

## MAURITIUS

### THE INSURANCE ACT 2005

(as amended, 2011)

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## **PART I - PRELIMINARY**

### **Short title**

1. This Act may be cited as the Insurance Act 2005.

### **Interpretation**

2. In this Act -

“Act” includes regulations made under this Act;

“actuary” means a person –

- (a) holding such actuarial qualifications as may be prescribed; and
- (b) appointed as actuary of an insurer with the approval of the Commission in terms of section 40;

“advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media;

“affiliated company” means a company which -

- (a) stands in relation to another body corporate as a parent or subsidiary company of that body corporate; or
- (b) is a body corporate that is a parent or subsidiary of a body corporate referred to in paragraph (a) or
- (c) is, in relation to another body corporate, a member of the same group of companies by virtue of common ownership or control;

“assigned capital” in relation to a foreign company incorporated outside Mauritius and having a branch in Mauritius, means capital consisting of funds transferred from abroad and such other funds as may be determined by the Commission;

“associate” has the meaning assigned to it by the Second Schedule;

“auditor” means a person –

- (a) qualified to act as auditor under the Financial Reporting Act 2004; and
- (b) appointed as auditor of an insurer with the approval of the Commission in terms of section 40;

“authorised agent” has the same meaning as in the Companies Act;

“balance sheet date” has the same meaning as in the Companies Act;

“bank” has the same meaning as in the Banking Act 2004;

“captive insurance business” means an insurance business carried on by a corporation in Mauritius whose business is restricted substantially to risks situated outside Mauritius with affiliated companies;

“category”, in relation to an insurance business, means general insurance business and long term insurance business;

“Chief Executive” has the same meaning as in the Financial Services Act 2007;

“claims professional” means a person referred to in section 78;

“class” with reference to insurance policies, means a class of policies of such description as may be specified in the First Schedule within the long term insurance business or general insurance business, as the case may be, and includes part of a class;

“Commission” means the Financial Services Commission established under the Financial Services Act 2007;

“Companies Act” means the Companies Act 2001;

“company” and “public company” have the same meaning as in the Companies Act;

“Compensation Fund” means the Insurance Industry Compensation Fund established under section 88;

“conservator” means a conservator appointed under section 106;

“controller” has the same meaning as in the Financial Services Act 2007;

“corporation” has the same meaning as in the Financial Services Act 2007;

“Court” means the Bankruptcy Division of the Supreme Court;

“derivative” has the same meaning as in the Securities Act 2005;

“designated fund”, in relation to section 18, means a fund established by a long term insurer in respect of a class of its long term insurance business or part of a class of such business;

“director” has the meaning assigned to it in section 128 of the Companies Act, and includes in the case of —

- (a) a foreign company, an authorised agent;
- (b) a partnership, the manager or a partner entitled to manage the partnership;
- (c) any other body, whether corporate or unincorporated, a person exercising alone or with other persons, the direction and control of the management of its business or affairs; and
- (d) a sole-proprietorship, the individual proprietor;

“Enforcement Committee” means the Enforcement Committee established under section 52 of the Financial Services Act 2007;

“established surplus” and “established deficit”, in relation to section 18, mean any amount shown by an actuarial investigation to be an amount by which the assets representing a designated fund, or representing any part of such fund, exceed or, as the case may be, are less than the liabilities of the insurer attributable to that fund or that part of the fund;

“external insurance business”, subject to such other restrictions or limitations as may be prescribed, means insurance business which is restricted by a licence issued under section 11 to only non-Mauritian policies, and includes captive insurance business;

“external insurer” means a corporation licensed under section 11 to carry on external insurance business;

“financial crime” has the same meaning as in the Financial Services Act 2007;

“financial statements” has the same meaning as in the Companies Act;

“foreign company” has the same meaning as in the Companies Act;

FSC Rules” has the same meaning as in the Financial Services Act 2007;

“general insurance business” has the meaning assigned to it by section 4;

“general insurer” means an insurer conducting general insurance business;

“general insurance policy” means a policy, other than a long term insurance policy, of a class specified in Part II of the First Schedule, and includes a policy which contains related or subsidiary provision within another class, and a reinsurance contract in respect of such policy;

“general reinsurance treaty” means a reinsurance treaty in respect of a general insurance policy;

“guidelines” has the same meaning as in the Financial Services Act 2007;

“insurance agent” means a person who, with the authority of an insurer and not being an employee of the insurer, acts on behalf of the insurer in the initiation of the insurance business, the receipt of proposals, the issue of policies, the collection of premiums or the settlement of claims;

“insurance broker” means a person who arranges insurance business with insurers on behalf of prospective policyholders, or as a representative of a policyholder, and includes a reinsurance broker carrying on reinsurance brokering for an insurer;

“insurance business”, subject to section 4, means the business of undertaking liability, by way of insurance or reinsurance, under long term insurance policies or general insurance policies, as the case may be, and includes external insurance business and the business of a professional reinsurer;

“insurance manager” means a person who carries on, or holds himself out as carrying on, the business of managing insurance business originating from outside Mauritius, and whose activities consist of accepting an appointment from any insurer -

- (a) to manage any part of its business; or
- (b) to exercise managerial functions in the insurer’s business; or
- (c) to be responsible for maintaining accounts or other records of such an insurer; and

in this context, “management” includes authority to enter into contracts of insurance on behalf of the insurer under the terms of the appointment;

“insurance policy” includes a contract of insurance to provide policy benefits;

“insurance salesperson” means a natural person who solicits proposals for and negotiates insurance on behalf and with the authority of an insurer or an insurance agent, not being its employee or officer;

“insurer” means a person carrying on a category of insurance business;

“International Financial Reporting Standards” has the same meaning as in the Financial Reporting Act 2004;

“licensee” means any person licensed under this Act;

“linked long term policy” means a long term insurance policy of the class described in Part I of the First Schedule;

“long term insurance business” has the meaning assigned to it by section 4;

“long term insurer” means an insurer licensed to carry on long term insurance business;

“long term insurance policy” means a policy of a class specified in Part I of the First Schedule and includes a policy which contains related or subsidiary provision within another class, and a reinsurance contract in respect of such policy;

“major contract” has the same meaning as in the Companies Act;

“Mauritian policy” means an insurance policy which is issued by an insurer licensed under this Act in relation to risks situated in Mauritius;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“non-Mauritian policy” means an insurance policy which is issued by an insurer licensed under this Act in relation to risks situated outside Mauritius;

“officer” means a director, the chief executive officer, the senior manager or the chief internal auditor, and includes a person by whatever name called holding similar position and responsibilities;

“personal lines business” means general insurance business in respect of which the policyholder is a natural person;

“policy benefits” means one or more sums of money, services or other benefits, and includes, in the case of a long term policy, an annuity;

“policyholder” means a person who enters into a contract of insurance, and includes a person entitled to be provided with or enforce the policy benefits under an insurance policy;

“premium” means the consideration given or to be given in return for an undertaking to provide policy benefits under specified circumstances;

“prescribed fee” means such processing fee or annual fee as may be prescribed;

“professional reinsurer” means a corporation licensed under this Act to carry on only reinsurance business;

“protected cell company” means a company incorporated as, or converted into, a protected cell company in accordance with the Protected Cell Companies Act;

“registered person” means any person registered under this Act;

“reinsurance contract” means a contract whereby an insurer reinsures the risk insured by him, or part of that risk, with another insurer or reinsurer;

“reinsurance treaty” means a reinsurance arrangement in respect of an insurance policy;

“reinsurer” means a person who carries on reinsurance business;

“relevant Acts” has the same meaning as in the Financial Services Act 2007;

“repealed Act” means the Insurance Act 1987;

“resident” has the same meaning as in the Income Tax Act;

“Review Panel” means the Financial Services Review Panel established under section 54 of the Financial Services Act 2007;

“risk” means a possibility that a particular event may occur during the period for which an insurance policy is operative;

“risk situated in Mauritius” means –

- (a) in the case where the insurance relates to property and buildings, or to buildings and the contents, in so far as the contents are covered by the same insurance policy, any risk related to property situated in Mauritius;
- (b) in the case where the insurance relates to vehicles of any type, any risk related to any vehicles registered in Mauritius;
- (c) in the case where the insurance relates to travel or holiday risks, whatever the class concerned, any risk related to travel or holiday if the policy covering the risk is of a duration not exceeding one year and the policy is issued in Mauritius,
- (d) in the case where the insurance relates to any risk of any kind, other than a risk specified in paragraphs (a), (b) or (c), any risk of such kind if the policyholder is resident in Mauritius;

“rule” means rule made by the Commission;

“share” in the case of any body corporate or unincorporated other than a company, means an interest in the capital of that body;

“significant shareholder” has the meaning assigned to it by the Second Schedule;

“solvency margin” means the solvency margin required under section 15;

“solvency rules” means rules made by the Commission under sections 23 and 130;

“specified” means specified in rules made by the Commission;

“stated capital” means such amount required as stated capital and expressed in rupee denomination or, notwithstanding any provision of the Companies Act, in any other currency approved by the Commission, and includes in the case of –

- (a) a foreign company, its assigned capital;
- (b) a partnership, its paid up capital;
- (c) any other body, whether corporate or unincorporated, an amount corresponding to a non-distributable fund or deposit as may be specified by the Commission;
- (d) a sole-proprietorship, a deposit or a professional indemnity insurance cover as may be specified by the Commission;

“subsidiary” has the meaning assigned to it by sections 3 and 4 of the Companies Act;

“substantial shareholder” has the same meaning as in the Companies Act;

“supervisory body” means a regulatory or supervisory body having similar functions as the Commission in relation to the supervision of the insurance business or other financial services;

“technical provisions” means provisions based on actuarial principles, required to be made in the accounts of an insurer to meet its underwriting liabilities.

### **Administration of Act**

- 3.(1)** The Commission shall be responsible for the administration of this Act.
- (2)** In administering this Act, the Commission shall have regard to the following regulatory objectives -
- (a)* maintaining fair, safe, stable and efficient insurance markets for the benefit and protection of the public;
  - (b)* promoting confidence in the insurance industry;
  - (c)* ensuring fair treatment to policyholders;
  - (d)* reducing as far as is reasonably possible the risk that the insurance business is used in furtherance of, or for a purpose connected with, a financial crime; and
  - (e)* ensuring orderly growth of the insurance industry in Mauritius.
- (3)** The Commission shall discharge its functions under this Act in a manner which it considers most appropriate for the purpose of meeting the regulatory objectives set out in subsection (2), taking into account -
- (a)* the need to balance the regulatory objectives;
  - (b)* the responsibilities of insurers and other service providers in the insurance industry;
  - (c)* the benefit of promoting public understanding of the insurance industry;
  - (d)* the need to use resources committed to supervision in an efficient and economic manner;
  - (e)* the desirability of maintaining the good repute of Mauritius as a financial centre and of enhancing its competitive position; and
  - (f)* the best economic interests of Mauritius.

### **Classification of insurance business**

- 4.(1)** For the purposes of this Act -
- (a)* insurance business is divided into either long term insurance business or general insurance business;
  - (b)* subject to subsection (2) –
    - (i)** “long term insurance business” means insurance business of any of the classes described in Part I of the First Schedule;
    - (ii)** “general insurance business” means insurance business, other than long term insurance business, consisting of the classes described in Part II of the First Schedule
- (2)** In determining the classification of insurance business -
- (a)* the effecting or carrying out of a contract of insurance whose principal object is within any one of the classes described in Part I of the First Schedule, but which contains related and subsidiary provisions which are not within any of those classes in that Part, shall be deemed to constitute long term insurance business;

- (b) the reinsurance of risks under a contract of insurance shall be treated as insurance business of the class to which the contract would have belonged if it had been entered into by the reinsurer.

**(3)** The Commission may -

- (a) by rule amend the First Schedule and by such amendment specify new classes of insurance business;
- (b) by a determination declare that a contract of insurance shall form part of a particular class of insurance business, and where so determined, the contract shall be deemed to form part of, and to be subject to the requirements pertaining to, that class.

**(4)** Subject to any enactment relating to the regulation of pension schemes and the management of pension funds, a long term insurer shall be entitled to conduct the business of effecting and carrying out of –

- (a) contracts to manage pension funds business or the investment of pension funds;
- (b) contracts of the kind mentioned in paragraph (a) that are combined with a contract of insurance covering either conservation of capital or payment of a minimum interest; or
- (c) contracts on a group basis to provide pensions during the lifetime of employees as from their retirement and to their dependants should they die in service or on pension.

#### **Application of Act**

**5.(1)** Nothing in this Act shall affect the status and the operation of the Sugar Insurance Fund set up under the Sugar Insurance Fund Act.

**(2)** The Minister may, on the recommendation of the Commission, by regulations –

- (a) exclude from the application of this Act or any provision of this Act –
  - (i) the African Reinsurance Corporation specified in the African Reinsurance Corporation (Privileges and Immunities) Regulations 1978;
  - (ii) an association of underwriters carrying on any classes of insurance business;
  - (iii) an organisation where –
    - (A) the provision of insurance benefits are incidental in nature and volume to its main activity; and
    - (B) the operation of such insurance activity is of minor importance for the insurance market; or
  - (iv) a professional reinsurer, or any other corporation to the extent of its external insurance business;
  - (v) any other person or class of persons;
- (b) provide for restriction on the insurance of risks relating to assets situated in Mauritius with insurers not licensed under this Act;
- (c) declare certain services and activities ancillary to or connected with insurance business as not constituting insurance business for the purposes of any or all of the provisions of this Act.

(3) In case of doubt as to whether an activity constitutes insurance business to which this Act applies, or whether insurance business is or is not being carried on in or from Mauritius, the matter shall be determined by the Commission which shall give public notice of its determination.

### **Registers**

6.(1) The Commission shall establish and maintain a register containing such particulars and details of licensees and registered persons, and in such form, manner and medium as it thinks appropriate.

