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## Insurance Act, 2005

Act 7 of 2005

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# Insurance Act, 2005

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## Insurance Act, 2005

### Act 7 of 2005

Assented to on 26 November 2005

Commenced

*[This is the version of this document at 1 December 1998.]*

**An Act to make provision for the regulation and supervision of insurance companies and their intermediaries and for matters incidental thereto.**

## Part I – Preliminary

### 1. Short title and commencement

This Act may be cited as the Insurance Act, 2005, and shall come into force on a date to be published by the Minister in the *Gazette*.

### 2. Interpretation

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

“**actuary**” means any fellow of a recognized institute, faculty, society or chapter of actuaries approved by the Minister;

“**Adjudicator**” means the Insurance Adjudicator appointed in terms of section 92 of this Act;

“**annuity**” means a series of payments payable either monthly, quarterly, bi-annually or annually;

“**auditor**” means an individual who is registered as an auditor in terms of the Accountants Act, 1985;

“**Board**” means the Insurance and Retirement Funds Board established in terms of section 29 of this Act;

“**Chairman**” in the context of any association of persons, means an individual who is at the head of the Board of directors or governing body of the association;

“**citizen**” means “citizen of Swaziland as defined in the Citizenship Act, 1992;

“**class**” in the context of insurance business, refers to those types of insurance business included in the definition of “long term insurance business” or “short term insurance business” in this Act;

“**Companies Act**” means the Companies Act, 1912;

“**Company**” means a person incorporated and registered in accordance with the provisions of the Companies Act;

“**complainant**” means—

(a) a person who is, or who claims to be—

(i) the proposer of a policy;

(ii) a beneficiary or former beneficiary under a policy; or

(iii) a life assured under a policy; or

(b) a person who has financial interest in a complaint;

and includes a group of persons referred to in (a) (i), (ii) and (iii) or (b);

**“complaint”** means a complaint by a complainant relating to the interpretation and application of the terms and conditions of a policy or the conduct of any person in relation to insurance business and alleging that—

- (a) a decision of any person purportedly taken in terms of the policy terms and conditions was in excess of the powers of that insurer or person, or an improper exercise of its or his powers;
- (b) the interest of the complainant has or will be prejudiced as a result of the decision, whether by act or omission;
- (c) a dispute of fact or law pertaining to insurance business has arisen between any person and the complainant; or
- (d) the person has not fulfilled their duties in terms of the policy terms and conditions,

but does not include a complaint which does not relate to any of the above specific list of complaints;

**“Corporation”** means the Swaziland Royal Insurance Corporation established by the Kings Order-In-Council, No. 32 of 1973 or its successor company as registered in terms of section 4 of this Act;

**“Court”** means the High Court of Swaziland;

**“death event”** means the event of the life of a person having ended;

**“director”** means a person who is a member of the Board of directors of a company or a member of the governing body of an organisation that is not a company;

**“disability event”** means the event of the functional ability of the mind or the body of a person becoming impaired;

**“domestic insurer”** means an insurer registered in terms of this Act;

**“financial year”** in relation to any person means the 12 months, or such other period as approved by the Registrar, preceding a set day and month in each year as informed to and approved by the Registrar, on which that person’s financial statements are drawn;

**“foreign insurer”** means an insurer other than a domestic insurer;

**“friendly society”** means an association of individuals with no share capital established for the purpose of rendering aid to its members or to their dependants and which does not at any time after the commencement of this Act—

- (a) employ or remunerate any person for the purpose of inducing other persons to become members of such association or for collecting contributions or subscriptions from members;
- (b) pay a lump sum benefit including bonuses exceeding E10 000; or
- (c) pay an annuity inclusive of bonuses exceeding E1 200 a year;

**“health event”** means an event relating to the health of the mind or body of a person;

**“insurance agent”** means a person who is neither an insurance broker, nor an employee of an insurer, underwriter or insurance broker and who undertakes the selling or servicing of any kind of insurance business on behalf of such an insurance company, underwriter or insurance broker;

**“insurance and retirement benefit trust fund”** means the fund referred to in section 43 of this Act;

**“insurance broker”** means a person, other than an employee of an insurer, who is not an insurance agent, and who, on behalf of any other person, negotiates insurance business including reinsurance as his principal business;



**“insurance business”** means conducting any transaction involving any class of business defined in this Act and excludes—

- (a) the activities of a friendly society;
- (b) the activities of a medical scheme;
- (c) unemployment insurance business;
- (d) the activities of agricultural co-operatives;
- (e) the activities of a deposit taking institution;
- (f) the activities of a retirement annuity fund; and
- (g) any long term insurance policy exempted by this Act;

**“insurer”** means a person registered under [section 4](#) or [section 6](#) of this Act;

**“invested in the Kingdom of Swaziland”** means an investment that is not reinvested in full or in part, outside of the borders of the Kingdom of Swaziland;

**“life annuity”** means an annuity payable for the life time of a specified person;

**“Minister”** means the Minister responsible for Finance;

**“parent company”** means in relation to a person another person who has a controlling interest in that person;

**“policy”** means a written contract for the purpose of effecting any class of insurance as defined in this Act;

**“policy benefit”** means a lump sum or an annuity payable on a certain contingency;

**“policy holder”** means the contracting party entitled to be provided with the benefits stipulated in the policy contract;

**“premium”** means a lump sum payment, or a maximum of 12 instalments in lieu of that lump sum payment, or a periodical monthly payment intended to be paid for a specified period or the lifetime of a particular person in exchange for the undertaking to be paid a policy benefit;

**“proportional reinsurance”** means the reinsurance of a part of a liability where premiums are shared in the same proportion as losses between the reinsurer and the insured;

**“public company”** means a public company in terms of the Companies Act;

**“Registrar”** means the Registrar of Insurance and Retirement Funds referred to in section 20 of this Act;

**“Regulation”** means any Regulation made under section 118 of this Act;

**“reinsurance”** means insurance by a reinsurer of a risk under a policy issued by an insurer;

**“reinsurer”** means a person whose sole business is the insurance of risks under a policy issued by an insurer;

**“risk”** means a possibility that a particular event may occur during the period;

**“State”** means the Government of the Kingdom of Swaziland;

**“subsidiary company”** means an associated organisation in which a person has a controlling interest;

**“this Act”** includes the Regulations and any forms and circulars emanating from the Regulations;

**“valuator”** means an actuary who has been entrusted with carrying out actuarial investigations of an insurer;

- (2) In this Act, in relation to Long term insurers, and unless the context otherwise requires—

**“assistance policy”** means a life policy whereby the insurer undertakes in return for a premium to provide a lump sum payment not exceeding in total an amount prescribed by the Minister by Regulation in respect of all policies of that class in the name of the insured, underwritten by the insurer on the death of the insured person;

**“disability policy”** means a contract whereby an insurer, in return for a premium, undertakes to provide the policyholder with specified benefits on the occurrence of a disability event;

**“Exempt Policy”** means any long term insurance policy contracted to prior to this Act and any long term insurance policy for which an exemption certificate has been issued in terms of this Act;

**“insured”** means a person to whose life or functional ability a policy relates;

**“life business”** means the business whereby, in return for a premium or promise of a premium, an insurer undertakes to—

- (a) pay a specified lump sum benefit on the death of a particular person;
- (b) pay an annuity either for a specified limited period or for the lifetime of a particular person; or
- (c) pay a lump sum benefit if a particular person survives for a certain period or up to a particular age,

and shall exclude the business of a retirement annuity fund;

**“long term insurance business”** means any life business and shall include assistance policies;

**“long term insurer”** means any person who carries on long term insurance business;

**“retirement annuity fund”** means any fund—

- (a) that is established solely for the purpose of providing annuities and lump sum benefits to its members or their dependants;
- (b) that has not more than one-third of the actuarially determined capital value of the annuity may be payable as a cash lump sum benefit to the member;
- (c) wherein no annuity shall become payable to a member unless he has reached the age of 55 years;
- (d) wherein if a member dies before becoming entitled to an annuity and he does not leave any dependants or nominees, the benefit payable to his estate shall not exceed the amounts contributed by him plus interest;
- (e) wherein if a member dies and leaves dependants or nominees the benefits payable shall be an annuity payable for the duration of the life of the dependant:

Provided that, in the case of dependent children, the annuity shall be payable until the age of 21 years, and up to the age of 25 years if the dependant is still at school;

- (f) wherein the benefit payable on discontinuance of membership shall be an annuity provided that if the member has not attained the age 55 years, the annuity will commence when the member reaches age 55 years;
- (g) for which a copy of the rules of the scheme has to be submitted to and approved by the Registrar of Retirement Funds;
- (h) wherein, on the winding up of the fund, the member’s interest must be used to purchase an annuity from another insurer or the member’s interest must be transferred to another retirement annuity fund for the member’s benefit; and

- (i) wherein any changes to the rules must be notified to and approved by the Registrar of Retirement Funds.
- (3) In this Act, in relation to short term insurers, and unless the context otherwise requires—
  - “**accident and health policy**” means a contract in terms of which, in return for a premium, a person undertakes to provide policy benefits if a—
    - (a) disability event;
    - (b) health event; or
    - (c) death event,

contemplated in the contract as a risk occurs, provided that the term of the contract together with any renewal or extensions of the contract shall not exceed 12 months in aggregate;

“**engineering policy**” means a contract whereby an insurer, in return for a premium, promises to pay a policy benefit on the occurrence of an event specified as a risk in relation to—

- (a) the possession, use or ownership of machinery or other equipment other than a motor vehicle in the carrying on of a business;
- (b) the construction of any structure or other works;
- (c) the installation of machinery or equipment,

and shall include a reinsurance policy in respect of such a policy;

“**guarantee policy**” means the business whereby an insurer undertakes, in return for a premium, to assume responsibility for payment of the debts of any person or to make good any obligations of that person in the event of the failure of that person to pay his debts or make good his obligations;

“**liability policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk relating to the incurring of a liability occurs;

“**miscellaneous policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk relating to any matter not otherwise defined in this Act occurs;

“**motor policy**” means the business whereby an insurer undertakes, in return for a premium to provide policy benefits if an event contemplated in the contract as a risk relating to the use or ownership of a motor vehicle occurs;

“**property policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk and related to the use, ownership, loss or damage to movable or immovable property occurs;

“**short term insurance business**” means insurance business relating to an engineering policy, transportation policy, motor policy, guarantee policy, liability policy, accident and health policy, property policy, workman’s compensation business and miscellaneous policy;

“**transportation policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits if an event contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft for the conveyance of goods by air, land or water, or to the storage, treatment or holding of goods so conveyed or to be so conveyed occurs;

“**workman’s compensation business**” means the business of providing compensation where compensation is as defined in the Workman’s Compensation Act, 1983.

