Malawi

Insurance Act

Chapter 47:01

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/2010/9/eng@2014-12-31

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PDF created on 17 March 2023 at 08:46.

Collection last checked for updates: 31 December 2014.

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Malawi

Insurance Act

Chapter 47:01

Assented to on 8 January 2010

Commenced on 1 October 2010

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the supervision and regulation of the insurance industry and for matters connected therewith or incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Insurance Act.

2. Interpretation

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

"**agent for brokers**" means a person acting as an agent for a broker;

"**approved securities**" means securities issued by the Government and such other securities as the Registrar may approve;

"**chairperson**", includes an individual presiding over a board of directors or other governing body;

"**executive officer**", means any person who is an officer of an insurer, insurance broker or insurance agent, including the chief executive officer, deputy chief executive officer, financial controller, actuary, underwriting manager, claims manager (or their equivalents), and any other person who, alone or together with one or more others, has the authority to enter into commitments for the account of the licensed institution;

"**existing insurer**", in relation to an applicant for a licence as an insurer, means an applicant who is, at the date of his application for licence, carrying on insurance business inside or outside Malawi;

"**external re-insurer**" means a reinsurer whose head office is not in Malawi;

"**Financial Services Act**" means the Financial Services Act;

[Cap. 44:05]

"**financial services law**" bears the same meaning ascribed thereto in the Financial Services Act;

"**financial year**", in relation to a person, means each period at the end of which the balance of the accounts of the person is struck, and shall in the case of a licensed entity, end on 31 December of each year or alternatively such period as is approved by the Registrar of Insurance;

"**general insurer**" means an insurer carrying on general insurance business;

"**holding company**" bears the same meaning assigned thereto in the Companies Act;

[Cap. 46:03]

"**insurance agent**" means a person who—

(a) initiates insurance business; or

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

on behalf of a person carrying on insurance business who has appointed the person to act as the insurer's agent;

"**insurance broker**" means a person who for any compensation, commission or other things of value, with respect to persons or property, deals directly with the public or in the case of a reinsurance broker, deals directly with insurers, and—

(a) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance or reinsurance whether or not the person has agreements with insurers allowing the person to bind coverage and countersign insurance documents on behalf of insurers;

(b) provides risk management services, including claims assistance where required; or

(c) provides consulting or advisory services with respect to insurance or reinsurance;

"**insurance business**" means the business of undertaking liability, under a contract of insurance to indemnify a person in respect of any loss or damage, including a liability to pay damages or compensation contingent upon the happening of a specified event, and includes reinsurance business;

"**insurer**" means a corporation incorporated under the Companies Act carrying on an insurance business, otherwise than as a broker, an agent for brokers or as an insurance agent and includes a reinsurer, a friendly society and a medical aid scheme unless this Act contains a separate provision specifically applicable to the reinsurer, the friendly society and the medical scheme in which case that provision shall apply;

[Cap. 46:03]

"**insurer**" means an insurer licensed under this Act in accordance with the procedures laid down in the Financial Services Act;

[Cap. 44:05]

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

"**life insurer**" means an insurer carrying on life insurance business;

"**local insurer**" means a registered insurer whose head office is in Malawi;

"**local policy**" means a policy issued in or outside Malawi upon an application made or presented to a broker, an agent for brokers or an insurance agent at any place in Malawi and includes a life policy issued outside Malawi and subsequently made payable in Malawi at the request of the owner which the owner has agreed in writing shall be treated as a local policy for the purposes of this Act, but does not include a life policy made payable, after the date of its issue, outside Malawi at the request of the owner which the owner has agreed in writing shall not be treated as a local policy for the purposes of this Act;

"**local reinsurer**" means a reinsurer whose head office is in Malawi;

"**new insurer**", in relation to an applicant for licensing as an insurer, means an applicant who is not, at the date of his application for licence, carrying on insurance business inside or outside Malawi;

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

"**person**" includes a company, corporate body, association, natural person, partnership and scheme;

"**policy**" means an insurance contract under terms which a person in return for a premium, receives policy benefits from an insurer or allows an organization to provide policy benefits to another person—

(a) upon the occurrence of a specified event, or in specified circumstances;

(b) at a specified date; or

(c) during, or upon the expiry of, a specified period;

"**policy benefits**" means money, services or other benefits including annuities, services or other benefits, paid or payable under an insurance policy;

"**premium**" means the consideration to be given in return for an undertaking to provide policy benefits;

"**principal officer**" means the principal officer of an insurer appointed under section 15;

"**Registrar**" means the Registrar of Financial Service Institutions appointed under the Financial Services Act;

[Cap. 44:05]

"**Registrar's directive**" means a directive issued under the Financial Services Act, or any other financial services law;

[Cap. 44:05]

"**reinsurer**" means a person whose predominant business is to carry on reinsurance or retrocession business and includes both a local reinsurer and an external reinsurer;

"**reinsurance business**" means the business of undertaking liability to pay money to insurers or reinsurers in respect of contractual liabilities or insurance business incurred by insurers or reinsurers and includes a retrocession;

"**share**" bears the same meaning assigned thereto in the Companies Act;

[Cap. 46:03]

3. Principal object of this Act

The principal object of this Act is to make provision for the enhancement of the safety, soundness and prudent management of insurers and other persons involved in the insurance industry in Malawi with the aim of protecting the interests of insurance policyholders and ensuring the highest standard of conduct of business of insurance companies, brokers and agents.

4. Application of the Financial Services Act

This Act shall apply to the insurance industry in addition to the Financial Services Act.

[Cap. 44:05]

5. Licensing and registration procedures

The provisions relating to licensing and registration applications contained in the Financial Services Act, shall apply *mutatis mutandis* to this Act.

[Cap. 44:05]

Part II – Insurers

6. Categories and classes of insurance

(1) Insurance business in Malawi shall be categorized into the following—

(a) Life insurance; and

(b) General insurance.

(2) The Registrar shall issue directives to divide each category into classes and each class may be divided further into sub-classes.

7. Insurers to be licensed

(1) Subject to subsection (2), no person shall carry on insurance business in Malawi unless he is licensed as an insurer in the category of insurance business carried on by him.

(2) Nothing contained in subsection (1) shall apply to the carrying on of business by a person whose licence as an insurer in a class of insurance business has been cancelled relating to policies in that class of insurance business which were issued by him before the date of the cancellation of his licence as an insurer in that class of insurance business.