(2) A person may on payment of a prescribed fee –

- (a) inspect the register during normal office hours and take copies of any entry;
- (b) obtain a copy certified by the Commission as correct of any, entry in or extract of, the register.

(3) A copy of any entry in the register, or of any extract of the register, given under subsection (2) shall be received in any proceedings as prima facie evidence of the entry, or the extract, as the case may be.

(4) The Commission may make such addition, erasure or other alteration to the registers as it considers necessary to ensure its accuracy.

(5) The Commission may post on its website parts or extracts of the register updated at regular intervals.

## **PART II – LICENSING OF INSURANCE BUSINESS**

### **General restrictions on insurance business**

7.(1) No person shall carry on, or hold himself out as carrying on, insurance business of any category or class, in or from within Mauritius except under the authority of a licence issued by the Commission under section 11 in respect of that category or class of insurance business.

(2) A corporation set up and organised under the laws of Mauritius shall not without the approval of the Commission carry on, or hold itself out as carrying on, insurance business of any class in or from within a country outside Mauritius.

(3) For the purposes of this section, a person shall be deemed –

- (a) to carry on insurance business in or from within Mauritius, where that person performs any act in Mauritius -
  - (i) the object or result of which is that another person enters into, or offers to enter into, renews or varies an insurance contract, in terms of which the first-mentioned person undertakes to provide policy benefits to the other person; or
  - (ii) in relation to an insurance contract, in terms of which that person undertakes to provide policy benefits, and which act is aimed at -
    - (A) maintaining, servicing or surrendering, or otherwise dealing with, the insurance contract;
    - (B) collecting or accounting for premiums payable under the insurance

contract; or

(C) receiving or submitting of, or assisting or otherwise dealing with the settlement of, a claim under the insurance contract;

(b) to be holding himself out as carrying on insurance business in or from within Mauritius, where –

(i) by way of business as an insurer, he occupies premises in Mauritius, or makes it known by an advertisement or by an insertion in a directory or by means of letterheads that he may be contacted at a particular address in Mauritius;

(ii) he invites a person in Mauritius, by issuing an insurance advertisement or otherwise, to enter into or to offer to enter into a contract of insurance; or

(iii) he conducts himself or performs any act from which it may reasonably be inferred that he intends, or proposes to, carry on, insurance business by way of business, in or from within Mauritius;

(4) For the purposes of this section, an advertisement issued or other invitation made, or an act performed by any person on behalf of or to the order of another person shall also be construed as an advertisement issued or invitation made or an act performed, as the case may be, by that other person.

(5) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2 million rupees and to imprisonment for a term not exceeding 8 years.

#### **Restriction on composite insurance business**

**8.(1)** Subject to the other provisions of this section, no insurer other than a professional reinsurer shall carry on both long term and general insurance business.

(2) The Commission shall not grant a licence in respect of –

(a) long term insurance business to an insurer already engaging, or a person who has applied to be licensed to engage, in general insurance business; or

(b) general insurance business to an insurer already engaging, or a person who has applied to be licensed to engage, in long term insurance business.

(3) Notwithstanding subsections (1) and (2), the Commission may authorise an insurer to carry on both long term insurance business and general insurance business where –

(a) either the long term insurance business or the general insurance business is restricted exclusively to reinsurance;

(b) one class of insurance business is or will be incidental, in terms of premium income, to the principal insurance business of the insurer.

(4) Where authorisation is granted under subsection (3), the insurer shall manage its long term insurance and general insurance business separately in such manner as may be determined by the Commission.

(5) A person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2 million rupees and to imprisonment for a term not exceeding 8 years.

## **Reinsurance**

**9.(1)** An insurer licensed under this Part shall not underwrite or reinsure risks from another insurer or otherwise carry on reinsurance business except where –

- (a) it is licensed as a professional reinsurer to carry on solely reinsurance business; or
- (b) it is otherwise authorised expressly by the Commission on such conditions as it may deem fit.

**(2)** Notwithstanding section 8, a professional reinsurer licensed under section 11 may carry on reinsurance business of any category or of any classes except where specifically restricted.

**(3)** Subject to subsection (4), nothing in this section shall be construed as a requirement for a reinsurer organised under the laws of any country outside Mauritius from underwriting risks from insurers in Mauritius, to be licensed under this Act.

**(4)** The Commission may provide in the FSC Rules –

- (a) the conditions under which risks situated in Mauritius may be ceded to a reinsurer;
- (b) the classes of reinsurers to whom risks underwritten by insurers in Mauritius may be ceded.

**(5)** (a) Notwithstanding subsection (4), an insurer shall offer to cede to a statutory reinsurer such percentage of its relevant risks as may be prescribed.

(b) For the purposes of paragraph (a) -

“relevant risks” means risks reinsured by way of a treaty;

“statutory reinsurer” means any reinsurer approved by the Commission.

**(6)** The Commission may exempt any insurer from compliance with the requirements of subsection (5), wholly or in respect of any description of relevant risks, if it is satisfied that it is necessary or appropriate to do so in the circumstances.

**(7)** The Minister may make such regulations as he deems necessary for the purposes of this section, to provide for professional reinsurers.

## **Application for a licence as insurer**

**10.(1)** An application for a licence under this Part shall be made in such form, manner and medium as the Commission may determine and shall be accompanied by –

- (a) a statement of the applicant’s proposed insurance business, including details on the class of insurance business to be carried on;
- (b) particulars of any substantial shareholder, or of any person being proposed to act as officer of the proposed insurer;
- (c) a business plan together with a feasibility study conducted certified by an actuary;
- (d) such other information and documents as may be required by the Commission; and
- (e) the prescribed fee.

(2) On receipt of an application, the Commission may require the applicant or any person referred to in subsection (1)(b) to provide such additional information or documents as it may require for determining the application.

(3) The Commission may require that any information furnished by the applicant or any other person referred to in subsection (2) be verified in such manner as it may direct.

(4) Where an applicant fails within a reasonable time to comply with a requirement made under subsection (2) or (3), the Commission may by notice given to the applicant determine that the application shall lapse.

(5) The applicant shall notify the Commission of any material change which may have occurred, whether before or after the issue of the licence, in the information or documents submitted in connection with an application.

(6) Any person who, for the purpose of making an application for a licence under this section –

(a) makes a representation or statement which he knows to be false in a material particular; or

(b) recklessly makes a representation or statement which is false in a material particular,

shall commit an offence and shall on conviction be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

#### **Grant of a licence**

**11.(1)** Where the Commission is satisfied that an application under section 10 ought to be granted, it shall grant the application and on payment of the prescribed fee, issue a licence authorising the applicant to carry on such category of insurance business in respect of such class of insurance policies as may be specified in the licence.

(2) Subject to section 12, a licence issued under subsection (1) shall authorise the carrying on of insurance business –

(a) in the case of an applicant incorporated or registered under the Companies Act, in or from within Mauritius, or in or from within a country outside Mauritius;

(b) in the case of an applicant is organised under the laws of a country outside Mauritius, in or from within Mauritius.

(3) The Commission shall not grant an application under subsection (1) except where it is satisfied that -

(a) the applicant's objects are limited to insurance business and operations arising directly from it;

(b) the applicant has disclosed such bona fide information as the Commission has requested in relation to the proposed business, and to persons who will, upon commencement of the applicant's business, have any proprietary, financial or other interest in, or in connection with, that applicant;

(c) the applicant has the financial resources, organisation and management capacities that are necessary to carry on the business which is the subject-matter of the application;

(d) the applicant, substantial shareholders, and officers of the proposed insurer are fit and proper persons to ensure the sound and prudent management of the insurance business;

(e) the applicant will, upon being licensed, be able to comply with and fulfil all requirements under this Act;

- (f) in the case of a foreign company, it is registered under the Companies Act and has a satisfactory record of at least 3 years experience in handling the category and class of insurance business, in respect of which the application is made, in the country under whose laws it is organised;
- (g) the interests of the public and of the applicant's policyholders and potential policyholders and the reputation of Mauritius as a financial centre will not be jeopardised by the grant of a licence to the applicant; and
- (h) it would be in the economic interests of Mauritius for the applicant to be licensed as an insurer.

(4) In determining an application under this Part, the Commission may take into account –

- (a) any guidelines or international standards relating to the regulation of insurance business issued by an international body;
- (b) the provisions of any regulations made under this Act or the FSC rules or guidelines issued by the Commission; and
- (c) any information obtained from a foreign regulator or enforcement agency.

#### **Conditions of licence**

**12.(1)** The Commission may, on issuing a licence under this Part, impose such conditions, restrictions and limitations as it deems fit.

(2) Subject to Part XIII, the Commission may, by notice in writing to the insurer, add, delete, vary or determine any condition, restrictions and limitations in the licence and the licence shall be deemed to have been issued with such addition, deletion, variation or determination.

(3) Where an insurer fails to comply with a condition, restriction and limitation imposed under subsection (1), it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2 million rupees and to imprisonment for a term not exceeding 8 years.

#### **Branches and display of licence**

**13.(1)** A person licensed to carry on insurance business under this Part –

- (a) shall not without prior written notification to the Commission –
  - (i) open a branch in Mauritius;
  - (ii) open a branch, agency or set up or acquire any subsidiary in any country outside Mauritius.
- (b) shall –
  - (i) keep its licence, at all times, at its principal place of business in Mauritius and a copy thereof in every branch or office that it may have;
  - (ii) ensure that the licence kept in accordance with paragraph (i) contains the up-to-date conditions attached to the licence;
  - (iii) display, on request made by any person on or before entering into a business

transaction with that insurer, the licence together with the up-to-date conditions to the licence.

(2) Where an insurer fails to comply with subsection (1), it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

### **PART III – SOLVENCY REQUIREMENTS**

#### **Maintenance of financially sound condition**

**14.(1)** An insurer shall maintain its business in a financially sound condition by generally conducting its affairs so as to be in a position at all times to –

- (a) meet its liabilities as they arise; and
- (b) keep the solvency margin required under this Part.

(2) An insurer shall, notwithstanding the circumstances which prevent it from maintaining a financially sound condition, be deemed to contravene subsection (1) where it fails to meet any requirement under this Act or any solvency rule relating to –

- (a) the solvency margin and the method of its valuation and calculation;
- (b) the maintenance of any technical provisions and reserves; and
- (c) the kinds and spread of investment of assets.

(3) An officer of an insurer who knows or reasonably suspects that the insurer does not meet the requirement of subsection (1) shall forthwith inform the Commission in writing.

#### **Solvency margin**

**15.(1)** An insurer shall –

- (a) at all times maintain a solvency margin of such value as may be specified in solvency rules;
- (b) furnish to the Commission a return on its solvency margin in such form, manner and medium, and within such time of its balance sheet date, as may be specified in solvency rules.

(2) *Repealed*

#### **Technical reserves**

**16.(1)** An insurer shall make adequate technical provisions in its accounts for its underwriting liabilities in respect of its insurance policies, whether long term or general, as the case may be, including liabilities for unexpired risks, outstanding and incurred claims, provisions for claims incurred but not reported, and liabilities for policy benefits which have not become claimable, computed in accordance with a method specified in solvency rules.

(2) An insurer shall at all times hold unencumbered assets to the value of its technical provisions and after making adequate provisions for all its other liabilities.

(3) The assets covering the technical provisions shall take account of the insurance business and the classes or part classes of business carried on by the insurer in such a way as to secure the safety, yield and marketability of its investments, which the insurer shall ensure are diversified and adequately spread in accordance with solvency rules.

(4) Solvency rules made for the purpose of this section may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent.

### **Separation of fund**

**17.(1)** Subject to subsection (2), an insurer shall, regardless of the category of its insurance business, set up and maintain for so long as it is under liability in respect of an insurance policy or claim relating to that fund, separate insurance funds for its Mauritian policies and for its non-Mauritian policies.

(2) The Commission may having regard to the small number of insurance policies and their relative value in any one of the insurance fund, allow the insurer to maintain only one insurance fund for both the Mauritian and the non-Mauritian policies.

(3) An insurer shall –

- (a) maintain the solvency margin, make such technical provisions and establish such reserve or fund, invest assets and apply the solvency rules in respect of each insurance fund as if they were separate businesses;
- (b) pay into the corresponding insurance fund all money received by it in respect of policies to which the insurance fund relates;
- (c) carry to the insurance fund all income and gains arising from the investment of the assets of that insurance fund.

(4) Except in a winding up, and subject to any applicable rules, an insurer shall apply the assets of an insurance fund only to meet such liabilities and expenses as are properly attributable to that insurance fund.

(5) An insurer shall within each insurance fund established under subsection (1), establish and maintain, in respect of each category of insurance business, such assets, reserves and designated fund and in such manner as are referred to in this Part and under applicable solvency rules.

### **Designated fund**

**18.(1)** A long term insurer shall keep within its corresponding insurance fund set up under section 17, an appropriately designated fund in respect of each class of long term insurance business carried on, into which shall be paid –

- (a) all money received by the insurer in respect of policies of that class which are issued by it or under which it has undertaken liability;
- (b) all income and gains arising from the investment of the assets of that designated fund.

(2) An insurer shall on issuing or undertaking liability under a long term insurance policy determine the designated fund to which the policy relates and the policy shall for the purposes of this Act be deemed to be and shall continue to be included in that designated fund until the determination is revoked with the approval of, or by,

the Commission.

**(3)** Assets of a designated fund established under subsection (1) shall be kept separate from the other assets of an insurer and shall not include –

- (a) an amount on account of goodwill;
- (b) an expenditure relating to capital;
- (c) any other asset as may be excluded under FSC rules.

