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Act

No. 6 of 2025

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

24th January, 2025

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An Act to provide for the regulation of the insurance industry; provide for licensing, operation and supervision of insurance entities; provide for the re-organization, statutory management and dissolution of insurance entities; and provide for matters incidental thereto

ENACTED by the Parliament of the Republic of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Insurance Act, 2024 and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

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

"approved security" means a security issued by the Government or the Reserve Bank of Malawi and any other security or investment which the Registrar may approve;

"associated person" means a person who–

(*a*) is a holding entity, subsidiary or related party of an insurance entity;

(*b*) carries on a business separate from an insurance entity in a manner that the separate businesses of the person and the insurance entity, or a substantial part thereof, are not readily identifiable; or

(*c*) although not directly associated with an insurance entity, both the person and the insurance entity are associated with another person;

"bancassurance agent" means a body corporate, including a bank and a deposit taking financial institution, which transacts insurance business on behalf of an insurer or an insurance broker, by way of selling insurance policies;

"chief executive officer" means a person occupying the position of chief executive officer of an entity by whatever name designated;

"disability insurance business" means the business of undertaking liability under an insurance policy in respect of the happening of a personal accident or sickness or any class of personal accident or sickness;

"executive officer" means—

(*a*) a director, chief executive officer, chief finance officer, chief operating officer, chief risk officer, an actuary, underwriting manager and a claims manager of an insurer, reinsurer or insurance intermediary;

(*b*) a person holding an office declared by the Registrar to be an executive office; and

(*c*) a person declared to be an executive officer by the Registrar in writing;

"financial statement" includes—

(*a*) annual financial statement and provisional annual financial statement;

(*b*) interim or preliminary report;

(*c*) call report;

(*d*) in the case of a group of companies, group and consolidated financial statement; and

(*e*) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or policyholder, or holder of a security of a company, or any regulatory authority or person, may reasonably be expected to rely on;

"financial year" means a period of twelve months beginning on 1st January and ending on 31st December;

"fit and proper requirements" means qualities of competence, integrity and financial standing as may be prescribed by the Registrar by directive;

"fundamental transaction" means a transaction which fundamentally alters a company and includes—

(*a*) amalgamation or merger;

(*b*) disposal of all or the greater part of the assets or undertaking of the company; and

(*c*) a scheme of arrangement;

"general insurance business" means the business of undertaking liability, by way of insurance, in respect of any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event, and includes any business incidental to insurance business, but does not include–

(*a*) life insurance business;

(*b*) disability insurance business undertaken solely in relation to life insurance business;

(*c*) business in relation to the provision of a benefit by a friendly society or trade union to its member or his or her dependent; and

(*d*) any business excluded from this definition by the Registrar;

"group of companies" means a holding or parent company and its subsidiaries;

"holding company" in relation to a subsidiary company, means a body corporate that controls the subsidiary company;

"inclusive insurance business" means insurance business designed to be accessible to, and targeted at, low-income households, where the risk insured is funded by premium and managed based on insurance principles;

"insurance agent" means a person, other than an officer or salaried employee of an insurer, who in consideration of a commission, is authorized by the insurer to—

(*a*) sell an insurance policy of the insurer; or

(*b*) do any act in relation to the receiving of an insurance proposal or the issuance of an insurance policy;

"insurance broker" means a person who, in consideration of any compensation, commission or other benefit of value deals directly with the public, and—

(*a*) acts or aids in any manner in soliciting, negotiating or procuring the making of any contract of insurance, whether or not the person has entered into an agreement with an insurer allowing the person to bind coverage and countersign documents on behalf of the insurer;

(*b*) provides a risk management service, including assistance in processing a claim, where required; or

(*c*) provides consulting or any other advisory service with respect to insurance;

"insurance business" means general insurance business and life insurance business;

"insurance entity" means a person carrying on business as an insurer, a reinsurer or an insurance intermediary;

"insurance intermediary" means a person who performs any act—

(*a*) resulting in another person entering into or offering to enter into, vary or renew an insurance policy; or

(*b*) with a view to—

(i) maintaining, servicing or otherwise dealing with an insurance policy;

(ii) collecting or accounting for a premium payable under an insurance policy; or

(iii) receiving, submitting or processing a claim under an insurance policy;

"insurance policy" means a contract of insurance whose terms provide that a person, in return for a premium, receives a benefit from an insurer or allows an organization to provide a benefit to the 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;

"insurer" means a person licensed under this Act to carry on life insurance business or general insurance business, and includes a reinsurer;

"life insurance business" means a business that–

(*a*) involves–

(i) the issuing of a life insurance policy; or

(ii) the undertaking of liability under a life insurance policy; or

(*b*) relates to a business referred to in paragraph (a),

but does not include a business of a kind excluded from the category by the Registrar;

"life insurance fund" means a fund maintained by a life insurer under section 25;

"life insurance policy" includes—

(*a*) a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuation of human life;

(*b*) a contract of insurance that is subject to payment of premium for a term dependent on the termination or continuation of human life;

(*c*) a contract of insurance that provides for the payment of an annuity or joint annuity;

(*d*) a contract of insurance that provides for the payment of a term annuity;

(*e*) a continuous disability policy as defined by the Registrar; or

(*f*) a contract, whether or not it is a contract of insurance, that is an investment linked contract, as defined by the Registrar, and includes a contract that provides for the payment of money on the death of a person where–

(i) the term of the contract is expressed to be not more than one year; and

(ii) payment is only to be made in the event of death by accident or death resulting from a specified sickness;

"life insurer" means an insurer who carries on life insurance business;

"local reinsurer" means a reinsurer who is incorporated in Malawi or, if incorporated in another country, its head office is in Malawi;

"loss adjustor" means a person acting on behalf of an insurer who possesses knowledge and skill to—

(*a*) assess and investigate an accident; and

(*b*) negotiate and adjust compensation payable under an insurance policy;

"loss assessor" means a person who possesses knowledge and skill to assess and investigate an accident on behalf of the insured;

"notice" includes a circular, guideline, practice note or any instrument issued by the Registrar;

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

"policyholder" means a person entitled to receive a policy benefit under an insurance policy;

"policy benefit" means money, service or other benefit paid or payable under an insurance policy;

"premium" means the consideration given or to be given in return for an undertaking to provide a policy benefit;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; Cap. 44:05

"reinsurance broker" means an insurance intermediary who, for remuneration or fee, solicits, negotiates or places reinsurance or retrocession business on behalf of a ceding insurer;

"reinsurance business" means the business of undertaking liability to pay money to an insurer or a reinsurer in respect of a contractual liability of insurance business incurred by the insurer or reinsurer, and includes a retrocession;

"reinsurer" means a person who carries on reinsurance or retrocession business, and includes a local reinsurer and an external reinsurer;

"related party" has the meaning assigned thereto under the Financial Services Act; Cap. 44:05

"responsible person" includes—

(*a*) an executive officer;

(*b*) a significant owner;

(*c*) an internal auditor; and

(*d*) an external auditor;

"retrocession" means the purchase of reinsurance by a reinsurer; and

"serious wrongdoing" means an act, omission or course of conduct that—

(*a*) is misleading or deceptive;

(*b*) involves the unlawful use of funds or resources of an insurance entity;

(*c*) constitutes an offence which is punishable by imprisonment for a term of at least two years;

(*d*) is oppressive, discriminatory, or negligent or, that constitutes gross mismanagement; or

(*e*) otherwise reflects adversely on the competence, diligence, judgment, honesty or integrity of a person.

(2) In this Act, reference to insurance business of an insurer includes business of the insurer relating to the investment, administration and management of assets of the insurer and any statutory funds of the insurer.

Objective of the Act

3. The objective of this Act is to make provision for the regulation of the insurance industry and supervision of insurance entities in order to promote safety, soundness, prudent management and highest standard of conduct of business of insurance entities for the benefit and protection of policyholders.

Application of Financial services Act and Companies Act
Cap. 44:05
Cap. 46:03

4. Where there is an inconsistency between this Act and the Financial Services Act or the Companies Act, this Act shall prevail to the extent of the inconsistency.

Part II–Licensing of Insurers

Categories and classes of insurance business

5.—(1) Insurance business in Malaŵi shall be categorized into–

(*a*) life insurance; and

(*b*) general insurance.

(2) The Registrar may divide each category of insurance business into classes and sub-classes as the Registrar may determine appropriate.

Insurance entities to be licensed

6.—(1) A person shall not carry on insurance business in Malawi unless the person is licensed under this Act to carry on the business.

(2) An insurer may be licensed to carry on either life insurance business or general insurance business and not both.

(3) Subsection (2) shall not apply to inclusive insurance business and reinsurance business.

(4) A person who is not licensed to carry on insurance business shall not use a name, title, trademark, style, designation, or description that represents or implies that the person is a licensed insurance entity.

Licensing requirements for insurers Cap. 46:03

7.—(1) A person shall not be licensed as an insurer unless the Registrar is satisfied that the person–

(*a*) is a company incorporated under the Companies Act;

(*b*) has included the words "insurance" or "assurance" in the registered name;

(*c*) has professional and technical ability to carry on the proposed insurance business in a prudent manner;

(*d*) has the financial ability to carry on the proposed insurance business;

(*e*) has shareholders, directors and other responsible persons that meet the fit and proper requirements prescribed by the Registrar;

(*f*) has a name which is not identical to the name of another insurance entity or does not nearly resemble the name of another insurance entity so as to likely confuse the public; and

(*g*) in the case of life insurance business and general insurance business, has entered or undertaken to enter into a reinsurance agreement with a reinsurer acceptable to the Registrar.

(2) In addition to the requirements under subsection (1), the Registrar shall, in processing an application for a licence, consider—

(*a*) the nature and sufficiency of financial resources of the applicant, including the financial resources of the shareholders of the applicant;

(*b*) the soundness and feasibility of the plan of the applicant for the conduct of the business;

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

(*d*) whether establishment of the business is in the public interest; and

(*e*) whether the applicant has complied with all prescribed requirements.

(3) Where an applicant for a licence carries on insurance business outside Malawi, the Registrar shall, in considering the application, take into account the performance of the insurance business in the other country even if the category of insurance business intended to be carried on in Malawi is different from the category of insurance business carried on in the other country.

Application for and grant of insurance business licence

8.—(1) A person who intends to carry on insurance business shall submit an application for a licence to the Registrar which shall be—

(*a*) in the form; and

(*b*) accompanied by a non-refundable application fee,

prescribed by the Registrar.

(2) The Registrar shall review an application received under subsection (1) and notify his or her decision to the applicant within ninety days of receipt of all the required information.

(3) Where the Registrar is satisfied that the applicant has met the prescribed requirements for grant of a licence, the Registrar may grant a licence to the applicant, with or without conditions.

(4) Conditions imposed under subsection (3) may–

(*a*) relate to the carrying on of business in a prudent manner;

(*b*) require the insurer to maintain a sufficient solvency margin;

(*c*) limit the amount or value of policy benefits to be provided by the insurer; or

(*d*) limit the amount of premiums the insurer may contract to receive.

(5) The Registrar may, at any time after a licence is issued, by notice in writing to the insurer, vary, remove, add or substitute any condition imposed on the licence.

(6) The Registrar shall not exercise the power under subsection (5) unless the Registrar gives the insurer not less than seven days' notice in writing of the intention to exercise the power.

(7) The notice issued under subsection (6) shall contain a statement of reasons justifying the intended decision of the Registrar.

(8) The insurer shall, upon receipt of the notice under subsection (6), submit its response in writing to the Registrar within the period specified in the notice.

(9) The Registrar shall take into account the response of the insurer in making a decision under subsection (5).

Rejection of application for insurance business licence

9.—(1) The Registrar may refuse to grant a licence to an applicant for an insurance business licence where the Registrar is satisfied that—

(*a*) the applicant has not met any requirement prescribed under section 7;

(*b*) grant of a licence to the applicant is not in the public interest;

(*c*) the applicant, its shareholder or associated person is a shell company; or

(*d*) the direct or indirect control of the applicant by another person, whether by virtue of shareholding, voting power, power to appoint a director, or in any other manner is not in the interest of policyholders.

(2) Where the Registrar refuses to grant a licence, the Registrar shall give reasons for the refusal, in writing, to the applicant.

Commencement of business

10.—(1) An insurer shall commence business within twelve months from the date of the grant of a licence.