(3) No person shall—

(a) without the approval of the Registrar, apply to his business or undertaking a name or description which includes the words "assure" or any derivative thereof, unless he is an insurer in whatever class of insurance business; or

(b) perform any act which indicates that he carries on or is authorized to carry on any class of insurance business, unless he is an insurer licensed to carry on that class of insurance business.

(4) Any person who contravenes subsections (1) and (3) commits an offence and upon conviction shall be liable to a fine of K10,000,000 and to imprisonment for four years, or, if the offender is not a natural person the provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

8. Registration criteria

(1) If the Registrar is satisfied—

(a) that the applicant for a licence as an insurer, other than as an external reinsurer, is a company incorporated under the Companies Act;

[Cap. 46:03]

(b) that the applicant, if licensed, shall not conduct any business other than that for which it has been licensed;

(c) that the applicant has entered into or undertakes to enter into a reinsurance agreement with a reinsurer acceptable to the Registrar;

(d) that the applicant is not disqualified under section 9 to be licensed as an insurer in the class of insurance business with respect to which the application is made; and

(e) in the case of an applicant who is a new insurer, that the category of insurance business with respect to which the application is made shall be carried on by the applicant in accordance with sound insurance principles,

the Registrar may, licence the applicant, as an insurer in the category of insurance business with respect to which an application for a licence is made and the Registrar shall notify the applicant in writing of his decision within ninety days of the receipt of a complete application.

(2) The Registrar shall not license a person to carry out both life insurance business and general insurance business.

(3) Without limiting the matters that the Registrar may take into account in determining an application for a licence under this Part, the Registrar shall pay particular attention to—

(a) the nature and sufficiency of financial resources of the applicant;

(b) the soundness and feasibility of the applicant's plans for the future conduct of the insurer's business;

(c) the business record and experience of the applicant;

(d) whether the persons who shall operate the business are fit and proper persons, regarding their qualifications, character, competence and experience in managing financial institutions; and

(e) whether the establishment of the business is or is not contrary to the public interest in Malawi.

9. Reasons for rejecting an application for a licence

(1) Without limiting the power of the Registrar to refuse to grant an application for a licence under this Part, the Registrar shall not grant an application for a licence under this Part if it appears to the Registrar that—

(a) it would be contrary to the public interest or policyholders' interests to do so;

(b) the name under which the applicant desires to be licensed is identical with the name of another insurer or so nearly resembles its name as likely to be mistaken for it unless that insurer is being or is to be wound-up or dissolved or, bar ceased to curry on insurance business in Malawi as the case may be, and consents to the licence of the applicant under the name in question;

(c) the applicant's margin of solvency as defined in section 13, is not sufficient for the purposes of the category or classes of insurance business as the case may be, for which an application is made;

(d) if the applicant is a corporate body with share capital, the applicant does not comply with the requirements of Registrar's directive as to capital and reserves.

(2) For the purposes of subsection (1) (b) an applicant who carries on, outside Malawi, a category of insurance business other than or those with respect to which an application for a licence is made shall be treated as if he had applied for a licence as an insurer both in the category of insurance business with respect to which his application for a licence is made and in the category of insurance business carried on by him outside Malawi.

(3) The Registrar shall inform an applicant of his decision not to licence the applicant as an insurer within ninety days from receipt of a complete application.

10. Commencement of business

No insurer shall commence his business until the Registrar has approved the commencement, which the Registrar shall not do unless satisfied that—

(a) the meeting of shareholders has been duly held and other legal formalities regarding the organization of the business have been complied with;

(b) the insurer has complied with the requirements of the Registrar's directives regarding capital and reserves;

(c) the insurer has entered into a reinsurance agreement with a reinsurer, acceptable to the Registrar;

(d) the external reinsurer has on deposit an amount acceptable to the Registrar;

(e) the expenses of incorporation and organization to be borne by the company are reasonable; and

(f) all other provisions of this Act and other relevant financial services laws have been complied with.

11. Suspension and revocation of licences

(1) Without limiting the power of the Registrar under the Financial Services Act, to suspend or revoke a licence, the Registrar may suspend or revoke the licence of an insurer on the grounds that—

(a) the insurer is disqualified under section 9 to be licensed as an insurer in the category of insurance business with respect to which he is licensed;

(b) a category of insurance business with respect to which the insurer is licensed or any other category of insurance business carried on outside Malawi by the insurer, is not being carried on by the insurer in accordance with sound insurance principles;

(c) the insurer has failed to comply with any insurance law of a country outside Malawi applying to the insurer; or

(d) it is contrary to the interest of the public or policyholders in Malawi for the said licence to continue in force.

[Cap. 44:05]

12. Revocation of licence on ceasing to carry on business

(1) The Registrar shall revoke the licence of an insurer if he is satisfied that the insurer has ceased to carry on insurance business in Malawi.

(2) Where the Registrar revokes the licence of an insurer, the Registrar shall do so after satisfying himself that the insurer has met the requirements of section 60.

13. Margin of solvency sufficient for the purposes of carrying on insurance business

An insurer shall be treated as having a margin of solvency sufficient for the purposes of carrying on any class of insurance business if the insurer meets solvency conditions as set out in the Registrar's directives.

Part III – Provisions governing the carrying on of insurance business by insurers

14. Application of Part III

This Part applies to insurers.

15. Insurers to maintain principal office and appoint principal officer

(1) An insurer shall establish a principal office in Malawi and shall appoint a principal officer in Malawi:

Provided that the appointment of the principal officer shall be subject to prior approval of the Registrar in terms of fit and proper person requirements as determined in the Registrar's directives.

(2) Where an insurer has established a principal office, the insurer shall notify the Registrar in writing where the office is situated.

(3) If an insurer changes the place of his principal office in Malawi or closes the office or appoints a new principal officer, the insurer shall, within twenty-one days of such change, closure or new appointment, give notice thereof to the Registrar in writing.

(4) An insurer shall inform the Registrar in writing of the name and address of every director and executive officer and shall keep such information current by notifying the Registrar of any changes or additions or deletions with respect to the names and addresses of such persons as specified in the Registrar's directives.

16. Reinsurance

(1) An insurer may enter into an agreement to reinsure risks undertaken by it with a reinsurer of adequate standing, taking into account the considerations of safety and soundness when such an agreement is made in the ordinary course of business.