## Part II – Transitional provisions and registration of insurers

### 3. Prohibition of unregistered insurers

- (1) After the expiry of a period of 12 months from the commencement of this Act no person shall carry on insurance business in the Kingdom of Swaziland unless he has been registered as an insurer in terms of [section 4](#) or [section 6](#) of this Act.
- (2) No person shall issue a new policy or renew a policy in the period of 12 months from the commencement of this Act unless he has been registered as an insurer in terms of [section 4](#) or [section 6](#) of this Act or has been granted a temporary certificate of registration in terms of [section 4](#) of this Act.
- (3) For purposes of this section “carry on insurance business” includes—
  - (a) the receipt of proposals for or issuing of a policy of insurance, in respect of a person resident in Swaziland, by an insurer whether through an agent or broker; and
  - (b) the receipt of premiums in respect of a policy subsisting at the date of commencement of this Act;but excludes—
  - (a) any obligations of a policyholder or insurer under a policy issued outside of Swaziland to a person resident outside Swaziland on the date of issue of that policy;
  - (b) reinsurance of risks carried by an insurer registered in terms of [section 4](#) or [section 6](#) of this Act; and
  - (c) any obligations by an insurer under a policy subsisting at the date of commencement of this Act or an exempted policy as defined in section 5 of this Act.
- (4) Any insurance, other than a life policy issued individually on the life of a person prior to the date of commencement of this Act, shall be assumed to have been terminated on its first renewal date after the commencement of this Act or 12 months after the commencement of this Act whichever is the earlier.

### 4. Transitional measures concerning current insurance business

- (1) The Swaziland Royal Insurance Corporation established in terms of the Swaziland Royal Insurance Corporation Order, 1973 shall, for purposes of this Act, be regarded as being a registered insurer and shall, within a period of 12 months after the commencement of this Act, be registered as an insurer by the Registrar and be issued with a certificate of registration.
- (2) The Swaziland Royal Insurance Corporation shall pay the required fees to the Office of the Registrar and shall fulfil the necessary obligations in terms of the Regulations, but such action shall only be for the purposes of formality and to ensure the completeness of the Registrar’s records and these obligations shall have no bearing on the granting of a certificate of registration in terms of subsection (1).
- (3) A person other than the Swaziland Royal Insurance Corporation who—
  - (a) was carrying on insurance business immediately before the commencement of this Act, whether lawfully or unlawfully, and has within a period of 30 days of such commencement informed the Registrar of his intention to continue such business, shall, at the discretion of the Registrar be granted a temporary licence which shall expire 12 months after the commencement of this Act;
  - (b) who was carrying on insurance business in Swaziland immediately before the commencement of this Act, whether lawfully or unlawfully, and has been granted a

temporary licence in terms of paragraph (a), shall apply for registration as an insurer in terms of section 6 of this Act within 60 days of being granted a temporary licence; or

- (c) who has not been granted a temporary licence in terms of subsection (1)(a) may apply for registration as an insurer in terms of section 6 of this Act.
- (4) A person, other than the Swaziland Royal Insurance Corporation, who was carrying on insurance business in Swaziland immediately before the commencement of this Act, whether lawfully or unlawfully, shall within 3 months of such commencement submit to the Registrar a scheme for the transfer of his business to a domestic who is either—
  - (a) a domestic insurer registered in terms of this Act; or
  - (b) a domestic insurer which is a subsidiary company of a foreign insurer incorporated in Swaziland and which has been registered in terms of this Act.
- (5) The Registrar may grant any person an exemption from the prohibition of this section after application by that person in the form prescribed by the Registrar, for long term insurance policies, and subject to such conditions as the Registrar may impose from time to time.

## **5. Contracts with foreign insurers prohibited**

- (1) After the commencement of this Act, no person shall enter into a contract of insurance with any foreign insurer except as allowed for in terms of this Act.
- (2) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding E100 000 or a term of imprisonment not exceeding 5 years.

## **6. Registration of insurers**

- (1) A person wishing to conduct insurance business in Swaziland after the commencement of this Act and who has been registered in terms of the Companies Act shall apply for registration as an insurer in terms of Regulation 1 of this Act.
- (2) If the Registrar is satisfied that the person has complied with all the requirements of [section 7](#), he may register that person as being authorised to carry on the class of business applied for and issue him with a certificate of registration.
- (3) Notwithstanding the provisions of subsection (2), the Registrar may request an applicant to provide additional information in order to assist him to make a decision.
- (4) The Registrar shall refuse to register a company as an insurer if the conditions of [section 7](#) or any other request that he may have made in terms of subsection (3) have not been fulfilled.
- (5) The Registrar may refuse to register an applicant as an insurer if he considers this to be in the public's interest.
- (6) The Registrar may attach such conditions to the registration of an insurer as he considers to be in the public's interest.

## **7. Qualifying requirements for registration as an insurer**

- (1) Only a public company may apply for registration as an insurer.
- (2) A company applying for registration as an insurer shall have a paid up share capital of not less than E2 000 000.
- (3) Notwithstanding the provision of subsection (2), a company which applies for registration as an insurer and whose only business will be the issuing of assistance policy contracts shall have a share capital of not less than E400 000:

Provided that, if at any time after its registration, such insurer wishes to issue policy contracts of another class of insurance, the shareholders shall register another insurer in terms of [section 6](#) and then proceed to amalgamate the two insurers in terms of [section 55](#) of this Act.

- (4) A company applying for registration as an insurer shall ensure that its shares conform to the provisions of section 11 of this Act.
- (5) At least 25% of the issued shares of the company contemplated in [section 7\(1\)](#) shall be held by a person who—
  - (a) if he is a natural person, is a citizen of Swaziland;
  - (b) if he is a juristic person, then—
    - (i) at least 51% of the issued voting share of that person is owned by a person who is a citizen of Swaziland;
    - (ii) at least 51% of the interest in that person is owned by a person who is a citizen of Swaziland; or
    - (iii) where the person is a retirement fund, at least 51% of its members must be citizens of Swaziland;
  - (c) if an association of persons established for the mutual benefit of its members only, at least 80% of its members must be citizens of Swaziland and the aforementioned members must have a claim to at least 51% of the association assets.
- (6) At least 25% of the directors of the company contemplated in subsection (7)(a) shall be citizens of Swaziland.
- (7) A person applying for registration shall provide proof, to the satisfaction of the Registrar that that person—
  - (a) is a public company and has the carrying on of insurance business as its main object;
  - (b) has the resources, financial, human and structural, to enable it to conduct the business; and
  - (c) will be able to comply with the requirements to this Act and any conditions attached by the Registrar to its registration.

## **8. Principal office and principal representative in swaziland**

- (1) Every insurer registered in terms of [section 4](#) or [section 6](#) of this Act shall maintain a principal office and appoint a principal representative in Swaziland and the address of the principal office and the name of the principal representative shall be notified to the Registrar in writing.
- (2) Any change of address of the principal office or a change of principal representative shall be notified to the Registrar within 30 days in writing.
- (3) Any notice emanating from legal proceedings may be served on the insurer by delivery to the principal office or if that office has ceased to exist by delivery to the Registrar.

## **9. Prohibition of certain actions by insurers and use of certain words**

- (1) An insurer may not enter into an agreement with another person whereby that person is allowed to operate as an insurer by virtue of the insurer's licence.
- (2) A person registered to carry on insurance business shall conduct its business through its own organisation only.
- (3) After the expiry of a period of 12 months from the commencement of this Act no person may use the words "insure" or "assure" or any derivative of those words as part of the name of his business unless he is a registered insurer in terms of this Act.

- (4) After the expiry of a period of 12 months from the commencement of this Act no person may use the words “insure” or “assure” as part of the name of his products or services which indicates that he carries on the business of an insurer unless the product or service is underwritten by an insurer and he is an authorised agent of the insurer.

## **10. Change of name**

- (1) An insurer wishing to change its registered name shall apply in writing to the Registrar in terms of the Regulations.
- (2) An insurer shall not refer to himself by a name other than the registered name.
- (3) An insurer shall not change his name except with the permission of the Registrar.

## **11. Limitation on the issue of types of shares and the rights attaching to shares**

- (1) An insurer may issue only ordinary shares and may not issue any non-voting shares.
- (2) All an insurer’s issued shares shall bear the same rights and obligations emanating from whatever source or action.
- (3) An insurer shall not—
  - (a) convert its issued shares to another class of shares;
  - (b) issue any debentures;
  - (c) issue any preference shares; or
  - (d) reduce its share capital.
- (4) No person may enter into an agreement which will result in him agreeing not to exercise his rights attaching to the shares of an insurer that he owns.

## **12. Limitation on the ownership of shares**

- (1) No person may acquire shares in an insurer that will result in him or him and his associates acquiring more than 25% of the shares of an insurer.
- (2) Notwithstanding the provisions of subsection (1), the Registrar may grant a person permission to acquire shares in an insurer which might result in that person or that person and his associates acquiring control of the insurer if the Registrar is satisfied that this is not against the public interest.
- (3) The Registrar may apply such conditions to the ownership of shares as he considers to be in the public interest.
- (4) The Registrar may, if he considers the acquisition of shares in an insurer not to be in the public interest, apply to the Court for an order directing a person to divest himself of a certain number of shares in an insurer.
- (5) The shares of an insurer shall be held and registered in the name of its owner and may not be held or registered in the name of any other person except if the owner is deceased, under liquidation, under curatorship, under guardianship, or under execution.

## **13. Cancellation of the registration of an insurer**

- (1) The Registrar may cancel the registration of an insurer to carry on one or more class of insurance business—
  - (a) if the insurer has failed to commence carrying on that business within a reasonable period after registration; or

- (b) if the Registrar is satisfied that the insurer has ceased to carry on that class of insurance business.
- (2) The Registrar may cancel the registration of an insurer to carry on one or more classes of insurance business if as a result of an investigation by him, he has found cause to do so provided that no cancellation shall be carried out until the class or classes of business has been wound up in terms of section 67 of this Act.
- (3) The Registrar may cancel the registration of an insurer to carry on one or more classes of insurance business at the insurer's request provided that—
  - (a) the insurer shall submit a scheme to the Registrar setting out how he intends to address the expectations of current policyholders;
  - (b) the Registrar is satisfied that current policyholders will not be prejudiced by such cancellation; and
  - (c) the cancellation shall not be effected until all obligations to current policyholders have been discharged.
- (4) A Court may order the cancellation of an insurer's registration to carry on one or more classes of insurance business if the Court considers this to be in the public interest:

Provided that no such cancellation shall be effected until the class or classes of business has been wound up in terms of section 67 of this Act.

### **Part III – Transitional provisions and registrations of intermediaries**

#### **14. Unlicensed insurance brokers and insurance agents prohibited**

- (1) After the expiry of a period of 12 months after the commencement of this Act no person may carry on the business of an insurance broker unless he has been licensed in terms of this Act.
- (2) After the expiry of a period of 12 months after the commencement of this Act, no person may operate as an insurance agent unless that person has submitted his name in writing to the Registrar and the Registrar has given his approval in writing.

