insurance proposal form or the similar document on behalf of any person, he or she shall be deemed to be the agent of the insurer and not the agent of the person on whose behalf he or she completes the proposal form or a similar document.

(2) Any knowledge acquired by an insurance agent in the course of completing an insurance proposal form or the similar document under subsection (1) shall be deemed to be knowledge acquired by the insurer.

Penalties
for non-
compliance
by
insurance
agents and
insurers

(3) Nothing contained in any contract of insurance shall absolve the insurer from liability in respect of any knowledge obtained by the insurance agent under subsection (2).

48. (1) A person who contravenes section 45 (1) commits an offence and is liable on conviction to a fine of ten thousand dalasis or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(2) The Court may in addition to the penalty specified in subsection (1) make an order requiring the person to refund any sums collected by him or her, while so carrying on the business of an insurance agent, to the rightful owners or to other persons entitled to the sums collected.

(3) An insurance agent who contravenes subsection 46 (3) -

(a) shall pay to the insurer the premium collected and to the Bank , for the Special Insurance Supervision Fund, a penalty of ten *per centum* of the premium collected;

(b) may have his or her registration cancelled, and he or she may also be disqualified from being registered again as an insurance agent.

(4) An insurer who knowingly or recklessly transacts any insurance business with a person who carries on business as an insurance agent without that person -

(a) having been licensed as an insurance agent under this Act; or

(b) having his or her licence renewed under this Act; or

- (c) producing an official receipt indicating that the prescribed fees for renewal of the licence has been paid,

commits an offence and is liable on conviction to a fine of fifteen thousand dalasis and the Court may make such additional order as to the refund of the sums involved as specified under subsection (2).

B - INSURANCE BROKERS

Insurance
Brokers to be
registered

49. (1) No person shall act as or carry on business as an insurance broker unless he or she is registered under this Act.

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

(3) If the Commissioner is satisfied that the applicant -

- (a) has the prescribed qualifications;
- (b) is a limited liability company duly registered under the Companies Act; and
- (c) has a paid-up capital of at least one hundred thousand dalasis, which shall be maintained at all times and of which a security deposit of twenty-five thousand dalasis shall be deposited with the Bank in Government securities,

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he or she may, with the approval of the Bank, register the applicant as an insurance broker and issue a licence to the applicant in the prescribed form.

(4) The Secretary of State may by regulations increase the minimum paid-up capital or the security deposit specified in of subsection (3)(c).

(5) No person shall be a chief executive in a brokerage company unless-

- (a) he or she holds a certificate in insurance from a recognised educational institution; or
- (b) in the case of an existing company, he or she has, within three years of the commencement of this Act, successfully completed a course on insurance brokerage conducted by a recognised insurance institution and he or she has in addition satisfied all the requirements of that institution.

Requirement as to professional indemnity cover, staff, etc.

50. An insurance broker shall -

- (a) maintain a professional indemnity cover of not less than five hundred thousand dalasis or fifty *per centum* of his or her annual brokerage for the preceding year, whichever ever is the greater;
- (b) have as a member of its senior management staff at least one person who has professional qualification in insurance or at least five years experience at senior management level with an insurer or insurance broker;
- (c) not hold directly or indirectly financial interest in-
 - (i) excess of ten *per centum* in an insurance or reinsurance company, or
 - (ii) a loss adjustment company in The Gambia; and
- (d) keep a register of business transacted by him or her on an annual basis.

Suspension of registration

51. (1) Where an insurance broker fails to comply with any of the provisions of this Act, the Bank may suspend it for such period as the Bank may deem fit.

(2) If an insurance broker continually fails to comply under subsection (1), the Bank may give to the broker notice of its intention to cancel its registration under section 10.

Insurance broker to establish trust account

52. An insurance broker shall establish and maintain at all times a trust account into which all monies, premiums, claims, and recoveries from and on behalf of clients, insurers and reinsurers shall be paid.

Payment of premium to insurer

53. (1) Where an insurance business is transacted through an insurance broker, the insurance broker shall, not later than thirty days of collecting the premium, pay to the insurer any premium collected by it.