(2) Without limiting the Registrar's powers under the Financial Services Act, to issue Registrar's directives, and without limiting the Registrar's power under that Act to give direction to an insurer, the Registrar's directives or direction from the Registrar may specify the conditions under which reinsurance contracts may be entered into, and the extent to which an insurer may cause itself to be reinsured.

[Cap. 44:05]

17. Reinsurance contracts of insurers

(1) No life insurer shall enter into a contract of reinsurance against any liability in respect of his life insurance business in Malawi otherwise than with a life reinsurer.

(2) No general insurer shall enter into a contract of reinsurance against any liability in respect of his general insurance business in Malawi otherwise than with a general reinsurer.

(3) Subsections (1) and (2) shall not apply to a contract of reinsurance against any liability in respect of insurance business in Malawi the parties to which and the terms of which have been approved in writing by the Registrar.

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18. Insurance business to be placed within Malawi

No insurer, insurance broker, insurance agent or any other person shall place insurance business, other than reinsurance business, outside Malawi unless it is approved in writing by the Registrar.

19. Annual financial statements

(1) The directors of an insurer shall place before the shareholders at every annual meeting—

(a) comparative annual consolidated financial statements for the current year and the immediately preceding year, if any;

(b) the annual financial statements that shall contain—

(i) a balance sheet as at the end of the financial year;

(ii) a statement of profit and loss for the financial year;

(iii) a statement of change of financial position for the financial year;

(iv) a statement of changes in shareholders' equity for the financial year;

(v) a list of subsidiaries of the insurer with their addresses and percentage ownership of shares of the subsidiary by the insurer;

(vi) the report of the auditor;

(vii) the report of the actuary; if applicable; and

(viii) a description of the roles of the auditor and the actuary in the preparation and audit of financial statements.

(2) The directors shall approve the annual financial statements and their approval shall be evidenced by the signatures of the chief executive officer and one other director.

20. Request for audit by shareholders and policyholders

If required by the shareholders and policyholders, an external auditor of an insurer shall audit a report on any financial statements presented to them by the Board of Directors and the external auditor shall express an opinion on the fair presentation of the financial statements.

21. Audit for external reinsurer

An external reinsurer shall have the financial statements of its reinsurance business in Malawi audited by the auditors of the head office of the external reinsurer, and the auditors shall express an opinion on the fair presentation of the financial statements using the auditing and accounting standards applicable in the country of the head office.

22. Appointment of an actuary

(1) Where the Registrar is of the opinion that actuarial review of an insurer's business is warranted, or that such review is warranted for all companies undertaking a particular class of insurance business, the Registrar may require an insurer to appoint an actuary to value, in accordance with the Registrar's directives, the insurer's liabilities either at a point in time or at regular intervals.

(2) An actuary appointed under this section shall comply with the provisions contained in section 25 of this Act, as if it applied to this section.

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Part IV – Special provisions governing the carrying on of life insurance business by insurers

23. Application of Part IV

This Part shall apply to life insurers.

24. Life insurers carrying on business other than life insurance business

(1) A life insurer who carries on, in addition to his life insurance business, any other businesses, whether insurance business or otherwise, shall maintain separate books of accounts for all of his life insurance business in accordance with the Registrar's directives.

(2) The receipts and payments in respect of the life insurance business of a life insurer shall be carried to and form part of the life insurance funds.

(3) The life insurance funds of a life insurer referred to in subsection (2) shall be as absolutely the security of the owners of the life policies issued by the life insurer as though it belonged to a life insurer carrying on no other business than life insurance business.

(4) Payments from the life insurance funds of a life insurer referred to in subsection (2) which would not be made if the business of the life insurer were only that of life insurance, and the life insurance funds shall not be applied directly or indirectly to any purposes other than those of life insurance.

(5) Nothing contained in this section shall preclude a life insurer referred to in subsection (1) from investing the life insurance funds in the same investments as any other funds.

(6) Where the life insurer has invested life insurance funds in the same investments as other funds, the life insurer shall calculate the portion of any such investments belonging to the life funds, and record the amount attributable to the life funds in the books of accounts of the life insurance funds.

25. Actuaries of life insurers

(1) A life insurer shall appoint an actuary for a specific duration and such an appointment shall be subject to approval by the Registrar.

(2) An individual shall be qualified to be the actuary of a life insurer if he is a member of an institute, society or association of actuaries acceptable to the Registrar.

(3) The Board of Directors may revoke the appointment of an actuary, in which case it shall notify the Registrar in writing immediately.

(4) An actuary whose appointment is revoked or who resigns shall submit to the Board of Directors of an insurer and the Registrar a written statement of the circumstances and reasons why he resigned or why, in the actuary's opinion, his appointment was revoked.

(5) Where an actuary resigns or his appointment is revoked, or the Registrar withholds the approval of his appointment, the Board of Directors shall appoint another actuary as soon as possible.

(6) The actuary shall value, in accordance with Registrar's directives, the actuarial and other policy liabilities as at the end of the financial year and the Registrar may require the actuary to carry out a valuation in a specific area, in which case the expenses incurred shall be paid by the insurer.

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(7) At the request of the actuary, the present or former Directors, officers or employees of a company shall provide him with access to the company's records as well as provide him with other information and explanations as are, in the opinion of the actuary, necessary to perform his duties.

(8) A life insurer shall ensure that an actuary so appointed shall within ninety days from the end of the financial year of the insurer, make a report, in the prescribed form under the Registrar's directives, on the valuations made and in his report, the actuary shall state whether, in his opinion, the annual financial statements present fairly the results of his valuations.

(9) Where the Registrar is of the opinion that an actuary other than the actuary of the insurer should value the actuarial and other policy liabilities of the insurer or conduct a valuation in a specific area, he may appoint another actuary and the expenses incurred in this respect shall be payable by the insurer.

(10) The actuary shall report in writing to the chief executive officer any matters that have come to his attention that, in his opinion, have material adverse effect on the financial condition of the insurer and require rectification and he shall forthwith provide a copy of his report to the Board of Directors and to the Registrar.

(11) Where an insurer is a subsidiary of a foreign insurance company and the foreign insurance company furnishes to the appropriate authority in the country in which its head office is located any report or statement reflecting the results of an actuarial investigation of the whole or part of its insurance business, it shall furnish a copy of such report or statement to the Registrar.