#### **15. Application for licence to carry on the business of an insurance broker**

- (1) Any person wishing to carry on the business of an insurance broker after the expiry of a period of 12 months from the commencement of this Act must apply for a licence to conduct such business in terms of the Regulations.
- (2) If the Registrar satisfied that the person has complied with all the requirements of the Regulations and any other requirement imposed by this Act, and that the person has complied to the Registrar's satisfaction with any other request that the Registrar has made, he shall register that person as being authorised to carry on the business of an insurance broker and issue him with a licence of registration.
- (3) Notwithstanding the provision of subsection (2), the Registrar may refuse to grant a licence to an applicant if he considers this to be in the public interest provided that the Registrar shall, in writing, inform the broker of the reasons for his refusal.
- (4) The Registrar may impose such conditions upon a licence issued under this section as he deems appropriate.



## 16. Considerations pertaining to the licensing of insurance brokers

Before issuing a licence to carry on the business of an insurance broker, the Registrar shall ensure that the granting of the licence will not be against the public interest by considering whether—

- (a) the directors of the business have sufficient knowledge and skill to operate the business as demonstrated by the curriculum vitae of each director required to be submitted in terms of the Regulations;
- (b) the name under which the applicant has requested to be licensed is—
  - (i) identical or a close resemblance to the name of a person already licensed under this Act;
  - (ii) a name containing the words “Royal” or “King” or any other word suggesting Royal patronage or support, unless the written consent of the King has been obtained;
  - (iii) a name containing the word “Government” or “National” or any other word suggesting Government patronage; or
  - (iv) otherwise likely to mislead the public;
- (c) any senior manager or director has been—
  - (i) convicted of any crime or found liable for any offence involving dishonesty or fraud;
  - (ii) declared insolvent in Swaziland or any other country, unless later rehabilitated by an order of a Court; or
  - (iii) a director, senior manager or controller of any financial institution that has been wound-up in Swaziland or any other country; or
- (d) the broker has not entered into an agreement relating to the preferential offer of insurance business with any person conducting an insurance business such as to impair the impartiality of the applicant in placing insurance business.

## 17. Qualifying requirements for registration as a broker

- (1) After the expiry of a period of 12 months from the commencement of this Act any person who was lawfully carrying on the business of an insurance broker at the commencement of this Act may continue his operations provided that he has applied for and is granted a licence in terms of [section 15](#).
- (2) Any person who applies for registration as a broker and who commenced operations after the commencement of this Act shall—
  - (a) if it is not a public company, be wholly owned by one or more citizens of Swaziland; or
  - (b) if it is a public company at least 51% of the interest in the company is owned by one or more citizens of Swaziland or a person registered in Swaziland where—
    - (i) if the person is a public company then at least 51% of the interest in that person is owned by citizens of Swaziland; or
    - (ii) if the person is any other business or organisation, citizens of Swaziland have a claim to at least 80% of the person’s assets.
- (3) After the expiry of a period of 12 months after the commencement of this Act, a person who has acquired an interest in an insurance broker which has resulted in him or him and his associates holding more than 25% of all the shares or interest of that company shall notify the Registrar of his acquisition and such acquisition shall be of no force until the Registrar has approved his acquisition in writing.

- (4) The Registrar may attach any condition that he deems to be in the public interest to any acquisition referred to in subsection (3).
- (5) The Registrar may reject any acquisition that he deems not to be in the public interest and may if the need arises apply to the Court for an order directing a person to dispose of his acquisition.

## **18. De-registration of a broker**

- (1) The Registrar may revoke the licence of any broker if he determines that the broker has—
  - (a) ceased to carry on an insurance business in Swaziland;
  - (b) requested in writing the cancellation of the registration;
  - (c) failed to commence operations within one year following the granting of a licence;
  - (d) not adhered to the terms and conditions of the licence; or
  - (e) acted in contravention of any of the provisions of this Act or other applicable law.
- (2) The Registrar shall give a broker notice, in writing, 30 days before he proceeds to cancel the broker's registration and may defer the cancellation for a period determined by him.
- (3) After revoking a broker's licence, the Registrar shall publish notice of the revocation in the *Gazette* and a newspaper of general circulation in Swaziland.
- (4) A broker shall cease to carry on insurance business immediately on being informed by the Registrar of the revocation of his licence.

## **19. Registration and operation of insurance agents**

- (1) A person shall not be registered as an insurance agent unless that person is a Swazi citizen.
- (2) The Registrar shall lay down minimum qualifications required of any person to whom an agency agreement may be granted by an insurer.
- (3) An insurer or insurance broker employing an agent shall issue to that agent a form of agency agreement and shall submit such agreement to the Registrar and no such agreement shall be of any force until the Registrar has given his approval.
- (4) The Registrar may, on good cause being shown, refuse to register or may cancel the registration of any agent.
- (5) An application for approval of the granting of an agency shall be made to the Registrar in terms of the Regulations.

## **Part IV – Registrar of Insurance and Retirement Funds**

### **20. Registrar of Insurance and Retirement Funds**

- (1) The office of the Registrar of Insurance and Retirement Funds is hereby established.
- (2) The Minister shall appoint on conditions determined by him and in compliance with the laws governing the public service, an officer called the Registrar who shall head the office of the Registrar of Insurance and Retirement Funds.
- (3) The Minister shall appoint, on conditions determined by him and in compliance with the laws governing the public service, such staff as is required by the Registrar to perform his duties.
- (4) The Registrar and his staff shall be remunerated out of the Consolidated Fund which shall be reimbursed by the office of the Registrar from the Registrar's Levies Account.

- (5) For purposes of this Act the Registrar shall be referred to as the Registrar of Insurance.

## **21. Persons disqualified from being appointed as Registrar**

No person shall be appointed as the Registrar if that person—

- (a) is a chairman, director or majority shareholder in an insurance company registered in Swaziland;
- (b) is an unrehabilitated insolvent in terms of the laws of any country;
- (c) has been convicted of theft, fraud, forgery or uttering a forged document or perjury or any other crime involving dishonesty or fraud;
- (d) is of unsound mind; or
- (e) has been a director or chairman of any financial institution that has been wound up in any country:

Provided that, where the person was a director of a subsidiary company which has been wound up as a result of its parent company being wound up and the Minister is satisfied that the subsidiary company did not wholly or partly cause the parent company to be wound up, the person shall be considered eligible for appointment as Registrar.

## **22. Functions of the Registrar**

Subject to the provisions of this Act the Registrar—

- (a) shall supervise and exercise of control over the activities of insurers and retirement funds in terms of this Act and any other law of the Kingdom of Swaziland;
- (b) shall advise the Minister on matters relating to insurance services and retirement funds either of his own accord or at the request of the Minister;
- (c) may purchase and alienate immovable property on behalf of the Registrar's office; and
- (d) may, with the approval of the Minister, raise money by way of levies in relation to the assets under the control of insurance companies and retirement funds.

## **23. Delegation of the powers and assignment of the duties of the Registrar**

- (1) The Registrar may, on such conditions as he may determine, delegate any of his powers or assign any of his duties to an officer or employee of the office of the Registrar.
- (2) A delegation or assignment under subsection (1) shall not—
  - (a) usurp the Registrar's powers or duties and he may set aside any decision made thereunder; or
  - (b) prevent the exercise of the power or duty by the Registrar himself.

## **24. Minister's authority to remove the Registrar from office**

- (1) The Minister may remove the Registrar from office—
  - (a) if he becomes disqualified subject to any criterion in [section 21](#);
  - (b) if the Minister can demonstrate incompetence on the part of the Registrar; or
  - (c) if the Minister is of the opinion that the Registrar's continued occupation of his office is detrimental to the functioning of the insurance and retirement fund industry.

## **25. Registrar's enforcement authority**

- (1) The Registrar is hereby empowered to investigate any possible violation of this Act and his powers shall include the investigation or examination of persons not regulated under this Act and the

Retirement Funds Act, 2005, in so far as those persons' activities may have a bearing on his investigation.

- (2) The Registrar may, in consultation with the Minister, appoint a committee to conduct the enquiry and the committee shall be chaired by the Registrar or a person appointed by him.
- (3) The Registrar shall inform a person who is the subject of an enquiry in writing of his intention to launch a formal investigation and the person shall ensure that he is ready to participate in the Registrar's investigation within 7 days of the date of the Registrar's letter by ensuring that his documents, electronic records, financial information and officers are available.
- (4) The Registrar may subpoena any person who in his opinion has knowledge or custody of any information that has a bearing on his investigation.
- (5) Any enquiry shall take place in public unless the Registrar with the concurrence of the Minister orders otherwise.
- (6) A person who has been subpoenaed and who without proper cause—
  - (a) fails to attend the enquiry at the time and place stated on the subpoena;
  - (b) fails to remain in attendance until excused by the Registrar;
  - (c) refuses to be sworn in as a witness or make an affirmation;
  - (d) refuses to answer or satisfactorily answer any question lawfully put to him; or
  - (e) refuses to surrender any document or record or any other material article in his possession or custody,commits an offence and shall, on conviction, be liable to a fine not exceeding E20 000 or to a term of imprisonment not exceeding 1 year or both.
- (7) The Registrar is hereby empowered to order any person whose activities are a hindrance to his enquiry to desist from such action failing which he may ask a Court to order such person to desist from his actions.
- (8) The Registrar is hereby empowered to bring a charge of perjury against any person in a Court of law if as a result of his investigation he becomes aware that the person has knowingly made a false statement to any enquiry convened by him.
- (9) A person who behaves in such a manner so as to disrupt the committee's work or insults any member of the committee, commits an offence and shall, on conviction, be liable to a fine not exceeding E5 000 or a prison sentence not exceeding 6 months or both.

## 26. Confidentiality of non-public information

- (1) The Minister, Registrar, or any member of their staff shall not divulge any non-public information obtained in the performance of their duties under this Act to any person except—
  - (a) as authorised in this Act;
  - (b) with the written consent of the person to whom the information pertains;
  - (c) by order of Court; or
  - (d) as necessary to enforce the provision of this Act in a court of law.
- (2) A person whose action is in violation of the provision of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding E10 000 or to a term of imprisonment not exceeding 1 year and he shall be individually liable for civil damages arising as a result of his action.
- (3) The Registrar shall ensure that every member of his staff, before taking up their posts is made aware of the provisions of this section, and he shall obtain a sworn and witnessed written statement from each staff member stating that they will abide by the provisions of this section.

**27. Registrar's annual report to the Minister**

- (1) The Registrar shall within 3 months after the expiry of the financial year end of the office of the Registrar prepare and submit to the Minister a report on the activities of his office.
- (2) The Minister shall place the report contemplated in subsection (1) before Parliament for consideration.
- (3) The Minister shall, on request from Parliament, summon the Registrar before a Committee of Parliament to answer any question or offer any explanation.

**28. Special provisions covering the Registrar's office and the powers of the Registrar**

- (1) Any communication emanating from the Registrar's office and any communication made to the Registrar's office shall only be valid if made in writing.
- (2) The Registrar may, after due and diligent consideration, extend any period for submission of documents for compliance with the provisions of this Act and any other Act that he is authorised to supervise.
- (3) The Registrar may direct any person not to make public, withdraw or change any promotional material that he considers misleading or false.
- (4) The Registrar may at any time without launching a formal investigation order a person to appear before him at a stated time and place to answer questions on any matter pertaining to the business that he is empowered to supervise in terms of this Act or any other Act.