(2) An external auditor who audits the accounts of an insurance broker shall, at the conclusion of each audit, issue a certificate on oath that all premium collected by the insurance broker have been paid to the insurer with whom it transacted business during the year.

(3) An insurance broker who fails to pay an insurer any premium collected under subsection (1)-

(a) shall pay to the insurer the premium collected and to the Bank , for the Special Insurance Supervision Fund, a penalty of ten *per centum* of the premium collected;

(b) may have its registration cancelled, and it may also be disqualified from being registered again as an insurance broker.

(4) False declaration by an insurance broker of its income or remittance of premium collected shall constitute a ground for the cancellation of the registration or refusal to renew the registration of the insurance broker.

Records,
transactions,
etc.

54. (1) An insurance broker shall keep records of all insurance business handled by it and, for the purposes of this section, separate records shall be kept by the insurance broker with respect to -

- (a) insurance business entered into with insurers registered under or pursuant to this Act; and
- (b) subject to subsection (3), insurance business entered into with persons outside The Gambia.

(2) An insurance broker shall -

- (a) keep accounting records which shall show and explain the business transacted by the insurance broker and disclose its true financial position; and
- (b) ensure that the accounting records kept under paragraph (a) give a true and fair view of its business at the accounting date.

(3) An insurance broker shall submit to the Bank an audited statement of accounts, comprising of-

- (a) the profit and loss accounts; and
- (b) the balance sheet,

in the prescribed form and, if there is no the form, in the recognised accounting format, not later than three months after the end of the financial year.

(4) The records kept under this section shall be subject to inspection by the Bank or any person authorized by the Bank in that behalf, for the purpose of ascertaining the conduct of the business of the insurance broker.

Reinsurance
brokerage

55. (1) No insurance broker shall undertake reinsurance business without the approval of the Bank.

(2) The Bank may grant an approval to an insurance broker for the purposes of subsection (1) if it is satisfied that –

- (a) the insurance broker has the required expertise to conduct the class of reinsurance business; and
- (b) at least one employee of the insurance broker has at least five years working experience in the middle management cadre of a reinsurer or reinsurance broker.

(3) An insurance broker which contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine of fifteen thousand dalasis and in addition-

- (a) the reinsurance business transacted shall be null and void; and
- (b) the Court may make an order requiring the insurance broker to refund any sums collected by it, while so carrying on the reinsurance business, to the rightful owners or to other persons entitled to the sums collected.

Contracts
with foreign
insurers

56. (1) An insurance broker who enters into a contract of insurance with a foreign insurer shall -

- (a) serve the Bank notice of the contract within thirty days of its being signed; and
- (b) include any commission received on the transaction as part of the gross commission received by the insurance broker during the relevant year.

(2) An insurance broker which contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine of thirty thousand dalasis and a continuous contravention

shall constitute a ground for the cancellation of the registration of the insurance broker.

Insurance broker to submit particulars to the Bank

57. An insurance broker shall prepare in the prescribed form and, if there is no such form, in the recognised accounting format and furnish to the Bank within three months after the end of each financial year –

- (a) a report containing the particulars prescribed relating to all insurance transactions undertaken by the insurance broker during the financial year;
- (b) a certified true copy of its audited financial statement and annual report; and
- (c) any other information that the Bank may request.

C - LOSS ADJUSTERS

Loss adjusters to be registered

58. (1) No person shall act as or carry on business as a loss adjuster unless he or she is registered under this Act.

(2) An application for registration as a loss adjuster shall be made to the Commissioner in the prescribed form and accompanied by the prescribed fee and such other documents as may be prescribed, from time to time.

(3) If the Commissioner is satisfied that the applicant -

- (a) has the prescribed qualifications;
- (b) is a limited liability company duly registered under the Companies Act; and
- (c) has a paid-up capital of at least five hundred thousand dalasis which shall be maintained at all times and of which a security deposit of one hundred and twenty-five thousand dalasis shall be

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deposited with the Bank in Government securities,

he or she shall, with the approval of the Bank, register the applicant as a loss adjuster and issue a licence to the applicant in the prescribed form.

(4) The Secretary of State may by regulations increase the minimum paid-up capital or the security deposit specified in subsection (3)(c).