(2) The insurer shall not commence business unless the commencement is approved by the Registrar in writing.

Suspension of insurance business licence

11.—(1) The Registrar may suspend a licence of an insurer by notice in writing where the Registrar is satisfied that the insurer—

(*a*) has breached a condition of the licence;

(*b*) has failed to make an arrangement, to the satisfaction of the Registrar, to address the non-compliance of a responsible person with fit and proper requirements;

(*c*) has failed to meet any requirement prescribed by the Registrar;

(*d*) has failed to comply with a governance and risk management framework prescribed by the Registrar;

(*e*) has contravened this Act;

(*f*) has ceased to comply with a licensing requirement prescribed under section 7; or

(*g*) has failed to submit a plan, scheme or strategy required under this Act.

(2) The suspension of a licence under subsection (1) shall—

(*a*) be for a period specified in the notice of suspension; and

(*b*) not be lifted until the insurer has addressed the matters specified in the notice to the satisfaction of the Registrar.

(3) Where the licence of an insurer is suspended, the insurer shall—

(*a*) not underwrite new insurance business in the class or sub-class to which the suspension relates;

(*b*) not renew or vary an insurance policy in the class or sub-class to which the suspension relates; and

(*c*) honour any claim and liability arising from an insurance policy existing at the time of the suspension.

Revocation of insurance business licence

12.—(1) The Registrar may revoke an insurance business licence of an insurer where the Registrar is satisfied that the insurer—

(*a*) has ceased to carry on insurance business in Malawi;

(*b*) has failed to commence business within twelve months of the grant of the licence;

(*c*) has ceased to meet a condition of the licence;

(*d*) has failed to meet any requirement prescribed by the Registrar;

(*e*) has been removed from the register of companies in Malawi;

(*f*) has been liquidated, wound up, dissolved or has otherwise ceased to exist;

(*g*) has contravened or failed to comply with this Act or the Financial Services Act; Cap. 44:05

(*h*) made a material misrepresentation in the application for the licence;

(*i*) has made a material misrepresentation to the public in connection with its insurance business;

(*j*) has submitted a plan, scheme or strategy that is inadequate;

(*k*) has failed to comply with any approved plan, enforceable undertaking, scheme or strategy;

(*l*) subsequent to a suspension of its licence under section 11, has failed to address the matters specified in the notice of suspension to the satisfaction of the Registrar within the period specified in the notice; or

(*m*) has ceased to comply with any licensing requirement prescribed under section 7.

(2) The Registrar may revoke a licence of an insurer where the insurer requests the Registrar, in writing, to revoke the licence.

(3) The provisions of the Financial Services Act which relate to the notification of the intention of the Registrar to revoke a licence of a financial institution and the grant of an opportunity to be heard to the financial institution, shall not apply to subsection 1 (*a*) and subsection (2). Cap. 44:05

(4) The Registrar shall not revoke a licence of an insurer on the ground that the insurer has—

(*a*) requested that the licence be revoked; or

(*b*) ceased to carry on insurance business in Malawi,

unless the Registrar is satisfied that the insurer has settled all outstanding liabilities.

(5) Where the licence of an insurer is revoked—

(*a*) the insurer shall immediately cease to conduct business and close all its business premises;

(*b*) the Registrar may freeze a bank account of the insurer; and

(*c*) an insurance intermediary who entered into an agency or broking contract with the insurer shall cease to transact insurance business with or on behalf of the insurer.

Operation of inclusive insurance business to be authorized

13.—(1) A person shall not carry on an inclusive insurance business unless the person is authorized to engage in the business by the Registrar.

(2) The Registrar may issue a directive prescribing authorization, operation and supervision requirements for inclusive insurance business.

Part III–Carrying on of Insurance Business

Division 1–General Provisions

Capital and margin of solvency requirements

14.—(1) An insurer shall at all times meet capital and solvency requirements prescribed by the Registrar.

(2) The Registrar may revoke the licence of an insurer who fails to meet the prescribed capital and solvency requirements.

(3) Where the Registrar intends to revoke a licence of an insurer under subsection (2), the Registrar shall give notice in writing to the insurer to show cause why, within a period specified in the notice, the licence should not be revoked.

(4) An insurer shall, upon receipt of a notice under subsection (3), submit its response in writing to the Registrar within the period specified in the notice.

(5) Where upon considering the representation received from the insurer under subsection (4) the Registrar decides to give the insurer a period within which to meet the capital and solvency requirements, the period so given shall not exceed one hundred and eighty days.

(6) Where the insurer fails to meet the capital and solvency requirements within the period given under subsection (5), the Registrar shall revoke the licence.

Insurers to maintain head office and appoint a chief executive officer

15.—(1) An insurer shall—

(*a*) have a head office for its business in Malawi; and

(*b*) appoint a chief executive officer and an officer designated as second in command both of whom shall be resident in Malawi.

(2) The insurer shall give prior notice in writing to the Registrar where the insurer intends to–

(*a*) change the location of its head office;

(*b*) close a branch; or

(*c*) appoint a new chief executive officer.

Reinsurance

16.—(1) An insurer shall reinsure risks underwritten by the insurer with a reinsurer of adequate standing.

(2) The Registrar may, by directive, prescribe requirements for reinsurance arrangements.

Insurance business to be placed within Malawi

17.—(1) An insurer, insurance broker and any other person who undertakes insurance business shall not place insurance business, other than reinsurance business, outside Malawi without prior written approval of the Registrar.

(2) The Registrar may, by directive, prescribe requirements and procedure for placement of insurance and reinsurance business outside Malawi.

Insurance contracts to be in Kwacha

18. An insurer shall quote insurance premium in Kwacha unless authorized in writing by the Reserve Bank of Malawi to quote in a foreign currency.

Settlement of insurance claims

19.—(1) An insurer shall settle a claim arising out of an insurance policy issued by the insurer—

(*a*) within fourteen days of—

(i) signing a claim discharge certificate; or

(ii) delivery of a decision of a court or tribunal ordering the insurer to settle the claim; or

(*b*) where the court or tribunal orders that the claim be settled within a period different from the period specified under paragraph (*a*), within the period specified in the order.

(2) A person who is not an insurance entity, a claim settling agent or a legal practitioner shall not process an insurance claim on behalf of a claimant.

(3) An insurer who fails, without any reasonable excuse, to settle a claim within the period specified under subsection (1) shall be liable to an administrative penalty.

(4) The Registrar may, by directive, prescribe a claims payment process to be followed by an insurer, insurance intermediary or any person who deals with any aspect of the insurance claim process.

Unclaimed funds

20.—(1) Where an insurer is in possession of unclaimed funds, the insurer shall give notice in writing to the owner of the funds of its intention to transfer the funds to the Registrar unless the owner claims the funds before expiry of thirty days from the date of the notice.

(2) A notice under subsection (1) shall be sent to the last known address of the owner of the funds and be published in at least two newspapers of wide circulation in Malawi.

(3) Where the funds remain unclaimed thirty days after publication of the notice under subsection (2), the insurer shall transfer the funds to the Reserve Bank of Malawi.

(4) The insurer shall, upon transferring the funds to the Reserve Bank of Malawi, be relieved of liability for any claim in respect of the funds.

(5) The owner of unclaimed funds transferred to the Reserve Bank of Malawi under subsection (4) may claim the funds in writing from Reserve Bank of Malawi within twelve months from the date of the transfer.

(6) Where the owner of unclaimed funds does not claim the funds within the period prescribed under subsection (5), the funds shall be transferred to, and form part of, the supervisory levy maintained under the Financial Services Act.

Cap. 44:05

(7) An insurer who fails to comply with subsection (1), (2) or (3) shall be liable to an administrative penalty.

(8) For purposes of this section—

(*a*) "owner of unclaimed funds" means a person entitled to any unclaimed funds, and includes his or her executor, administrator, assignee, or agent; and

(*b*) "unclaimed funds" means funds owing to any owner which, at any time before or after commencement of this Act, have been in possession, control or custody of an insurer for a period of seven years from the date the funds became payable.

Annual financial statements

21.—(1) An insurer shall, in respect of each financial year, prepare annual financial statements in accordance with International Financial Reporting Standards.

(2) Directors of the insurer shall approve the annual financial statements and the approval shall be evidenced by signatures of at least two directors.

(3) The directors shall present the approved annual financial statements to shareholders of the insurer at an annual general meeting of the insurer.

(4) The Registrar may, by directive, prescribe additional requirements for annual financial statements.

Appointment of actuary

22.—(1) An insurer shall, subject to prior approval of the Registrar, appoint an actuary for a specific duration.

(2) The insurer or actuary may terminate the appointment made under subsection (1) at any time.

(3) Where the appointment of the actuary is terminated by the—

(*a*) insurer, the insurer shall immediately notify the Registrar, in writing, of the termination and reasons for the termination; or

(*b*) actuary through resignation, the actuary shall immediately submit to the insurer and the Registrar a written statement of the circumstances and reasons for the resignation.

(4) The insurer shall, upon termination of the appointment of the actuary, appoint another actuary within sixty days from the date of termination of the appointment.

(5) Where the Registrar is of the opinion that an actuary other than the actuary appointed by the insurer under subsection (1) should—

(*a*) value the actuarial and other policy or technical liabilities of the insurer; or

(*b*) conduct a valuation in a specific area,

the Registrar may appoint another actuary to conduct the valuation.

(6) The insurer shall pay expenses of the valuation conducted by an actuary appointed under subsection (5).

Responsibilities of an actuary

23.—(1) An actuary shall value policy liabilities of an insurer as at the end of each financial year, in accordance with criteria prescribed by the Registrar by directive.

(2) The Registrar may order the actuary to carry out a valuation in a specific area and expenses of such valuation shall be paid by the insurer.

(3) A director, former director, officer or employee of the insurer shall, at the request of the actuary, give the actuary access to records of the insurer and provide such information and explanation as, in the opinion of the actuary, are necessary for the performance of the duties of the actuary.

(4) An actuary appointed by an insurer shall, within ninety days from the end of the financial year, issue a report on the valuation, in the manner prescribed by the Registrar.

(5) The report issued under subsection (4) shall state whether, in the opinion of the actuary, the annual financial statements of the insurer present fairly the results of his valuations.

(6) An actuary who forms an opinion that there is a matter that has adverse effect on the financial condition of the insurer shall report the finding in writing to the chief executive officer of the insurer and submit a copy of the report to the Registrar.

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

Insurer to submit returns to the Registrar

24.—(1) An insurer shall submit returns to the Registrar in a format and at the frequency prescribed by the Registrar in a directive.

(2) Where the Registrar is satisfied that a return submitted under subsection (1) is incomplete or incorrect, the Registrar may, by notice in writing—

(*a*) direct the insurer to submit a supplementary return containing information specified in the notice within the period specified in the notice; or

(*b*) reject the return and order the insurer to submit a new return within the period specified in the notice.

(3) An insurer who—

(*a*) fails to submit a return in accordance with subsection (1);

(*b*) fails to submit a supplementary return or a new return in accordance with subsection (2);

(*c*) submits a supplementary return or new return which is determined by the Registrar to be incomplete or incorrect; or

(*d*) fails to take reasonable steps to ensure accuracy and completeness of a return,

shall be liable to an administrative penalty.

Division 2–Special Provisions Governing the Carrying on of Life Insurance Business

Life insurer to maintain a life insurance fund

25.—(1) A life insurer shall maintain a life insurance fund into which, and from which, receipts and payments in respect of the life insurance business shall be made.

(2) The life insurance fund shall be a security of the owners of life insurance policies issued by the life insurer.

(3) The life insurer shall not apply a payment from the life insurance fund, directly or indirectly, to any purpose other than the life insurance business.

(4) The life insurer may invest funds from the life insurance fund in the same investment with any other fund.

(5) Where the life insurer invests funds from the life insurance fund in the same investment with another fund, the life insurer shall maintain separate books of accounts for the portion of the investment attributable to the life insurance fund.

(6) A life insurer who carries on another business, in addition to the life insurance business, shall maintain separate books of accounts for the life insurance business.

Investment in holding company

26.—(1) Where a life insurer is part of a group of companies, the life insurer may invest funds from its life insurance fund in its holding company through acquiring shares in the holding company.