**Part V – The Insurance and Retirement Funds Board****29. Establishment of Insurance and Retirement Funds Board**

- (1) There is hereby established a juristic person to be known as the Insurance and Retirement Funds Board.
- (2) For purposes of this Act the Insurance and Retirement Funds Board shall be known as the Insurance Board.

**30. Constitution of the Board**

- (1) The Board shall be made up of 9 persons as follows—
  - (a) two members appointed by the Minister from a list of two persons drawn up by the Swaziland Law Society;
  - (b) two members appointed by the Minister from a list of five persons drawn up by the Swaziland Institute of Accountants;
  - (c) one member appointed by the Minister from a list of three persons drawn up by the Swaziland Chamber of Commerce who have previously served on the Board of any enterprise for at least 5 years;
  - (d) one member appointed by the Minister who shall be a person who possesses experience in a relevant field and who shall act as chairman;
  - (e) one member appointed by the Minister who shall be a representative of employees;
  - (f) one member appointed by the Minister from a list of three persons drawn up by the Association of Swaziland Business Community; and

- (g) one member appointed by the Minister from a list of three persons submitted by the Institute of Chartered Secretaries and Administrators.
- (2) The Minister may, where he deems it necessary, appoint a person included in a list drawn up in terms of paragraph (a), (b), or (c) but whom the Minister has not appointed as a member, to sit on the Board as an alternate to a member appointed from the list on which that person was included.
- (3) The Minister shall designate the deputy chairman.
- (4) The Registrar shall not be eligible for appointment to the Board.
- (5) The Minister shall refer his choice of candidate for appointment to the Board to Cabinet for approval prior to installing such member as a member of the Board, and a person's membership of the Board shall be deemed not to have taken effect until Cabinet has given its approval.

### 31. Persons disqualified from being appointed to the Board

No person shall be appointed as a member of the Board who—

- (a) is a chairman or majority shareholder in an insurance company registered in Swaziland;
- (b) is an unrehabilitated insolvent in terms of the laws of any country;
- (c) has been convicted of theft, fraud, forgery or uttering a forged document or perjury or any other crime involving dishonesty and fraud;
- (d) is of unsound mind; or
- (e) has been a director or chairman of any financial institution that has been wound up in any country:

Provided that where the person was a director of a subsidiary company which has been wound up as a result of its parent company being wound up and the Minister is satisfied that the subsidiary company did not wholly or partly cause the parent company to be wound up, the person shall be considered eligible for appointment as Registrar.

### 32. Functions of the Board

The functions of the Board are to—

- (a) adjudicate in any dispute between the Registrar, any insurer or retirement fund;
- (b) receive and investigate complaints or submissions from the public or any insurer pertaining to the insurance industry or retirement funds in Swaziland; and
- (c) advise the Registrar and Minister on matters concerning the insurance industry and retirement funds either on its own accord or at the invitation of the Registrar or the Minister.

### 33. Term of office of board members and filling of vacancies

- (1) Subject to the provisions of [section 31](#) and [section 33\(2\)](#), a member of the Board shall hold office for a period not exceeding 3 years and the Chairman shall hold office for a period not exceeding 5 years.
- (2) Notwithstanding the provision of subsection (1), the Minister may vary the term of office of the members appointed to the Board at its inception from the period of 3 years by up to 12 months, in order to ensure that the term of office of the Board members do not expire at the same time.
- (3) If a seat on the Board becomes vacant because of the termination of a member's membership before the expiry of his term, the Minister may appoint another person in his place for the unexpired portion of his term.
- (4) A person whose term of office has expired shall be eligible for re-appointment to the Board.

### **34. Meetings and decisions of the Board**

- (1) The first meeting of the Board shall be convened by the Minister.
- (2) The Minister may at any time convene a meeting of the Board and the Minister shall ensure that the Board meets at least twice a year.
- (3) Any member of the Board may request the Minister to convene a meeting of the Board and the Minister shall not refuse any such reasonable request.
- (4) The Chairman may at any time convene a meeting of the Board to be held at a place and time determined by him:  
  
Provided that he shall inform the Minister and the Registrar of the meeting and its agenda.
- (5) A majority of Board members shall constitute a quorum.
- (6) If the Chairman or his deputy is absent from a meeting, the members present shall elect a chairman from the members present.
- (7) A decision of a majority of the members of the Board shall constitute a decision of the Board and in the event of a tie the presiding Chairman shall have a casting vote in addition to his deliberative vote.
- (8) All costs associated with any meeting, other than remuneration, shall be paid from the Registrar's Levies Account.
- (9) A decision of the Board shall be binding on all parties.
- (10) The Chairman of the Board may apply to the High Court to have any decision of the Board made an order of the court.

### **35. Remuneration of members of Board**

The members and alternate members of the Board shall be remunerated as the Minister determines from the Consolidated Fund which shall be reimbursed from the Registrar's Levies Account.

### **36. Removal of members of the Board**

- (1) A member or alternate member of the Board shall be instructed by the Minister to vacate his seat on the Board—
  - (a) if he becomes disqualified subject to any criterion in [section 31](#); or
  - (b) if he has been absent for two consecutive meetings of the Board without the consent of the Chairman.
- (2) The Minister may at any time terminate the membership of the Board of any member if, in the opinion of the Minister, sufficient reason exists to believe that the member's continued membership of the Board is detrimental to the good name of the insurance industry and retirement fund industry

## **Part VI – Financial arrangements pertaining to the office of the Registrar**

### **37. Registrar's Levies Account**

- (1) There is hereby established a fund called the Registrar's Levies Account.
- (2) The Registrar is hereby empowered to maintain a banking account in the name of the office of the Registrar for the revenue of the Registrar's Levies Account with an institution registered in terms of the Financial Institutions Act, 2005.

- (3) The revenue of the Registrar's Levies Account shall consist of monies from the following sources—
- (a) levies imposed by the Registrar as authorised in terms of the Regulations on the assets held by insurers, retirement funds and any other persons whom the Registrar supervises in terms of the provisions of this Act, and any fees payable as authorised in terms of the Regulations;
  - (b) any penalties and fines imposed in terms of this Act or any other Act and any fines imposed by a Court of law in terms of this Act;
  - (c) investment income earned on the assets of the Registrar's Levies Account;
  - (d) all fees payable in terms of this Act and any other Act;
  - (e) any amount paid by the State into the Account; and
  - (f) any donations from any source to the Account.
- (4) The Government shall pay into the Registrar's Levies Account any shortfall that arises as a result of the operations of the Office of the Registrar.

### **38. Employment of Registrar's Levies Account**

The Registrar's Levies Account shall be controlled by the Registrar and its funds shall be employed—

- (a) to reimburse the Consolidated Fund for the remuneration of the Registrar, his staff and members of the Insurance and Retirement Fund Board;
- (b) to pay for the cost of convening any meetings of the Insurance and Retirement Funds Board;
- (c) for the payment of any expenses incurred by the operation of the Office of the Registrar and shall include costs of rental, equipment, stationery and travelling expenses;
- (d) for payment of any costs arising as a result of an enquiry called by the Registrar; and
- (e) for payment of any miscellaneous expenses directly related to any activity of the Registrar's office arising from the application of this Act.

### **39. Budget of the office of the Registrar**

- (1) Before the commencement of each financial year, the Registrar shall arrange for an estimate of his expenditure and that of the Insurance and Retirement Funds Board expenditure to be made for the next financial year.
- (2) The estimates shall take into account—
  - (a) payment of salaries of the staff of the Registrar's office and members of the Insurance and Retirement Funds Board;
  - (b) cost of stationery, rent and utilities;
  - (c) cost of Court applications;
  - (d) cost for travelling, subsistence and accommodation incurred by the Registrar, his staff and members of the Insurance and Retirement Funds Board in the performance of their duties;
  - (e) cost of maintenance to equipment and buildings and their grounds;
  - (f) cost of replacing or acquiring new equipment;
  - (g) any other justifiable cost associated with the application of this Act; and
  - (h) the expenses of the office of the Insurance Adjudicator and the Retirement Funds Adjudicator.



- (3) The estimate shall be completed at least 30 days before the commencement of the next financial year and shall be submitted to the Minister for approval and the Minister may ask the Registrar to make any adjustments that he considers necessary.
- (4) After the Minister has given his approval the actual expenditure may not exceed the estimates without the Minister's approval.

#### **40. Accounting, auditing and reporting of Registrar's Levies Account**

- (1) The financial year end of the office of the Registrar shall be the last day of March in each year.
- (2) The Registrar shall receive all monies due to or for the benefit of the Registrar's Levies Account and the Registrar will be responsible for accounting of the receipt of that money and its use.
- (3) The Registrar may, with the concurrence of the Minister, invest any money of the Registrar's Levies Account on behalf of the office of the Registrar.
- (4) The Registrar shall arrange for the Registrar's Levies Account to be audited at the end of every financial year and produce financial statements and shall submit them to the Minister within six months of the expiry of the financial year end.

#### **41. Registrar's Guarantee Account**

- (1) There is hereby established a fund called the Registrar's Guarantee Account.
- (2) The Registrar is hereby empowered to maintain a banking account for the revenues of the Registrar's Guarantee Account with an institution registered in terms of the Financial Institution Act, 1975.
- (3) The revenue of the Registrar's Guarantee Account shall consist of monies from the following sources—
  - (a) levies imposed by the Registrar as authorised in terms of the Regulations on the commission received by brokers;
  - (b) proceeds of insurance policies issued in terms of the guarantee contemplated in section 61 of this Act;
  - (c) the proceeds of any liquidated assets held by the Registrar in respect of the guarantee contemplated in section 61 of this Act;
  - (d) any donations received from any source by the Fund;
  - (e) any monies paid by the State into the Fund; and
  - (f) any monies recovered as a result of a Court proceeding or out of Court settlement against an offending insurer, broker or agent.
- (4) The provisions of [section 40](#) shall be applied to the Registrar's Guarantee Account with every occurrence of "Registrar's Levies Account" being read as "Registrar's Guarantee Account".
- (5) The Registrar may invest the funds of the Registrar's Guarantee Account with the concurrence of the Minister on behalf of the office of the Registrar.

#### **42. Employment of Registrar's Guarantee Account**

- (1) The Registrar's Guarantee Account shall be controlled by the Registrar and its funds shall be employed to compensate persons who have suffered a loss of monies paid to a registered insurance broker or an agent of such broker, due to any action on the part of such broker or his agent that constitutes a criminal action as determined by the laws of the Kingdom of Swaziland.

- (2) Any moneys recovered as a result of court proceedings or out of court settlement against a broker or agent and in respect of whose actions a payment has been made from the Registrar's Guarantee Account, shall first be appropriated to compensate the Registrar's Guarantee Account.