(5) No person shall be a chief executive in a loss adjusting company unless -

(a) he or she holds a certificate in insurance from a recognised educational institution; or

(b) in the case of an existing company, he or she has, within three years of the commencement of this Act, successfully completed a course on loss adjusting, conducted by a recognised insurance institution, and he or she has, in addition, satisfied all the requirements of that institution.

(6) Where the company deals in oil and gas insurance, credit insurance bonds and surety ship, contractors' all risks and engineering risk insurance, marine, aviation insurance and reinsurance, the company shall satisfy the Bank that it possesses the relevant expertise.

(7) The registration of a loss adjuster shall be valid for one year and shall, subject to the loss adjuster satisfying the prescribed requirements, be renewable every year on payment of the prescribed fee and shall lapse at the end of two months after the expiry date.

(8) No loss adjusting company shall be owned by an insurer, a re-insurer or an insurance broker or any other company whose interest may prejudice the professional standard or conduct of the loss

adjusting company.

Records to be kept by loss adjusters

59. A loss adjuster shall keep proper records of all its business which shall be subject to inspection by the Bank or any person authorized by the Bank in that behalf, for the purpose of ascertaining the conduct of the business.

Loss adjusters to submit particulars to the Bank.

60. A loss adjuster shall prepare in the prescribed form and if there is no such form, in the recognised accounting format and furnish to the Bank within three months after the end of each financial year:

- (a) a report containing the prescribed particulars relating to all insurance transactions undertaken by it during the financial year;
- (b) a certified true copy of its audited financial statement and annual report; and
- (c) any other information that the Bank may request.

D - MISCELLANEOUS

Cancellation of registration of insurance agents, insurance brokers and loss adjusters

61. (1) If the Bank is satisfied that a registered insurance agent, insurance broker or loss adjuster -

- (a) has knowingly or recklessly contravened any of the provisions of this Act;
- (b) has, for the purpose of registration, made a statement which is false in a material particular;
- (c) has been found guilty by a Court of competent jurisdiction of fraudulent or dishonest practices (including misappropriation of clients' moneys); or
- (d) has in any manner displayed any act of professional misconduct,

the Bank shall give notice in writing of its intention to

cancel the registration or to refuse its renewal and the provisions of section 10, with appropriate modifications, shall apply to the notice of intention to cancel the registration or to refuse its renewal as if it was a notice of intention to cancel the registration of an insurer.

(2) The Bank shall cancel the registration of a registered insurance agent, insurance broker or loss adjuster if that agent, broker or loss adjuster requests in writing the cancellation of the registration.

(3) A notice of the cancellation of the registration of an insurance agent, insurance broker or loss adjuster shall be published in the *Gazette*.

(4) Every cancellation of a registration under this section shall take effect on the date on which notice of the cancellation is published in the *Gazette*.

(5) When a registration is cancelled, the insurance agent, insurance broker or loss adjuster shall not, after the cancellation has taken effect, engage in any new insurance transaction, but all rights and liabilities in respect of insurance transactions carried out by it before the cancellation takes effect shall continue as if the cancellation had not taken place.

(6) An insurance agent, insurance broker or loss adjuster which engages in any new business contrary to the provisions of subsection (1) commits an offence and is liable on conviction, in the case of -

- (a) an individual, to a fine of two hundred and fifty thousand dalasis or imprisonment for a term not exceeding five years, to both the fine and imprisonment; and
- (b) a body corporate, to a fine of five hundred thousand dalasis.

(7) Where a person who commits an offence under subsection (6) is a body corporate, every director, or any manager, secretary or other officer

of the body corporate is guilty of the offence if it is proved that the offence was committed with the consent or connivance, or was attributable to the negligence, of the director, manager, secretary or person, and is liable on conviction to the penalty specified in subsection (6)(a).

Regulation of commission of agents, brokers and loss adjusters.

62. (1) The Bank may, with the approval of the Secretary of State, by notice in the *Gazette* regulate the commission, brokerage or remuneration payable to persons registered under this Part.

(2) Regulations made under this section may make different provisions in relation to different cases or circumstances.

PART VIII - PREMIUMS AND COMMISSIONS

Receipt of premium valid to contract of insurance

63. (1) The receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk, unless the premium is paid in advance.