**(4)** A long term insurer shall not –

- (a) transfer or otherwise apply asset representing a designated fund established under subsection (1) otherwise than in respect of claims and expenses relating to that business, except out of any established surplus in that fund;
- (b) transfer or otherwise apply assets representing any part of the designated fund maintained under subsection (1), otherwise than in respect of claims and expenses relating to that part of that business, except out of any established surplus in that part of that fund;
- (c) transfer any surplus in any designated fund or part of such fund to shareholders' fund, except where all established deficits in any other designated fund have been met;
- (d) make any transfer from any designated fund to shareholders' funds, except out of an established surplus; or
- (e) declare or distribute any dividend or bonus except where all established deficit on any designated fund or any part of such fund have been met.

**(5)** Subject to subsection (4), where the actuary recommends after an actuarial investigation that the established surplus of a designated fund in respect of participating policies may be available for distribution, the insurer shall not transfer or otherwise apply assets representing any part of that surplus without allocating to the policyholders at least 90 per centum of that surplus or such other amount as the Commission may approve.

**19.** *Repealed*

#### **Prohibitions concerning assets**

**20.(1)** An insurer shall not, without the approval of the Commission, given generally or in a particular case, and on such conditions as the Commission may determine –

- (a) mortgage, charge or otherwise encumber its assets;
- (b) directly or indirectly borrow any asset;
- (c) by means of any surety, give any security in relation to obligations between other persons except where the security is provided under a guarantee policy which the insurer is authorised to issue under its licence.

**(2)** An insurer shall not invest in derivatives other than –

- (a) derivatives designated as an asset in respect of a linked long term policy;

- (b) for the purpose of reducing investment risk or for efficient portfolio management; or
- (c) in such manner as the insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches its obligations under that instrument and from which it can discharge those obligations.

### **Examination of reinsurance treaties**

**21.(1)** An insurer shall enter into reinsurance treaties in respect of risks insured or to be insured in the course of its insurance business which are consistent with sound insurance business principles.

**(2)** An insurer shall produce to the Commission for examination such particulars of its reinsurance treaties, or copies of its treaties or other reinsurance contracts as the Commission may request.

**(3)** Where the Commission finds that –

- (a) the terms of the reinsurance treaties are unfavourable to the insurer;
- (b) the reinsurance treaties are not technically appropriate to the portfolio of the insurer; or
- (c) the reinsurer or reinsurance broker is not a fit and proper person to do business with,

the Commission may give such direction as it considers fit, including termination or modification of the treaty or requiring additional reinsurance cover or prohibiting the insurer from entering into contract with a reinsurer or through a reinsurance broker.

**(4)** In issuing a direction under subsection (1), the Commission shall have regard to –

- (a) the category and class of insurance business carried on by the insurer;
- (b) the amount of premiums received by or due to be received by the insurer during its last preceding balance sheet date in respect of each class of insurance business carried on by it;
- (c) the nature and value of the assets of the insurer; and
- (d) the reinsurer with whom the reinsurance is undertaken.

**(5)** An insurer shall submit to the Commission such returns in respect of its reinsurance treaties including its facultative reinsurance as the Commission may require.

### **Remedial measures**

**22.(1)** Where the solvency margin of an insurer is less than that required to be maintained, or the insurer is otherwise in contravention of section 15 or of the solvency rules, the insurer shall not –

- (a) without the written approval of the Commission, assume any new risks of any kind, or underwrite or renew any insurance policy;
- (b) declare or distribute any bonus or dividend to its shareholders;
- (c) in the case of an insurer organised as a foreign company, remit any money out of Mauritius in the form of profits.

**(2)** (a) Subject to paragraph (b), no insurer shall declare or distribute any bonus or dividend to

its shareholders, or remit any profits out of Mauritius where the declaration or distribution, or the transfer of money out of Mauritius, as the case may be, results or is likely to result in reducing the solvency margin to less than that required to be maintained.

- (b) A insurer may declare or distribute a bonus or dividend, or emit a profit as specified in paragraph (a) where the actuary has certified that in so doing the insurer shall remain in a financially sound position in accordance with section 14(1), taking due account of the proposed operations of the insurer in the 12 months following the proposed declaration, distribution or transfer.

(3) Where the solvency margin of an insurer is less than that required to be maintained, the insurer shall make good the deficiency without delay.

(4) Where the Chief Executive is informed by an officer as required under section 14(3) or where the Chief Executive reasonably suspects that an insurer is failing to comply, or is likely to fail to comply, with section 14, the Chief Executive may direct the insurer to furnish him with –

- (a) information relating to the nature and causes of the failure, or to such matters as may in the opinion of the Chief Executive, lead to the likely failure;
- (b) a report by the actuary of the insurer on its state of solvency or on such matters as may be requested by the Chief Executive;
- (c) a plan acceptable to the Chief Executive for restoring the insurer's business to a financially sound position.

(5) Where the Chief Executive has received the information or the plan referred to in subsection (4), he may, without prejudice to any of his other powers under this Act -

- (a) direct the insurer to adopt the plan or course of action proposed or such other course of action acceptable to the Chief Executive that will bring the insurer into compliance with, or prevents it from being in contravention of, section 14;
- (b) authorise any modification of the course of action referred to in paragraph (a) which the Chief Executive deems appropriate;
- (c) where it is reasonably necessary in the interests of the policyholders of the insurer, at any time and notwithstanding any step already taken by the Chief Executive in accordance with paragraphs (a) and (b), take such measures as are appropriate including, issuing a direction, appointing an administrator or conservator, revoking the licence of the insurer or applying for the winding up of the insurer.

(6) In considering any decision under this section, the Chief Executive may consult the auditor and actuary of the insurer.

(7) Where he is satisfied that there is reasonable ground to suspect that the insurer does not meet the required solvency margin, or otherwise fails to comply with section 14, a Judge in Chambers may on application by the Commission –

- (a) make an order restraining an insurer from contravening this section or a direction of the Chief Executive under this section;
- (b) order compliance with a direction made by the Chief Executive in enforcing the provisions of this Part;
- (c) make such other order as he may think fit.

(8) An insurer shall be deemed to be unable to pay its debts where it fails for a continuous period of 3 months

to meet the required solvency margin.

**(9)** Where an insurer contravenes subsection (2), any person who, being at the time of the resolution a director of the insurer, voted for or consented to a resolution -

- (a) authorising payment or distribution of a dividend or bonus;
- (b) consenting to a remission of profits outside Mauritius,

shall be jointly and severally liable to restore to the insurer any amount so paid, distributed or remitted and not otherwise recovered by the insurer.

### **Solvency rules**

**23.(1)** The Commission may make solvency rules as are required for the purpose of this Part.

**(2)** Rules made under subsection (1) may provide for –

- (a) classes of assets and their exclusion from the calculation of the solvency margin;
- (b) the holding and investment of assets in Mauritius;
- (c) the restrictions on and diversification of investments;
- (d) the calculation of technical provisions and liabilities;
- (e) the valuation of assets;
- (f) the establishment of designated funds and statutory reserves; and
- (g) such other matters as are relevant to the prudential management of an insurance business.

## **PART IV – REGULATION OF BUSINESS OF INSURER**

### **Stated capital and deposit**

**24.(1)** An insurer shall in respect of its insurance business at all times –

- (a) have and maintain such stated capital as may be prescribed; and
- (b) make and maintain a deposit in such amount, and with such custodian as may be prescribed.

**(2)** An insurer shall make good forthwith any part –

- (a) of the stated capital that is impaired by losses or otherwise;
- (b) of the deposit which on any balance sheet date is valued as less than the prescribed amount.

**(3)** A deposit shall be part of the assets of the insurer but shall not –

- (a) be capable of being transferred, assigned, or encumbered with a mortgage or other charge, by the insurer;
- (b) be available for the discharge of a liability of the insurer, other than a liability in respect of a Mauritian policy; or
- (c) be liable to attachment in execution of a judgment, except a judgment obtained by a policyholder of the insurer in respect of a debt due upon a Mauritian policy and which debt the policyholder has been unable to recover in any other way.

(4) Notwithstanding any provision of the Companies Act, an insurer may with the approval of the Commission maintain the minimum capital requirement in a currency other than the Mauritian rupee.

### **Shares and debentures**

**25.** An insurer shall not, without the approval of the Commission or otherwise than in accordance with the conditions determined by the Commission –

- (a) issue or convert any shares which confer preferential rights to distributions of capital or income;
- (b) convert any of its shares of a particular class into another class;
- (c) convert any of its shares into debentures;
- (d) issue any debentures; or
- (e) reduce its minimum capital requirement.

### **Registration of shares in name of nominee**

**26.(1)** Subject to subsection (2), an insurer shall not, except with the approval of the Commission, issue, allot or register any of its shares in the name of a person other than the intended beneficial shareholder.

(2) Subsection (1) shall not apply to the issue, allotment or registration of the shares of an insurer –

- (a) by effect of law, whether on the death, bankruptcy or insolvency of a shareholder of the insurer, or otherwise;
- (b) where it is necessary that the shares be so issued, allotted or registered in order to facilitate delivery to the purchaser of the shares or to protect the rights of the beneficiary in respect of those shares for a reasonably limited temporary period;
- (c) in the name of a person acting as a trustee or custodian or a recognised depository institution where that person, the insurer or shareholder concerned is able, on request, to disclose to the Commission the name of the beneficial shareholder on whose behalf shares are held; or
- (d) to any other person for such purpose approved by the Commission.

(3) An insurer who knowingly issues, allots or registers its shares in breach of subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

### **Limitation on control of insurers**

**27.(1)** No person shall, without the approval of the Commission, acquire or hold such number of shares in an insurer so as to make him a significant shareholder in that insurer.

**(2)** Approval under subsection (1) shall not be granted where –

- (a)* the applicant or the significant shareholder is not fit and proper;
- (b)* it would be contrary to the interests of the policyholders, or of the insurer;
- (c)* it would be contrary to the public interest.

**(3)** An approval given under subsection (1) may be given –

- (a)* subject to the aggregate amount subscribed by the person concerned and his associates in respect of the stated capital of the insurer, not exceeding such percentage as may be determined by the Commission without further approval being required under this section;
- (b)* subject to such other conditions as the Commission may deem fit.

**(4)** Where the Commission is of the opinion that the retention of a particular shareholding by a particular significant shareholder is prejudicial to the insurer, the interests of the policyholders or the insurance industry, it may, by notice in writing –

- (a)* require that shareholder to reduce, within a period set down by the Commission, his shareholding to a percentage of the stated capital of the insurer below that qualifying him as a significant shareholder; and
- (b)* limit the voting rights that may be exercised by that shareholder to a percentage of the voting rights attached to all the amount subscribed in respect of the stated capital of the insurer below that qualifying him as a significant shareholder.

**(5)** A person who fails to comply with –

- (a)* subsection (1);
- (b)* a notice issued under subsection (4),

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

### **Effect of registration of shares contrary to Act**

**28.(1)** No person shall –

- (a)* either personally or by proxy granted to another person, cast a vote attached to;
- (b)* receive, or be entitled to receive, a dividend payable in respect of;
- (c)* be allotted any share by way of a bonus issue in respect of;

a share in an insurer acquired or held in contravention of section 27.

**(2)** The validity of a resolution passed by an insurer shall not be affected solely by reason of a vote being cast contrary to subsection (1).

(3) A shareholder of an insurer or the Commission may apply to the Court for an order of restitution to the insurer of any money paid to a person by way of dividend or any share allotted in breach of subsection (1).

(4) Any person who fails to comply with subsection (1) shall commit an offence and shall on conviction be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

### **Furnishing of information on shareholding**

**29.(1)** The Commission may require an insurer to furnish it, in the form, manner and medium as it may determine, with particulars and information concerning –

- (a) its shareholders;
- (b) the nominee of a shareholder;
- (c) any person according to whose instructions and directions a shareholder exercises, or normally exercises, his rights as a shareholder.

(2) Any person referred to under subsection (1) shall, upon written request from the insurer or the Commission, furnish the insurer or the Commission, as the case may be, with such particulars or information as is required for the purpose of a request made under subsection (1).

- (3) (a) An insurer who, without reasonable excuse, fails to comply with subsection (1); or
- (b) a person who fails to comply with a request under subsection (2);

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

### **Management of an insurer**

**30.(1)** No insurer shall be managed by any person other than –

- (a) in the case of an insurer established under the laws of Mauritius, by the persons appointed in accordance with the constitutive documents under which the insurer is set up;
- (b) in the case of an insurer established as a foreign company, by an authorised agent who is appointed by the parent insurer with the approval of the Commission;
- (c) an insurance manager licensed under Part VIII, with the approval of the Commission.

(2) No insurer shall have a board of directors composed of less than 7 natural persons of which 30 per cent shall be independent directors, or such other number and percentage as may be approved by the Commission.

(3) For the purposes of subsection (2), a director shall be deemed to be independent where, other than being a board member of the insurer, he has no relationship with or interest in the insurer or its group of companies, which could or could be reasonably perceived to, materially affect the exercise of his judgment in the best interest of the insurer.

### **Duties of directors**

**31.(1)** Without limiting their duties in managing the affairs of an insurer, the directors shall –

- (a) have regard to the interests of its stakeholders, including its policyholders;
- (b) establish adequate internal controls and adopt strategies, policies, processes and procedures in accordance with principles of sound corporate governance and risk management;
- (c) monitor compliance with the laws, rules, directions and guidelines of the Commission, and with the policies adopted;
- (d) set up such committees as they deem necessary to discharge their responsibilities effectively;
- (e) approve policies regarding the maintenance of the undertaking in a sound financial situation in accordance with section 14;
- (f) establish and maintain proper policies for –
  - (i) identifying and resolving situations of, or potential situations of, conflict of interest;
  - (ii) restricting the use of confidential information;
  - (iii) the disclosure of relevant information to clients so as to allow them to make informed decisions;
  - (iv) dealing with complaints from policyholders or members of the public in general; and
  - (v) such other matters as to ensure sound and sustainable conduct of business.

(2) The directors of an insurer shall establish clear responsibilities and reporting duties for the chief executive officer and the senior managers.

(3) Without prejudice to any of their other fiduciary duties, the directors and officers of an insurer shall –

- (a) act honestly and in the best interests of the insurer and policyholders; and
- (b) exercise care, diligence and skill in the discharge of their duties.