26. Assets of insurer may include shares in holding company

If the assets which a life insurer holds in its life insurance funds in respect of its liabilities to policyholders include shares in its holding company—

(a) those shares shall be deemed, for the purpose of the Companies Act, to be held by the insurer as trustee for the benefit of the owners of the policies to which the liabilities relate;

(b) those shares shall only be held subject to such limitations and conditions as the Registrar may determine; and

(c) the insurer shall not have the right to vote at meetings of the company in which it holds such shares or at meetings of any particular class of members of that company.

[Cap. 46:03]

Part V – Licensing of insurance brokers

27. Insurance brokers to be licensed

(1)

(a) No person shall carry on the business of an insurance broker in Malawi unless that person is licensed as an insurance broker.

(b) Any person who contravenes subsection (1) (a) commits an offence and upon conviction shall be liable to a fine of K5,000,000 and to four years imprisonment, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

(2) If an application is made in accordance with the Financial Services Act for a licence as an insurance broker, the Registrar may grant the licence if the applicant—

(a) holds professional insurance qualification recognized by the Insurance Institute of Malawi and acceptable to the Registrar, or has a minimum of five years experience in a managerial position in the insurance industry and a satisfactory record in such employment;

(b) does not own shares of an insurer or does not have financial interest in an insurer of more than five per cent or no insurer or an officer of the insurer owns shares or has financial interest in the applicant of more than five per cent;

(c) is not seeking to be licensed under a name identical or so nearly identical to the name of a person already licensed under this Act likely to be mistaken for it;

(d) is otherwise a fit and proper person to be licensed as an insurance broker in accordance with the Registrar's directives;

(e) has not entered into an agreement relating to the preferential offer of insurance business with any person carrying on insurance so as to impair his impartiality in placing insurance business;

(f) has secured appointment as a broker by not less than twenty-five per cent of insurers.
[Cap. 44:05]

(3) Notwithstanding anything contained in subsection (2), if the Registrar is of the opinion that it would not be in the public interest or policyholders' interests to approve an application for a licence as an insurance broker, the Registrar shall refuse to grant the licence.

(4) The Minister may, by order published in the *Gazette*, revise the percentages referred to in paragraphs 2 (b) and 2(f).

28. Insurance brokers to maintain professional indemnity and fidelity insurance policies

(1) Every insurance broker shall effect and maintain professional indemnity and fidelity insurance policies with such limits of liability as may be prescribed in the directives of the Registrar.

(2) Every policy of insurance of the type referred to in subsection (1) shall be held with an insurer and shall be for no lesser sum than referred to in subsection (1).

29. Termination of an insurance broker's appointment

(1) When a broker's appointment by an insurer is terminated, the insurer shall immediately notify the Registrar about the termination and thereupon inform the general public through a notice in at least two (2) newspapers of wide circulation.

(2) An insurance broker whose appointment by an insurer is terminated shall immediately cease to sell insurance policies on behalf of that insurer.

(3) Any violation of subsection (2) constitutes an offence and upon conviction the insurance broker shall be liable to a fine of K5,000,000 and to four years imprisonment, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

(4) The Registrar shall notify the insurance broker in writing that he intends to cancel the insurance brokers' licence as an insurance broker and of his reasons therefor, if at any time the Registrar is satisfied that a situation has arisen that if the insurance broker was an applicant for a licence under this Act, he would not be qualified to be licensed.

30. Revocation of licence at the request of an insurance broker, etc.

Notwithstanding provisions of the Financial Services Act, the Registrar shall not revoke an insurance broker's licence at the request of the broker unless satisfied that all liabilities of the broker in respect of his business are met or other provision is made for them by means acceptable to the Registrar

[Cap. 44:05]

31. Trust funds

All funds received or receivable by an insurance broker in the course of business on behalf of insurers from members of the public shall be treated as trust funds and no insurance broker shall assign, pledge or in any way charge the trust funds.

32. Directives for insurance brokers

Without limiting the Registrar's powers under the Financial Services Act to issue Registrar's directives, the Registrar's directives may make provision with respect to trust funds under section 31 and the keeping of trust accounts by insurance brokers.

[Cap. 44:05]

Part VI – Licensing of agents for brokers

33. Agents for brokers to be licensed

(1) Unless licensed under this Part, no person, shall carry on the business of an agent for insurance brokers.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to four years imprisonment, or if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

34. Licensing insurance agents for brokers, etc.

(1) If an application is made in accordance with the Financial Services Act, for a licence as an agent of a specified insurance broker, the Registrar shall grant the licence if—

(a) the applicant holds a reasonable educational and professional qualification and has a minimum of two years experience in the insurance industry with satisfactory record of performance;

(b) the applicant is not seeking to be licensed under a name that closely resembles the name of an existing agent;

(c) the applicant is otherwise a fit and proper person to be licensed as an agent for an insurance broker;

(d) the applicant has entered into an agreement with the insurance broker in (c) above specifying the terms and conditions relating to the agency, including payment to the insurance broker of any premiums collected on his behalf;

(e) the applicant shall not conduct his business contrary to the interest of the public in Malawi; and

(f) the insurance broker has confirmed in writing to the Registrar that he has appointed the applicant as his agent.

[Cap. 44:05]

(2) The licence shall specify the name of the insurance broker and the classes of insurance covered on behalf of such insurer.

35. Misrepresentation prohibited

(1) No person shall make any representation to the public, by advertisement or otherwise, that he is an agent of an insurance broker unless he—

(a) is a licensed agent for an insurance broker; and

(b) has been appointed by the insurance broker to act as the insurance broker's agent which appointment has not been revoked.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for four years, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

36. Termination of agency

(1) When the appointment of an agent for an insurance broker is terminated, an insurer shall forthwith notify the Registrar of the termination and thereupon the agent for an insurance broker's licence shall be automatically suspended.

(2) If the appointment of an agent for an insurance broker has been terminated, the agent shall immediately cease to operate as an agent for an insurance broker for that insurance broker and any violation thereof shall constitute an offence and upon conviction shall be liable to a fine of K500,000 and to imprisonment for two years or, if the offender is not a natural person, to a fine of K1,000,000.

37. Agent for broker

(1) An agent for an insurance broker shall, for all purposes connected with payment or receipts of premium for an insurance policy, be deemed to be the agent for an insurance broker until the agency agreement is terminated.