(2) An insurance premium collected by an insurance broker in respect of an insurance business transacted through the insurance broker shall be deemed to be premium paid to the insurer involved in the transaction.

Restriction on general increases in premium on motor insurance business etc.

64. (1) No insurer shall either by itself or as a member of an association of insurers make a general increase in the rates of premiums charged or to be charged with respect to any class of motor insurance business or any division thereof except with the prior approval of the Bank.

(2) An insurer who makes a general increase otherwise than in compliance with subsection (1) commits an offence and is liable on conviction to a fine of ten times the amount of the premiums charged and received by the insurer.

(3) An insurer who increases rates of premiums otherwise than in compliance with subsection (1)

commits an offence and is liable on conviction to either of the following additional penalties, that is –

- (a) a suspension of its operations in respect of new insurance business for a period of not less than six months or more than three years; or
- (b) cancellation of its certificate of registration,

and in addition to the penalty in paragraph (a) or (b), the insurer shall refund the excess payment to every person making the excess payment or to other persons entitled to the payment.

(4) The penalties referred to in subsection (3) shall be imposed by the Bank and an insurer who feels aggrieved may appeal to the Secretary of State in accordance with the provisions of section 9 and the decision of the Secretary of State shall be final.

(5) The provisions of this section shall not apply to non-tariff insurance business where premiums are charged according to the risk covered by the insurance policy.

(6) The Bank may, from time to time, appoint an ad hoc committee to deal with matters relating to tariff insurance business in The Gambia.

PART IX - FAILING AND FAILED INSURERS, ETC.

Failing
insurance
institution

65. (1) Where -

- (a) an insurance institution informs the Bank that –
 - (i) it is likely to become unable to meet its obligations under this Act, or
 - (ii) it is about to suspend payment of claims to any extent, or

(iii) it is insolvent; or

(b) after an examination, inspection, investigation or intervention under this Act or otherwise howsoever, the Bank is satisfied that the insurance institution -

(i) is in an unsound condition so that its method of transacting its business is such as to render its continued operation hazardous to its policyholders and potential clients,

(ii) has failed to maintain the statutory reserve,

(iii) has failed to maintain adequate management control, or

(iv) has failed generally to comply with the provisions of this Act or the regulations made under it,

the Bank may by order in writing exercise any one or more of the powers specified in subsection (2).

(2) The Bank may by order in writing under subsection (1) -

(a) prohibit the insurance institution from transacting any further business for such period as may be set out in the order, and make the prohibition subject to such conditions in relation to such explanations as may be set out in the order, and from time to time, by further order similarly made, extend that period;

(b) require the insurance institution to take any step or any action or to do or not do any act or thing whatsoever, in relation to the insurance institution or its business or its directors, partners or officers which the Bank considers necessary and which is set out in the

order, within such time as may be stipulated therein;

- (c) remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the insurance institution, notwithstanding anything in any written law or any limitations contained in the Memorandum and Articles of Association or other agreement of the insurance institution;
- (d) remove from office, with effect from such date as may be set out in the order, any director of the insurance institution;
- (e) appoint any person or persons as a director or directors, of the insurance institution and provide in the order for the person or persons so appointed to be paid by the insurance institution such remuneration as may be set out in the order; or
- (f) appoint any person to advise the insurance institution in relation to the proper conduct of its business and provide in the order for the person so appointed to be paid by the insurance institution such remuneration as may be set out in the order.

Control of failing insurance institution

66. (1) If, after exercising any of the powers specified in section 65 as may be appropriate in the opinion of the Bank, the state of affairs of the insurance institution does not improve significantly, the Bank may, with the approval of the Secretary of State -

- (a) assume control of the whole property and affairs of the insurance institution, and carry on the whole of its business and affairs; or

- (b) assume control of the part of its property, business and affairs as the Bank may consider necessary; or
- (c) appoint persons to exercise on behalf of the Bank the powers conferred under paragraph (a) or (b).