#### **43. Insurance and Retirement Benefit Trust Fund**

- (1) There is hereby established a fund called the Insurance and Retirement Benefit Trust Fund.
- (2) The Registrar is hereby empowered to maintain a banking account for the revenues of the Insurance and Retirement Benefit Trust Fund with an institution registered in terms of the Financial Institution Act, 2005.
- (3) The revenue of the Insurance and Retirement Benefit Trust account shall consist of—
  - (a) all moneys payable into the Fund in terms of this Act or any other law; and
  - (b) investment returns earned on the assets of the fund as contemplated in this section.
- (4) The provisions of [section 40](#) shall be applied to the Insurance and Retirement Benefit Trust Fund with every occurrence of "Registrars Levies Account" being read as "Insurance and Retirement Benefit Trust Fund".
- (5) The Registrar may invest the funds of the Insurance and Retirement Benefit Trust Fund with the concurrence of the Minister on behalf of the office of the Registrar.
- (6) The funds of the Insurance and Retirement Benefit Trust Fund shall only be invested in deposits, money market instruments and fixed interest securities as allowed for in terms of the Regulations.

#### **44. Claims on the Insurance and Retirement Benefit Trust Fund**

- (1) Any person to whom a benefit was due and which benefit has been paid into the Insurance and Retirement Benefit Trust Fund in terms of subsection 43(3)(a) may apply to the Registrar for those benefits to be paid to him.
- (2) If the person contemplated in subsection (1) has died, then his dependants or the nominated beneficiary to his estate may apply to the Registrar to have the benefits paid to them.
- (3) Any person who makes an application to the Registrar in terms of subsection (1) or (2) shall provide the Registrar with proof to his satisfaction that their claim is valid.
- (4) If any information that the Registrar may have requested from the claimants referred to in this section is supplied to his satisfaction and he is satisfied that the claim is valid, then he shall apply to the Court for an order authorising the payment of the benefit.
- (5) Before applying to the Court for an order authorising the payment of any benefit in terms of this section, the Registrar shall determine in what proportion the benefits shall be paid to each of the claimants to the benefit.
- (6) The Registrar may determine the amount of interest to be added to the benefit payable in terms of this section.
- (7) No benefit shall be payable to any person from the Insurance and Retirement Benefit Trust Fund unless the Court has issued an order authorising the payment of the benefit.
- (8) Any person whose application to the Registrar to claim against the assets of the Insurance and Retirement Benefit Trust Fund has been unsuccessful may lodge an appeal with the Insurance Board to have his application reviewed.
- (9) After the expiry of a period of fifty years after the payment of an amount into the Insurance and Retirement Benefit Trust Fund in terms of section 43(3) of this Act, and if no successful application has been made to claim that amount or if no application is being considered then the amount shall be paid into the Consolidated Fund, together with interest at a rate as determined by the Registrar.

- (10) After the provision of subsection (9) has been complied with, a persons right to any claim against the Insurance and Retirement Benefit Trust Fund shall expire.

## **Part VII – (Provisions relating to administration and business of insurers and intermediaries)**

### **Insurers officers**

#### **45. Registrar may direct the removal of certain officers**

- (1) The Registrar may direct an insurer to terminate the appointment of any person who has been contracted or employed in any way to provide a service to that insurer if the Registrar is satisfied that the person's appointment may prejudice the interests of policyholders.
- (2) The Registrar shall issue the directive contemplated in subsection (1) in writing and he shall furnish the insurer concerned with his reasons for directing the removal of the officer.
- (3) The insurer shall ensure that the officer referred to in subsection (1) immediately ceases to be associated with the insurer in any way.
- (4) The insurer or the officer may appeal to the Insurance Board to set aside the Registrar's directive.
- (5) If no appeal has been lodged against the Registrar's directive within 30 days then the Registrar may apply to the Court to make his directive an order of the Court.

#### **46. Registrar to be notified of certain appointments and terminations**

- (1) An insurer shall inform the Registrar in writing of the appointment of any person as a director or managing executive and shall furnish to the Registrar a brief curriculum vitae of the person and a description of his powers and duties.
- (2) An insurer shall inform the Registrar in writing of the termination of the services of a director or managing executive and supply him with the reasons for the termination.

#### **47. Appointment, powers and duties of auditor**

- (1) Every insurer shall appoint an auditor for his business provided that such appointment shall be of no force unless approved by the Registrar.
- (2) An application for approval of the appointment of the auditor must be submitted in terms of the Regulations.
- (3) The Registrar may withdraw the approval of an auditor's appointment if he becomes aware of any information which indicates that the auditor's appointment might prejudice the policyholders.
- (4) An auditor shall immediately upon discovery bring to the Registrar's attention any aspect of the insurer's business that he considers is harmful to the interests of the policyholders.
- (5) Where an insurer terminates the appointment of an auditor, the auditor shall, within 30 days, submit a report to the Registrar stating—
  - (a) whether he is aware of any irregularity, financial or otherwise, pertaining to the insurer;
  - (b) particulars of the irregularity; and
  - (c) the reason, if any, advanced by the insurer for the termination of his appointment.
- (6) The Registrar shall not approve any director or employee of an insurer as an auditor.

- (7) The auditor shall ensure that every financial statement of the insurer is properly drawn up and fairly reflects the financial position of the insurer.
- (8) The auditor shall bring to the notice of the Registrar any irregularity which, in his opinion, may lead to financial loss if not rectified.
- (9) No director or employee of an insurer shall hinder the appointed auditor in the performance of his duties and shall surrender any information requested by the auditor.
- (10) The approved auditor shall satisfy himself that the statements of assets to be submitted in terms of the Regulations correctly represents the insurer's financial position.

#### **48. Appointment, powers and duties of valuator**

- (1) Every long term insurer shall appoint an actuary as a valuator for his insurance business provided that such appointment shall be of no force unless approved by the Registrar.
- (2) An application for approval of the appointment of the valuator must be submitted in terms of the Regulations.
- (3) The Registrar may withdraw the approval of a valuator's appointment if he becomes aware of any information which indicates that the valuator's appointment may prejudice the policyholders and the financial condition of the insurer.
- (4) No director or employee of an insurer shall hinder the approved valuator in the performance of his duties and they shall surrender any information requested by the valuator.
- (5) If an insurer terminates the appointment of a valuator, the valuator shall within 30 days submit a report to the Registrar stating—
  - (a) whether he is aware of the occurrence or expected occurrence of any irregularity, financial or otherwise, pertaining to the insurer;
  - (b) particulars of the irregularity; and
  - (c) the reasons, if any, advanced by the insurer for the termination of his appointment.
- (6) A valuator shall at any time bring to the Registrar's attention the occurrence or expected occurrence of any irregularity that he is aware of which might prejudice the policyholders and the financial condition of the insurer.
- (7) The valuator shall be required to perform the duties referred to in the Regulations and to certify the documents to be submitted to the Registrar in terms of the Regulations.

### **Part VIII – Conduct of insurer's business and related provisions**

#### **49. Prohibition of inducements**

- (1) No person may induce a policyholder or a prospective policyholder in any way to enter into a contract of insurance or to make any alterations or additions to or cancel a policy.
- (2) The provisions of subsection (1) shall not apply to reinsurance policies.

#### **50. Prohibition of coercion**

- (1) If a person who is a party to a contract in terms of which money is loaned, goods are leased, or credit is granted, is required to provide security by means of an insurance policy to secure the debt incurred by him, then that person shall be entitled to—
  - (a) either enter into and cede a new policy contract to secure the debt or to cede an existing policy to secure the debt; or

- (b) choose the insurer and intermediary with whom he shall conclude a contract or insurance for purposes of securing the debt.
- (2) Every party to the contracts referred to in subsection (1) shall be informed of his entitlement in writing.
- (3) Non-compliance with the provisions of subsection (2) shall render any cession of policy benefits invalid and the benefits shall revert to the policyholder and the policyholder being the person who is required to provide the security contemplated in subsection (1).
- (4) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine of E40 000 or a term of imprisonment of 2 years or both.

#### **51. Premiums paid in cash**

- (1) Any person who receives payment of a premium in bank notes or coins shall issue a written receipt for the payment.
- (2) The receipt referred to in subsection (1) shall contain in print or stamp the name of the institution that is receiving the payment.

#### **52. Invalidity of certain provisions**

- (1) No person may include in a policy contract or in an endorsement thereto, a provision absolving the insurer from responsibility of the actions, omissions or representations of his agents, employees or representatives.
- (2) No person may include in a policy contract or in an endorsement thereto a provision which states that an agent, employee or representative of the insurer had acted on behalf of the policyholder.
- (3) No person may include in a policy contract or in an endorsement thereto a provision which makes the fulfilment of an insurer's obligations under the contract dependent upon the fulfilment of the obligation of another person under a reinsurance contract.
- (4) No persons may include in a policy contract or an endorsement thereto a provision whereby the policyholder waives any of his rights under this Act.

#### **53. Misrepresentation**

- (1) Subject to the provisions of subsection (2), a policy contract shall not be invalidated on account of the policyholder or his agent having supplied the insurer or his agent with information that is proved to be false except if the false information was of such a nature that it has resulted in the assessment of the risk under the policy being materially affected at the time of its issue, renewal or endorsement.
- (2) Where the age of a life assured has been misrepresented to an insurer or an agent, then the policy benefits shall be adjusted so that the policy benefits are equal to those that would have been provided under the policy based on the correct age for the premium being paid.

#### **54. Insurer's responsibility for action of agent**

- (1) The insurer shall be responsible for the actions of any agents in his employ and shall be liable for any claim for loss or any damages arising from the action of the agent.
- (2) Any premium paid to the insurer's agent shall be deemed to have been paid to the insurer.

## Part IX – Amalgamation of business

### 55. Registrar to approve any amalgamation of business between insurers

Any agreement between two or more insurers which will result in the transfer of all or part of the business from one insurer to another shall be of no legal force unless the Registrar has approved the agreement and his decision has been made an order of the Court.

### 56. Obligation pertaining to application

- (1) The parties to an agreement referred to in [section 55](#) shall, at least 30 days before lodging an application with the Registrar, publish notice of their intention in a newspaper of general circulation in Swaziland.
- (2) Any person may make a written representation to the Registrar within 25 days of the publication of the insurer's notice referred to in subsection (1).
- (3) The insurer shall supply the Registrar any further information that he may require.
- (4) The Registrar may cause any investigation to be made that he considers necessary and which may influence his decision.
- (5) If the Registrar is satisfied that the proposed agreement is not against the policyholder's interest or that of the insurance industry he shall approve the transaction and shall apply to the Court to have his decision made an order of the Court.

### 57. Withholding of approval

- (1) An approval shall not be granted if any provision relating thereto has not been fulfilled.
- (2) An approval shall not be granted, or if granted shall not be valid, if it is inconsistent with this Act.

### 58. Valid approval

- (1) A Court may vary any approval granted by the Registrar.
- (2) The approval endorsed by the Court shall be binding on all parties to the transaction.
- (3) The Companies Act, 1912, shall apply to any transaction approved by the Court as applicable.

### 59. Costs of application

The costs of any application made by the Registrar in terms of this Part shall be borne by the parties to the agreement.