(2) If such an agency is terminated the insurance broker shall within seven days issue a notice to the general public in at least two newspapers of wide circulation and inform the Registrar of the cancellation.

38. Suspension and revocation of insurance agent's for brokers licences

(1) Without limiting the power of the Registrar under the Financial Services Act, to suspend or revoke a licence, the Registrar may suspend or revoke such a licence on the grounds that the continuation in force of the agent's licence would, in the opinion of the Registrar, be contrary to the public or policyholder's interest.

(2) Notwithstanding provisions of the Financial Services Act, the Registrar shall not revoke or suspend the licence of an agent for an insurance broker at the request of the agent unless satisfied that all liabilities of the agent are met or other appropriate arrangements are made.

[Cap. 44:05]

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Part VII – Licensing of insurance agents

39. Insurance agents, etc., to be licensed

(1) Unless licensed under this Part, no person, whether or not he is licensed as an insurer or as an agent for brokers, shall carry on the business of an insurance agent.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to four years imprisonment, or if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

40. Licensing insurance agents, etc.

(1) If an application is made in accordance with the Financial Services Act, for a licence as an insurance agent of a specified insurer, the Registrar shall grant the licence if—

(a) the applicant holds a reasonable educational and professional qualification and has a minimum of two years experience in the insurance industry with satisfactory record of performance;

(b) the applicant is not seeking to be licensed under a name that closely resembles the name of an existing agent;

(c) the applicant is otherwise a fit and proper person to be licensed as an insurance agent;

(d) the applicant has undertaken not to be an agent for more than one insurer;

(e) the applicant has entered into an agreement with the insurer in (d) above specifying the terms and conditions relating to the agency, including payment to the insurer of any premiums collected on his behalf;

(f) the applicant shall not conduct his business contrary to the interest of the public in Malawi; and

(g) the insurer has confirmed in writing to the Registrar that he has appointed the applicant as his agent.

[Cap. 44:05]

(2) The licence shall specify the name of the insurer and the classes of insurance covered on behalf of such insurer.

41. Misrepresentation prohibited

(1) No person shall make any representation to the public, by advertisement or otherwise, that he is an insurance agent of an insurer unless he—

(a) is a licensed insurance agent; and

(b) has been appointed by the insurer to act as the insurer's agent which appointment has not been revoked.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for four years, or, if the offender is not a natural person, then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

42. Termination of agency

(1) When the appointment of an insurance agent is terminated, an insurer shall forthwith notify the Registrar of the termination and thereupon the insurance agent's licence shall be automatically suspended.

(2) If the appointment of an insurance agent has been terminated, the insurance agent shall immediately cease to operate as an insurance agent for that insurer and any violation thereof shall constitute an offence and upon conviction shall be liable to a fine of K500,000 and to imprisonment for two years or, if the offender is not a natural person, to a fine of K1,000,000, and the provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

43. Agent for insurer

(1) An insurance agent shall, for all purposes connected with payment or receipts of premium for an insurance policy, be deemed to be the agent for an insurer until the agency agreement is terminated.

(2) If such an agency is terminated the insurer shall within seven days issue a notice to the general public in at least two newspapers of wide circulation and inform the Registrar of the cancellation.

44. Suspension and revocation of insurance agents licences

(1) Without limiting the power of the Registrar under the Financial Services Act, to suspend or revoke a licence, the Registrar may suspend or revoke such a licence on the ground that the continuation in force of the agent's licence would, in the opinion of the Registrar, be contrary to the public or policyholder's interest.

[Cap. 44:05]

(2) Notwithstanding provisions of the Financial Services Act, the Registrar shall not revoke or suspend the licence of an insurance agent at the request of the insurance agent unless satisfied that all liabilities of the agent are met or other appropriate arrangements are made.

[Cap. 44:05]

Part VIII – Collection of premiums by brokers or agents

45. Interpretation of terms in Part VIII

In this Part, unless the context otherwise requires—

"**prescribed credit period**" means the period that starts—

(a) in the case of a new policy, at the inception date of the policy;

(b) in the case of an existing policy which has been renewed, at the renewal date of the policy; and

(c) in the case of a policy endorsement and a declaration under an open cover policy, on the first day of the month following the date upon which documentation is issued by the insurer to the policyholder concerned,

and ends as specified in the agreement with the insurer.

46. Collection of premiums

(1) An insurance broker or an insurance agent is responsible for the collection of premiums on behalf of an insurer and when he so collects the premiums he shall—

(a) close off his records of premium receipts within the prescribed credit period;

(b) pay the amount of such premiums to the insurer within that period and in any case not later than thirty days after receipt of the premium from the policyholder;

(c) simultaneously furnish the insurer with a detailed payment bordereau in respect of payment under paragraph (b);

(2) Payment of premium by policyholder under his insurance to an agent or broker shall be deemed to be specific performance under the policy.

(3) Registrar's directives may, in the interest of policyholders, insurers or intermediaries, prescribe different or additional requirements for the receipt of, retention of, or dealing with moneys in respect of premiums and, to the extent of any inconsistency between the other provisions of this section and the provisions of the Registrar's directives issued for this section, the provisions of the Registrar's directives shall prevail.

Part IX – Licensing of loss assessors/adjustors, and claims settling agents

47. Loss assessors/ adjustors and claims setting agents to be licensed

(1) No person shall, unless he is licensed under this Part, carry on the business of loss assessor/ adjustor or claims settling agent.

(2) Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine of K1,000,000 and to imprisonment for four years, or if the offender is not a natural person then provisions of the Financial Services Act, shall apply.

[Cap. 44:05]

48. Licensing loss assessors/ adjustors and claims setting agents

If an application is made in accordance with the Financial Services Act for a licence to carry on the business of loss assessor/ adjustor or claims settling agent the Registrar may grant the licence if the applicant—

(a) holds reasonable educational and professional qualifications and has a minimum of five years of relevant experience with satisfactory record of performance;

(b) is not seeking to be licensed under a name that closely resembles the name of an existing loss assessor/adjustor or claims settling agent as to be likely mistaken for it;

(c) has entered into a valid working arrangement with an insurer or a number of insurers;

(d) has not been declared insolvent or bankrupt under the laws of any country or made arrangement with or assignment to his creditors which has not been set aside;

(e) has not been convicted by any court of an offence involving dishonesty and does not otherwise have a criminal record; and

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(f) an insurer has confirmed in writing to the Registrar that he has appointed the applicant as a loss assessor/adjustor or claims settling agent.