### **Avoiding conflict of interest**

**32.(1)** Subject to subsections (2) and (3), an officer of an insurer who –

- (a) is a party to a major contract or proposed major contract with the insurer;
- (b) is an officer or a substantial shareholder of any entity that is a party to a major contract or proposed major contract with the insurer; or
- (c) has a material interest in any person who is a party to a major contract or proposed major contract with the insurer,

shall, immediately after becoming aware of the contract or proposed contract, disclose in writing or cause to be entered in a record kept for that purpose by the insurer the nature and extent of that interest in accordance with the other provisions of this section.

(2) Where the contracting party in subsection (1) is a director, the disclosure required by subsection (1) shall be made, -

- (a) at the meeting of directors at which a proposed contract is first considered;
- (b) where the director was not then interested in a proposed contract, at the first meeting after the director becomes so interested;
- (c) where the director becomes interested after a contract is made, at the first meeting after the director becomes so interested; or
- (d) where a person who is interested in a contract later becomes a director, at the first meeting after that person becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer other than a director, to the secretary of the board of directors –

- (a) immediately after the officer becomes aware that a proposed contract is to be considered or a contract has been considered at a meeting of directors;
- (b) where the officer becomes interested after a contract is made, forthwith after the officer becomes so interested; or
- (c) where a person who is interested in a contract later becomes an officer, immediately after the person becomes an officer.

(4) An officer who fails to make a disclosure in breach of this section shall commit an offence and shall on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

#### **Requirement to abstain**

**33.(1)** Where section 32 applies to a director in respect of a major contract, the director shall not be present at any meeting of directors while the contract is being considered at the meeting or vote on any resolution to approve the contract unless the contract is –

- (a) an arrangement by way of security for money lent to, or obligations undertaken by the director for the benefit of, the insurer or a subsidiary of the insurer;
- (b) a contract relating primarily to the director's remuneration as a director or an officer, employee or agent of the insurer or a subsidiary of the insurer or an entity controlled by the insurer or an entity in which the insurer has a material investment; or
- (c) a contract with an affiliate of the insurer.

(2) Any director of an insurer who knowingly contravenes subsection (1) shall commit an offence and shall on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

(3) The Court before which a director is convicted of an offence under this section shall, in addition to any penalty imposed under subsection (2), order that the director be disqualified from holding office as director of any insurer for a term not exceeding 5 years.

#### **Consequences of conflict of interest**

**34.(1)** Notwithstanding sections 32 and 33, and subject to subsection (2), a contract between an insurer and one or more of its officers, or between an insurer and another entity of which an officer of the insurer is a director or an officer or between an insurer and a person in which the officer has a material interest, shall not be void –

- (a) by reason only of that relationship; or
  - (b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at the meeting of directors or the committee of directors that authorised the contract.
- (2) A contract referred to in subsection (1) shall not be void except where –
  - (a) the officer has failed to disclose his interest;
  - (b) the contract was not approved by the directors, or specifically authorised by virtue of section 146 of the Companies Act; or
  - (c) it was not in the interest of the insurer at the time it was approved.

### **Shareholder action**

**35.** Where an officer of an insurer fails to disclose an interest in a major contract in accordance with section 32, a Court may, on the application of the insurer, or shareholders of the insurer in accordance with section 146(1)(a) of the Companies Act, set aside the contract on such terms as the Court thinks fit.

### **Appointments of officers**

**36.(1)** No appointment of an officer by an insurer shall take effect without the prior approval of the Commission.

(2) An insurer shall ensure and demonstrate to the Commission at the time of an application for approval in accordance with subsection (1) that the person is a fit and proper person to be appointed officer.

### **Fit and proper person**

**37.(1)** The Commission shall be deemed to have approved the appointment of a person under section 36 where it has not objected to such appointment within 15 days after having been notified in writing of the proposed appointment.

(2) Where the Commission considers that a person referred to in section 36 is not fit and proper, it shall give to the insurer and to the person concerned a notice of its intention to object to such appointment, and the appointment shall be of no effect for so long as the notice of objection is not withdrawn.

(3) The Commission shall not confirm its objection made under subsection (2) without giving the insurer and the person concerned an opportunity to make representations on the objection.

(4) The Commission may after taking into consideration the representations made under subsection (3) withdraw a notice of objection given under subsection (2).

### **Board sub-committees**

**38.(1)** The board of directors shall set up such sub-committees as it may deem appropriate in order to ensure that the business of the insurer is being conducted according to sound corporate governance principles.

(2) A sub-committee referred to under subsection (1) may include, but shall not be restricted to –

- (a) a corporate governance committee;
- (b) the audit committee referred to in section 46; or
- (c) a risks management committee.

(3) The Commission may issue guidelines on corporate governance for insurers and other licensees.

#### **Internal control systems**

**39.** An insurer shall maintain adequate internal control systems, commensurate with the nature and volume of its activities and various types of risks to which it is exposed, regarding –

- (a) operations and internal procedures;
- (b) the organisation of accounting and information processing systems;
- (c) risk and result measurement systems;
- (d) documentation and information systems; and
- (e) transactions monitoring systems.

### **PART V – AUDITORS, ACTUARIES, ACCOUNTS AND RETURNS**

#### **Appointment of auditor and actuary**

**40.(1)** Subject to this section and any FSC rules, an insurer shall appoint and have at all times –

- (a) an auditor; and
- (b) an actuary.

(2) Subject to subsection (5), an appointment made under subsection (1) shall not be effective except where it is approved by the Commission.

(3) In making an appointment under subsection (1), an insurer shall consider and state in the resolution making the appointment whether the auditor or the actuary, as the case may be –

- (a) holds the required qualifications and competence, has proven experience and adequate resources to perform his functions;
- (b) is independent of the insurer in that he, or in the case of a firm any of his partners, has no relationship with, or interest in the insurer, any of its group of companies, nor has any connection with any director or substantial shareholder of the insurer, which could reasonably be perceived to materially affect the exercise by him of an independent mind and judgement in the performance of his duties;
- (c) is fit and proper in accordance with such guidelines as may be made by the Commission.

(4) An application for approval under subsection (2) shall be made in writing and shall be accompanied by a certified copy of the resolution made under subsection (3) or any information and document as the Commission

may reasonably require.

(5) Except where it is expressly objected to by the Commission within 15 days of its submission of the application made under subsection (4), the appointment shall be deemed to have been approved and shall become effective.

(6) In determining its application under subsection (4), the Commission may take into consideration –

- (a) any report from the professional organisation of which the proposed appointee is a member, or from a supervisory body;
- (b) any matter or information relevant to determine whether the proposed appointee is a fit and proper person.

(7) Where an insurer does not have an auditor or an actuary approved pursuant to this section, the Commission shall make the appointment at the cost of the insurer.

(8) Where an auditor or actuary appointed by an insurer is a firm -

- (a) the firm shall designate a partner as the signing partner who shall, for the purposes of this Act, without any limitation to the obligations and liabilities of the other partners or associates, have all the duties, responsibilities and obligations of an auditor or actuary as if he were himself appointed;
- (b) the last approval of the Commission for the appointment of the firm shall not lapse by reason of a change in the membership of the firm provided that at least half of the members, after the change, were members when the appointment of the firm was last approved by the Commission.

#### **Notice of resignation and termination**

**41.(1)** An insurer shall give to the Commission written notice of the termination of appointment or resignation of its auditor or actuary within 15 days of the termination or resignation.

(2) Where the termination of appointment or resignation of an auditor or actuary is otherwise than by reason of expiry of his term of office -

- (a) the insurer shall set out the reasons for and circumstances of the termination or resignation;
- (b) the Commission may require the auditor or actuary to give his opinion on the circumstances of the termination or resignation.

#### **Termination of appointment by Commission**

**42.(1)** Subject to subsection (2), the Commission may require an insurer to terminate the appointment of an auditor or actuary of an insurer, where it has reason to believe that the person or firm concerned is not fit and proper to hold the office concerned.

(2) The Commission shall not make a determination under subsection (1) without giving prior notice of its intention to act in accordance with subsection (1) and the reasons for so doing, and give the insurer and the person or firm concerned as auditor or actuary, the opportunity to make representations.

### **Auditor's and actuary's duty to report**

**43.(1)** The auditor or the actuary of an insurer shall –

- (a) where a report or return is made to the insurer or to any public authority, provide a copy to the Commission;
- (b) where, but for a termination of appointment or resignation, there would have been reason to submit to the insurer a report containing unfavourable or critical remarks, submit such a report or draft report to the Commission.

**(2)** The auditor or the actuary of an insurer shall forthwith inform, and as soon as practicable, submit a report to the Commission where in the performance of his functions he becomes aware or has reason to believe that –

- (a) the insurer's financial soundness is seriously prejudiced, or the insurer's ability otherwise to comply with this Act and the FSC rules is seriously impaired;
- (b) there is any material change in the business of the insurer which may jeopardise its ability to continue as a going concern;
- (c) there has been or there is a breach of any of the provisions of this Act or FSC rules, or any other enactment relating to the keeping of accounting records and to audit;
- (d) the policy framework of the insurer to counter money laundering and the financing of terrorist activities, and the related measures, is inadequate, or lacking, or has not been or is not being properly implemented;
- (e) rules and guidelines made by the Commission have not been or are not being properly complied with;
- (f) a financial crime or any serious irregularity is being, has been committed, or is likely to be committed;
- (g) losses have been incurred which reduce the amount paid as stated capital or assigned capital, as the case may be, by 50% or more;
- (h) the insurer is unable or is not likely to meet the margin of solvency.

**(3)** In respect of any act performed or communication made in good faith, whether spontaneously or in response to a request by the Commission pursuant to the discharge of his duties under this section -

- (a) the auditor or the actuary shall not be deemed to be in contravention of any enactment or to commit a breach of –
  - (i) any code of professional conduct to which he is subject whether in Mauritius or abroad;
  - (ii) any contractual provision binding him to any confidentiality whether to the insurer or to any other party;
- (b) no civil, criminal or disciplinary proceedings shall lie against the auditor or the actuary.

### **Auditor's report**

**44.** Notwithstanding any other enactment, the auditor of an insurer shall –

- (a) in his report, state whether the financial statements of the insurer have been prepared in the manner and meet the requirements specified by the Commission;
- (b) provide the Commission with a certified copy of the report together with the audited financial statements and the corresponding notes within such time as the Commission may specify and in any case not later than one month after it was made; and
- (c) in relation to a statement forming part of the returns made under section 49, examine that statement or part thereof and satisfy himself, that it is properly drawn up so as to comply with the requirements prescribed, and express an opinion as to whether the statement or part thereof, including any annexure thereto, presents fairly the matters dealt with therein.

#### **Additional duties of the auditor**

- 45.** The Commission may require the auditor at the costs of the insurer, in addition to any other duties, to –
- (a) carry out an extended scope audit or other examination and make any necessary comments and recommendations;
  - (b) submit to the Commission such additional information in relation to the audit, extended scope audit or other examination as the Commission considers necessary;
  - (c) submit to the Commission a report on any matter specified in paragraphs (a) and (b);
  - (d) submit to the Commission a report on the financial and accounting systems and internal controls of the insurer; and
  - (e) submit to the Commission a report as to whether, in his opinion, the manner of provisioning against liabilities and the maintenance of assets is being done in compliance with this Act and FSC rules.

#### **Audit committee**

**46.(1)** Subject to subsection (2), every insurer shall by resolution of the board set up an audit committee consisting of such members and having such duties and functions as the board may, in accordance with guidelines issued by the Commission, determine.

**(2)** Guidelines issued by the Commission under this section shall have regard to the class and legal form of the insurer.

**(3)** The audit committee shall be open for attendance by the internal auditor and the external auditor who may also request and attend a meeting of the committee.

#### **Actuarial investigation**

**47.(1)** An insurer shall cause an investigation into its financial condition to be made by the insurer's actuary at such time and at such regular intervals as may be prescribed.

**(2)** An investigation to which subsection (1) relates shall include –

- (a) in the case of a long term insurer –

- (i) a valuation of the liabilities of the insurer attributable to the insurer's long term insurance business;
      - (ii) the establishment of any deficit on the insurance fund and the designated fund referred to under Part III;
      - (iii) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business and, where any rights of any long term insurance policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts;
      - (iv) the establishment of any excess on the insurance funds which may, subject to any restriction, be transferred to shareholders' funds and be available for distribution;
    - (b) in the case of a general insurer, a valuation of its underwriting liabilities, and in respect of liabilities incurred but not reported claims and other technical liabilities, including any deficiency in reserving for such liabilities in accordance with the solvency rules.
- (3) Where an investigation into an insurer's financial position is made, the insurer shall –
  - (a) furnish to the Commission a copy of the report of the insurer's actuary; and
  - (b) prepare and furnish to the Commission a statement of the insurer's business in the form to be determined by the Commission, within such time limit as may be prescribed.
- (4) The report referred to in subsection (3) shall include –
  - (a) a statement of the valuation basis used;
  - (b) a statement showing the extent to which account has been taken of the nature and term of the assets available to meet the liabilities valued;
  - (c) the actuary's opinion on the value of the assets mentioned in paragraph (b);
  - (d) a list of the assets so mentioned and their values, giving any equities held separately;
  - (e) a consolidated revenue account for the period covered by the report;
  - (f) a statement on whether the pricing of the insurance policies is prudentially sound; and
  - (g) such other matters as may be required under solvency rules.
- (5) The actuary who makes the valuation shall certify whether in his opinion the value placed upon the aggregate liabilities relating to a fund in respect of policies by the valuation is not less than the value which would have been placed upon those aggregate liabilities if it had been calculated on the minimum basis prescribed.