### 60. Registrar to approve acquisition of interest in insurer

- (1) A person who intends to acquire an interest in an insurer which will result in him, or him and his associates, acquiring more than 25% of all the shares in the insurer shall notify the Registrar of his intended acquisition and such acquisition shall be of no force until the Registrar has approved the acquisition in writing.
- (2) The Registrar may attach any condition that he deems to be in the public interest to any acquisition referred to in subsection (1).
- (3) The Registrar may reject any acquisition that he deems not to be in the policyholder's or public interest and may if the need arises apply to the Court to direct a person to dispose of his acquisition.

## Part X – Statutory obligations pertaining to intermediaries

### 61. Rules for operation for brokers

- (1) A licensed broker shall—
  - (a) as the Minister may by Regulation prescribe, maintain professional indemnity insurance and fidelity guarantees; and
  - (b) at all times adhere to the code of conduct for brokers published by the Registrar as authorised in terms of the Regulations.
- (2) The Registrar may order a broker to cease from any practice which he considers might be harmful to the interests of any policyholder or the good name of the insurance industry.
- (3) The chairman of each broker shall ensure that all directors, managers, agents and employees of the broker are made aware of and comply with the provisions of the code of conduct specified in subsection (1)(b).
- (4) A copy of the code of conduct contemplated in subsection (1)(b) shall be prominently displayed in areas of access to the public at each office of the broker.

### 62. Examination of brokers

The Registrar may from time to time, after consultation with the Minister, cause an examination to be made of any insurance broker in a manner consistent with this Act.

### 63. Broker's responsibility for premiums

- (1) A broker shall be liable to an insurer for any premiums collected by the broker or due to the insurer by virtue of insurance negotiated by the broker.
- (2) A broker shall remit to the insurer premiums due under subsection (1) within sixty days of the receipt of the premiums.
- (3) A broker shall, prior to remittance in terms of subsection (2), deposit all premiums received from a client in a separate trust account.

### 64. Broker's responsibility for actions of agents

- (1) A broker shall be liable for the acts or omissions of his agents and employees of such agents where the act or omission complained of falls within the area of authority of the agent as explicitly stated in his agency agreement or might reasonably be implied from it by a person seeking insurance.
- (2) A broker shall not cause a client to agree to a disclaimer absolving the broker from his responsibilities mentioned in subsection (1).
- (3) All premiums paid to a broker's agent or an employee of such agent shall be deemed to have been paid to the broker that is the principal of that agent.
- (4) Nothing in this section shall be construed to prevent—
  - (a) a broker from seeking redress against an agent or employee of an agent as a result of the liability arising under subsection (1) or (3); or
  - (b) an agent from seeking redress against an employee of such agent as a result of the liability arising under subsection (1) or (3).
- (5) The guarantees maintained by a broker under [section 61](#) shall cover the potential liability arising under subsections (1) and (3).

## **Part XI – Judicial intervention and winding up**

### **65. Application for judicial management or winding up of an insurer**

- (1) The Registrar, a creditor of an insurer or the insurer himself may apply to the Court for an order to have the insurer placed under judicial management or wound up.
- (2) A person who makes an application as contemplated in subsection (1) shall support that application with an affidavit or affidavits stating why his request should be granted.
- (3) At the request of the Court, a person who makes an application contemplated in subsection (1) shall supply the Court on request with any additional information that may have a bearing on this case.
- (4) After due consideration of any application received in terms of subsection (1) the Court may—
  - (a) refuse the application;
  - (b) direct the Registrar to investigate the affairs of the insurer to determine if any order of winding up or judicial management should be made;
  - (c) order that the insurer be placed under judicial management; or
  - (d) order that the insurer be wound up.

### **66. Judicial management of an insurer**

- (1) An order of Court placing an insurer under judicial management shall extend to his whole business.
- (2) The Court shall appoint a judicial manager who shall be selected from a list of three names drawn up by the Registrar with the concurrence of the Minister.
- (3) The Court shall determine the amount of remuneration payable to the judicial manager and shall have absolute discretion in directing his removal from the office.
- (4) The judicial manager shall take over the entire business of the insurer.
- (5) The Court shall on submission made by the Registrar determine whether the judicial manager may issue new policies other than paid up policies.
- (6) The Court shall specify to the judicial manager his powers and duties.
- (7) The law relating to judicial management of companies shall apply to judicial management of insurers in so far as they are not inconsistent with the provisions of this Act or any order of the Court in terms of this section.
- (8) The judicial manager shall approach the Court for any instruction pertaining to the duties conferred on him by this section.
- (9) The judicial manager shall notify the Registrar of any application that he intends to make to the Court and also inform the Registrar of any instruction received from the Court.
- (10) Nothing contained in this section shall be construed as curtailing the powers vested by this Act in the Registrar.
- (11) The Registrar shall make application to the Court and be heard on any matter which he deems relevant to the interest of the policyholders.



- (12) The judicial manager shall report to the Court within a period designated by the Court on the course of action that, in his opinion, best serves the interests of the policyholders and that report shall include—
- (a) the transfer of the insurer's obligations or part of his obligations to another person and shall allow for a reduction or increase in those obligations as the financial condition of the insurer allows;
  - (b) whether the insurer should be allowed to carry on his business or part of his business and he shall recommend any conditions that he considers necessary;
  - (c) whether the insurer's business should be wound up;
  - (d) the manner in which each class of policy should be dealt with; and
  - (e) a recommendation of any other course of action that serves the interest of the policyholders.
- (13) The Court shall after considering the recommendations contemplated in subsection (12) issue an order authorising a particular course of action and this Act shall be binding on all persons.

## **67. Winding up of an insurer**

- (1) An order of a Court directing the winding up of an insurer shall apply to the classes of business directed to be wound up or to the insurer's entire business if so ordered.
- (2) The winding up of the insurer shall be managed by a liquidator appointed by the Court who shall operate under the control of the Court.
- (3) The Court shall determine the liquidator's remuneration and shall have sole discretion in determining his removal from office.
- (4) The Court may issue such directives to the liquidator as it deems serves the interest of the policyholders and any such directive shall prevail over any other law which conflicts with such directives.
- (5) The law relating to winding up of companies shall apply in so far as they are not in conflict with any directive issued by the Court.
- (6) The liquidator shall approach the Court for any instructions pertaining to any duties conferred upon him in terms of this section.
- (7) The liquidator shall notify the Registrar of any application that he intends to make to the Court and also inform the Registrar of any instructions received from the Court.
- (8) The Registrar may make any submission to the Court that he deems serves the interest of the policyholders.
- (9) The available funds shall be distributed to each class of business and each policyholder on a basis as determined by the Court which shall take into account that—
  - (a) no part of any assets being held for a particular class of business shall be appropriated for transfer to another class of business;
  - (b) any assets not attributable to any class of business shall be distributed among all classes of business on a basis approved by the Court.
- (10) After final winding up, all the insurer's obligations shall be terminated in respect of that class of business that has been wound up.

## Part XII – Statutory limitations

### 68. Limitations of business

- (1) An insurer may only carry on that class of insurance business which the Registrar has authorised the insurer in writing to carry on in terms of this Act or any other business that the Registrar has authorised the insurer to carry on.
- (2) An insurer may not carry on those classes of insurance business for which it has not obtained authorisation or those classes of business which the Registrar has prohibited the insurer in writing from carrying on.
- (3) An insurer may not carry on those classes of insurance business that the Registrar has specified by publication in the *Gazette* as prohibited.

### 69. Policy suspended until first premium paid

The obligations of an insurer under a policy to provide policy benefits shall be suspended until the insurer or his agent or representative has received the first premium or an arrangement to the insurer's satisfaction has been made for the premium to be paid by debit order, stop order, credit card or otherwise provided that for classes of business other than individual life policies where the practice of the insurer has been to undertake the risk without making prior arrangements for the payment of premiums, then the policy benefits shall come into force from a date as stipulated or implied on the policy contract.

### 70. Remuneration of intermediaries

No consideration offered, provided or accepted by or for any person for providing services as an intermediary shall in aggregate exceed the amounts as provided for in terms of the Regulations.

### 71. Undesirable business practice

- (1) The Registrar may, in consultation with the Minister, declare a particular business practice undesirable or prohibit certain insurers from carrying on a certain business practice.
- (2) The Registrar may, in consultation with the Minister, direct an insurer to cease from carrying on a particular business practice if he intends to investigate that business practice and determine its desirability.
- (3) The Registrar may direct an insurer to amend any of his business practices.
- (4) The Registrar may direct an insurer to make any amends that he deems necessary and which arose as a result of a business practice declared undesirable by him in order to protect the good name of the insurance industry.
- (5) An insurer shall immediately cease to conduct a particular business practice if the Registrar has declared that practice undesirable or if the Registrar has directed the insurer to suspend that practice or if the Register has prohibited the insurer from carrying on a business practice.
- (6) If the Registrar wishes to declare a business practice undesirable, he shall do so in accordance with the Regulations.

## Part XIII – Policyholder protection

### 72. Registrar's authority to propose rules for policy contents

- (1) The Registrar may at any time—
  - (a) propose rules aimed at ensuring that policies are entered into, executed or enforced in accordance with sound insurance principles; or
  - (b) make proposals regarding the content of policy wording relating to—
    - (i) information that he considers should be disclosed; or
    - (ii) whether certain provisions effecting the rights of policyholders should be included or excluded.
- (2) The Registrar shall publish the proposals contemplated in subsection (1) in the *Gazette* and in the same notice invite interested parties to comment thereon.
- (3) The Registrar shall, after considering any comments, submit his proposals to the Minister for consideration.
- (4) The Minister may reject the proposals or he may publish the proposals in the *Gazette* in which case it shall be binding on all parties concerned.

### 73. Policy to be actuarially sound

- (1) A long term insurer shall not offer a long term policy contract unless the appointed valuator has certified in writing that the terms of the policy are actuarially sound.
- (2) A long term insurer shall not award a bonus to a policyholder unless the appointed valuator has certified that the bonus is actuarially sound.
- (3) A long term insurer shall not make a comparison between the premiums and benefits of different long term policies unless the valuator certifies that the comparison is actuarially sound.

## Part XIV – (Long term insurers)

### Financial matters and related issues

### 74. Assets

- (1) An insurer shall have in respect of his long term insurance business, on a day when a valuation is made by the valuator of his assets and liabilities—
  - (a) assets having a value no less than the value of his liabilities in respect of such business; and
  - (b) a contingency reserve as estimated by the valuator to allow for investment value fluctuations in respect of products not linked to market value, provided that the basis of valuation has been submitted to the Registrar and has been approved by him; and
  - (c) any other reserves prescribed by the Registrar including reserves for future mortality, morbidity and expenses.
- (2) A long term insurer shall not create any distributable reserves or pay a dividend while it cannot comply with subsection (1) or if the creation of the reserve or payment of dividend will result in it not being able to comply with the provisions of subsection (1).

- (3) Assets which have been pledged or encumbered in any way shall not be included as an asset for purposes of subsection (1).
- (4) An insurer shall maintain separate registers of assets in respect of long term business and other business.
- (5) An insurer shall maintain the assets of each class of insurer business separately.