[Cap. 44:05]

Part X – Investments, loans and ownership

49. Investments and lending policies

The board of directors of an insurer shall establish and monitor, and an insurer shall implement investment and lending policies, standards and processes that a reasonable and prudent person would apply in respect of investments and loans to avoid undue risk of loss and obtain a reasonable return.

50. Approval of investments

(1) Except as provided in the directives, an insurer shall not, without prior written approval of the Registrar, and subject to such terms and conditions as the Registrar may impose—

(a) acquire more than ten per cent of the outstanding voting share capital of a body corporate or ten per cent of beneficial interest in an unincorporated entity, the aggregate value of all such shares and beneficial interest not to exceed seventy-five per cent of the actuarial liabilities of the insurer; or

(b) purchase or otherwise acquire interest in real property or make an improvement to any real property if the aggregate value of all interests exceeds—

(i) in case of life insurer, twenty-five per cent of its actuarial liabilities; and

(ii) in case of general insurer ten per cent of its total assets.

(2) If the Registrar fails to respond to an insurer's request for approval of his investment within twenty-one days after the insurer provides all information required by the Registrar, the insurer may proceed with his investment without the Registrar's approval.

51. Acquiring ownership interest

Notwithstanding section 49, where an insurer has made a loan to an entity and a default has occurred, the insurer may acquire all or any of the ownership interest in the entity or its affiliates:

Provided that the insurer undertakes to the Registrar to do all things necessary to ensure that it divests itself of the ownership interest within two years.

52. Investment of assets

Subject to provisions of this Act, the articles of association of an insurer and any other reasonable constraints imposed on the insurer by other rules in respect of the manner in which it may invest its assets, the assets of the insurer shall be invested in Malawi with sufficient regard to the consideration of liquidity, return and security.

53. Prudential limit

The Registrar may by directives, prescribe prudential limits for consumer and commercial lending by insurers under the size of loans and aggregate exposure of an insurer to different types of lending, stated as a percentage of its local assets.

54. Disposal of loans and investments

The Registrar may, by order, direct an insurer to dispose of, within such period as the Registrar considers reasonable, any loan or investment made or acquired in contravention of this Act and directives.

55. Restriction of control

(1) No person or entity controlled by a person, shall without the approval of the Registrar, acquire shares of an insurer or acquire control of any entity that holds shares of the insurer, if, in the opinion of the Registrar, the acquisition would cause the person to have significant interest in any class of shares of the insurer or increase the already existing significant interest.

(2) Where as a result of an amalgamation, merger or reorganization, the emerging entity would have a significant interest in a class of shares of an insurer, such a transaction, shall be deemed to be an acquisition of significant interest in that class of shares of the insurer and require the approval of the Registrar.

(3) Any arrangement or agreement between an insurer and another person that affects in a significant manner the voting power or management control of the insurer, shall require prior written approval of the Registrar.

56. Amalgamation or transfer of insurance business

(1) Notwithstanding provisions of the Financial Services Act, the Registrar shall not approve a transfer or amalgamation of the business of an insurer if it appears to him that one fifth or more of the policyholders insured by any of the insurers involved dissent from the amalgamation or transfer.

[Cap. 44:05]

Part XI – Winding-up of insurance companies

57. Companies Act to apply

Subject to the provisions of this Part, the provisions of the Companies Act and the Financial Services Act, relating to winding-up of companies shall be applicable to insurance companies and insurance brokers which are companies within the meaning of that Act:

Provided that the provisions of the Companies Act, specifically applicable to creditors and members voluntary winding-up shall not apply to insurance companies.

[Cap. 46:03]

[Cap. 44:05]

58. Winding-up of an insurance company

The Registrar shall not approve the winding-up of an insurer until such a time as all policyholders benefits are paid, or all policyholders are transferred to an alternative insurer under a scheme for the transfer or the amalgamation of policyholders in accordance with provisions of the Financial Services Act, and the Registrar's directives.

[Cap. 44:05]

59. Rights of an insured person

For the purposes of any winding-up and notwithstanding anything to the contrary contained in the Companies Act or in the Bankruptcy Act, any entry in the books, account or records of an insurer respecting receipt of premiums, assumption or risk in insurance contracts, liability on insurance claims and life insurance fund, shall be *prima facie* evidence of the rights of the insured person.

[Cap. 46:03]

[Cap. 11.01]

60. Distribution of insurer's assets

Notwithstanding the provisions of the Companies Act and provisions of the Bankruptcy Act, in the winding-up of an insurer the assets of the insurer shall be distributed after payment of the secured and otherwise preferred claims in the following order—

(a) all claims for losses covered under insurance contracts that occurred before the date on which the Registrar gave approval to the winding-up for the purposes of the Financial Services Act, whichever is earlier but remain unpaid;

[Cap. 44:05]

(b) cash surrender value of unmatured full life policies;

(c) all claims for losses covered under insurance contracts that occurred before the date fixed by the court for winding-up of the insurer but remain unpaid;

(d) all claims of insurance persons for refunds of unearned premiums; and

(e) other claims.

[Cap. 46:03]

[Cap. 11:01]

61. Unclaimed money

Any sums of money remaining unclaimed after the winding-up of an insurer shall be deposited in the Bankruptcy Estates Accounts at the prescribed bank or with the Accountant General as if they were unclaimed and undistributed funds and provisions of the Bankruptcy Act and the provisions shall apply accordingly.