(2) Where a life insurer holds shares in a holding company in accordance with subsection (1)—

(*a*) for purpose of the Companies Act, the shares shall be deemed, to be held by the insurer as a trustee for the benefit of the policyholders; Cap. 46:03

(*b*) the shares shall be held subject to such conditions as the Registrar may prescribe; and

(*c*) the insurer shall not have the right to vote at meetings of the holding company.

Part IV–Licensing and Authorization of Insurance Intermediaries

Division 1–Insurance Brokers

Insurance brokers to be licensed

27.—(1) A person shall not carry on the business of an insurance broker in Malawi unless the person is licensed as an insurance broker under this Act.

(2) For purposes of this part "insurance broker" includes reinsurance broker.

Licensing of insurance brokers

28.—(1) A person who intends to carry on business as an insurance broker shall submit an application for a licence to the Registrar which shall be—

(*a*) in the form; and

(*b*) accompanied by a non-refundable application fee,

prescribed by the Registrar.

(2) The Registrar may grant an insurance broker licence to the applicant, if the Registrar is satisfied that—

(*a*) the applicant is a company incorporated under the Companies Act; Cap. 46:03

(*b*) the proposed head of the applicant—

(i) is a Chartered Insurer or holds an equivalent professional insurance qualification acceptable to the Registrar; and

(ii) has a minimum of five years' professional experience managing a technical function of an insurer or an insurance broker;

(*c*) each proposed executive officer of the applicant is a fit and proper person to hold the proposed office;

(*d*) the name of the applicant is not identical or so nearly identical to the name of another entity licensed under this Act or the Financial Services Act; Cap. 44:05

(*e*) the applicant has not entered into a preferential treatment agreement relating to the offer of insurance services with any insurer;

(*f*) the applicant has secured appointment, as a broker, by at least fifty percent of insurers operating in Malawi;

(*g*) the proposed name of the applicant includes the words "insurance broker"; and

(*h*) it is in the public interest to license the applicant as an insurance broker.

(3) The Registrar may, by directive, prescribe additional licensing requirements for insurance brokers.

(4) The Minister may, by order published in the *Gazette*, revise the percentage of insurers prescribed under subsection (2)(*f*).

Insurance brokers to maintain professional indemnity and fidelity insurance policies

29. An insurance broker shall maintain a professional indemnity policy and a fidelity insurance policy with such limits of liability as the Registrar may prescribe.

Termination of appointment of insurance broker

30.—(1) An insurer may, at any time, terminate the appointment of an insurance broker.

(2) Where an insurer terminates the appointment of an insurance broker, the insurer shall immediately notify the termination to–

(*a*) the Registrar; and

(*b*) the public through a notice published in at least two newspapers of wide circulation in Malawi or any medium of communication as the Registrar may prescribe.

(3) An insurance broker who receives a notice of termination of appointment from an insurer shall cease to sell insurance policies on behalf of the insurer with effect from the date specified in the notice.

Division 2–Bancassurance Agents

Bancassurance agents to be authorized

31. A person shall not carry on the business of a bancassurance agent unless the person is authorized to operate as a bancassurance agent under this Act.

Authorization of bancassurance agents

32.—(1) A person who intends to carry on business as a bancassurance agent shall submit an application for authorization to the Registrar which shall be—

(*a*) in the form; and

(*b*) accompanied by a non-refundable application fee,

prescribed by the Registrar.

(2) The Registrar may authorize an applicant to carry on business as a bancassurance agent if the Registrar is satisfied that—

(*a*) the applicant is a company incorporated under the Companies Act; Cap. 46:03

(*b*) the proposed head of the technical bancassurance function—

(i) is a Chartered Insurer or holds an equivalent professional insurance qualification acceptable to the Registrar; and

(ii) has a minimum of five years' experience managing a technical function of an insurer or an insurance broker;

(*c*) the applicant has entered into an agency agreement approved by the Registrar with an insurer or insurance broker;

(*d*) the proposed head of the bancassurance function—

(i) is a fit and proper person;

(ii) has not been found guilty of a serious wrongdoing in any disciplinary proceeding or by a court of law; and

(iii) is not under investigation for an allegation of serious wrongdoing; and

(*e*) authorization of the applicant is in the public interest.

(3) A bancassurance agent shall, for all purposes connected with payment or receipt of premium and other money due and payable to an insurer under an insurance policy, be an agent of the insurer.

(4) The Registrar may, by directive, prescribe additional authorization requirements for bancassurance agents.

Termination of bancassurance agency

33.—(1) An insurer or a bancassurance agent may terminate the agency agreement signed between the insurer and the bancassurance agent at any time.

(2) Where the agency agreement between the insurer and the bancassurance agent is terminated—

(*a*) the insurer shall—

(i) immediately notify the termination to the Registrar; and

(ii) notify the termination to the public through a notice published in at least two newspapers of wide circulation in Malawi or any other medium of communication as the Registrar may prescribe; and

(*b*) the bancassurance agent shall cease to operate as an agent of the insurer with effect from the date of the termination.

(3) A bancassurance agent whose agency agreement with an insurer is terminated, who purports to act as an agent of the insurer shall be liable to an administrative penalty.

Division 3–Insurance Agents

Insurance agents to be licensed

34. A person shall not carry on the business of an insurance agent unless the person is licensed as an insurance agent under this Act.

Licensing of insurance agents

35.—(1) A person who intends to carry on business as an insurance agent shall submit an application for a licence to the Registrar which shall be—

(*a*) in the form; and

(*b*) accompanied by a non-refundable application fee,

prescribed by the Registrar.

(2) The Registrar may grant an insurance agent licence to the applicant, if the Registrar is satisfied that—

(*a*) the proposed head of the applicant holds an insurance qualification and experience as the Registrar may prescribe;

(*b*) the name of the applicant is not identical or so nearly identical to the name of another entity licensed under this Act or the Financial Services Act; Cap. 44:05

(*c*) the applicant or the proposed head of the applicant is a fit and proper person to be licensed as an insurance agent;

(*d*) the applicant or the proposed head of the applicant has not been found guilty of serious wrongdoing in any disciplinary proceeding or by a court of law;

(*e*) the applicant or the proposed head of the applicant is not under investigations on an allegation of serious wrongdoing;

(*f*) the applicant has undertaken not to be an agent for more than one insurer in each category of insurance business;

(*g*) the applicant has entered into an agency agreement with an insurer specifying the terms and conditions of the agency; and

(*h*) the proposed name of the applicant includes the words "insurance agent".

(3) A person who intends to carry on business as an individual insurance agent shall submit his or her application for a licence through an insurer.

(4) The Registrar may, by directive, prescribe additional licensing requirements for insurance agents.

Termination of agency agreement

36.—(1) An insurer or an insurance agent may terminate the agency agreement signed between the insurer and the insurance agent at any time.

(2) Where the agency agreement is terminated—

(*a*) the insurer shall immediately notify the termination to the Registrar; and

(*b*) the insurance agent shall immediately cease to operate as an insurance agent of the insurer.

(3) The licence of an insurance agent shall automatically stand suspended on termination of the last subsisting agency agreement to which the insurance agent was a party.

Division 4–Suspension and Revocation of Licences and Authorizations of insurance intermediaries

Suspension of licence or authorization of an insurance intermediary

37.—(1) The Registrar may suspend the licence or authorization of an insurance broker, bancassurance agent or insurance agent by notice in writing, where the Registrar is satisfied that the insurance broker, bancassurance agent or insurance agent has—

(*a*) breached a condition of the licence;

(*b*) failed to meet any requirement prescribed by the Registrar;

(*c*) contravened this Act;

(*d*) has ceased to comply with a licensing requirement prescribed under this Act or the Financial Services Act; or

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(*e*) has failed to make an arrangement, to the satisfaction of the Registrar, to address the non-compliance of a responsible person with fit and proper requirements.

(2) The suspension of a licence or authorization under subsection (1) shall—

(*a*) be for a period specified in the notice of suspension; and

(*b*) not be lifted until the insurance broker, bancassurance agent or insurance agent has addressed the matters specified in the notice to the satisfaction of the Registrar.

(3) Where the licence of an insurance broker, bancassurance agent or insurance agent is suspended, the insurance broker, bancassurance agent or insurance agent shall cease to conduct business as an insurance intermediary.

Revocation of licence or authorization of insurance intermediary

38.—(1) The Registrar may revoke the licence of an insurance broker or insurance agent or authorization of a bancassurance agent if the Registrar is satisfied that the insurance broker, insurance agent or bancassurance agent—

(*a*) has ceased to comply with a licensing requirement prescribed under this Act or the Financial Services Act;

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(*b*) is not conducting its business in accordance with sound business principles;

(*c*) has ceased to carry on insurance broking, insurance agency or bancassurance agency business in Malawi; or

(*d*) has contravened this Act, any financial services law or a condition of the licence or authorization.

(2) The Registrar may, at the request of an insurance broker, insurance agent or bancassurance agent in writing, revoke the licence or authorization of the insurance broker, insurance agent or bancassurance agent.

(3) The Registrar shall not revoke the licence or authorization of an insurance broker, insurance agent or bancassurance agent under subsection (2) unless the Registrar is satisfied that the insurance broker, insurance agent or bancassurance agent has—

(*a*) settled all its insurance business liabilities; or

(*b*) made adequate provision for settlement of the liabilities.

(4) Where the Registrar revokes the licence or authorization of an insurance broker, insurance agent or bancassurance agent, the Registrar shall—

(*a*) immediately notify the revocation to insurers; and

(*b*) notify the revocation to the public through a notice published in at least two newspapers of wide circulation in Malawi or any medium of communication as the Registrar may determine appropriate.

(5) Where the licence or authorization of an insurance broker, insurance agent or bancassurance agent is revoked, the insurance broker, insurance agent or bancassurance agent shall cease to conduct business as an insurance intermediary.

Part V–Licensing of Loss Assessors, Adjustors and Claims Settling Agents

Loss assessors, loss adjustors and claims settling agents to be licensed

39. A person shall not carry on the business of an insurance loss assessor, insurance loss adjustor or insurance claims settling agent unless the person is licensed to carry on the business under this Act.

Licensing of loss assessors, loss adjustors and claims settling agents

40.–(1)A person who intends to carry on business as an insurance loss assessor, insurance loss adjustor or insurance claims settling agent shall submit an application for a licence to the Registrar which shall be—

(*a*) in the form; and

(*b*) accompanied by a non-refundable application fee,

prescribed by the Registrar.

(2) The Registrar may grant an insurance loss assessor, insurance loss adjustor or insurance claims settling agent licence to the applicant, if the Registrar is satisfied that the applicant–

(*a*) holds relevant educational and professional qualifications or has a minimum of five years' work experience;

(*b*) is not seeking to be licensed under a name that is identical or so nearly identical to the name of another entity licensed under this Act or the Financial Services Act; Cap. 44:05

(*c*) has entered into a working arrangement with an insurer;

(*d*) has not been declared insolvent by a competent court of law or made arrangement with, or assignment to, a creditor which has not been set aside;

(*e*) does not have a criminal record; and

(*f*) has a valid professional indemnity insurance policy with an insurer which complies with a policy benefit limit prescribed by the Registrar.

(2) The Registrar may, by directive, prescribe additional licensing requirements for insurance loss assessors, insurance loss adjusters and insurance claims settling agents.

Part VI–Corporate Governance Requirements for Insurers and Insurance Brokers

Fit and proper policy for directors and responsible persons

41.—(1) An insurer and insurance broker shall develop, maintain and implement a fit and proper policy for directors and responsible persons that complies with requirements prescribed by the Registrar by directive.

(2) Where an insurer or insurance broker is part of a group of insurance companies, the insurer or insurance broker may adopt the group fit and proper policy of the group.

(3) Where an insurer or insurance broker adopts a group fit and proper policy of a group and the group fit and proper policy does not comply with the requirements prescribed by the Registrar, in any respect, the insurer or insurance broker shall prepare a supplementary fit and proper policy which, when taken together with the group fit and proper policy, complies with the requirements prescribed by the Registrar.

(4) For purposes of this section, "group fit and proper policy" means a fit and proper policy that applies to an insurer or insurance broker and another member of a group of companies.