### **Separation of accounts**

- 48.(1)** An insurer carrying on more than one class of policies in any category of insurance business shall keep separate accounts of all receipts and payments in respect of each class of business.
- (2)** The Commission may, by notice in writing, require an insurer carrying on more than one class of insurance business to keep separate accounts of all receipts and payments in respect of a part of any such class of business.

(3) Where a single amount received or paid, whether in respect of premiums, investment income, claims, commission, reinsurance costs, administration costs, taxes or otherwise is received or paid in respect of more than one class of insurance business, and the amount is not otherwise allocable between the different classes, the insurer shall, for the purposes of this paragraph, apportion the amount in an equitable manner between the classes of insurance business in respect of which it is received or paid.

(4) Where a long term insurer manages assets in linked long term insurance business, that insurer shall keep separate accounts and records for each portfolio.

(5) Nothing in this section shall affect the establishment and maintenance of an insurance fund under section 17 or a designated fund under section 18.

### **Accounts, balance sheet and other returns**

**49.(1)** An insurer shall, at the expiration of each balance sheet date, prepare with reference to that year –

- (a) a balance sheet;
- (b) a profit and loss account or a revenue account, or both, as may be applicable; and
- (c) in respect of each class of insurance business, or part thereof, for which the insurer is required by section 48 to keep a separate account of receipts and payments, a revenue account.

(2) An insurer shall furnish to the Commission such further returns or abstracts, or amended or substituted returns or abstracts, as may be required by the Commission.

(3) Subject to Part III, every reserve or provision shall be calculated in accordance with internationally approved methods, and the methods adopted for the purpose shall be disclosed to the Commission, including any change in the methods.

(4) All amounts which are required to be shown in any account or balance sheet shall be shown in Mauritian currency to the nearest rupee or in such other currency as may be approved by the Commission.

(5) An insurer which is a foreign company and is required by the law of the country where it is established to prepare and furnish to a public authority any documents, shall furnish to the Commission copy of such of those documents, as may be specified by the Commission.

(6) No insurer shall change its balance sheet date without the approval of the Commission.

(7) The Commission may specify such additional requirements in respect of the audited financial statements of protected cell companies as it may deem appropriate.

### **Audit and auditor's certificate**

**50.(1)** The accounts of an insurer shall be audited annually by its auditor appointed under section 40.

(2) The auditor shall, in a certificate relating to the accounts and statements in respect of a balance sheet date of an insurer, state whether –

- (a) the accounts and statements to which it relates appear to him to be in accordance with the requirements of this Act, the FSC rules, guidelines and give particulars of any matters that do not appear to him to be in accordance with those requirements;
- (b) the accounting records of the insurer in respect of that year appear to him to have been

properly kept and to record and explain correctly the transactions and financial position of the insurer, and give particulars of accounting records that appear to him not to have been so kept and of transactions that appear to him not to have been so recorded;

- (c) in respect of that year, he has obtained the information and explanations that he requested;
- (d) he has been denied any information requested under paragraph (c), setting out the particulars of information and explanations that he requested but did not obtain;
- (d) he is satisfied that the accounts and statements referred to in paragraph (a) agree with the accounting records of the insurer and appear to him to represent truly the transactions and financial position of the insurer in respect of the balance sheet date to which they relate and, where any of them appear to him to fail so to represent the transactions and financial position, give particulars of the failure;
- (e) amounts required by section 48(3) to be apportioned have been equitably apportioned and where they have not been so apportioned give particulars of the failure;
- (f) all management expenses wheresoever incurred in respect of the insurer's business, whether directly or indirectly, have been fully debited in the revenue account or profit and loss account as expenses and, where they have not been so debited, give particulars of the amounts not so debited; and
- (g) every reserve has been calculated in accordance with section 49(3), and where they have not been so calculated give particulars of the failure.

#### **Submission and publication of returns**

**51.(1)** A copy of every account, balance sheet, certificate, report, return or statement required to be prepared under sections 47, 49 or 50 shall be signed by two directors and, in the case of a foreign company, the authorised agent of the insurer, and by the auditor who made the audit or the actuary who made the valuation (as the case may be) and shall be submitted to the Commission within 3 months after the end of the period to which they relate.

**(2)** An insurer shall furnish forthwith to the Commission a certified copy of every report on its affairs made to its shareholders or policyholders.

**(3)** A statement or return other than a balance sheet, profit and loss account, revenue account or actuarial report shall, in the case of a foreign company, be signed by the authorised agent unless the Commission requires it also to be signed by the auditor or the actuary of the insurer.

**(4)** No insurer shall publish in Mauritius or elsewhere any return or statement required under this Act in a form other than that in which it has been furnished to the Commission, but nothing in this subsection shall prevent an insurer from publishing a true and accurate abstract from such return or statement for the purpose of publicity and a copy of which is submitted to the Commission.

#### **Examination of returns**

**52.(1)** Where it appears to the Commission that any return or report furnished to it under this Part is inaccurate or incomplete in any respect, the Commission may –

- (a) require further information, which shall be certified if it so directs, from the insurer or from such auditor, actuary or other person as it may consider necessary;

- (b) require the insurer to submit any document for examination by the Commission at its registered office, or its principal place of business, in Mauritius, or to supply any statement;
  - (c) examine any officer of the insurer in relation to the return or report; or
  - (d) reject the return or report unless such further information as may be required by the Commission is furnished within such period as it may specify, and if the Commission declines under this section to accept any return or report, the insurer shall be deemed to have failed to comply with the requirements of this Part in relation to such a return or report.
- (2) Any person who, for the purpose of making returns under subsection (1) –
- (a) makes a representation or statement which he knows to be false in a material particular; or
  - (b) recklessly makes a representation or statement which is false in a material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 2 years.

#### **Keeping of records and registers**

**53.(1)** In addition to the requirements of the Companies Act, an insurer shall, for the purposes of this Act, keep in relation to its business activities, a full and true written record, whether electronically or otherwise, in English or French language of every transaction it makes.

- (2) For the purposes of subsection (1), such records shall include-
- (a) registers of all policies classified in accordance with the class and the category of insurance business;
  - (b) a register of claims reported;
  - (c) a register of insurance agents and of insurance salespersons authorised to act on behalf of the insurer; and
  - (d) any specific record as may be determined by the Commission.
- (3) Every record under subsection (1) shall be kept in Mauritius at the principal place of business of the insurer or such other place as may be approved by the Commission for a period of at least 7 years after the completion of the transaction to which it relates.
- (4) Pursuant to subsection (1), a foreign company shall maintain such records in relation to its insurance business carried on in or from within Mauritius, at its registered office in Mauritius.
- (5) The Commission may specify in the FSC Rules the manner in which books, records and registers may be kept and the entries that shall be made.

#### **PART VI – TRANSFER AND AMALGAMATION**

### **Approval required for transfer and amalgamation**

**54.(1)** Nothing in this Part shall preclude the application of Parts XVI and XVII of the Companies Act, except that before approving an amalgamation, each amalgamating company shall obtain the approval of the Commission.

(2) No transaction to which an insurer is a party and which constitutes an agreement by which all or any part of the business of an insurer is transferred to another person, or by which an amalgamation is effected, shall have effect without the approval of the Commission.

(3) Any arrangement entered into between two or more insurers whereby a liability of any insurer towards policyholders is to be substituted for a liability of any other insurer towards such policyholders, whether or not the liability of the insurer is expressed in or created by existing policies or by new policies, or the terms of such new policies are the same as or different from the terms of the original policies, shall be deemed for the purposes of this Part to be a scheme for the transfer of the insurance business concerned, except where the Commission is satisfied that all the policyholders have been made aware of the nature of such substitution and have signified their consent in writing.

(4) Subsection (1) shall not apply to the transfer of any insurance business of a foreign company that is an insurer except in so far as the transfer relates to insurance business carried on in, or from within Mauritius.

(5) For the purposes of this Part, "amalgamation" includes any scheme of arrangement, reconstruction or compromise involving an insurer.

### **Application for approval of transfer or amalgamation**

**55.(1)** Subject to this section, an application for a transfer or amalgamation referred to in section 54 shall be made jointly by the parties to the transaction in such form, manner and medium and by giving such notices as may be prescribed.

(2) An application under subsection (1) shall be accompanied by –

- (a) the draft of the document including the terms of the agreement or deed under which the proposed transfer or amalgamation is to be carried out or take effect, as the case may be;
- (b) the audited accounts for the last five years or such shorter period as applicable in respect of the insurance business of all insurers concerned in the proposed transfer or amalgamation; and
- (c) any other report or document as the Commission may require.

(3) The notice referred to in subsection (1) shall invite any person, including an employee, director, shareholder or policyholder, who has reasonable grounds for believing that he would be adversely affected by the carrying out of the scheme to write to the Commission within 30 days of the publication of the notice, stating the grounds on which he believes he would be adversely affected by the carrying out of the scheme of transfer or amalgamation.

(4) The Commission –

- (a) may appoint a person, at the expense of the parties to the transaction, to enquire into, and report to it on, the desirability or otherwise of the transaction;
- (b) shall require the insurers concerned to obtain and submit to it the opinion of its actuary on the fairness of the transaction to the policyholders; or
- (c) may by notice, direct any party to the transaction to provide the Commission or that

person appointed under paragraph (a) with all information and documents relating to the transaction which it may require.

(5) Where the proposed transfer or amalgamation is in respect of long term insurance business, an application shall, in addition to the documents mentioned in subsections (1) and (2), be accompanied by a report on the terms of the scheme and the likely effects of the scheme on policyholders of the insurers concerned as a result of the proposed transfer or amalgamation, prepared by an actuary approved by the Commission.

(6) The documents, accounts and reports mentioned in subsections (1) and (2) shall be prepared as at the date at which the proposed transfer or amalgamation is to take effect, which date shall not be more than 12 months after the date of the application.

### **Approval of transfer or amalgamation**

**56.(1)** The Commission shall not approve a transfer or an amalgamation referred to in section 54 except where it is satisfied that –

- (a) the provisions of this Part have been complied with;
- (b) the transaction is consistent with this Act and in the interests of the policyholders of the insurer concerned;
- (c) payment of the expenses referred to in section 55(4) has been made or secured;
- (d) the transferee or amalgamated insurer, as the case may be, is or immediately after the approval will be licensed under this Act to carry on insurance business or the appropriate class or classes of insurance business; and
- (e) the transferee's or amalgamated insurer's financial resources and the other circumstances of the case justify the giving of its approval.

(2) Subject to subsection (1), the Commission may, after considering the accounts, documents and reports lodged with it and any representations made in connection with an application under section 55 -

- (a) approve a scheme of transfer or amalgamation on such terms as it considers necessary; or
- (b) reject the application.

(3) The Commission shall -

- (a) cause to be published a notice of its decision; and
- (b) send a copy of the notice to the transferor and the transferee or to the parties to the amalgamation.

### **Effect of approval**

**57.(1)** Subject to subsection (2), notwithstanding the absence of any agreement or consent which would otherwise be necessary for it to be effectual in law, an instrument giving effect to a transfer or amalgamation approved under section 56 shall be effectual in law –

- (a) to transfer to the transferee or amalgamated insurer all the rights and obligations under the policies included in the instruments of the parties to the transfer or amalgamation; and

- (b) where the instrument so provides, to secure the continuation by or against the transferee or the amalgamated insurer of any legal proceedings by or against the transferor or any party to the amalgamation which relate to those rights or obligations.

(2) Where a transfer or amalgamation has taken place, no policyholder shall be regarded as having abandoned any claim which he would have had against the original insurer or to have accepted in its place the liability of another insurer, unless he or his agent has signed a written document abandoning that claim and accepting in its place the liability of that other insurer.

(3) Within 3 months of the publication of a notice of approval, the transferee or amalgamated insurer, as the case may be, shall lodge with the Commission –

- (a) a balance sheet, prepared in accordance with the International Financial Reporting Standards, and, showing a true and fair view of the amalgamated insurer's or the transferee's affairs, as the case may be, as at the date of that publication; and
- (b) a declaration under the hand of each person who was, immediately prior to the date of that publication, chairperson of any insurer that was a party to the transfer or amalgamation, that –
  - (i) to the best of their knowledge and belief, every payment made or to be made to any person on account of the transfer of amalgamation is fully specified in the declaration and no other payments, except those specified, have been or are to be made, either in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the transfer or amalgamation; and
  - (ii) the requirements under this Part or regulations for the purpose of this Part have been complied with.

### **Application to Court for directions**

58. The Commission may apply to the Court for directions in relation to any particular matter arising under a transfer or amalgamation under this Part.

## **PART VII – INSOLVENCY AND WINDING UP**

### **Sub Part A – General Provisions**

#### **General provisions on winding up**

59.(1) Subject to this Part and such regulations as may be prescribed, Sub-Part II or Part III, Parts IV and VII of the Insolvency Act 2009 or such other specific enactment relating to winding up of companies shall apply to the winding up of an insurer so far as these provisions are applicable and provided further that where there is any inconsistency between those provisions and the provision of this Part, the provisions in this Part shall prevail.

(2) Where an insurer is a subsidiary of a body corporate which is not an insurer, and the body corporate is wound up –

- (a) the subsidiary shall not be wound up except on the basis of a separate application for winding up; and
- (b) the provisions of this Part shall apply in relation to the subsidiary as to any other

insurer.

### **Continuation of business by liquidator**

**60.(1)** A liquidator who is in charge of liquidation proceedings in respect of an insurer shall, so far as it may be possible and subject to the direction of the Commission or the order of the Court, carry on the insurance business of the insurer during the liquidation proceedings, but shall not effect any new contracts of insurance including renewals of existing policies of general insurance.

**(2)** A liquidator under subsection (1) may, in accordance with Part VI and subject to such exemptions and directions as the Commission may determine, transfer the assets and liabilities of the insurer to another insurer.

**(3)** The liquidator may for the purpose of a transfer under subsection (2) apply to the Court for an order to reduce –

- (a)* the amount of liabilities under the policies of the insurer; or
- (b)* the amount of its other liabilities,

and the Court may reduce the liabilities to the extent necessary taking into account the value of its available assets subject to such condition as it considers fit.