[Cap. 11:01]

Part XII – Miscellaneous provisions

62. Other actions requiring prior approval of the Registrar

Without limiting the Registrar's powers under the Financial Services Act, an insurer, an insurance broker or insurance agent, as the case may be, shall obtain prior written approval of the Registrar for the following matters—

(a) appointment of executive officers and directors;

(b) change in the articles of association;

(c) reduction in capital base by repayment of capital or distribution of reserves;

(d) opening and closing of branches;

(e) opening of establishments abroad;

(f) takeover of assets or liabilities of other insurance entities;

(g) participation in any other company to an extent in excess of ten per cent of the paid up capital of such company;

(h) financial restructuring;

(i) liquidation;

(j) arrangement or agreement—

(i) for the sale or disposal of its shares or business; or

(ii) affecting voting power, management or other matters which may result in a change in the control or management of the company;

(k) amalgamation or transfer of life funds or classes of business between insurers;

(l) amalgamation or merger between the insurance entity and any other corporation wherein the whole or a considerable part of the business or property of the insurance entity will be transferred to that other corporation; or

(m) introduction of new insurance products.
[Cap. 44:05]

63. Disqualification of directors

Without limiting the Registrar's power under the Financial Services Act to issue Registrar's directives, the following persons shall be disqualified from being appointed directors of an insurer—

(a) a person who is an insurance agent or broker of the company; or

(b) an employee, director or agent of an insurance broker.
[Cap. 44:05]

64. Insurers to appoint licensed agents or brokers

Unless authorized by the Registrar, an insurer shall not appoint as an agent or a broker a person who is not licensed as such under this Act.

65. Settlement of claims by insurers

(1) Every insurer shall in respect of claims arising out of policies of insurance issued by the insurer, pay the claims no later than fourteen (14) days after signing of a claim discharge certificate.

(2) The Registrar's directives may, in the interest of policyholders, insurers or intermediaries, further prescribe claims payment processes to be followed by insurers.

66. Service of process against licensed insurers

(1) Process in any legal proceedings against an insurer may be served at the principal office of the insurer in Malawi or, in the absence of any such principal office, at the office of the Registrar.

(2) Service of process upon the Registrar, in accordance with subsection (1), shall be deemed to be service upon the insurer.

67. Action by policy-owners against insurers

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

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

(3) Notwithstanding subsection (1), a local policy may validly provide that the amount of any liability under the policy shall be determined in accordance with the Arbitration Act.

[Cap. 6:03]

68. Deposit of approved securities

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

(2) An insurer who has deposited approved securities with the Registrar under this Act shall be entitled to the income derived from the approved securities.

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

(4) If the licence of an insurer who has deposited approved securities with the Registrar under this Act is revoked, the Registrar may cause the approved securities deposited by the insurer to be realized to meet—

(a) the liabilities of the insurance business of the insurer in Malawi; and

(b) any penalty imposed on the insurer under a financial services law.

(5) When the Registrar is satisfied that the liabilities of the insurance business in Malawi of an insurer referred to in subsection (4) have been met, the Registrar shall return to the insurer such of the approved securities deposited by the insurer as have not been realized to meet those liabilities.

69. Documents to be signed and accompanied by copies

(1) Subject to subsection (2), an insurer shall be regarded as having failed to comply with a provision of this Act requiring an insurer to furnish documents or copies of documents to the Registrar, unless—

(a) in the case of a document by the insurer which is not in a prescribed form—

(i) the document is signed—

(A) by the chairperson and one other director of the insurer or, if the insurer has no chairperson or director, by such other person or persons having control over the business of the insurer as the Registrar may specify;

(B) by such persons other than the persons referred to in paragraph (A) as are required by a provision of this Act to sign or certify the document; and

(ii) the document is accompanied by two copies;

(b) in the case of a document prepared by the insurer which is in a form prescribed—

(i) the document is signed by the persons specified in the form; and

(ii) the document is accompanied by two copies;

(c) in the case of an original document other than a document referred to in paragraph (a) or (b), the document is accompanied by two copies; and

(d) in the case of a copy of a document, the copy is accompanied by two other copies, one of which is certified as correct by the insurer or by an officer of the insurer.

(2) The Registrar may, in such cases as he deems expedient, direct that a lesser number of copies of documents than that specified in subsection (1) (a), (b), (c) or (d) or that no copy of a document referred to in subsection (1) (a), (b) or (c) be furnished to him.

70. Sums insured, etc., to be stated in currency of Malawi

Unless the exchange control authorities have approved the transaction in writing, insurers shall not quote insurance contracts in foreign currency.

71. Default of an insurer, etc., not to invalidate policy

Subject to this Act, failure on the part of an insurer, insurance broker or agent to comply with any provision of this Act shall not invalidate any policy issued by the insurer.

72. Policies to be printed in clearly legible letters, etc.

No insurer shall issue a policy in a form, the printed provisions of which, whatever their nature, are not put in a clear type face in letters of a uniform size of not less than ten points.

73. Persons acting on behalf of unlicensed insurers

(1) A person who causes another person to enter into or make an application to enter into a contract of insurance with a person who is not a licensed insurer commits an offence and on conviction shall, subject to subsection (3), be liable to a fine of K10,000,000 and to four years imprisonment.

(2) A person shall, save as provided in subsection (3), be guilty of an offence under subsection (1) notwithstanding that—

(a) the insurance is placed by an insurance broker; and

(b) the contract of insurance is without his knowledge or consent effected with a person who is not a licensed insurer or a person referred to in section 7 (2).

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

(a) a substantial portion of the risk is placed with a licensed insurer;

(b) the portion of the risk insured which is not placed in accordance with paragraph (a) is placed with an insurer who does not solicit business, either directly or indirectly, in Malawi or advertise his business in any newspaper or other publication in Malawi; and

(c) The transaction is approved by the Registrar in writing.

74. References to insurance companies in other written laws

Any reference in any written law in force in Malawi relating to companies or to a company carrying on insurance business under any other written law or to an insurance company registered or licensed under any other written law shall be read and construed as a reference or if the context so requires, as including a reference to a company on insurance business under this Act.

75. Inconsistency with the Companies Act

Wherever the provisions of this Act are inconsistent with or in addition to the provisions of the Companies Act, the provisions of this Act shall apply.

[Cap. 46:03]

76. Contravention of this Act, regulations, or directives

(1) Any person who contravenes the provisions of this Act, the regulations or directives made hereunder commits an offence.

(2) Every director, officer or employee of an insurer who wilfully gives or concurs in giving a creditor of the company a fraudulent, undue or unfair preference over other creditors, commits an offence.

(3) Every person who, without reasonable cause, refuses or fails to comply with the requirements of section 10 commits an offence.

(4) Every person who, fails to take all reasonable steps to ensure accuracy and completeness of returns or other reports submitted to the Registrar commits an offence.

77. Penalties

(1) Any person who commits an offence under this Act for which no penalty has been prescribed, shall be liable to administrative penalty prescribed under the Financial Services Act.