Removal of directors and responsible persons by the Registrar

42.—(1) Where the Registrar has sufficient cause or reasonable ground to believe that a shareholder, director or responsible person of an insurer or insurance broker is not fit and proper to be a shareholder, director or responsible person of the insurer or insurance broker, the Registrar may—

(*a*) order the insurer or insurance broker to—

(i) remove the director or responsible person from the position with effect from the date specified in the order;

(ii) remove or suspend all directors of the insurer or insurance broker; or

(iii) remove the shareholder or require the shareholder to reduce his shareholding in the insurer or insurance broker; and

(*b*) disqualify the director from serving as a director of any insurance entity in Malawi.

(2) Where the Registrar makes an order under subsection (1)(*a*) (i) or (ii), the Registrar may direct that the director or responsible person so removed shall not be reappointed as a director or responsible person of the insurer or insurance broker—

(*a*) at any time;

(*b*) for a period specified in the order; or

(*c*) unless a condition specified in the order is fulfilled.

(3) For purposes of this section, "sufficient cause" means—

(*a*) in relation to a director—

(i) ceasing to comply with the fit and proper requirements prescribed by the Registrar; or

(ii) failure to attend, without a valid reason, three consecutive meetings of the Board of directors of which the director had notice; or

(*b*) in relation to a Board of directors—

(i) failure, omission or neglect of duties and responsibilities as prescribed in this Act or the Financial Services Act; or Cap. 44:05

(ii) failure, omission or neglect to report to the Registrar any breach of the requirements of this Act or any financial services law.

Insurance risk management framework

43.—(1) An insurer shall develop and maintain a risk management framework that complies with requirements prescribed by the Registrar by directive.

(2) Where an insurer is part of a group of insurers, the insurer may adopt the group risk management framework of the group.

(3) Where an insurer adopts a group risk management framework of a group and the group risk management framework does not comply with the requirements prescribed by the Registrar, in any respect, the insurer shall prepare a supplementary risk management framework which, when taken together with the group risk management framework, complies with the requirements prescribed by the Registrar.

(4) An insurer shall, within twenty-one days of amending the risk management framework, notify the amendment to the Registrar.

(5) For purposes of this section "group risk management framework" means a risk management framework that applies to more than one insurer.

Corporate governance framework

44.—(1) An insurer and insurance broker shall adopt, implement and document a corporate governance framework that provides for prudent management and oversight of its business.

(2) A corporate governance framework adopted under subsection (1) shall comply with requirements prescribed by the Registrar by directive.

Part VII–Supervision of Insurers

Definitions

45. For purposes of this Part, unless the context otherwise requires—

"competent authority" means a regulatory authority that is empowered by law to supervise insurers in another jurisdiction;

"group actuary" means an actuary appointed under section 52;

"group supervisor" in relation to an insurance group, means the Registrar or a competent authority who is a group supervisor for the insurance group;

"insurance group" means two or more undertakings consisting of an insurer and any other undertaking which is—

(*a*) a holding company, operating or non-operating;

(*b*) a subsidiary of the insurer;

(*c*) a subsidiary of a holding company of the insurer; or

(*d*) an entity where the insurer or the holding company of the insurer is entitled to exercise, or control the exercise of, twenty per cent or more of the voting power at a general meeting; and

"undertaking" means a body corporate, partnership, unincorporated association or a trust, and includes a comparable undertaking incorporated in, formed or established under the law of another country.

Supervision of insurer

46.—(1) The Registrar may, at any time, examine or cause to be examined, the business of an insurer to determine whether the insurer is in a sound financial condition and compliant with this Act and other financial services laws.

(2) The Registrar may, on a consolidated or group wide basis, carry out an examination of the business of an affiliate, associate, holding or subsidiary company or a person who controls an insurer, whether the affiliate, associate, holding or subsidiary company or person is domiciled within or outside Malawi.

(3) An insurer entity under examination shall provide information and data requested by the Registrar for purposes of carrying out the examination.

Registrar may be a group supervisor

47.—(1) The Registrar may, in respect of an insurance group, be the group supervisor of the group.

(2) The Registrar shall, in determining whether to be a group supervisor of an insurance group, consider—

(*a*) whether the insurance group is headed by an insurer or a holding company incorporated in Malawi; and

(*b*) where the insurance group is headed by a holding company incorporated in another country, whether—

(i) the insurance group is directed and managed from Malawi; or

(ii) the insurer in the insurance group with the largest balance sheet total is an insurer licensed in Malawi.

(3) The Registrar shall maintain a register, in the prescribed form, of insurance groups for which the Registrar is the group supervisor.

Functions of the Registrar as group supervisor

48. Where the Registrar is a group supervisor for an insurance group, the Registrar shall–

(*a*) coordinate the gathering and dissemination of relevant information for supervisory purposes;

(*b*) conduct supervisory review and assessment of the financial situation of the insurance group;

(*c*) assess the compliance, with this Act, of the insurance group;

(*d*) assess the governance system of the insurance group in collaboration with any competent authority and taking into account the nature, scale and complexity of the risks inherent in the business of each undertaking which is part of the insurance group; and

(*e*) coordinate any enforcement action which may be taken against the insurance group or any member of the insurance group.

Inclusion of an undertaking under group supervision

49.—(1) The Registrar may include within group supervision, any undertaking that is a member of the insurance group if the Registrar is satisfied that the—

(*a*) financial operations of the undertaking have a material impact on the operations of the insurance group; and

(*b*) inclusion of the undertaking under the scope of group supervision would be appropriate.

(2) The Registrar shall notify, in writing, the competent authority of the decision to include the undertaking within the scope of group supervision.

Exclusion of an undertaking from group supervision

50.—(1) The Registrar may exclude from group supervision, any undertaking that is a member of an insurance group if the Registrar is satisfied that—

(*a*) the undertaking is situated in a country where there is a legal impediment to cooperation and exchange of information;

(*b*) the financial operations of the undertaking have a negligible impact on the financial operations of the insurance group; or

(*c*) the inclusion of the undertaking in the group supervision would, for some other reason, be inappropriate.

(2) The Registrar shall notify, in writing, the competent authority of the decision to exclude the undertaking from the scope of group supervision.

Withdrawal of group supervisor

51.—(1)The Registrar may withdraw from being a group supervisor of an insurance group—

(*a*) on his or her own initiative; or

(*b*) at the request of a competent authority.

(2) Where the Registrar considers withdrawing from being a group supervisor under subsection (1)(*a*) or (*b*), the Registrar shall give notice of the intention in writing to the competent authority and the insurance group.

Appointment of group actuary

52.—(1) An insurance group shall appoint an actuary for the group as prescribed by the Registrar by directive.

(2) An insurance group that contravenes subsection (1) shall be liable to an administrative penalty.

Part VIII–Payment and Collection of Premiums

Insurance policy to be valid upon payment of premium

53.—(1) An insurance policy shall not be valid unless a policyholder has paid a premium due and payable under the insurance policy.

(2) An insurer who assumes risk in respect of an insurance policy in contravention of subsection (1) shall be liable to an administrative penalty.

(3) Subsection (1) shall not apply to a life insurance of a class other than group life insurance.

(4) The Registrar may, by notice published in the *Gazette*, exempt any person from application of subsection (1).

Collection of premiums and other payments under insurance policies

54.—(1) An insurance broker shall not receive a cheque payment in respect of premium or any other payment due and payable to an insurer under an insurance policy unless the cheque is made payable to the insurer.

(2) An insurance broker shall not receive or cause to be received into its bank account an electronic money transfer in respect of premium or any other payment due and payable to an insurer under an insurance policy.

(3) An insurance broker who receives a cash payment in respect of premium or any other payment due and payable to an insurer under an insurance policy shall remit the money to the insurer within twenty-four hours of receiving the money or if the period expires outside office hours, then before the close of business on the following working day.

(4) The insurance broker shall remit the money received under subsection (3) in full without any deduction.

(5) An insurance intermediary, other than an insurance broker, reinsurance broker and bancassurance agent shall not receive payment on behalf of an insurer in respect of premium or any other payment due and payable to the insurer under an insurance policy.

(6) Where a policyholder makes payment in respect of premium or any other payment due and payable to an insurer under an insurance policy to an insurance broker, reinsurance broker or bancassurance agent, the payment shall constitute specific performance under the insurance policy.

(7) An insurance broker who—

(*a*) contravenes subsection (3) shall be liable to—

(i) remit to the insurer the premium due and such interest as the Registrar may prescribe; and

(ii) an administrative penalty; or

(*b*) issues a certificate of insurance to a policyholder prior to payment of premium shall be liable to an administrative penalty.

(8) The Registrar may, by directive, prescribe additional requirements for payment and collection of premiums.

Premium and other money received by insurance broker to be trust funds

55. Premium and other money received by an insurance broker on behalf of an insurer shall be trust funds and shall not be–

(*a*) assigned, pledged or in any way charged; and

(*b*) treated, for any purposes, as an asset or property of the insurance broker.

PART IX–INVESTMENT AND LENDING

Investment and lending policies

56. An insurer shall establish, implement and monitor investment and lending policies and 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.

Approval of certain investments

57.—(1) An insurer shall not, without prior written approval of the Registrar—

(*a*) acquire more than ten percent of the—

(i) outstanding voting share capital of a body corporate; or

(ii) beneficial interest in an unincorporated entity,

where the aggregate value of the shares or beneficial interest exceed seventy five percent of the actuarial liability 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 the interest exceeds—

(i) in the case of a life insurer, twenty-five percent of its actuarial liability; or

(ii) in the case of a general insurer, ten percent of its total assets.

(2) The Registrar shall determine an application for the approval required under subsection (1) and communicate the decision to the insurer within twenty-one days of receiving the application.

(3) The Registrar may, within ten days of receiving the application, request the insurer to submit additional information and, where such request is made, the period prescribed under subsection (2) shall start to run from the date the insurer submits the requested information to the Registrar.

(4) Where the Registrar—

(*a*) approves the application, the Registrar may impose such terms and conditions as the Registrar may determine appropriate; or

(b) fails to communicate his or her decision within the period prescribed under subsection (2), the Registrar shall be deemed to have approved the application.

Investment of assets

58.—(1) An insurer shall, subject to this Act, invest its assets in Malawi with sufficient regard to the consideration of liquidity, return and risk.

(2) Notwithstanding subsection (1) and subject to Articles of Association of the insurer and any other applicable laws, the insurer may invest in another country a maximum of five percent of the total assets of the insurer.

Lending to policyholders

59.—(1)An insurer may grant a loan to a policyholder where the policyholder undertakes to use his or her policy with the insurer as collateral for the loan.

(2) The Registrar may, by directive, prescribe prudential limits for lending to policyholders.

Disposal of loan or investment

60. The Registrar may direct an insurer to dispose of, within such period as the Registrar considers reasonable, a loan or investment made or acquired in contravention of this Act.

Part X–Reorganization, Statutory Management and Dissolution

Division 1–Reorganization of Insurers

Approval required for compromise, scheme of arrangement, amalgamation, etc.

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61.—(1) A transaction to which an insurer is a party and which constitutes an agreement by which—

(*a*) all or any part of the business of the insurer is transferred to another person; or

(*b*) a fundamental transaction or compromise contemplated under the Companies Act is effected,

shall not have legal effect unless the transaction is approved by the Registrar in writing.

(2) An arrangement entered into between an insurer and another insurer whereby the liability of the insurer towards policyholders is transferred to the other insurer, shall be deemed to be a scheme for the transfer of the insurance business of the insurer to the other insurer and shall not have legal effect unless approved by the Registrar in writing.

Report on proposed transfer or amalgamation

62.—(1) Where the Registrar receives an application for the transfer or amalgamation of insurance business, the Registrar may appoint an independent actuary or any other suitably qualified person to prepare a report on the proposed transfer or amalgamation.

(2) The insurer and every other party to the proposed transfer or amalgamation shall provide to the actuary or other person referred to in subsection (1), the information required in the preparation of the report.

Determination of request for transfer or amalgamation of business

63. The Registrar shall, in determining an application for transfer or amalgamation of insurance business, consider—

(*a*) the ability of the transferee, or the amalgamated entity, to comply with prudential requirements prescribed under this Act;

(*b*) the interest of policyholders likely to be affected by the proposed transfer or amalgamation; and

(*c*) any other matter the Registrar considers relevant.