(2) Where the Bank or an appointed person has assumed control of the business of an insurance institution in pursuance of subsection (1), the insurance institution shall submit its business to the control of the Bank and shall provide the Bank or the appointed person with the facilities as the Bank or the appointed person may require to carry on the business of the insurance institution and notwithstanding the provisions of this section, all insurance institutions shall cooperate with the Bank at all times.

(3) An insurance institution which fails to comply with the provisions of subsection (2) with any requirement of the Bank or any appointed person under subsection (1), commits an offence and is liable on conviction to a fine of fifty thousand dalasis and in addition, to a fine not exceeding five hundred dalasis for each day during which the default continues.

(4) The insurance institution may, however, within thirty days from the date in which the Bank took over the operation of the insurance institution, lodge an appeal to the Secretary of State against the action of the Bank.

Management
of failing
insurance
institution

67. (1) Where the Bank or an appointed person has assumed control of the business of the insurance institution in pursuance of section 66, the Bank or the appointed person shall remain in control and continue to carry on the business of the insurance institution in the name and on behalf of the insurance institution until such time as -

- (a) the Bank is satisfied that adequate provision has been made for the settlement of all outstanding liabilities; and

(b) in the opinion of the Bank, it is no longer necessary to remain in control of the business of the insurance institution.

(2) The cost and expenses of the Bank or the remuneration of an appointed person, as the case may be, shall be payable from the funds and properties of the insurance institution as a first charge on the funds of the insurance institution, policy holders, creditors or the public generally.

(3) An order made in consequence of a representation may either be confirmed, modified, altered, varied or replaced by the Secretary of State.

Application to the High Court for winding-up

68. (1) Where the Bank makes an order revoking the registration of an insurance institution and requiring the business of the insurance institution to be wound up, the insurance institution shall within fourteen days of the date of the order, apply to the Court for an order winding-up the affairs of the insurance institution and the Court shall hear the application in priority to all other matters.

(2) If the insurance institution fails to apply to the Court within the period specified in subsection (1), the Bank may apply to the Court for the winding-up of the insurance institution.

Merger of failing insurance institution

69. The Bank shall have the power, notwithstanding the provisions of sections 66, 67 or 6, to direct that -

(a) a failing insurance institution shall merge or consolidate with any other insurance institution, subject to such conditions as it may deem fit to impose;

(b) an insurance institution merged or consolidated with a failing insurance institution shall settle the financial liabilities of the failing insurance institution;

- (c) any asset of the failing insurance institution should be transferred to and be vested in the insurance institution concerned with the merger or consolidation.

PART X - SUPPLEMENTARY AND MISCELLANEOUS PROVISIONS

Confidentiality

70. (1) The Commissioner and the Bank and any of its officers or staff shall not, unless lawfully required to do so by a court or any law, reveal or disclose to any person any information obtained in connection with their official duties under this Act, including -

- (a) non-public information;
- (b) information obtained in the course of on-site inspections; and
- (c) information obtained from insurance supervisors of other countries.

(2) The Bank may, in exercise of its supervisory role, at its discretion and on obtaining assurance of confidential treatment -

- (a) give to and receive, from an insurance supervisor of another country, confidential information; and
- (b) enter into agreements with insurance supervisors of other countries providing for the exchange of confidential information.

(3) Any confidential information given to or received by the Bank under subsection (2) shall be subject to the same requirements concerning confidentiality as govern information obtained directly by the Bank from other sources

Protection from liability

71. The Commissioner and the officers and staff of the Bank shall not be liable in respect of any civil matter or thing done or omitted to be done by them

in good faith in connection with their official duties under this Act.

Duty to disclose material facts

72. (1) A party to a contract of insurance shall not be under an obligation to disclose any fact about which no question is asked by the insurer or its agent.

(2) Notwithstanding subsection (1), where a party to a contract of insurance with intent to avoid the rejection of the risk by the insurer or the payment of higher premiums, conceals from or fails to disclose to the other party to the contract any fact which he or she knows or believes or has reason to believe is material to the contract, the contract may be rescinded by that other party.

Test of materiality

73. For the purpose of a contract of insurance, a fact shall be deemed to be material if in the circumstances it would be considered material by a reasonable person.