#### **75. Investment of long term insurer's assets**

- (1) Every insurer shall ensure that his long term assets are invested in accordance with the provisions of the Regulations.
- (2) The Minister may at any time amend the provisions of the Regulations governing the investment of long term assets.
- (3) The Minister shall give 30 days' notice of his intention to amend the Regulations by publishing such notice in the *Gazette* and a newspaper of general circulation in Swaziland.
- (4) Any interested party may make submissions to the Minister on his intention to amend the Regulations.
- (5) Any amendments made by the Minister to the Regulations shall take effect 6 months after the date of publication of the amendments in the *Gazette*.

#### **76. Prohibition of use of assets**

A long term insurer shall not—

- (a) encumber its assets;
- (b) allow its assets to be held in the name of another person on its behalf;
- (c) borrow money directly or indirectly;
- (d) issue a guarantee or create for itself any obligations under a surety; or
- (e) invest in derivative instruments except for the purposes of reducing risks.

#### **77. Valuation of liabilities for long term insurance**

- (1) The valuator appointed to an insurer shall perform an actuarial valuation of the insurer as at the end of each financial year, and at such other dates as may be required by the Registrar.
- (2) The valuation report shall be submitted to the Registrar before the expiry of a period of six months from the insurer's financial year end.
- (3) The Registrar may extend the period contemplated in subsection (2) if a request is made in writing.
- (4) The actuarial valuation report contemplated in subsection (1) shall be in accordance with the Regulations.
- (5) The Registrar may reject the valuation report contemplated in subsection (2) if, in his opinion, the valuation report does not accurately reflect the financial condition of the insurer.

#### **78. Maintenance of financially sound condition**

- (1) An insurer shall at all times maintain its business in a financially sound condition by—
  - (a) having sufficient assets to enable it to meet its liabilities at any time; and
  - (b) conducting its business according to sound insurance and business principles.

- (2) An insurer shall be deemed to have failed to comply with the provisions of subsection (1) if it cannot comply with the provisions of [section 74](#).
- (3) An insurer shall, within 30 days of becoming aware that it has failed to comply with the provision of subsection (1), inform the Registrar of the failure.
- (4) An insurer shall not create a distributable reserve or pay a dividend if it has failed to comply with the provisions of subsection (1) or if the creation of the distributable reserve or payment of the dividend will result in it not being able to comply with the provisions of subsection (1).

## **79. Failure to maintain financially sound condition**

- (1) If an insurer has failed to comply with the provisions of [section 78](#) or if the Registrar is of the opinion that the insurer is likely to fail to comply with the provisions of [section 78](#) then the insurer shall supply to the Registrar—
  - (a) information explaining the reasons for his failure or pending failure; and
  - (b) a scheme to restore his compliance with [section 78](#) or to avert failure to comply with [section 78](#).
- (2) The Registrar may ask the insurer to make any amendments to the scheme contemplated in subsection (1)(b).
- (3) The Registrar may attach any additional conditions to the insurer continuing registration after considering any scheme contemplated in subsection (1)(b).
- (4) The Registrar may after considering the scheme—
  - (a) authorise the insurer to proceed to implement the scheme; or
  - (b) act against the insurer in terms of [section 65](#) or [section 66](#) if he considers this to be in the policyholder's and the insurance industry's interest.

## **80. Returns to Registrar**

- (1) An insurer shall submit to the Registrar in respect of his long term insurance business within 6 months of the expiry of his financial year end the return required to be submitted as prescribed by the Regulations.
- (2) The Registrar may request an insurer to make changes to any return submitted to him.
- (3) An insurer shall supply to the Registrar any additional information requested by him.

## **81. Failure to submit returns**

- (1) An insurer who fails to submit the returns referred to in [section 80](#) in the prescribed time commits an offence and shall be liable to a penalty of E2 000 plus E10 for every day that the returns are overdue.
- (2) An insurer may apply to the Registrar for an extension of the time in which to submit the returns contemplated in [section 80](#).

## Part XV – (Short term insurers)

### Financial matters and related issues

#### 82. Assets

- (1) An insurer shall have in respect of his short term insurance business on a day when a valuation is made of his assets and liabilities—
  - (a) assets having a value not less than the value of his liabilities in respect of such business;
  - (b) an amount calculated in accordance with the Regulations.
- (2) An insurer shall not create any distributable reserves or pay a dividend while it cannot comply with subsection (1) or if the creation of the reserve or payment of dividend will result in it not being able to comply with the provisions of subsection (1).
- (3) Assets which have been pledged or encumbered in any way shall not be included as an asset for purposes of subsection (1).
- (4) An insurer shall maintain separate registers of assets in respect of short term business and other business.
- (5) An insurer shall maintain the assets of each class of insurer business separately.

#### 83. Investment of short term insurer's assets

- (1) Every insurer shall ensure that his short term assets are invested in accordance with the provisions of the Regulations.
- (2) The Minister may at any time amend the provisions of the Regulations governing the investment of short term assets.
- (3) The Minister shall give 30 days' notice of his intention to amend the Regulations by publishing such notice in the *Gazette* and a newspaper of general circulation in Swaziland.
- (4) Any interested party may make submissions to the Minister on his intention to amend the Regulations.
- (5) Any amendments made by the Minister to the Regulations shall take effect 6 months after the date of publication of the amendment in the *Gazette*.

#### 84. Prohibition on use of assets

With respect to his short term assets an insurer shall not—

- (a) encumber its assets;
- (b) allow its assets to be held in the name of another person on its behalf;
- (c) borrow money directly or indirectly;
- (d) issue a guarantee or create for itself any obligations under a surety; or
- (c) invest in derivative instruments except for the purposes of reducing risk.

*[Please note: numbering as in original.]*

**85. Valuation of liabilities for short term insurance**

The liabilities of a short term insurance shall be the sum of—

- (a) an estimate of the amount the insurer expects to pay in respect of—
  - (i) claims that have been reported and which have not yet been paid, due allowance being made for reinsurance recoveries; and
  - (ii) claims that have been incurred but have not yet been reported, due allowance being made for reinsurance:

Provided that this amount shall be subject to minimum of the amount established according to the Regulations—

- (b) a reserve for unearned premium calculated in accordance with the Regulations;
- (c) an unexpired risk provision representing the underwriting loss suffered by an insurer in any class of short term business and which the insurer together with his auditor considers it necessary to defray the possible cost of claims; and
- (d) a contingency reserve calculated in accordance with the Regulations.

**86. Maintenance of financially sound condition**

- (1) An insurer shall at all times maintain its short term business in a financially sound condition by—
  - (a) having sufficient assets to enable it to meet its liabilities at any time; and
  - (b) conducting its business according to sound insurance and business principles.
- (2) An insurer shall be deemed to have failed to comply with the provisions of subsection (1) if it cannot comply with the provisions of [section 82](#).
- (3) An insurer shall within 30 days of becoming aware that it has failed to comply with the provision of subsection (1) inform the Registrar of the failure.
- (4) An insurer shall not create a distributable reserve or pay a dividend if it has failed to comply with the provisions of subsection (1) or if the creation of the distributable reserve or payment of the dividend will result in it not being able to comply with the provisions of subsection (1).

**87. Failure to maintain financially sound condition**

- (1) If an insurer has failed to comply with the provisions of [section 86](#) or if the Registrar is of the opinion that the insurer is likely to fail to comply with the provisions of [section 86](#) then the insurer shall supply to the Registrar—
  - (a) information explaining the reasons for his failure or pending failure; and
  - (b) a scheme to restore his compliance with [section 86](#) or to avert failure to comply with [section 86](#).
- (2) The Registrar may ask the insurer to make any amendments to the scheme contemplated in subsection (1).
- (3) The Registrar may attach any additional conditions to the insurer, continuing registration after considering any scheme contemplated in subsection (1).
- (4) The Registrar may after considering the scheme—
  - (a) authorise the insurer to proceed to implement the scheme; or

- (b) act against the insurer in terms of [section 65](#) or [section 66](#) if he considers this to be in the policyholder's and the insurance industry's interest.

## **88. Returns to Registrar**

- (1) An insurer shall submit to the Registrar in respect of his short term insurance business within 6 months of the expiry of his financial year end the return required to be submitted as prescribed by the Regulations.
- (2) The Registrar may request an insurer to make changes to any return submitted to him.
- (3) An insurer shall supply to the Registrar any additional information requested by him.

## **89. Failure to submit returns**

- (1) An insurer who fails to submit the returns referred to in [section 88](#) in the prescribed time commits an offence and shall be liable to a penalty of E2 000 plus E10 for every day that the returns are overdue.
- (2) An insurer may apply to the Registrar for an extension of the time in which to submit the returns contemplated in [section 88](#).

# **Part XVI – Consideration and adjudication of complaints**

## **90. Submission and consideration of complaints**

- (1) Notwithstanding the provisions of any contract, policy document, any other Act or common law practice a complainant shall have the right to lodge a written complaint with an insurer, broker or agent or any other person.
- (2) A complaint so lodged shall be properly considered and replied to in writing within 30 days after the receipt thereof.
- (3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the person with whom the complaint is lodged fails to reply within 30 days after the receipt of the complaint, the complainant may lodge the complaint with the Adjudicator.

## **91. Establishment of Office of Insurance Adjudicator**

- (1) There is hereby established an Office which shall be known as the Office of the Insurance Adjudicator.
- (2) The function of the Office shall be performed by the Insurance Adjudicator.

## **92. Appointment of Adjudicator**

- (1) The Minister shall, after consultation with the Insurance and Retirement Funds Board and in compliance with the laws governing the public service appoint a person as the Insurance Adjudicator, hereinafter referred to as the Adjudicator.
- (2) No person shall be appointed as Adjudicator unless he or she is qualified to be admitted to practise as an advocate or as an attorney under the Legal Practitioners Act, 1964, and—
  - (a) for an uninterrupted period of at least 10 years practised as an advocate or attorney;
  - (b) for an uninterrupted period of at least 10 years was involved in the tuition of law and also practised as an advocate or attorney for such period as renders him or her suitable for appointment as Adjudicator; or



- (c) possess such other experience as renders him or her suitable for appointment as Adjudicator.
- (3) The Adjudicator shall be appointed for a period of three years and may be re-appointed on expiry of his or her term of office.
- (4) The Adjudicator may at any time resign as Adjudicator by tendering his resignation in writing to the Minister at least three months prior to the date on which the Adjudicator wishes to vacate office, unless the Minister allows a shorter period.
- (5) The Minister may, after consultation with the Insurance Retirement Funds Board, remove the Adjudicator from office on the ground of misbehaviour, incapacity or incompetence.

### **93. Main object of Adjudicator**

The main object of the Adjudicator shall to be dispose of complaints lodged in terms of section 90 of this Act in a procedurally fair, economical and expeditious manner.