Division 2–Statutory Management of Insurers

Statutory management of insurer

64.—(1) The Registrar may place an insurer under statutory management and appoint a statutory manager for the insurer if—

(*a*) the Registrar determines that the insurer has contravened a financial services law or has engaged in any unsafe or unsound practice which weakens the condition of the insurer, jeopardize the interest of policyholders or dissipate assets of the insurer;

(*b*) the Registrar has reasonable cause to believe that the insurer, its shareholder, director or executive officer has engaged in, or is engaging in, a criminal activity which jeopardizes the interest of policyholders;

(*c*) the insurer fails, in any manner, to cooperate with the Registrar or an examiner assigned by the Registrar, including through concealment or failure to submit any record for inspection thereby rendering the Registrar unable to perform supervisory responsibilities prescribed under this Act or the Financial Services Act;

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(*d*) the insurer, its shareholder, director, executive officer or employee fails to comply with an enforcement action of the Registrar;

(*e*) the regulatory capital level or solvency of the insurer falls below the level prescribed by the Registrar;

(*f*) the insurer, by resolution of its directors or shareholders, requests the appointment of a statutory manager;

(*g*) the Registrar determines that a shareholder or another insurer who holds a controlling interest in the insurer, faces a risk of becoming insolvent or has failed to meet a regulatory requirement, whether in or outside Malawi, regarding capital or solvency applicable to the shareholder or other insurer; or

(*h*) the Registrar determines that the insurer is in an unsafe or unsound condition to transact business and the insurer, its directors, shareholders or executive officer are unable to promptly improve the condition.

(2) Where the Registrar decides to place an insurer under statutory management, the Registrar shall—

(*a*) promptly communicate the decision to the insurer;

(*b*) specify the grounds for the decision;

(*c*) appoint a statutory manager; and

(*d*) record the decision and the grounds for the decision in the register of insurers.

(3) A statutory manager may be the Registrar or another person with relevant expertise and experience as the Registrar may determine.

(4) The decision of the Registrar to appoint a statutory manager shall take effective on the date specified in the notice of appointment of the statutory manager.

(5) A statutory manager shall serve for a period not exceeding six months, as may be specified in the notice of appointment.

(6) The Registrar may, where determined appropriate and by notice in writing, extend the period prescribed under subsection (5) twice, for a period not exceeding three months at a time.

(7) Where the Registrar appoints another person as statutory manager of an insurer, the statutory manager shall be paid such remuneration as the Registrar shall determine.

(8) A statutory manager shall act in accordance with directives, directions and guidelines given by the Registrar, from time to time.

(9) A statutory manager shall be accountable to the Registrar for the performance of duties and the exercise of powers under this Act.

(10) The Registrar may remove a statutory manager before the end of the period specified in the notice of appointment where the statutory manager—

(*a*) fails to comply with this Act or a direction given by the Registrar; or

(*b*) contravenes a term or condition of the appointment.

(11) Where the Registrar removes a statutory manager under subsection (10) the Registrar may appoint another statutory manager for the insurer.

(12) Where a statutory manager fails to resolve issues which caused the Registrar to place the insurer under statutory management within a period of twelve months, the Registrar may revoke the licence of the insurer and initiate liquidation of the insurer under section 76.

(13) All costs and expenses incurred on account of the statutory management of the insurer shall be borne by, and charged to, the insurer.

Duties and powers of a statutory manager

65.—(1) A statutory manager shall exercise all powers, rights, functions and responsibilities of shareholders, directors, executive officer, managers and officers of an insurer under statutory management.

(2) Where an insurer is under statutory management, any action or decision taken by, or on behalf of, the insurer by its shareholder, director, executive officer, manager or officer shall be null and void, unless the action or decision is taken under the authority of the statutory manager.

(3) The statutory manager shall exclusively manage and operate the insurer and may take any action necessary or appropriate to carry on the business and preserve and safeguard assets and property of the insurer.

(4) The statutory manager shall suspend—

(*a*) payment of bonuses, dividends or any other form of capital distribution to shareholders; and

(*b*) any payment to a director other than payment for a service rendered by the director to the insurer on request of the statutory manager.

(5) The statutory manager may appoint any person, on such terms as the Registrar shall approve, to assist the statutory manager in the course of performing duties of the statutory manager under this Act.

(6) The statutory manager may, subject to approval of the Registrar or instructions issued by the Registrar, delegate any of his or her powers or duties under this Act to another person.

(7) Where the statutory manager has reasonable cause to believe that a shareholder, director, executive officer or any other person acting on behalf of the insurer is engaged in a criminal activity in relation to the business of the insurer, the statutory manager—

(*a*) shall immediately notify the Registrar;

(*b*) shall report the matter to the appropriate law enforcement agency; and

(*c*) may institute civil action seeking damages and restitution from the shareholder, director, executive officer or other person.

Conflict of interest of statutory manager

66.—(1) A statutory manager shall report to the Registrar, in writing, any conflict of interest that arises in the exercise of his or her powers or performance of his or her functions.

(2) The statutory manager shall not undertake any transaction involving the insurer under his or her management in which the statutory manager or a close relation of the statutory manager has a material interest without the prior written approval of the Registrar.

(3) The Registrar shall remove a statutory manager who contravenes subsection (1) or (2).

Effect of appointment of a statutory manager

67.—(1)The Registrar may, on the written request of a statutory manager, impose a moratorium on some or all payments by an insurer in statutory management as the Registrar may consider necessary to protect the interest of policyholders and other creditors.

(2) Notwithstanding any written law and except with the written approval of the Registrar, a person shall not, with respect to the insurer—

(*a*) commence or continue any proceeding or petition in a court or any other adjudication panel against the insurer;

(*b*) exercise his or her right under a mortgage, charge or other security or collateral over a property of the insurer; or

(*c*) issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of the insurer.

(3) A right or obligation under any contract to which the insurer is a party may not be terminated, accelerated, or modified solely because of the appointment of the statutory manager or any action taken by the statutory manager.

Taking control of insurer under statutory management

68.—(1) A statutory manager shall, immediately after appointment, take all necessary and appropriate steps to secure properties, offices, assets, and records of the insurer.

(2) The statutory manager shall have unrestricted access to, and control over, the properties, offices, assets, books of accounts and other records of the insurer.

(3) The statutory manager may engage an authorized officer to assist the statutory manager to access any premises of the insurer and gain control over and secure the properties, offices, assets and records of the insurer.

(4) The directors, executive officer and employees of the insurer shall cooperate with the statutory manager and provide any information the statutory manager may request in writing.

(5) The statutory manager may, with the prior approval of the Registrar, physically close the insurer for a temporary period or for such period as the statutory manager may determine.

(6) For purposes of this section, "authorized officer" means an officer of the Malawi Police Service or designated security officer of the Reserve Bank.

Inventory and plan of action

69.—(1) A statutory manager shall, no later than thirty days after his appointment, prepare and submit to the Registrar–

(*a*) an inventory of the assets and liabilities of the insurer; and

(*b*) a plan of action to resolve the issues that caused the Registrar to place the insurer under statutory management.

(2) The statutory manager shall, as soon as practicable, and in any event, no later than sixty days after his or her appointment, prepare and submit to the Registrar, a report on the financial condition and future prospects of the insurer.

Recapitalization of an insurer under statutory management

70.—(1) Where an insurer is placed under statutory management on the ground that the capital level or solvency of the insurer is below the level prescribed by the Registrar, the statutory manager may, with prior approval of the Registrar—

(*a*) determine the extent of losses and prepare the financial position of the insurer, covering the amount of the losses through profits, reserves and, if necessary, capital of the insurer;

(*b*) notify shareholders of the insurer of the additional capital required to bring the capital of the insurer into compliance with capital and solvency requirements prescribed by the Registrar; and

(*c*) invite the shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to, or in excess of, the required additional capital.

(2) Where—

(*a*) the shareholders have not submitted binding commitments, or the binding commitments submitted by the shareholders are below the required additional capital;

(*b*) an expedited resolution of the insurer is necessary to maintain financial stability of the insurer;

(*c*) the shareholders are no longer suitable to maintain a controlling shareholding in the insurer; or

(*d*) the insurer has failed to comply with enforcement action requiring the insurer to increase its capital within a prescribed period,

the statutory manager may, with the prior written approval of the Registrar, issue additional shares of the insurer to new shareholders.

(3) The existing shareholders of the insurer shall not have preemptive or other rights to purchase additional shares issued under subsection (2), except as provided under subsection (1).

(4) The statutory manager shall, for purposes of subsection (2)—

(*a*) determine the extent of losses and prepare the financial position of the insurer covering the amount of the losses through profits, reserves and, if necessary, capital of the insurer;

(*b*) where necessary to reflect losses, reduce the par value of outstanding shares, notwithstanding provisions of any other written law; and

(*c*) determine the amount and type of funding needed to bring the insurer into compliance with capital and solvency requirements for insurers.

Mergers, restructuring of liabilities, disposal of assets, etc.

71.—(1) A statutory manager may, with prior written approval of the Registrar, carry out a merger of the insurer under statutory management, or a transfer, in whole or in part, of the assets and liabilities of the insurer.

(2) The transfer of the assets and liabilities of the insurer may include a temporary transfer of the assets and liabilities to a bridge insurer for the purpose of resolving the insurer.

(3) The statutory manager may establish an asset management company to acquire bad or non-viable assets of the insurer.

(4) The statutory manager may, on direction or instructions of the Registrar, approve restructuring of the liabilities of the insurer through arrangement with creditors of the insurer, including a reduction, modification, rescheduling and novation.

(5) Notwithstanding the provisions of any other written law, the statutory manager shall not require approval of any person, court or any other institution to restructure liabilities of the insurer under subsection (4).

(6) For purposes of this section, "bridge insurer" means an insurer established by the Government or the Registrar for the purpose of resolving a failing insurer.

Termination of statutory management

72.—(1) Statutory management of an insurer shall terminate at the expiry of the period specified in the notice of appointment of a statutory manager or any extension thereof.

(2) The Registrar may terminate statutory management of an insurer prior to the expiry of the period specified in subsection (1), where the Registrar determines that—

(*a*) statutory management of the insurer is no longer necessary following resolution of the issues that caused the Registrar to place the insurer under statutory management; or

(*b*) the insurer cannot be rehabilitated and revokes the licence of the insurer.

(3) The decision of the Registrar to terminate statutory management of an insurer under subsection (2)(a) shall be based on a recommendation of the statutory manager which shall be supported by a detailed report on the status of the issues that caused the Registrar to place the insurer under statutory management.

(4) Where statutory management is terminated under subsection (2)(*a*), the statutory manager shall continue to carry out duties of directors, executive officer and managers of the insurer until new directors, executive officer and managers are appointed in accordance with the Financial Services Act.

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(5) The statutory manager shall, upon appointment of new directors, executive officer and managers of the insurer, return control of the insurer and its properties, offices, assets and records to the new directors, executive officer and managers.

(6) The statutory manager shall submit his or her final report to the Registrar within twenty-one days of termination of the appointment.

Exercise of statutory management power without placing insurer under statutory management

73. The Registrar may exercise the powers of a statutory manager in relation to an insurer without placing the insurer under statutory management.

Division 3–Dissolution of Insurance Entities

Winding up of an insurance entity

74.—(1) An insurance entity shall only be wound up on the basis of—

(*a*) a scheme for voluntary winding up in accordance with section 75; or

(*b*) a compulsory winding up order made by the Registrar.

(2) An insurance entity shall not be wound up on the basis of a petition by a creditor.

Voluntary winding up

75.—(1) An insurance entity shall not be wound up voluntarily except with the prior written approval of the Registrar.

(2) The Registrar may approve the voluntary winding-up of an insurance entity where the Registrar is satisfied that—

(*a*) the insurance entity is solvent and has sufficient liquid assets to repay its policyholders and other creditors in full and without delay;

(*b*) the winding-up has been approved by the holders of at least two-thirds of issued voting securities of the insurance entity; and

(*c*) there is clear procedure in place for repayment to policyholders and other creditors within a reasonable period.

(3) An application for voluntary winding up of an insurance entity shall be accompanied by a written declaration of the directors of the insurance entity that they have made a full inquiry into the affairs of the insurance entity and have formed an opinion that the insurance entity will be able to settle its liabilities in full.