Effect of misstatement

74. Subject to section 72 and notwithstanding anything contained in any contract of insurance, no defence to a claim shall be maintainable by reason of any misstatement of fact by the insured, where-

(a) the insured can prove that the statement was true to the best of his or her knowledge or belief; or

(b) the fact misstated is not material to the risk.

Special Insurance Supervision Fund

75. (1) Every registered insurer and insurance intermediary shall pay to the Bank an annual contribution in such sum as shall be determined by the Bank in consultation with the Insurance Association of The Gambia and other insurance intermediaries.

(2) All sums received by the Bank under subsection (1) shall be paid into a fund to be known as the Special Insurance Supervision Fund.

Principal office, principal officer, new offices and relocation of registered insurers.

76. (1) An insurer shall maintain a principal office in The Gambia, appoint a principal officer in The Gambia and notify the Bank in writing of the address of the principal office and the name of the principal officer.

(2) An insurer shall, within twenty one days of a change of the address of its principal office, or the appointment of a new Principal Officer, give notice of the change or appointment to the Bank in writing.

(3) No insurer shall open a new place of business, change the location of, or close an existing place of business in The Gambia, without the approval of the Bank.

Service of process upon insurers

77. A notice issued under a provision of this Act and a process in legal proceedings against an insurer may be served on that insurer by leaving it at the principal office of the insurer.

Service of notices upon policy holders

78. (1) A notice which is by this Act required to be sent to a policy holder may be addressed and sent to the person to whom notices in respect of that policy are usually sent, and a notice so addressed and sent shall be deemed to be notice to the holder of the policy.

(2) Where a person claiming to be interested in a policy has given to the insurer notice in writing of his or her interest, a notice which is by this Act required to be sent to policy holders shall also be sent to that person at the address specified by him or her in his or her notice.

Inspection of balance sheet by policy holders

79 (1) A policy holder may inspect a copy of the balance sheet of an insurer at any time during the business hours of the principal office of the insurer in The Gambia.

(2) No fee shall be paid to the insurer for an inspection made by a policy holder of a copy of the balance sheet of the insurer under this section.

(3) On a request made by a policy holder for a copy of the balance sheet, and on payment by him or her to the insurer of the prescribed fee, the insurer shall supply a copy of the balance sheet to the policy holder.

Publications referring to authorised capital etc. of registered insurers

80. An insurer shall not publish or issue a document which contains a statement of its -

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

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

Advertisement

81. No person shall issue an advertisement which directly or indirectly has the capacity and tendency to mislead or deceive prospective policy holders with respect to the assets, corporate structure, financial standing, age or relative position in the insurance business of an insurer.

Fees

82. The Bank may charge fees in connection with the registration of insurers, insurance agents, insurance brokers and loss adjusters and for any other exercise of its functions under this Act as may be prescribed.

Extension of time to comply with provisions of this Act

83. (1) Where an insurer, insurance agent, insurance broker or a loss adjuster is required or entitled to do or refrain from doing anything within a specified period of time, the Bank may, on an application in writing by the insurer, insurance agent, insurance broker or loss adjuster, extend the time for such longer period, not exceeding three months at a time, as it may think fit.

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

Exemption of insurers

84. The Bank, in consultation with the Secretary of State in writing, may in the public interest exempt, for a specified period, exempt an insurer or a class of insurance business from some of the provisions of this Act.

Publication of summary of returns and preparation of annual report by the Bank

85 (1) The Bank may publish every year, in such manner as it may think fit, a summary of the accounts, balance sheets, statements, abstracts and other returns which have been furnished to it in pursuance of the provisions of this Act during the year preceding the year of publication, and may append to the summary any notes and correspondence.

(2) The Bank shall prepare a general annual report of matters within this Act.

Penalty for false statement

86. A person who, in any return, report, abstract, statement, certificate, accounts, balance sheet or other document required by or for the purposes of any of the provisions of this Act, makes a statement which is false in any material particular, commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

Examination of insurance institutions

87. (1) The Bank shall cause an examination to be made of each insurance institution whenever in its judgement the examination is necessary or expedient in order to determine that the institution is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of an insurance institution and its compliance with this Act, the Bank may, at any time, cause an examination to be made of any of its associates or affiliates in The Gambia to the same extent that an examination may be made of the financial institution.