### **94. Disposal of complaints**

- (1) In order to achieve his main object, the Adjudicator—
  - (a) shall, subject to paragraph (b), investigate any complaint and may make the order which any Court of law may make; and
  - (b) may, if it is expedient and prior to investigating a complaint, require any complainant first to approach an organisation established for the purpose of resolving disputes in the Insurance industry or part thereof, and approved by the Registrar.
- (2) Any complaint dealt with in terms of subsection (1)(b), shall be recorded by the Adjudicator and shall, for purposes of this section be deemed to be a receipt of a complaint.
- (3) If the complaint, dealt with in terms of subsection (1)(b), is not resolved, the complainant may again lodge the complaint with the Adjudicator, who shall deal with it in terms of subsection (1)(a).

### **95. Opportunity to comment**

When the Adjudicator intends to conduct an investigation into a complaint, he or she shall afford the person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.

### **96. Parties to complaint**

The parties to a complaint shall be—

- (a) the complainant;
- (b) the person against whom the complaint is directed;
- (c) any person who has applied to the Adjudicator to be made a party and who has a sufficient interest in the matter to be made a party to the complaint; and
- (d) any other person whom the Adjudicator believes has a sufficient interest in the matter to be made a party of the complaint.

### **97. Jurisdiction and prescription**

- (1) The Adjudicator shall, subject to [section 98](#), investigate a complaint notwithstanding that the complaint relates to a matter which arose prior to the commencement of this Act.

- (2) The Adjudicator shall not investigate a complaint if, before the lodging of the complaint, proceedings have been instituted in a Court in respect of a matter which would constitute the subject matter of the investigation.
- (3) Receipt of a complaint by the Adjudicator shall interrupt any running of prescription in terms of any Act or the rules of the fund in question.

#### **98. Time limit for lodging of complaints**

- (1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.
- (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became or ought reasonably to have become aware of such occurrence, whichever occurs first.
- (3) The Adjudicator may, on good cause shown, or of his or her own motion—
  - (a) either before or after expiry of any period prescribed by this Part, extend such period; or
  - (b) condone non-compliance with any time limit prescribed by this Part.

#### **99. Procedure of conducting investigation**

- (1) The Adjudicator may follow any procedure which he or she considers appropriate in conducting an investigation, including procedures in an inquisitorial manner.
- (2) The Adjudicator may obtain copies of any document or correspondence contained in the files of the Registrar.

#### **100. Legal representation**

No party shall be entitled to legal representation at proceedings before the Adjudicator except where the Adjudicator has given permission for the parties to obtain legal representation or where the Adjudicator has requested the parties to obtain legal representation.

#### **101. Record of proceedings**

- (1) The Adjudicator shall ensure that a permanent record of the proceedings relating to the adjudication of a complaint, and the evidence given, is kept whether in writing or by mechanical or electronic means.
- (2) Any member of the public may obtain a readable copy of the record on payment of a fee determined by the Adjudicator.
- (3) The Registrar may, for purposes of the performance of his or her functions in terms of this or any other Act, rely on a copy of the record without the need of any further proof.

#### **102. Statement by Adjudicator regarding determination**

After the Adjudicator has completed an investigation, he or she shall send a statement containing his or her determination and the reasons therefor, signed by him, to all parties concerned as well as to the clerk or the Registrar of the Court which would have had jurisdiction had the matter been heard by a Court.

#### **103. Interest on amount awarded**

Where a determination consists of an obligation to pay an amount of money, the debt shall bear interest as from the date and at the rate determined by the Adjudicator.

#### 104. Enforceability of determination

- (1) Any determination of the Adjudicator shall be deemed to be a civil judgment of any Court of law had the matter in question been heard by such Court, and shall be so noted by the clerk, or the Registrar of the Court, as the case may be.
- (2) A writ or warrant of execution may be issued by the clerk or the Registrar of the Court in question and executed by the sheriff of such Court after expiration of a period of six weeks after the date of the determination, on condition that no application contemplated in [section 105](#) has been lodged.

#### 105. Access to Court

- (1) Any party who feels aggrieved by a determination of the Adjudicator may, within 21 days after the date of determination, apply to a Court which has jurisdiction, for relief, and shall at the same time give written notice of his intention so to apply to the other parties to the complaint.
- (2) The Court contemplated in subsection (1) shall have the power to consider the merits of the complaint in question, to take evidence and to make any order it deems fit.

#### 106. Powers of Adjudicator

The Adjudicator may with the concurrence of the Registrar—

- (a) hire, purchase or otherwise acquire such movable property as may be necessary for the performance of his or her functions and may let, sell or otherwise dispose of property so purchased or acquired;
- (b) in order to perform his or her functions, enter into an agreement with any persons for the performance of any specific act or function or the rendering of specific services;
- (c) insure his or her Office against any loss, risk or liability which it may suffer or incur;
- (d) employ persons to assist in the performance of his or her functions;
- (e) obtain such professional advice in the performance of his functions as may be reasonably required;
- (f) subject to such conditions as he may determine, delegate any of his functions contemplated in [section 93](#), to an employee of his or her Office; or
- (g) in general do anything which is necessary or expedient for the achievement of his or her object and the performance of his or her functions.

#### 107. Expenses of the Adjudicator

- (1) The financial year end of the Office of the Adjudicator shall be last day of February of each year.
- (2) Before the commencement of each financial year, the Adjudicator shall submit to the Registrar an estimate of the expenditure of his office for the next financial year.
- (3) The estimate contemplated in subsection (2) shall take into account any justifiable expenses that the Adjudicator might incur in the performance of the duties imposed on him in terms of this Act.
- (4) The estimate shall be completed at least 60 days before the commencement of the next financial year and submitted to the Registrar for approval and the Registrar may ask the Adjudicator to make any adjustments that he considers necessary.
- (5) After the Registrar had given his approval, the actual expenditure by the Office of the Adjudicator may not exceed the estimated without the Registrar's approval.
- (6) The expenses of the Office of the Adjudicator shall be paid by the office of the Registrar of Insurance.

- (7) The Adjudicator shall ensure that any accounts payable are brought to the attention of the Registrar timeously.

#### **108. Remuneration and terms and conditions of employment of Adjudicator and employees**

- (1) The remuneration and other terms and conditions of employment of—
- (a) the Adjudicator shall be determined by the Minister in consultation with the Insurance and Retirement Funds Board; and
  - (b) any employee of the Adjudicator shall be determined by the Insurance and Retirement Funds Board.
- (2) Any remuneration of the Adjudicator and his employee shall be paid by the Registrar.

#### **109. Report of Adjudicator**

The Adjudicator shall each year within six months after the end of the financial year, submit a report to the Minister on his activities during the financial year.

#### **110. Offences and penalties**

A person who—

- (a) insults the Adjudicator;
- (b) anticipates a determination of the Adjudicator in any manner calculated to influence the determination;
- (c) wilfully interrupts any proceedings conducted by the Adjudicator or misbehaves himself or herself in any manner in the place where the proceedings are being held; or
- (d) in connection with the complaint does anything which, if done before a Court of law, would have constituted contempt of Court,

commits an offence and shall be liable on conviction to a fine not exceeding E5 000 or to imprisonment for a period not exceeding three months.

#### **111. Limitation of liability**

The Adjudicator, or any of his or her employees, shall not be liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of the duty conferred or imposed by or under this Act.

#### **112. Liquidation of office of Adjudicator**

The Office of the Adjudicator shall not be placed in liquidation except by Act of Parliament.

### **Part XVII – Final provisions**

#### **113. Days of grace and non-forfeiture provision**

- (1) If any premium, payable monthly on a long term policy is not paid on its due date, the insurer shall maintain the policy in force for a period of 1 month from the start of the due date, for the full sum insured.
- (2) The insurer shall be liable to pay any claim arising in the period and may deduct the outstanding premium from the benefit payable.

- (3) Notwithstanding the provisions of subsection (1), if premiums have been paid continuously for at least 3 years in the case of a long term policy and if a premium due is not paid within the period mentioned in subsection (1) the insurer shall either—
  - (a) issue a paid up policy in lieu of the policy and all his obligation under the policy shall be discharged; or
  - (b) apply the value of the policy established by the valuator in keeping the policy in force.
- (4) The insurer shall when carrying out any action contemplated in subsection (3) provide full details of the basis employed and declare all the benefits and obligations due to and by the policyholder under the paid up policy or while his policy is kept in force in terms of subsection (3).
- (5) The provisions of subsections (3) and (4) shall not apply to short term insurance business or in the case of long term insurance business of such a nature for which a cash value is not normally obtainable.
- (6) If any premium due under an assistance policy is not paid by its due date the insurer shall maintain the policy in force for the full value of the benefits for a period of 1 month provided that if premium on the policy were payable for a term less than the duration of the policy, and premiums have been paid for at least 3 years, the period shall be 3 months.

#### **114. General penalty**

A person who contravenes any provision of this Act or its Regulations commits an offence and, if no penalty is specially prescribed in this Act for that contravention, shall be liable on conviction to a fine not exceeding E40 000 or to a term of imprisonment not exceeding two years.

#### **115. Penalty for false representation**

Any person who submits false information on any document required in terms of this Act commits an offence and on conviction he shall be liable to a fine not exceeding of E40,000 or to imprisonment for a period not exceeding two years.

#### **116 Decisions of the Registrar and Insurance Board may be made an order of the Court**

The Registrar or the Chairman of the Insurance Board may apply to the Court to have any of their decisions made an order of the Court.

#### **117. Adherence to the provisions of this Act shall not constitute an offence**

Any person who in good faith supplies information to the Registrar, a Court or the Insurance Board in accordance with the provisions of this Act shall not be guilty of an offence in terms of any law, or be subject to sanctions in terms of any code of conduct or ethics or be in breach of any agreement.

#### **118. Power to make Regulations and issue directives**

- (1) The Minister may, in consultation with the Registrar, the Board and such other person or persons as he may in his discretion consult, by Notice published in the *Gazette*, make Regulations not in conflict with this Act, which may include prescribing—
  - (a) ways in which formalities required in terms of the Act shall be executed and shall include the process of registration and the approval of the valuator and auditor;
  - (b) the manner where necessary in which an insurer shall maintain records of his business;
  - (c) the format of the valuator's report and the minimum information to be contained in the report; and
  - (d) any other duties to be carried out by the valuator and auditor.

- (2) The Registrar may, in consultation with the Board, by Notice published in the *Gazette*, issue directives not in conflict with this Act, which may include prescribing—
  - (a) the procedures to be followed for registration of brokers and agents;
  - (b) the directives that may be issued by the Registrar;
  - (c) valuation assumptions to be used in valuing liabilities; and
  - (d) prudent investment guidelines.
- (3) The Minister may either of his own accord, or if he is ordered by Parliament to do so, order the Registrar to withdraw or amend any directives which have been issued by the Registrar.

### **119. Repeal of legislation**

- (1) The Swaziland Royal Insurance Corporation Order, 1973 (King's Order-in-Council, 32 of 1973) is, to the extent that it is inconsistent with this Act, hereby repealed.
- (2) The Control of Insurance Order, 1973, (Kings Order-in-Council, 33 of 1973) is hereby repealed.