(4) The insurance entity shall, upon receipt of the approval of the Registrar for voluntary winding-up—

(*a*) immediately surrender its licence and all copies thereof to the Registrar;

(*b*) cease to conduct business;

(*c*) retain only such staff as is necessary for an orderly winding-up;

(*d*) repay in full, all its policyholders and other creditors; and

(*e*) wind-up—

(i) in the case of a local insurance entity, operations which were commenced or undertaken prior to receipt of the approval; or

(ii) in the case of a foreign insurance entity, all operations in Malawi which were commenced or undertaken prior to receipt of the approval.

(5) Where an insurance entity under statutory management is granted approval for voluntary liquidation, the insurance entity shall, within ten days of receipt of the approval, give notice of the voluntary winding-up, in writing, to policyholders and creditors of the insurance entity and other persons having interest or claims in its assets.

(6) A notice issued under subsection (5) shall—

(*a*) set out such information and be sent in such manner as the Registrar may specify;

(*b*) be published in the *Gazette* and in two newspapers of wide circulation in Malawi; and

(*c*) be placed in a conspicuous place, at the premises of each office or branch of the insurance entity.

(7) The approval of the Registrar for voluntary winding-up of the insurance entity shall not adversely affect the rights of—

(*a*) a policyholder or other creditor of the insurance entity to full settlement of his or her claim;

(*b*) any person having an interest in an asset of the insurance entity to full settlement of that interest; or

(*c*) an owner of an asset held by the insurance entity, to the return thereof.

(8) The insurance entity shall settle claims described under subsection (7) within such time as the Registrar may specify.

(9) The assets of the insurance entity that remain after settlement of all claims by policyholders, creditors and other persons that have interest in the funds and assets of the insurance entity shall be distributed among shareholders of the insurance entity in proportion to the respective rights of the shareholders.

(10) The liquidator of the insurance entity shall not distribute the remaining assets in accordance with subsection (9) where—

(*a*) there is a disputed claim, unless the insurance entity deposits with the Registrar, sufficient funds to meet any liability that may arise under the claim;

(*b*) a policyholder or creditor disclosed in the records of the insurance entity has not made his or her claim, unless the insurance entity deposits with the Registrar the funds payable to the policyholder or creditor; or

(*c*) there is an asset to be returned to any person unless the insurance entity transfers the asset to the Registrar together with the relevant records.

(11) Where the Registrar determines that the assets of the insurance entity are not sufficient to fully discharge the obligations of the insurance entity or that the completion of the winding-up is being unduly delayed, the Registrar may wind up the insurance entity in accordance with section 76.

Compulsory winding up of an insurance entity

76.—(1) Where it appears to the Registrar that circumstances exist which may lead to the revocation of a licence or authorization of an insurance entity, the Registrar may order that the insurance entity be wound up.

(2) Without limiting the generality of subsection (1), the Registrar may order that an insurance entity be wound up, if the Registrar is satisfied that—

(*a*) the insurance entity is unable to pay its debts in accordance with the Insolvency Act; Cap. 11:01

(*b*) the insurance entity is failing or has failed to maintain the capital and solvency margin prescribed by the Registrar;

(*c*) the insurance entity has failed to comply with any direction, condition, enforceable undertaking or other requirement imposed under this Act or the Financial Services Act; Cap. 44:10

(*d*) the insurance entity or a shareholder or director of the insurance entity has committed an offence under the Financial Crimes Act; or Cap. 7:07

(*e*) it is in the interest of policyholders and the public that the insurance entity be wound up.

Vesting of assets before appointment of liquidator

77.—(1) Where the Registrar orders that an insurance entity be compulsorily wound up, the assets of the insurance entity shall vest in the Registrar until such a time as the Registrar appoints a liquidator to wind up the insurance entity.

(2) Where the assets of an insurance entity vest in the Registrar under subsection (1), the Registrar may—

(*a*) order a financial institution holding an account or any other asset of the insurance entity—

(i) not to permit the insurance entity or any person acting on behalf of the insurance entity to withdraw funds held in the account;

(ii) not to return the asset to the insurance entity or a shareholder, director or any employee of the insurance entity; or

(iii) to deal with the account or asset only in the manner directed by the Registrar;

(*b*) physically close premises of the insurance entity;

(*c*) sue or be sued on behalf of the insurance entity, with respect to the assets vested in the Registrar, as if the Registrar was a liquidator of the insurance entity appointed under this Act;

(*d*) cancel any agreement between the insurance entity and a shareholder, director or executive officer of the insurance entity, if, in the opinion of the Registrar, the agreement—

(i) does not benefit the insurance entity; and

(ii) was entered into during a time when the shareholder, director or executive officer ought to have known that the insurance entity was failing to maintain the capital and solvency margin prescribed by the Registrar; and

(*e*) exercise any power which may be exercised by a liquidator appointed under this Act, the Financial Services Act or any other written law.

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Appointment and payment of remuneration and expenses of liquidator

78.—(1) The Registrar may act as a liquidator of an insurance entity which is under liquidation.

(2) Where the Registrar decides not to be a liquidator of an insurance entity under liquidation, the Registrar may appoint another person to be a liquidator of the insurance entity on such terms and conditions as the Registrar may determine.

(3) The Registrar shall cause to be published in the Gazette and two newspapers of wide circulation in Malawi, a notice of the appointment of the liquidator.

(4) The Registrar may, by notice in writing to the person appointed as a liquidator under subsection (2), vary the terms and conditions of the appointment or revoke the appointment.

(5) The insurance entity under liquidation shall pay or reimburse the remuneration and expenses of—

(*a*) the liquidator;

(*b*) any person engaged by the liquidator for purposes of the liquidation; and

(*c*) the Registrar, incurred in the course of the liquidation.

(6) Payments under subsection (5) may be made on a current basis where, in the judgment of the liquidator and on approval of the Registrar, the insurance entity has sufficient liquid assets.

(7) Funds owing to the liquidator at the end of the term of liquidation shall be paid from proceeds of sale of assets of the insurance entity, in accordance with the priority of claims prescribed under section 88.

(8) The Registrar may indemnify the liquidator for the cost of any claim, cause of action, order, fine, amount paid in settlement of fees and other expenses reasonably incurred by the liquidator in the

performance of the functions of the liquidator unless it is shown that the liquidator acted in bad faith and in a manner inconsistent with the performance of functions and duties, or the exercise of powers of the liquidator.

Effect of appointment of liquidator

79. Upon appointment of a liquidator—

(*a*) all liabilities of the insurance entity shall be deemed due and payable and interest shall cease to accrue on the liabilities;

(*b*) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the insurance entity shall expire or be extinguished, shall be suspended;

(*c*) the calculation of interest or a penalty against the insurance entity, shall be suspended and no other charge or liability shall accrue on the insurance entity;

(*d*) all legal proceedings against the insurance entity shall be stayed;

(*e*) the exercise of any right on the assets of the insurance entity shall be suspended;

(*f*) no right may be exerted over an asset of the insurance entity during the liquidation of the insurance entity, except a right given to the liquidator;

(*g*) no creditor may attach, sell or take possession of any asset of the insurance entity as a means of enforcing a claim of the creditor, or initiate or continue any legal proceeding to recover a debt or perfect a security interest in the asset of the insurance entity;

(*h*) any attachment or security interest, except one existing six months prior to the effective date of the liquidation, shall be vacated, and no attachment or security interest, except one created by the liquidator shall attach to any asset or property of the insurance entity so long as the liquidation continues;

(*i*) the rights of shareholders shall be extinguished except for the right to receive proceeds, under section 88(4); and

(*j*) the liquidator may sell the assets of the insurance entity or arrange for the assumption of liabilities of the insurance entity on such terms as the liquidator considers fair.

Powers and duties of a liquidator

80.—(1) A liquidator shall be the sole representative of the insurance entity under liquidation, and assume all rights and powers of the shareholders, directors and executive officer of the insurance entity.

(2) Without prejudice to the generality of subsection (1), the powers and duties of the liquidator shall include—

(*a*) holding title to the books, records, and assets of the insurance entity;

(*b*) managing, operating and representing the insurance entity;

(*c*) marshalling assets of and claims against the insurance entity;

(*d*) transferring or disposing of assets and liabilities of the insurance entity; and

(*e*) taking such other action as the liquidator considers necessary for the efficient liquidation of the insurance entity to maximize proceeds from the sale of assets of the insurance entity, including—

(i) continuing or interrupting any operation of the insurance entity;

(ii) borrowing money on the security of an asset of the insurance entity or without guarantee;

(iii) suspending or limiting the payment of debts, subject to the approval of the Registrar;

(iv) hiring specialists, experts or professional consultants;

(v) administering the accounts of the insurance entity;

(vi) collecting debts due to the insurance entity;

(vii) restructuring any liability of the insurance entity through arrangement with a creditor of the insurance entity including through a reduction, modification, rescheduling and novation of the claim, up to the amount determined by the Registrar;

(viii) suspending the payment of capital distributions in general, and payment of any kind to directors, officers and shareholders:

Provided that base compensation may be paid to directors and officers for services rendered in their capacity as directors and officers of the insurance entity; and

(ix) establishing a new financial position for the insurance entity, based on his or her determination of liquidation values of the assets and liabilities of the insurance entity.

(3) The liquidator shall have unrestricted access to, and control over, the offices, books of accounts and other records and assets of the insurance entity and its subsidiaries.

(4) The liquidator may request the assistance of law enforcement officers, to gain access to any premises of the insurance entity, to gain control over and to secure properties, offices, assets, books and records of the insurance entity.

(5) The liquidator may, on the prior written approval of the Registrar—

(*a*) arrange a merger with another insurance entity;

(*b*) dispose of the assets and liabilities of the insurance entity through a purchase and assumption transaction;

(*c*) organize a restructuring of the assets and liabilities of the insurance entity or continue with viable or necessary operations through a bridge insurance entity; or

(*d*) engage in any other option which the liquidator may consider to be in the interest of the policyholders of the insurance entity.

(6) Where the liquidator disposes of assets of the insurance entity through sale, the liquidator shall sell the assets in a transparent and commercially reasonable manner.

(7) Where the liquidator has reasonable cause to believe that a shareholder, director, officer, agent or other professional of the insurance entity has, with regard to the affairs of the insurance entity, engaged in, or is engaging in, a criminal activity, the liquidator shall immediately notify the Registrar and shall, after the conclusion of the criminal matter, pursue any civil action seeking damages, restitution and such other relief as the liquidator considers appropriate.

(8) The liquidator shall be accountable to the Registrar for the performance and exercise of his or her duties and powers.

(9) A person who—

(*a*) refuses or fails to comply with a requirement of the liquidator, to the extent to which the person is able to comply;

(*b*) obstructs or hinders the liquidator in the performance or exercise of duties or powers under this Act;

(*c*) furnishes information or makes a statement which the person knows to be false or misleading in any material particular; or

(*d*) when appearing before a liquidator for examination in accordance with such a requirement, makes a statement which the person knows to be misleading in any material particular,

commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for four years.

Taking possession of insurance entity

81.—(1) A liquidator shall, immediately after being appointed, post at a conspicuous place at each branch of the insurance entity, a notice announcing the revocation of the licence of the insurance entity, and his or her appointment, specifying the effective date and time of his or her taking possession of the insurance entity.

(2) The notice under subsection (1) shall, in addition to the matters specified in subsection (1), specify that authorizations of persons hitherto mandated—

(*a*) with financial responsibility of the insurance entity have been cancelled; and

(*b*) to give instructions on behalf of the insurance entity with respect to transfer of assets of the insurance entity, or assets managed by the insurance entity, have been cancelled.

(3) The liquidator shall—

(*a*) publish a notice issued under subsection (1) once a week for four weeks, in two newspapers of wide circulation in Malawi; and

(*b*) submit a copy of the notice to the registrar of a correspondent insurance entity and external securities transfer agent and asset manager of the insurance entity.

(4) The liquidator shall, within fourteen days of his appointment, publish in the *Gazette* and two newspapers of wide circulation in Malawi, a notice specifying the manner and time, not being earlier than sixty days from the date of publication of the notice, by which any claim against the insurance entity shall be filed with the liquidator.

(5) The liquidator shall, within one month of taking possession of the insurance entity, prepare an inventory of the assets and liabilities of the insurance entity and submit a copy of the inventory to the Registrar.

(6) The Registrar shall make the inventory of assets and liabilities, received under subsection (5), available for examination by the public.

(7) The liquidator shall submit monthly reports on the progress of the liquidation to the Registrar, in such form as the Registrar may prescribe.