Duty of insurance institutions to produce documents and supply information for examination

88. (1) An insurance institution shall -

(a) produce and cause its affiliates and associates to produce, for the inspection of any examiner appointed by the Bank at such times as the examiner specifies, all books, minutes, internal operations manuals, accounts, cash, securities, documents, and vouchers relating to its business in The Gambia; and

(b) supply all information concerning its business in The Gambia as may reasonably be required by the examiner within the time as the examiner specifies.

(2) If, without reasonable excuse, the proof of which shall be on it, an insurance institution or an affiliate or associate, fails to comply with the requirements of subsection (1), it commits an offence and is liable on conviction to a fine of not than twenty thousand dalasis and if the default continues, to a further fine of one thousand dalasis every day during which the default continues.

(3) If any information supplied or item produced is false in any material particular, the person responsible commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand dalasis or to a term of imprisonment not exceeding six months.

Complaints Bureau

89. (1) The Bank shall establish a Bureau to which complaints against an insurance institution may be submitted by members of the public.

(2) The functions, procedure and other matters relating to the Bureau shall be determined by regulations made under this Act.

Penalty for non-compliance with the Act

90. A person who contravenes a provision of this Act or rules or regulations made under it commits an offence and is liable on summary conviction in a case for which no specific penalty is otherwise provided in this Act, if the offender is –

(a) an individual, to a fine not exceeding one thousand dalasis or to imprisonment for a term not exceeding one year, or to both the fine and imprisonment; and

(b) a body corporate, to a fine not exceeding five thousand dalasis.

Offences by
bodies corporate

91. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer or servant of the body corporate, he or she, as well as the body corporate shall be guilty of that offence and be liable, except as otherwise provided in this Act, to a fine of not less than twenty thousand dalasis or to imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

Action of
the Bank
to be reviewed

92. (1) A person aggrieved by any of the following actions or orders of the Bank -

- (a) an order refusing to register an insurer;
- (b) an order cancelling the registration of an insurer;
- (c) a decision refusing the renewal of the registration of an insurer;
- (d) a decision refusing to grant an application for registration to an insurance agent, insurance broker or loss adjuster;
- (e) an order cancelling the registration of an insurance agent, insurance broker or loss adjuster,

may appeal to the Secretary of State against the order or decision, as the case may be, within thirty days of the date of the order or decision, giving the grounds for the appeal.

(2) The Secretary of State, after giving an opportunity to the Bank to contest the grounds of appeal under subsection (1), may decide whether to allow or dismiss the appeal.

Power to make regulations and issue guidelines

93.(1) The Secretary of State may make regulations, including the provision of penalties for a breach of the regulations –

- (a) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed;
- (b) in relation to any other matter or thing authorized or required by this Act;
- (c) requiring that a specified part of the insurance business of any registered insurer shall be reinsured ("statutory cession") with a specified registered insurer;
- (d) requiring that insurance effected by a specified person or persons shall be placed with a specified insurer;
- (e) requiring that insurance of a specified description shall not be placed outside The Gambia except through an insurer registered under this Act;
- (f) the carrying out of Government policies relating to insurance business;
- (g) generally, as the Bank thinks fit for the purpose of giving effect to this Act.

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

(3) The Bank may prescribe the guidelines, interpretation bulletins or other regulatory statements as the Bank may consider necessary or desirable for the administration of this Act and the regulations

may prescribe penalties for the violation of the guidelines, interpretation bulletins or other regulatory statements by persons who have received written notice of them from the Bank.

94. This Act applies to every insurer, insurance agent, insurance broker and loss adjuster and every class of insurance business.

95. (1) The Insurance Act, 1974 is hereby repealed.

(2) Notwithstanding subsection (1) of this section -

(a) all regulations, orders, rules, notices or directives made under the Insurance Act, and in force at the time of the coming into operation of this Act shall be deemed to have been made or given under this Act and shall continue in force until other provisions are made by virtue of this Act; and

(b) any proceedings commenced before the commencement of this Act shall be proceeded with as if this Act had not been passed.

**FAMARA L. JATTA
SECRETARY OF STATE FOR FINANCE AND
ECONOMIC AFFAIRS**