**(4)** Where the liquidator is satisfied that the interests of the existing policyholders and creditors in respect of liabilities of the insurer attributable to its business require the appointment of a special manager of the business, he may apply to the Court, and the Court may on the application appoint a special manager of that business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager under any other enactment, as may be entrusted to him by the Court.

**(5)** The Court may require the special manager to give such security as it considers necessary.

**(6)** The Court may make such order as it considers appropriate with regard to the payment of remuneration to the special manager.

### **Proof of claims**

**61.** Where it appears to the liquidator in charge of liquidation proceedings in respect of an insurer that by reason of the insufficiency of its documents or any other circumstances, hardship would be caused if he requires strict proof of debt, he may act on such evidence as he thinks appropriate and payment of a debt made by the liquidator in good faith to any person as being the person entitled to it shall discharge the liquidator from all liabilities in respect of that debt.

### **Valuation of assets and liabilities**

**62.(1)** Subject to any directions which may be given by the Court, in the winding up of an insurer -

- (a)* the value of the assets of the insurer shall be ascertained in such manner and upon such basis as may be determined by the liquidator in consultation with the Commission;
- (b)* the liabilities of the insurer in respect of the current policies of long term insurance business shall, as far as practicable, be calculated by the method and upon such basis as may be determined by an actuary appointed by the Commission; and
- (c)* the liabilities of the insurer in respect of general insurance business shall be determined

by the liquidator in consultation with the Commission.

- (2) The actuary, in determining the basis of valuation under subsection (1)(b), shall take into account -
- (a) the purpose for which the valuation is to be made;
  - (b) any guidelines issued by the Commission; and
  - (c) any directions which may be given to him by the Court.

### **Application of funds on winding up**

**63.(1)** Notwithstanding any other enactment, this section shall have effect with respect to the application of funds on the winding up of an insurer, and where any provision of this section is inconsistent with the provision of any other enactment, the provision of this section shall, to the extent of the inconsistency, prevail over the other provision.

(2) Any debt or other liabilities arising out of contracts of insurance issued or underwritten by an insurer shall rank in priority before any other claim against the assets of the insurer.

(3) Subject to the other provisions of this section -

- (a) the assets representing the insurance fund maintained by the insurer with respect to policy liabilities in Mauritius or with respect to policy liabilities outside Mauritius shall be applied only for meeting the liabilities of the fund to which it relates;
- (b) where the assets representing an insurance fund exceed the liabilities of that fund, the surplus assets may be applied to meet the liabilities of the other insurance fund which is deficient; and
- (c) any deficiency subsisting after application of the assets of the insurance funds under paragraphs (a) and (b) shall be met out of the other assets of the insurer, and any unsatisfied liabilities to a policy shall have priority over any other claim or liabilities.

(4) Where the insurer is a long term insurer -

- (a) the assets representing the designated funds maintained by it under section 18 shall be available only for meeting the liabilities of the insurer attributable to that fund;
- (b) the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other insurance business; and
- (c) any surplus asset remaining after application of paragraphs (a) and (b) shall be available for meeting any liabilities not attributable to any insurance policies.

### **Sub Part B – Voluntary Winding up**

#### **Voluntary winding up**

**64.(1)** Notwithstanding the Insolvency Act 2009 or any other specific enactment, no insurer shall be wound up voluntarily without the prior written authority of the Commission.

(2) The Commission may authorise an insurer to wind up where the insurer is solvent and submits a

declaration to the effect that arrangements satisfactory to the Commission have been made by the insurer to meet all its liabilities under the insurance policies entered into by it prior to the winding up.

- (3) Where an insurer has received the authorisation of the Commission under subsection (2), it shall -
- (a) immediately cease to do business, retaining only the powers to carry out the necessary business for the purpose of effecting an orderly winding up;
  - (b) repay its policyholders and creditors in accordance with section 63; and
  - (c) wind up all operations undertaken.
- (4) The insurer shall -
- (a) not later than 30 days from the receipt of an authorisation under subsection (2), send by registered post a notice of voluntary winding up, specifying such information as the Commission may specify, to all policyholders, creditors and persons otherwise entitled to the funds or property held by the insurer as a fiduciary;
  - (b) cause to be published a notice of the voluntary winding up in such manner as the Commission may specify.

#### **Rights of policyholders and creditors**

**65.(1)** The authorisation under section 64(2) to wind up an insurer shall not prejudice the rights of a policyholder or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the insurer to the return thereof.

(2) All lawful claims shall be paid promptly and all funds and other property held by the insurer shall be returned to their rightful owners within such maximum period as the Commission may determine.

#### **Distribution of assets**

**66.(1)** Where, in the opinion of the Commission, the insurer has discharged all of its obligations, its licence shall be cancelled and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights.

- (2) No distribution shall be made before -
- (a) all claims of policyholders and other creditors have been paid or, in the case of a disputed claim, before the insurer has turned over to the Commission, or to any other person proposed by the insurer and approved by the Commission, sufficient funds to meet any liability that may be judicially determined;
  - (b) any funds payable to a policyholder or other creditor who has not claimed them have been turned over to the Commission or to any other person proposed by the insurer and approved by the Commission;
  - (c) any other funds and property held by the insurer that could not be returned to the rightful owners in accordance with section 84 have been transferred to the Commission, or to any other person proposed by the insurer and approved by the Commission, together with the relevant inventories.
- (3) Any funds or property not claimed within a period of 10 years following their transfer shall be presumed to be abandoned funds or property and shall be dealt with in accordance with section 84.

### **Insufficient assets**

**67.** Where the Commission finds that the assets of an insurer whose voluntary winding up has been authorised shall not be sufficient for the full discharge of all of its obligations or that completion of the voluntary winding up is unduly delayed, it may petition the Court for a winding up of the insurer under section 68 and for the appointment of liquidator.

## **Sub Part C- Winding up by the Court**

### **Winding up by Court**

**68.(1)** In addition to the circumstances set out for winding up in the Insolvency Act 2009, or under any other specific enactment, the Commission may make a petition to the Court for the winding up of an insurer where

- (a) it is satisfied that the insurer is contravening section 15;
- (b) the licence of the insurer has been revoked;
- (c) it is in the public interest to do so.

**(2)** Where an application to the Court for the winding up of an insurer is presented by a person other than the Commission, a copy of the application shall, at the same time, be served on the Commission who shall be entitled to be heard on the petition.

**(3)** The Commission shall be a party to any proceedings under any enactment relating to the winding up of the affairs of an insurer and the liquidator in such a winding up shall provide the Commission with such information as it may from time to time require about the affairs of the insurer.

**(4)** In the petition by the Commission for the winding up of an insurer, a reference which relates to the inability of the insurer to pay its debts or to meet its obligations shall be construed as relating also to its inability to comply with section 15.

**(5)** Where an insurer licensed under this Act is wound up, the debts of the insurer shall, subject to section 63, be paid according to the laws of Mauritius with respect to privileges and priorities of claims, subject to the retention of such sums as are reasonably required to cover the claims arising under insurance policies.

### **Reduction of contract**

**69.(1)** Where an insurer is unable to pay its debts, the Court may, instead of making an order for winding up, order the reduction of the amount of the current policies of the insurer upon such terms and subject to such conditions as the Court considers appropriate.

**(2)** For the purpose of a reduction under subsection (1), the value of the assets and liabilities of the insurer and all claims in respect of policies issued by the insurer shall be ascertained in the manner set out in section 15.

## **PART VIII - OTHER INSURANCE PROFESSIONALS**

### **Licensing of insurance managers, insurance agents and insurance brokers**

**70.(1)** Except under the authority of a licence to that effect, no person shall act as or hold himself out as –

- (a) an insurance manager;
- (b) an insurance agent; or
- (c) an insurance broker.

**(2)** For the purposes of this section a person shall be deemed to act as, or hold himself out as, an insurance manager, insurance agent or insurance broker in or from within Mauritius, where that person –

- (a) by way of business, as an insurance manager, insurance agent or insurance broker, occupies premises in Mauritius, or makes it known by an advertisement or by an insertion in a directory or by means of letterheads that he may be contacted at a particular address in Mauritius;
- (b) invites a person, by issuing an advertisement (in any place or country whatsoever) or otherwise, to do in or from within Mauritius any act in relation to an insurance policy whereby he will act as an insurance manager, insurance agent or insurance broker as the case may be; or
- (c) conducts himself or performs any act from which it may reasonably be inferred that he intends, or proposes to carry on, or carries on business as an insurance manager, insurance agent or insurance broker, as the case may be, in or from within Mauritius.

**(3)** An application for a licence to act as an insurance manager, insurance agent or insurance broker, as the case may be, shall be made in such form, manner and medium, and be accompanied by such document and information as the Commission may determine.

**(4)** Where the Commission is satisfied that an application under subsection (3) ought to be granted, it shall, on payment of the prescribed fee, issue a licence authorising the applicant to carry on business as an insurance manager, insurance agent or insurance broker, as the case may be.

**(5)** The Commission shall not grant a licence under subsection (4) except where it is satisfied that -

- (a) the objectives of the business of the applicant are consistent with this Act and are limited to the business stated in the application and operations arising directly from it;
- (b) the applicant has such stated capital as may be specified in the FSC rules;
- (c) the applicant is covered by a professional indemnity insurance policy acceptable to the Commission and meeting such requirements as may be prescribed;
- (d) the applicant meets such requirements as may be prescribed;
- (e) the applicant has disclosed such bona fide information as the Commission has requested in relation to the proposed business, and to persons who will, upon commencement of the applicant's business, have any proprietary, financial or other interest in, or in connection with, that applicant;
- (f) the applicant has the financial resources, organisation and management capacities that are necessary to carry on the business which is the subject-matter of the application;
- (g) the applicant, the substantial shareholders, controllers, and officers of the applicant where it is a body corporate are fit and proper persons to ensure the sound and prudent management of the business;

- (h) the applicant will, upon being licensed, be able to comply with and fulfil all requirements under this Act;
- (i) the applicant meets such other requirements as may be specified.

(6) In determining an application under this section, the Commission may take into account -

- (a) any guidelines or international standards relating to the regulation of insurance managers, agents and brokers, as the case may be, issued by an international body;
- (b) the provisions of any regulations made under this Act or the FSC rules or guidelines issued by the Commission; and
- (c) any information obtained from a foreign regulator or enforcement agency.

(7) The Commission may, on granting a licence under this section, impose such conditions, restrictions and limitations to the scope of business of the licensee as it deems fit.

(8) Any person who –

- (a) contravenes subsection (1);
- (b) fails to comply with any of the conditions, restrictions and limitations attached to his licence;

shall commit an offence and shall on conviction be liable to a fine not exceeding 2 million rupees and to imprisonment for a term not exceeding 8 years.

(9) Any person who for the purpose of an application for a licence under subsection (3) -

- (a) makes a representation or statement which he knows to be false in a material particular; or
- (b) recklessly makes a representation or statement which is false in a material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

### **Obligations of an insurer in relation to insurance agents**

**71.(1)** An insurer shall maintain at its principal place of business and display in a conspicuous place to which the public has access, a list of all its insurance agents, and provide the Commission on demand with a copy of such list.

(2) An insurer shall notify forthwith the Commission of any violation of this Act, the FSC rules or guidelines committed by its insurance agent and of which it has knowledge.

(3) An insurer shall notify the Commission of any termination of appointment of an insurance agent –

- (a) within 14 days of the date of termination; and
- (b) of the reasons for the termination.

(4) Notwithstanding any obligation under a contract relating to confidentiality, no disclosure made by an insurer, acting in good faith, under subsections (2) and (3) shall give rise to any criminal or civil action against the insurer.

### **Financial statements and returns by insurance managers, insurance agents and insurance brokers**

**72.(1)** No licensee under this Part shall change its balance sheet date without the approval of the Commission.

**(2)** Notwithstanding any other enactment, an insurance manager, insurance agent or insurance broker, as the case may be, shall submit to the Commission not later than 3 months after the expiry of each balance sheet date and with reference to that year -

(a) his audited financial statements;

(b) any other statements or returns as the Commission may specify.

**(3)** The Commission may specify the form in which financial statements are to be prepared for submission under subsection (2).

**(4)** An insurance manager, insurance agent or insurance broker, as the case may be, shall –

(a) keep such records as may be specified by the Commission;

(b) furnish to the Commission such statements and returns relating to its business in such form and at such intervals as may be specified; and

(c) provide such other document and information as the Commission may require.

### **Separate accounts for premium received**

**73.(1)** No insurance manager, insurance agent or insurance broker, as the case may be, shall receive, hold, or in any other manner deal with, or shall be allowed by an insurer to receive, hold and deal with, premiums payable under an insurance policy, other than a reinsurance treaty entered into or to be entered into with an insurer, otherwise than in accordance with this Act, the FSC rules or guidelines issued under this Act.

**(2)** An insurance manager, insurance agent or insurance broker shall open and maintain a bank account for the keeping of premiums received under subsection (1) and such account shall be separate from any account which the insurance manager, insurance agent and insurance broker, as the case may be, may open and maintain for the keeping of its own funds.

**(3)** Any insurance manager, insurance agent or insurance broker who receives payment of premium from a policyholder on behalf of an insurer, shall pay the premium, less any commission and other deductions to which, by written consent of the insurer, he is entitled, to the insurer within 30 days of its receipt or such shorter period as may be agreed in advance by the insurer.

### **Obligations of insurance broker**

**74.(1)** No insurance broker shall provide its services in relation to an insurance policy where to do so would result or be likely to result in a conflict of interest between the broker and an insurer or a policyholder.

**(2)** An insurance broker shall disclose to a prospective policyholder any commission or other remuneration that it is likely to receive from an insurer in the event that the prospective policyholder enters into an insurance policy for which it had provided its services.