Termination of certain contracts

82.—(1) The liquidator may, within thirty days from the date of his or her appointment, terminate any unfulfilled or partially fulfilled contract with a third party on the basis that fulfillment of the contract is burdensome for the insurance entity and the termination will promote the orderly administration of the affairs of the insurance entity and protect the interest of policyholders.

(2) Any liability arising from the termination of a contract under subsection (1) shall be determined as at the date of termination and shall—

(*a*) be limited to actual direct damages incurred; and

(*b*) not include any damages for loss of profit or opportunity, or non-monetary damages.

(3) Notwithstanding any provision of a lease to the contrary, a lessor of any property occupied by the insurance entity shall—

(*a*) be given not less than thirty days' notice of termination of the lease;

(*b*) have no claim for rent other than rent accrued up to and including the notice period prescribed under paragraph (a); and

(*c*) have no right to consequential or other damages which arise by reason only of the termination of the lease.

Schedule of actions for winding up and objections

83.—(1) The liquidator shall, not later than ninety days after the last day specified in the notice for filing claims against an insurance entity in liquidation—

(*a*) reject any invalid claim and notify the claimant in writing;

(*b*) determine the amount owing to each known policyholder or other creditor, and the priority of the claim of the policyholder or creditor;

(*c*) prepare for filing with the Registrar, a schedule of the actions proposed to be taken for the purpose of the compulsory winding-up of the insurance entity;

(*d*) notify in writing each person whose claim is allowed; and

(*e*) publish in the *Gazette* and in two newspapers of wide circulation in Malawi, once a week, for three consecutive weeks—

(i) a notice of the date and place where the schedule referred to in paragraph (*c*) will be available for inspection; and

(ii) the last date, not being earlier than thirty days from the date of publication of the notice, on which the liquidator will file the schedule with the Registrar.

(2) A policyholder, creditor or shareholder of the insurance entity may, within twenty-one days of the publication of the schedule, object to any action proposed in the *schedule* by filing an objection notice with the liquidator giving particulars of the objection.

(3) The Registrar may prescribe guidelines for determination of the validity of claims, liquidation of assets of the insurance entity and return of property of customers of the insurance entity.

Voidance of pre-liquidation transfer

84.—(1) A liquidator may declare as void, a transaction based on a forged or fraudulent document which the insurance entity executed to the detriment of a creditor prior to the effective date of liquidation of the insurance entity.

(2) A liquidator may recover from a third party or declare void, the following transactions made by the insurance entity which affect the assets of the insurance entity—

(*a*) a gratuitous transfer to, or a person related to, a director, officer or principal shareholder, or a holder of substantial interest in the insurance entity, made prior to the effective date of the liquidation;

(*b*) a gratuitous transfer to a third party made prior to the effective date of the liquidation;

(*c*) a transaction in which the consideration given by the insurance entity considerably exceeds the received consideration, made prior to the effective date of the liquidation;

(*d*) any act done, with the intention of all parties involved, to withhold an asset from a creditor of the insurance entity or otherwise impair a right of the creditor, made prior to the effective date of the liquidation; and

(*e*) a transfer of property of the insurance entity to, or for the benefit of, a creditor on account of a debt incurred prior to the effective date of the liquidation which has the effect of increasing the amount that the creditor would receive in the liquidation of the insurance entity.

(3) A liquidator may declare as void, any transaction between the insurance entity and a related person, conducted within one year prior to the effective date of the liquidation, which the liquidator determines to be detrimental to the interest of policyholders and other creditors.

(4) Notwithstanding subsections (1), (2) and (3), a liquidator may not declare void, a payment or transfer by the insurance entity where the payment was made in the ordinary course of business of the insurance entity, or where the payment was part of a contemporaneous exchange for reasonably equivalent value, on the basis that, following the transfer, the recipient extended new unsecured credit to the insurance entity which had not been satisfied by the insurance entity as at the effective date of the liquidation.

(5) A liquidator may recover property or the value of property, transferred to a subsequent transferee by the initial transferee of the insurance entity only where the subsequent transferee did not give fair value for the property, and knew or ought to have reasonably known, that the initial transfer could be set aside.

(6) A liquidator may register or cause to be registered, in the public records of real estate ownership and any other rights in property, a notice of the intended declaration of a transfer as void, and any person taking title to, or acquiring any security interest or other interest in such property, after the filing of the notice, takes his or her title or interest, subject to the rights of the insurance entity to recover the property.

(7) Notwithstanding subsection (1)—

(*a*) an irrevocable money and security transfer order entered into a payment or securities settlement system by the insurance entity, shall be legally enforceable and binding on a third party, only if the transfer order becomes irrevocable before the revocation of the licence of the insurance entity; or

(*b*) where the insurance entity enters an irrevocable money or security transfer order into a payment or securities settlement system on the date the licence of the insurance entity is revoked and the appointment of the liquidator takes effect, and the order is entered after the revocation of the licence and appointment of the liquidator, the transfer order shall be legally enforceable and binding on a third party unless the liquidator proves that the system operator was aware of the revocation of the licence and appointment of the liquidator at the time the transfer order became irrevocable.

(8) Any netting rules and arrangements regarding transactions issued or adopted before the decision to revoke the licence of the insurance entity and appointment of the liquidator takes effect shall be binding on the liquidator.

(9) Nothing in this Act shall prevent or prohibit a set-off by operation of law of obligations between an insurance entity in liquidation and its counterparties.

(10) A liquidator shall, in determining rights and obligations between the insurance entity and its contractual counterparty, give effect to termination provisions of an eligible financial contract between the insurance entity and the counterparty.

(11) The net termination value determined in accordance with an eligible financial contract between the insurance entity and the counterparty, shall be a claim of the insurance entity on the counterparty or shall be admitted after its validation as a claim of the counterparty on the insurance entity.

(12) Subject to subsection (9), a set-off shall not be allowed with respect to a claim on the insurance entity acquired–

(*a*) within three months before the revocation of the licence; or

(*b*) after revocation of the licence and appointment of the liquidator takes effect.

(13) A claim on the insurance entity, arising from a deposit, shall be set-off against any sum due from the depositor to the insurance entity as at the date of the revocation of the licence and appointment of the liquidator as follows—

(*a*) automatically, where the sum is matured or past due; and

(*b*) at the option of the depositor, where the sum is not matured or past due.

(14) Declarations by the liquidator under this section shall be made within twelve months from the date of appointment of the liquidator.

(15) For purposes of this section—

(*a*) a transfer order entered into a payment or securities settlement system becomes irrevocable at the time defined by the rules of the payment system;

(*b*) "eligible financial contract" means any of the following agreements—

(i) a swap agreement;

(ii) a spot, future, forward or other foreign exchange agreement;

(iii) a forward rate agreement;

(iv) an agreement to buy, sell, borrow or lend a security, to clear or settle a security transaction or to act as a depository for a security;

(v) any derivative, combination or option in respect of, or agreement similar to, an agreement referred to in sub-paragraphs (i) through (viii);

(vi) any master agreement in respect of an agreement referred to in sub-paragraphs (i) through (viii);

(vii) a guarantee of the liabilities under an agreement referred to in sub-paragraph (vii); and

(viii) any agreement of a kind prescribed by the Registrar;

(*c*) "fair value" has the meaning ascribed thereto in international financial reporting standards;

(*d*) "net termination value" means the net amount obtained after setting off mutual obligations between parties to an eligible financial contract, in accordance with its provisions; and

(*e*) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant in a settlement system either issues to, or receives from another participant in the system with the result that, only a net claim or a net obligation remains.

Remuneration of employees of a liquidator

85. An employee appointed to represent or assist a liquidator or the Registrar in connection with liquidation of an insurance entity, shall not be paid remuneration greater than the remuneration payable to an employee or agent of the insurance entity, rendering a similar service.

Evidence of rights of policyholder

86. For the purposes of a winding up under this Act, any entry in a book of accounts or record of the insurer with respect to receipt of premiums, assumption of risk in an insurance contract, liability on an insurance claim or life insurance fund, shall constitute *prima facie* evidence of the rights of the policyholder.

Distribution of assets during liquidation

87.—(1) A liquidator may, in the course of a liquidation and with the approval of the Registrar, make a partial distribution of assets of the insurance entity to certain classes of policyholders.

(2) The liquidator shall, as soon as practicable, after all objections filed under section 83(2) are heard and determined, make final distribution of the assets of the insurance entity.

Priority of claims

88.–(1) Notwithstanding the provisions of any other written law, any agreement or Articles of Association of an insurance entity in liquidation, claims shall be ranked as follows—

(*a*) allowed secured creditor claims which are payable to the extent of the realization of the security;

(*b*) necessary and reasonable expenses incurred by the liquidator in carrying out his or her functions under this Act, including professional fees;

(*c*) policyholder claims, including cash surrender value of unmatured life policies and claims of insured persons for refund of unearned premiums, not exceeding an amount as may be determined by the Registrar at the time of liquidation;

(*d*) claims from an approved deposit insurance fund or agency to the extent of the limit of any payout by such fund or agency to insured policyholders;

(*e*) wages and salaries of the officers and employees of the insurance entity that accrued during the three months immediately preceding the appointment of the liquidator;

(*f*) fees and other payments owing to the Registrar;

(*g*) other unsecured claims of creditors; and

(*h*) accrued taxes due and other imposts owing to the Government of Malawi.

(2) Unmatured liabilities shall be discounted to present value at the rate of interest as the Registrar shall determine.

(3) Where the amount available for payment of claims of any class of claimants is not sufficient to pay claimants in that class in full, the liquidator shall distribute the available amount on a pro rata basis among the claimants in that class.

(4) Where assets of the insurance entity remain after payment of all claims, the liquidator shall distribute the remaining assets among the shareholders of the insurance entity, in proportion to the respective rights of each shareholder.

Liquidator to transfer unclaimed funds to Registrar

89.—(1) The liquidator shall transfer to the Registrar any funds which remain unclaimed two years after distribution of the assets of the insurance entity.

(2) The Registrar shall deposit funds received under subsection (1) into the supervisory levy account maintained under the Financial Services Act or, in the case of liquidation by a deposit insurance agency, remit the funds to the deposit insurance agency.

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Part XI–Mandatory Insurance

Insurance of infrastructure under construction

90.—(1) A person who is registered with the National Construction Industry Council, shall not carry out any works on a project, unless the person insures his or her liability in respect of bodily injury, loss of life or damage to property arising from the works.

(2) The obligation under subsection (1) shall cease upon expiry of the project defects liability period.

Insurance of public buildings

91.—(1) An owner of a public building in Malawi shall insure the building against any hazard caused by collapse of the building, fire or any other natural disaster.

(2) The insurance policy under subsection (1) shall cover the liability of the owner and occupier of the building with respect to loss of, or damage to, property, bodily injury or death caused by any defect of, or damage to, the building.

(3) The Minister may, by notice published in the *Gazette*, exempt any public building from application of this section.

(4) For purposes of this section, "public building" means a building to which members of the public have ingress and egress, and includes a tenement house and hostel lodge.

Registrar to maintain disaster fund

92.—(1) The Registrar shall maintain a disaster fund into which an insurer who insurers a public building shall deposit a proportion of the net premium paid by the insured as the registrar may prescribe.

(2) Money in the disaster fund shall be used to procure equipment and facilities required in firefighting services, disaster rescue operations and any other service as the Registrar may prescribe.

Part XII–Offences and Penalties

Offences relating to licensing of insurance entities

93.—(1) A person who carries on insurance business as an insurer in Malawi without a licence commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K100,000,000 and to imprisonment for ten years; or

(*b*) in the case of a body corporate, a fine of K150,000,000.

(2) A person who is not licensed as an insurer under this Act who uses a name, title, trademark, style, designation, or description that represents or implies that the person is an insurer commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K50,000,000 and to imprisonment for five years; or

(*b*) in the case of a body corporate, a fine of K100,000,000.

(3) An applicant for a licence to carry on business as an insurer who provides false or misleading information to the Registrar for purposes of obtaining the licence commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K50,000,000 and to imprisonment for five years; or

(*b*) in the case of a body corporate, a fine of K100,000,000.

(4) A person who carries on insurance business as an insurance broker without a licence commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K50,000,000 and to imprisonment for five years;

(*b*) in the case of a body corporate, a fine of K100,000,000; or

(*c*) in the case of continued contravention, to an additional fine of K100,000 for each day the contravention continues.