[Cap. 44:05]

(2) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and, on conviction, shall be liable to—

(a) in case of a natural person, upon conviction, be liable to a fine of K1,000,000 or to four years imprisonment; and

(b) in case of a corporation, then provisions of the Financial Services Act, shall apply.
[Cap. 44:05]

(3) Where a person has been convicted of an offence under this Act, the court may, in addition to the punishment it may have otherwise imposed, order the person to comply with the provisions of the Act or the regulations, or the directives which were contravened.

(4) Where a person has been convicted of an offence under this Act, the court may, notwithstanding the fine that may be imposed under subsection (1), assess an additional amount where the court is satisfied that the convicted person or his spouse or other dependent or other associated person has acquired monetary benefits, directly or indirectly, because of the commission of the offence, such additional fine may be up to the amount of the acquired benefits estimated by the court.

(5) In addition to any other remedies available under this Act or any other written law—

(a) a court may, on convicting a person for an offence under section 71, in addition to any other penalty, if satisfied that the convicted person or his spouse or other dependent or other

associated person has acquired monetary benefits, directly or indirectly, because of the commission of the offence, also impose a monetary penalty on the person in an amount not exceeding the amount of the monetary benefits so acquired; and

(b) the Registrar may, on imposing an administrative penalty under the Financial Services Act, if satisfied that the convicted person, his spouse or his other dependent has acquired monetary benefits, directly or indirectly, because of the Commission of the offence, also impose a monetary penalty on the person in an amount of the monetary benefits so acquired.

[Cap. 44:05]

78. Regulations

(1) The Minister may, in consultation with the Registrar, make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objectives and purposes of this Act.

(2) The Minister may make different provision for different classes of insurers and for different classes of insurance business in regulations made under subsection (1).

(3) The Minister may make regulations with respect to transitional provisions to enable existing insurance companies to comply with this Act.

(4) Notwithstanding provisions of the General Interpretation Act, any person who contravenes any regulations made under this Act shall be liable to such penalties as contained in the Financial Services Act.

[Cap. 1:01]

[Cap. 44:05]

79. Compliance with this Act

(1) Upon coming into effect of this Act, the insurers, insurance agents, insurance brokers, agents for brokers, loss assessors/adjusters, claims settling agents shall meet the requirements of the Act, including those respecting incorporation, capital and margin of solvency.

(2) The Registrar may upon application by an insurer, insurance broker or insurance agent allow a transition period to facilitate compliance by him with the Act.

(3) Without limiting the Registrar's power under the Financial Services Act, to issue Registrar's directives, the Registrar's directives may make provisions with the respect to—

(a) ownership matters of an insurer and a reinsurer;

(b) ownership matters of an insurance broker;

(c) ownership matters of a mutual insurer;

(d) minimum capital requirements for insurers and local reinsurers;

(e) minimum capital requirements for brokers;

(f) the maintenance by insurers and local reinsurers of adequate capital and appropriate forms of liquidity;

(g) the maintenance by brokers of adequate capital and appropriate forms of liquidity;

(h) the maintenance by insurers and local reinsurers of adequate value of assets corresponding to their liabilities;

(i) the maintenance by brokers of adequate value of assets corresponding to their liabilities;

(j) the margins of solvency required by an insurer and a local reinsurer for carrying on insurance business;

(k) the method of calculating, the following for the purposes of establishing the solvency position of an insurer—

(i) valuation of assets;

(ii) depreciation of assets;

(iii) determination and value of insurance liabilities;

(iv) provision of bad and doubtful debts;

(v) provision of contingent losses and litigation;

(vi) provision of tax payable;

(vii) amortization of deferred acquisition costs;

(viii) amortization of goodwill and other intangible assets;

(ix) calculation of technical provision;

(x) calculation of mathematical reserves; and

(xi) such other items as may be determined;

(l) the requirements of establishing and maintaining separate accounts for certain classes of life insurance policyholders;

(m) the margins of solvency required by an insurance broker;

(n) investments of insurers, local reinsurers and brokers;

(o) the classes of insurance products to be sold within each insurance category;

(p) the value of assets of an insurer and a local reinsurer to be held in Malawi and the manner in which these assets are to be held;

(q) the standards of sound business and financial practices of insurers, local reinsurers and brokers;

(r) the risk management frameworks and practices of insurers, local reinsurers and brokers;

(s) the standards of corporate governance of insurers, local reinsurers and brokers;

(t) the establishment, functions and duties of sub-committees of boards of directors of insurers, local reinsurers and brokers;

(u) the appointment processes, powers and responsibilities of auditors;

(v) the reporting requirements of auditors to the Registrar;

(w) the appointment processes, powers and responsibilities of actuaries;

(x) the reporting requirements of actuaries to the Registrar;

(y) the fair and equitable treatment of policyholders, including those of a mutual policy;

(z) the fair and timely payment of policyholder claims and benefits;

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(aa) reinsurance conditions and arrangements for insurers;

(bb) the establishment of compulsory classes of business;

(cc) the approval process for insurers in respect of launching new products;

(dd) the approval processes and procedures relating to portfolio amalgamations and portfolio transfers;

(ee) the information of insurers, local reinsurers and brokers required to be maintained in the office of the Registrar;

(ff) the information of insurers, local reinsurers and brokers required to be provided to the office of the Registrar;

(gg) the actions to be taken by the Registrar in circumstances whereby an insurer, a local reinsurer or a broker has breached laws, solvency directives or other directives;

(hh) responsibilities and additional requirements of insurers, local reinsurers carrying on business outside Malawi;

(ii) responsibilities, conditions and requirements of foreign insurers, reinsurers and brokers carrying on business in Malawi;

(jj) the conversion of a mutual society into a mutual company and the conversion of other unincorporated entities into corporate entities;

(kk) the smooth transition of insurers, local reinsurers, insurance agents, brokers and agents for brokers to the requirements of this Act;

(ll) the transition period for insurers, local reinsurers, insurance agents, brokers and agents for brokers to the requirements of this Act;

(mm) requiring the payment of a fee in respect of the filing, examining or issuing of any document or in respect of any action the Registrar is required or authorized to take under this Act;

(nn) defining words and expressions to be defined for the purposes of this Act;

(oo) prescribing anything that is required or authorized by this Act to be prescribed; and

(pp) generally for carrying out the purposes and provisions of this Act.

[Cap. 44:05]

80. Repeal and savings

(1) The Insurance Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; or

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

[Cap. 47:01]