### **Registration of insurance salespersons**

- 75.(1)** No person other than a natural person shall act as insurance salesperson for an insurer or insurance agent unless that person is registered with the Commission to act as such for that particular insurer or insurance agent.
- (2)** The Commission shall keep and maintain a register of insurance salespersons.
- (3)** No insurer or insurance agent shall appoint a person in Mauritius to act as an insurance salesperson unless that person is registered as such with the Commission.
- (4)** An insurer or insurance agent shall, before appointing a person to act as its insurance salesperson, apply to the Commission for registration of that person as its insurance salesperson in such form, manner and medium as may be determined by the Commission.
- (5)** The application under subsection (3) shall be accompanied by –
- (a)* information or document establishing the fact that the salesperson is fit and proper and such other information or document as the Commission may determine; and
  - (b)* such fee as may be prescribed.
- (6)** Where the Commission considers that a person is not fit and proper to be an insurance salesperson, it may –
- (a)* refuse to register him as an insurance salesperson; or
  - (b)* where a person has already been appointed insurance salesperson, direct the insurer or insurance agent, as the case may be, to terminate the appointment, and remove the name of the insurance salesperson from its register of salesperson.
- (7)** Where an insurer or insurance agent terminates the appointment of an insurance salesperson, it shall within 14 days after the date of the termination, notify the Commission.
- (8)** Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 000 rupees and to a term of imprisonment not exceeding 2 years.

### **Annual fee for insurance salespersons**

- 76.(1)** The Commission may, in respect of every insurance salesperson, levy such annual fee as may be specified in FSC Rules.
- (2)** The annual fee shall be paid by the insurer or insurance agent, as the case may be, by such date as may be specified in FSC Rules.
- (3)** Where payment of the annual fee is offered to be made after the date specified in FSC Rules –
- (a)* the Commission shall not be bound to accept the payment;
  - (b)* the insurer or insurance agent shall be liable to pay to the Commission, in addition to the annual fee, such additional charge as may be specified in FSC Rules;
  - (c)* the Commission may, after giving prior written notice of not less than 15 days to the insurer or insurance agent, terminate the registration of the insurance salesperson on such conditions as may be determined by the Commission.
- (4)** *(a)* Where the registration of an insurance salesperson is terminated under subsection (3)(c), the name of that salesperson shall be removed from the register referred to in

section 75(2).

- (b) An insurer or insurance agent shall not allow a person whose name as insurance salesperson has been removed from the register to act for him or on his behalf.

(5) An insurer or insurance agent shall keep and maintain, at its or his principal place of business, an updated list of its or his insurance salespersons and provide, on demand by the Commission, a copy of the updated list.

### **Obligations of insurance salespersons**

77.(1) An insurance salesperson shall-

- (a) keep such records as may be specified; and
- (b) furnish to the Commission such statements and returns relating to his business in such form and at such intervals as may be prescribed.

(2) An insurance salesperson shall not collect and keep premiums on behalf of an insurer or insurance agent.

### **Claims professionals**

78.(1) The Minister may by regulations provide for the registration of claim professionals and the conduct of their business.

(2) For the purpose of this Act, reference to a claims professional shall be construed as a reference to a person who for a fee or remuneration carries on the business of, or holds himself out as, loss surveyors or loss adjusters, or otherwise advises on, or investigates into the cause and circumstances, of a loss, and ascertaining the quantum of the loss for the purpose of processing a claim on a general insurance policy.

## **PART IX – PROTECTION OF POLICYHOLDERS**

### **Certain provisions to be void**

79. A provision of an agreement shall be void, where the purport of the provision is that-

- (a) an insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to an insurance policy;
- (b) the person who has entered into the insurance policy declares or admits that a person who acted on behalf of the insurer in connection with an offer of that person to do so, or with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person;
- (c) the obligation of an insurer under an insurance policy is dependent upon the discharging of an obligation of another person under a reinsurance treaty;
- (d) the person who has entered into an insurance policy, or the life insured, or any beneficiary, under an insurance policy, waives a right to which he is, by or under this Act, entitled.

### **Information on policies**

**80.(1)** Where an insurance policy, other than a reinsurance treaty, is entered into or varied, the insurer, or the insurance agent, shall, not later than 30 days after the policy has been entered into, provide for the purpose of the policyholder written information, in the form of a summary, relating to at least the following matters, namely -

- (a) those of the representations made by or on behalf of the policyholder to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;
- (b) the premiums payable and the policy benefits to be provided under the policy;
- (c) the disclosure of fees, commissions and other costs on the policy;
- (d) the events in respect of which the policy benefits are to be provided and the circumstances, if any, in which those benefits are not to be provided.

**(2)** The summary referred to in subsection (1) –

- (a) may be used in evidence where it is relevant to determine any matter relating to the policy;
- (b) in the absence of evidence to the contrary, be deemed to be representative of the matters which are material to the assessment of the risks under the policy.

**(3)** An insurer or an insurance agent who knowingly provides a summary required to be made under this section which is false or misleading in any material particular, shall commit an offence, and shall on conviction be liable to a fine not exceeding one million rupees or to a term of imprisonment not exceeding 5 years.

### **Free choice of policy**

**81.(1)** Where a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or otherwise, that an insurance policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to make that policy or those policy benefits available shall have a free choice -

- (a) as to whether he wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilize a combination of those options; and
- (b) where a new policy is to be entered into –
  - (i) as to the insurer with which the policy is entered into and as to the insurance agent, if any;
  - (ii) as to whether or not the policy benefits concerned are to be provided in an event other than the death or disability of the life insured; and
  - (iii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of that debt or other obligation; and
- (c) where an existing policy is to be made available, as to whether or not a variation of the policy required for that purpose shall be such as to cause –
  - (i) policy benefits to be provided in an event other than the death or disability of

the life insured; or

- (ii) the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of that debt or other obligation.

(2) The provisions of subsection (1) shall be deemed not to have been complied with unless the policyholder whose policy is to be made available has confirmed in writing, before the policy is used for the purpose of securing the debt concerned or other obligation, that he -

- (a) was given prior written notification of his entitlement to the freedom of choice referred to in that subsection; and
- (b) freely and willingly exercised that freedom of choice.

(3) Any policy benefits that may be provided under a policy referred to in subsection (1) shall accrue and be paid to a creditor only to the value of the interests of the creditor in the subject-matter of the policy, and any surplus shall accrue and be paid to the policyholder whose policy is used for the protection of the interests of the creditor concerned.

(4) Where the provisions of subsections (1) and (3) are not complied with, the security provided by the policy made available and used for the purpose shall be void and the policy benefits shall be provided to the person who made it available.

(5) A judgment creditor, the trustee in bankruptcy or liquidator of a bankrupt or insolvent policyholder, who is entitled to a part of the realisable value of an insurance policy may, where he is in possession of the policy, deliver it to the insurer who is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he is entitled.

(6) Where a judgment creditor, the trustee in bankruptcy or liquidator referred to in subsection (5) is not in possession of the policy concerned, he may by notice inform the person in possession of the policy of his rights and require him to deliver the policy to the insurer which is liable under the policy for the purpose of the payment to that creditor, the trustee in bankruptcy or liquidator of the sum to which he is entitled.

(7) This section shall not apply to a loan granted to a policyholder by a long term insurer against a security of a long term insurance policy.

#### **Annual statement to certain policyholders**

**82.(1)** Where a policyholder has invested in a “with profit” life insurance product which entitles him to a bonus at the discretion of the insurer or in an investment linked policy, the insurer shall provide the policyholder with a report of the performance of the investment in such products, regularly and in any case not less than once every year.

(2) The Commission may specify in the FSC Rules the form and particulars of the report referred to in subsection (1).

#### **Undesirable business practice**

**83.(1)** Notwithstanding anything to the contrary in any enactment, the Commission may declare a particular insurance business practice to be undesirable for -

- (a) all or a particular class of insurance policies; or

- (b) all or a particular category of persons who render services in respect of insurance policies.

(2) Where the Commission is satisfied that an insurer or a person rendering services in respect of insurance policies is carrying on a business practice which may become the subject of a declaration under this section, the Commission may by notice direct that insurer or person –

- (a) to suspend that particular business practice for such period as the Commission deems necessary to enable the matter to be determined;
- (b) to take such remedial actions to the satisfaction of the Commission to eliminate or mitigate the effects of, or arising from, that undesirable practice.

(3) An insurer or other person who –

- (a) carries on a practice declared undesirable under this section;
- (b) fails to comply with a direction given under subsection (2);

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to a term of imprisonment not exceeding 3 years.

#### **Abandoned funds**

**84.(1)** Notwithstanding anything in any agreement between an insurer and a policyholder, and irrespective of the amount, where a policyholder's entitlement to receive money under an insurance policy has been left untouched and not claimed for 10 years or more, the insurer shall -

- (a) send by registered post a notice to that effect to the last known address of the policyholder or the beneficiary under the policy;
- (b) cause the notice to be published in the Gazette and in two daily newspapers.

(2) Where a policyholder or the beneficiary under a policy does not respond to a notice given under subsection (1), the entitlement under the insurance policy shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the insurer concerned to the Curator of Vacant Estates to be dealt with by the Curator.

#### **Protection of policyholders**

**85.(1)** Without prejudice to the provisions of Livre Troisième, Titre Douzième, Chapitre Troisième of the Code Civil Mauricien, the Commission may provide in the FSC Rules and guidelines for sound insurance principles and practice.

(2) Without derogating from the generality of subsection (1), FSC rules and guidelines may include -

- (a) the disclosure of fees, commissions and other costs on insurance policies;
- (b) advertisements and canvassing in relation with insurance policies;
- (c) information to be provided before and after entering into an insurance contract;
- (d) any other matter affecting the conduct of insurance business.

### **Assumption of risk by general insurer**

**86.(1)** No general insurer shall assume any risk in respect of such general insurance policy as may be prescribed except where the premium payable is received by the insurer in such manner and within such time as may be prescribed.

(2) Where the premium payable under subsection (1) is received by a person on behalf of the insurer, the receipt shall be deemed to be receipt by the insurer for the purpose of that subsection and the onus of proving that the premium was received by a person not authorised to receive the premium shall lie on the insurer.

(3) Where a person receives on behalf of an insurer premium on an insurance policy referred to in subsection (1), that person shall remit the amount to the insurer within such period as may be prescribed.

(4) For the purposes of this section, where -

- (a) the premium is remitted through postal money order or cheque sent by post, the date of booking the money order and the date of posting the cheque shall be treated as the date of payment of the premium if the cheque is honoured;
- (b) the premium paid on or before the commencement of the risk, to the insurance agent shall be treated as equivalent to the payment of premium to the office of the principal insurer.

### **Premium rate under long term policy**

**87.(1)** A long term insurer shall not issue a long term insurance policy except where the premium rate chargeable under that class of policy has been certified by the actuary as being prudentially sound.

(2) A long term insurer shall provide the Commission with particulars of a new long term insurance policy product together with the certificate from its actuary, the prospectus or other sales literature and specimen policy relating to that product and any other supporting information as the Commission may specify at least 30 days before offering the product to the public.

(3) Where it appears to the Commission that a long term insurance product is not appropriate for any reason, the Commission may before the expiry of the 30 days –

- (a) prohibit the insurer from offering the policy to the public;
- (b) require the insurer to make such changes to the product as the Commission may specify before being offered to the public.

(4) The actuary shall not certify premium rates for a long term insurance policy product except where he is satisfied that it is suitable and in accordance with sound insurance business and actuarial principles.

(5) The Commission may require the actuary of a long term insurer to provide it with a report on –

- (a) the suitability of the policy terms and premium rates for the time being chargeable by the insurer for a long term insurance policy product; or
- (b) on such other matter as the Commission may specify in its request.

(6) The Commission may after considering the report of the actuary take such measures as are referred to in subsection (3).

(7) No action shall lie against the Commission or any member of the Commission for any damage or loss suffered as a result of any long-term policy filed with the Commission.

### **Compensation Fund**

**88.(1)** There shall be established, under regulations made by the Minister, a fund to be known as the Insurance Industry Compensation Fund which shall have all the powers of a natural person-

- (a) for the payment of any claims, in respect of risks situated in Mauritius as may be prescribed, against an insurer licensed under this Act, remaining unpaid by reason of insolvency of such insurer, subject to such limitations, restrictions, exclusions, and conditions as may be prescribed; and
- (b) for the payment of compensation to persons suffering personal injury in traffic accidents where the tortfeasor or the vehicle which caused the injury is untraceable, subject to such limitations and restrictions as may be prescribed.

**(2)** The Compensation Fund may be organised in different sub-funds designed to provide for compensation in respect of different classes of policies or parts of classes of policies.

**(3)** The Compensation Fund shall be administered in accordance with such regulations as may be prescribed.

### **Contribution to the Compensation Fund**

**89.(1)** An insurer shall, to the extent of its insurance business relating to Mauritian policies, contribute to the Compensation Fund in such amounts payable at such time as may be prescribed and different amounts may be prescribed with respect to different categories of insurance business or different classes or part classes of policies, or in view of different circumstances.

**(2)** No payment shall be made from the Compensation Fund or any sub-fund to –

- (a) a substantial shareholder of the insolvent insurer; or
- (b) any officer of the insolvent insurer, or other person whose policy benefits are in excess of the normal benefits relating to that class of insurance policy to such extent or in such circumstances as may be prescribed.

### **Management of the Compensation Fund**

**90.(1)** The Compensation Fund shall be managed by a managing committee consisting of not more than 7 persons appointed by the Minister.

**(2)** Where a sub-fund is set up -

- (a) separate accounts shall be kept by the managing committee in respect of each sub-fund; and
- (b) payments made into one sub-fund, after deduction of any amount determined by the managing committee to cover any administrative costs, shall be utilised exclusively for compensation to meet only the purposes of that sub-fund.