(5) An insurance broker whose appointment by an insurer is terminated who sells an insurance policy on behalf of the insurer, commits an offence and shall, upon conviction, be liable to a fine of K100,000,000.

(6) A person who carries on insurance business as a bancassurance agent without authorization, commits an offence and shall, upon conviction, be liable to–

(*a*) in the case of a natural person, a fine of K50,000,000;

(*b*) in the case of a body corporate, a fine of K100,000,000; or

(*c*) in the case of continued contravention, to an additional fine of K100,000 for each day the contravention continues.

(7) A bancassurance agent whose appointment by an insurer is terminated who sells an insurance policy on behalf of the insurer, commits an offence and shall, upon conviction, be liable to a fine of K50,000,000.

(8) A person who carries on insurance business as an insurance agent, insurance loss assessor, insurance loss adjustor or insurance claim settling agent without a licence, commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K25,000, 000 and to imprisonment for three years; or

(*b*) in the case of a body corporate, a fine of K50,000,000.

(9) A person who is not licensed under this Act as an insurance agent, insurance loss assessor, insurance loss adjustor or insurance claim settling agent or authorized as a bancassurance agent who uses a name, title, trademark, style, designation, or description that represents or implies that the person is an insurance agent, insurance loss assessor, insurance loss adjustor or insurance claim settling agent or an authorized bancassurance agent, commits an offence and shall, upon conviction, be liable to–

(*a*) in the case of a natural person, a fine of K25,000,000 and to imprisonment for three years; or

(*b*) in the case of a body corporate, a fine of K50,000,000.

(10) A person who holds out as a licensed or authorized insurance entity while that person is not licensed or authorized, commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K50,000,000 and to imprisonment for five years; or

(*b*) in the case of a body corporate, a fine of K100,000,000.

Causing a person to enter into insurance contract with an unlicensed entity

94. A person who causes another person to enter into a contract of insurance with an entity which is not a licensed insurer, commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K50,000,000 and to imprisonment for five years; or

(*b*) in the case of a body corporate, a fine of K100,000,000.

Insurance Fraud and related offences

95.—(1) A person who engages in any act or scheme which amounts to insurance fraud commits an offence and shall, upon conviction, be liable to a fine of K100,000,000 or three times the amount defrauded or intended to be defrauded, whichever is greater, and to imprisonment for ten years.

(2) A person commits the offence of insurance fraud where the person, by act or omission, with intent to defraud—

(*a*) prepares, presents or causes to be presented to an insurer, insurance broker, insurance agent or bancassurance agent, any oral or written statement containing false or misleading information concerning any material fact with knowledge or belief that the statement will be used in connection with, or in support of, an application for an insurance policy;

(*b*) prepares, presents or causes to be presented to an insurer, any oral or written statement containing false or misleading information concerning any material fact as part of a claim for a policy benefit;

(*c*) assists, abets, solicits or conspires with another person to prepare or present any oral or written statement which contains false or misleading information concerning any material fact, in connection with, or in support of, any claim for a policy benefit;

(*d*) makes, alters, introduces, signs, affixes a signature to or transmits any record which contains false or misleading information concerning any material fact with intent to benefit from an insurance policy;

(*e*) offers any service in relation to insurance business where the person knowingly and willfully assists, conspires with, or urges any other person to violate a provision of this Act;

(*f*) knowingly or willfully benefits from an insurance policy as a result of assistance, conspiracy or urging envisaged under paragraph (*e*);

(*g*) presents or causes to be presented to an insurance prospect, false or misleading information regarding the nature, extent and terms of insurance coverage which may be available to such prospect under any policy;

(*h*) presents or causes to be presented in any insurance claim, false or misleading information regarding or affecting, in any manner, the extent of any right of a claimant to benefit under, or to make a claim against an insurer; or

(*i*) in the case of an insurer, if the insurer contracts a liability which the directors of the insurer did not, at the time the liability was contracted, believe on reasonable grounds that the insurer would be able to settle when due for settlement.

(3) A person who knowingly or willfully, hinders, prevents or obstructs an insurer or a person acting on behalf of the insurer from investigating an offence pertaining to fraud, commits an offence and shall, upon conviction, be liable to a fine of K50, 000, 000 and to imprisonment to five years.

Offences relating to mandatory insurance

96. A person who fails to take out mandatory insurance prescribed under part XI commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K10,000,000 and to imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K50,000,000.

Administrative penalties

97.—(1) Where the Registrar is satisfied that an insurance entity has contravened a provision of this Act and the contravention does not amount to an offence, the Registrar may impose an administrative penalty prescribed under the Financial Services Act or any other financial services law on the entity.

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(2) Where the Registrar imposes an administrative penalty on the insurance entity, the Registrar may publish a statement to that effect in a newspaper of wide circulation in Malawi or any other public media as the Registrar may determine appropriate.

Part XIII–Miscellaneous

Actions requiring prior approval of the Registrar

98. Without limiting the powers of the Registrar under the Financial Services Act, an insurance entity shall obtain prior written approval of the Registrar for the following matters—

(*a*) appointment of a director;

(*b*) appointment of an executive officer;

(*c*) change of Articles of Association;

(*d*) reduction of capital base through repayment of capital or distribution of reserves;

(*e*) opening and closure of a branch;

(*f*) opening an establishment in another country;

(*g*) arrangement or agreement–

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

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

(*h*) participation in another company in excess of ten percent of the paid-up capital of the other company;

(*i*) taking over an asset or liability of another insurance entity;

(*j*) financial restructuring;

(*k*) amalgamation or transfer of life insurance funds;

(*l*) amalgamation or transfer of insurance business;

(*m*) 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 the corporation;

(*n*) introduction of a new insurance product;

(*o*) modification of an existing insurance product;

(*p*) appointment of a distributor for an inclusive insurance product;

(*q*) entry into a management or shared services agreement with any party; and

(*r*) outsourcing of a technical service.

Restriction on control of insurers

99.—(1) A person shall not, without prior written approval of the Registrar, directly or indirectly, acquire shares or any other financial interest in an insurer or a related party or associate of the insurer which results in the person, directly or indirectly, alone or with a related party of the person or another person associated with the person, exercising control over the insurer.

(2) Where any fundamental transaction would result in the emergence of an entity which may exercise direct or indirect control of an insurer, the fundamental transaction shall not be effected without the prior written approval of the Registrar.

(3) Any agreement between an insurer and another person which alters in a significant manner the voting power or management control of the insurer, shall not be entered into without the prior written approval of the Registrar.

(4) An insurer shall inform the Registrar in writing if any person, directly or indirectly, acquires shares or any other financial interest in the insurance business of the insurer.

(5) Any transaction which is entered into in breach of this section shall be voidable and may be set aside by a court of law on application by the Registrar or any party with significant interest in the transaction.

Supply of information by insurance entity

100.—(1) The Registrar may, by notice in writing, require an insurance entity to submit to the Registrar, within a period specified in the notice, any information or forecast on any matter relating to the insurance business, operation or management of the entity.

(2) An insurance entity that fails to comply with a request of the Registrar under subsection (1) shall be liable to an administrative penalty.

Auditors and actuaries to report certain breaches to the Registrar

101. An auditor or actuary who, in the course of performing his or her duties—

(*a*) forms an opinion that an insurer or associated person of the insurer—

(i) is failing to maintain a solvency margin prescribed by the Registrar;

(ii) is likely to fail to maintain the solvency margin at any time within the next twelve months;

(iii) is in a serious financial difficulty; or

(iv) is, or has been, operating fraudulently or recklessly; or

(*b*) comes across information that is likely to assist, or be relevant to, the exercise of the powers of the Registrar,

shall submit a report on the matter to the Registrar.

Protection of auditors and actuaries

102.—(1) Civil, criminal or disciplinary proceedings shall not lie against an auditor or actuary arising from submission of a report, in good faith, to the Registrar under section 101.

(2) A tribunal, authority or any other body responsible for the professional conduct of auditors or actuaries shall not make any order or decision or take any action which is detrimental to the auditor or actuary who submits a report under section 101.

(3) A report submitted to the Registrar under section 101 shall not be admissible in evidence in any proceeding against the auditor or actuary.

Management and technical agreements with shareholders, etc.

103.—(1) An insurance entity shall not enter into a management or technical agreement with its shareholder, related party, or associated person without the prior written approval of the Registrar.

(2) The Registrar shall not approve a management or technical agreement which purports to provide a service which ordinarily constitutes the normal day to day duty of management of the insurer.

(3) The Registrar may prescribe further requirements on management or technical agreements.

Insurers to appoint licensed insurance intermediaries

104.—(1) An insurer shall not permit an insurance intermediary who is not licensed under this Act to transact business on behalf of the insurer.

(2) Where the licence of an insurance intermediary expires and the insurance intermediary transacts business on behalf of the insurer, the insurer shall be deemed to have permitted the insurance intermediary to transact the business.

Power of Registrar to call for approved security

105. Where it appears to the Registrar that an insurance entity is likely to breach the prescribed solvency requirements, the Registrar may order the insurance entity to deposit with the Registrar an approved security as security for interests of policyholders of the insurance entity.

Rights of insurer who deposits an approved security

106.—(1) The Registrar shall, at the request of the insurer who deposits an approved security with the Registrar under section 105, furnish the insurer, once each year, with a certificate specifying the approved security deposited by the insurer and the face value of the security.

(2) The insurer shall be entitled to receive the income derived from the approved security.

(3) The insurer may at any time substitute the approved security deposited under section 105 with another approved security of the like face value.

(4) Where the licence of the insurer is revoked, the Registrar may cause the approved security to be realized to meet—

(*a*) a liability of the insurer in Malawi; and

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

(5) Where the Registrar is satisfied that the liability of the insurer provided for under subsection (4) has been met, the Registrar shall return to the insurer such of the approved security as remains unrealized.

Insurance of imports to be effected with insurer in Malawi

107.—(1) An importer of goods into Malawi shall insure the goods with an insurer in Malawi.

(2) A bank or financial institution in Malawi which issues a letter of credit or such other similar document for importation of goods into Malawi shall issue the letter of credit or other document on a carriage and freight basis only.

(3) An importer, insurance broker or insurance agent who effects insurance for imported goods in contravention of subsection (1) shall be liable to an administrative penalty.

Default of an insurer, etc., not to invalidate

108. Where an insurance entity contravenes this Act, the contravention shall not invalidate an insurance policy issued by an insurer.

Appeal against decision of the Registrar
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109.—(1) A person who is aggrieved by a decision of the Registrar under this Act may appeal against the decision to the Financial Services Appeals Committee established under section 78 of the Financial Services Act.

(2) A decision against which an appeal is lodged shall continue in force until the appeal is determined.

Power to make regulations, directives and codes of conduct

110.—(1) The Minister may, on recommendation of the Registrar, make such regulations as are necessary or expedient for the purpose of giving full effect to this Act in general, or prescribing anything for the better carrying out of the objectives and purposes of this Act.

(2) The Registrar may issue directives prescribing anything required to be prescribed by the Registrar under this Act or guide the conduct of insurance business to ensure integrity, prudence, professionalism and protection of interests of policyholders.

(3) Without limiting the generality of subsection (2), the Registrar may issue directives on capital, solvency, risk management, corporate governance, technical reserving, licensing, fit and proper person requirements, information, products pricing, groupwide supervision and any other area for better implementation of this Act.

(4) The Registrar may issue codes of conduct for insurance entities and persons associated with insurance entities.

(5) Failure by an insurance entity or person associated with the insurance entity to comply with a code of conduct shall be considered by the Registrar in determining whether the insurance entity is conducting its business in a prudent manner.

Compliance with this Act

111. An insurance entity in operation at the commencement of this Act shall, within twelve months of the Act coming into operation, take the necessary measures to comply with requirements set out in the Act.

Repeal and saving
Cap. 47:01

112.—(1) The Insurance Act is repealed.

(2) Notwithstanding subsection (1)—

(*a*) any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

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

(3) A licence, statutory approval, insurance policy, agreement or similar arrangement made pursuant to the Act repealed under subsection (1) shall remain in force until terminated in accordance with the terms and conditions thereof.

Passed in Parliament this seventeenth day of December, two thousand and twenty four.

FIONA KALEMBA
Clerk of Parliament