### **Prescription of claims**

**91.** No claim for payment of compensation shall be made out of the Compensation Fund except where the

claim is made –

- (a) in the case of claims made by persons suffering personal injury in traffic accidents where the tortfeasor or the vehicle which caused the injury is untraceable, within 2 years from the date of the occurrence of the accident relating to that claim;
- (b) in any other case, within 2 years from the date the name of the insurer is removed from the register or the insurer is definitely wound up.

### **Regulations on Compensation Fund**

**92.** Subject to this Act, regulations made under this Act may provide for -

- (a) the levying of contributions from licensees and other means of financing the Compensation Fund;
- (b) the power to subscribe to insurance policies;
- (c) the mode of determining the right to compensation payable under the Compensation Fund and the circumstances in which such right may be excluded or modified;
- (d) the power to settle claims;
- (e) specifications as to the quantum of the compensation;
- (f) the right of subrogation to the Compensation Fund in order to recover from any person whose liability is extinguished or reduced by the payment of the compensation;
- (g) the terms and conditions on which compensation is to be payable; and
- (h) accounts to be kept in respect of the Compensation Fund.

## **PART X – INSPECTION AND INVESTIGATION**

### **Power of Commission to issue direction**

**93.(1)** Without prejudice to the powers of the Commission under the Financial Services Act 2007, where the Commission is of the view that a licensee or registered person is not complying with any provision of this Act, FSC Rule or guideline, it may direct the licensee or registered person to comply with such provision, FSC Rule or guideline.

**(2)** A licensee or registered person who fails to comply with a direction issued under subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

### **Request of information**

**94.(1)** Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, the Chief Executive may, for the purpose of carrying out the functions of the Commission under this Act or any FSC Rules, by notice in writing, require a licensee or registered person to provide to the Commission -

- (a) at such times or intervals, at such place and in respect of such periods with such information or document as may be specified in the notice;
- (b) with a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission on, or on any aspect of, any matter in relation to which the Chief Executive may require information under paragraph (a).

**(1A)** Subsection (1) shall apply to information, records or documents required in connection with the exercise by the Commission of its functions under this Act, or any other enactment including the Financial Intelligence and Anti-Money Laundering Act 2002 and the Prevention of Terrorism Act 2002.

**(2)** The notice under subsection (1) may require the information or document to be verified in a manner or by a person referred to in subsection (1)(b).

**(3)** The power to require production of information and document under subsection (1) shall extend to any person who, in the opinion of the Chief Executive, appears to be in possession of such information and document.

**(4)** Where documents are produced, the Chief Executive may take copies of or extracts from them and require –

- (a) any person who is a present or past officer, controller, partner, manager or employee of that licensee;
- (b) the person producing the document;
- (c) in the case of an insurer, any insurance agent, broker, manager or insurance salesperson who acts, or has acted for that insurer,

to provide explanation on the document produced.

**(5)** Where the information or document requested is not in the possession of the person who was required to produce it, that person shall state, to the best of his knowledge and belief, where the document can be found.

**(6)** Any person who, without reasonable excuse, fails to comply with any requirement of this section shall commit an offence and shall on conviction be liable to a fine not exceeding 500, 000 rupees and to imprisonment for a term not exceeding 2 years.

### **On-site inspection**

**95.(1)** Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, the Chief Executive may, at any time, inspect the affairs or any part of the affairs of a licensee or registered person in order to verify whether the licensee or registered person, as the case may be, is conducting its business according to sound insurance principles.

**(2)** For the purpose of carrying out an inspection under subsection (1), the Chief Executive may appoint as inspector any person, whether or not a member of staff of the Commission, who is an auditor, actuary or any person of required competence.

**(3)** An inspection may take place at the head office and any branch offices or any premises where business of the licensee or registered person is conducted or records are maintained by the licensee, registered person or any associated party.

**(4)** For the purpose of the inspection, the inspector may –

- (a) request such information and documents in such form and medium, put such questions and require such explanations as the inspector thinks necessary;

- (b) enter any premises used or apparently used by the licensee for business purposes;
- (c) examine, and make copies of or take extracts from documents;
- (d) record any information or make copy of any information kept in electronic form;
- (e) seek information, explanation or clarification about any document or information; and
- (f) make such request as would assist him in the inspection.

(5) A licensee, registered person or associated party shall, for the purpose of an inspection under this Part, provide the inspector with such facility and assistance as may be necessary for him to carry out the inspection in an efficient and effective manner.

(6) Any person who obstructs an inspector in the performance of his duties under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

### **Investigation**

**96.(1)** Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, where the Chief Executive has reason to believe that a licensee or registered person –

- (a) has failed, is failing or is likely to fail, to comply with any direction issued by the Commission under section 93(1);
- (b) has committed, is committing or is likely to commit a fraud, any financial crime or a serious misconduct;
- (c) has carried on, is carrying or is likely to carry out any activity which may cause serious prejudice to its customers, or to the soundness, stability and integrity of the financial services sector;
- (d) in the case of an insurer, has failed, is failing or is likely to fail to maintain a financially sound position in accordance with Part III;
- (e) has failed to provide any information or document requested by the Commission,

he may make an investigation into the business or any part of the business of the licensee or registered person.

(2) For the purpose of an investigation under subsection (1), the Chief Executive may, by notice in writing, require –

- (a) a licensee or registered person whose affairs are to be investigated to attend, at a specified time and place, and answer questions or otherwise furnish information or produce such documents as may be required with respect to any matter relevant to an investigation by him; and
- (b) any officer of the licensee or registered person to furnish information or to produce any document in his custody or under his control.

(3) The Chief Executive may take copies or extracts from any document produced under subsection (2) and may require the person producing the document to give any explanation relating to such document.

(4) Where material to which an investigation relates consists of information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the request from the Chief Executive shall be deemed to require the person named therein to produce or give access to it in a form and

medium in which it can be taken away and in which it is visible and legible.

(5) Subject to subsection (6), any person required to attend and answer questions or otherwise furnish information or to produce any specified documents or any documents of a specified class shall not, without reasonable excuse, fail to answer a question or furnish information or produce a document or class of documents.

(6) It shall be a reasonable excuse, for the purposes of subsection (5), for a person to refuse or fail to answer a question put to him or to refuse or fail to produce a document or class of documents that he was required to produce, where the answer to the question or the production of the document or class of documents might tend to incriminate him.

(7) An investigation may take place at any or all the premises where business of the licensee or registered person is conducted or records are maintained by the licensee, registered person or associated party.

(8) The Chief Executive may appoint any member of the staff of the Commission or any other person to be an investigator who shall have all the powers of the Chief Executive under this section and may require the person under investigation to –

- (a) produce to him at a reasonable time and at a place specified by him any document that may afford such evidence and that is in the possession of the relevant person or under his control;
- (b) give explanations or further information about such documents;
- (c) attend before the investigator at a reasonable time and place and answer under oath or solemn affirmation question relating to the matter.

(9) Any person who –

- (a) fails to comply with any requirement of this section;
- (b) obstructs an investigator in the performance of any of his duties under this section; or
- (c) fails, without reasonable cause, to comply with any direction of an investigator in the performance of his duties under this section;
- (d) in relation to any question put to him by an investigator in the performance of his duties under this section –
  - (i) says anything, or provides any information or document, that the person –
    - (A) knows to be false or misleading in a material particular; or
    - (B) is reckless as to whether it is false or misleading in a material particular;
  - (ii) refuses, without reasonable excuse, to answer,

shall commit an offence and shall on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

### **Suspension of licence**

**97.(1)** Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, where, at any time it appears to the Chief Executive that –

- (a) he has grounds under section 96 to carry out an investigation into the business of a

licensee; or

- (b) there are grounds under section 112 for the revocation of a licence or under section 106 for the appointment of a conservator,

he may, by notice in writing, suspend wholly or in part, the licence of a licensee.

(2) The Chief Executive shall not suspend a licence under subsection (1) unless he has given prior notice to the licensee of his intention and his reasons to do so, and has afforded the licensee reasonable opportunity to make representations on the matter.

(3) Subsection (2) shall not apply where the Chief Executive considers that delay in suspending the licence would not be in the interest of policyholders or of the public, provided that the licensee is given the opportunity to make representations as soon as practicable.

(4) Where a licence is suspended under subsection (1), the licensee shall –

- (a) not carry out the business or the part of the business in relation to which the suspension relates;
- (b) continue to be subject to any provision of this Act or any rule made under this Act as if the licence had not been suspended.

(5) A suspension under subsection (1) shall have effect as a suspension of the licence of any insurance agent of the insurer and of the registration of any of its insurance salespersons in relation to the whole of the insurer's business or to the part of the insurer's business in respect of which the licence has been suspended, as may be applicable.

(6) The Commission shall give public notice of any decision to suspend a licence under subsection (1).

#### **Effect of suspension of licence**

98. A suspension of licence under section 97 shall not prevent a licensee from –

- (a) continuing to carry on business in relation to an insurance policy issued before the date on which it was notified, in accordance with section 97(1), of the suspension; or
- (b) issuing or dealing with an insurance policy in pursuance of a term in an insurance policy subsisting at that time,

and for the purpose of doing so the licensee shall be deemed to be licensed.

99. *Repealed*

#### **Power to enter premises**

100.(1) For the purpose of carrying out an inspection under section 95 or an investigation under section 96, the inspector or investigator, as the case may be, may at any time during normal business hours enter the premises of a licensee or registered person or associated party in order to -

- (a) inspect, take possession or make copies of or take extracts from any documents, books or records; or

- (b) have access to or take possession of any computer, disc, cassette, microfilm, or any mechanical or electronic device used to store or preserve information.

(2) Any person who obstructs an inspector or investigator in the performance of his duties under this Part or prevents him from entering onto the premises of the licensee or registered person shall commit an offence and shall on conviction be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

### **Tampering with evidence**

**101.** Any person who –

- (a) destroys, falsifies, conceals or disposes of; or
- (b) causes or permits the destruction, falsification, concealment or disposal of,

any document, information stored on a computer or other device or other thing, which the person knows, or ought reasonably to have known, to be relevant to an inspection or investigation under this Part shall commit an offence and shall on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.

### **Meaning of certain words**

**102.** For the purposes of this Part –

- (a) any reference to a “licensee” shall, save and except for sections 97 and 98, include –
  - (i) a registered person who acts or has acted on behalf of that licensee or any past or present employee of that registered person;
  - (ii) any person who is a past or present officer, partner, manager, employee or controller of that licensee;
  - (iii) an associated party of that licensee;
  - (iv) a corporation whose licence has expired, or has been cancelled, revoked, suspended or surrendered;
  - (v) a person who has carried out or is carrying out any activity in the insurance sector without the appropriate licence under this Act.
- (b) any reference to the “Chief Executive” shall include any person designated from among the staff of the Commission, or appointed because of his qualification or competence, by the Chief Executive.
- (c) “associated party”, in relation to any person, means –
  - (i) any person who is in partnership with that person;
  - (ii) any company of which that person is a controller;
  - (iii) any body of which that person is a director or officer;
  - (iv) where that person is a company –

- (A) a holding company, subsidiary or related company of that person;
- (B) a subsidiary or related company of a holding company of that person;
- (C) a holding company of a subsidiary of that person; or
- (D) a company in the case of which a significant shareholder of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50 percent of the voting power in a general meeting,

and where, in accordance with the above provisions, any person or body is an associated party in relation to another person or body, then that other person or body is an associated party in relation to that first-mentioned person or body.

## **PART XI – ADMINISTRATOR AND CONSERVATOR**

**103.** *Repealed*

### **Duties and powers of administrator**

**104.** Where an administrator is appointed by the Commission pursuant to its powers under the Financial Services Act 2007, he shall –

- (a) have the powers, and shall carry out the duties, of an administrator under the Financial Services Act 2007; and
- (b) carry out the activities of a licensee in accordance with section 98.

**105.** *Repealed*

### **Appointment of conservator**

**106.** Where the Commission has reasonable cause to believe that -

- (a) the stated capital of the insurer is impaired or there is a threat of such impairment; or
- (b) the insurer has, or its directors have -
  - (i) engaged in practices detrimental to the interests of its policyholders and creditors;
  - (ii) knowingly or negligently permitted its chief executive officer, any of its other managers, officers, employees, insurance agents or salesperson to contravene any provision of this Act, or any FSC Rule, or any enactment relating to anti-money laundering or prevention of terrorism or guidelines and directions issued by the Commission;

- (c) contraventions referred to in paragraph (b)(ii) are likely to occur;
- (d) the assets of the insurer are not being maintained in accordance with solvency rules, or is not sufficient to give adequate protection to its policyholders or creditors;
- (e) the solvency margin of the insurer is or is likely to be deficient;

it may appoint a conservator, who may be an employee of the Commission or any other person appointed by the Commission to be conservator.

### **Duties and powers of conservator**

**107.(1)** The conservator shall take charge of the business of the insurer and all of its property, books, records and effects and shall exercise all powers necessary to preserve, protect and recover any of the assets of the insurer, collect all monies and debts due to it, assert causes of action belonging to the insurer and file, sue and defend suits on its behalf.

**(2)** The conservator may -

- (a) overrule or revoke actions of the board of directors and management of the insurer; or
- (b) suspend the powers of the board of directors of the insurer during the period of the conservatorship.

**(3)** The conservator may -

- (a) subject to subsection (4), suspend, in whole or in part, the repayment or withdrawal of claims and other liabilities of the insurer;
- (b) subject to paragraph (d), disaffirm or repudiate any contract to which the insurer is a party;
- (c) enforce any contract entered into by the insurer, notwithstanding any provision of the contract providing for termination, default or acceleration by reason of insolvency or the appointment of a conservator;
- (d) disaffirm or repudiate a contract that, in his opinion, is fraudulent.

**(4)** Any money and other credits received while the insurer is under conservatorship shall be kept in a separate account and shall not be used to liquidate any indebtedness of the insurer existing at the time the conservator was appointed or subsequent indebtedness incurred in order to discharge such indebtedness.

**(5)** The conservator, where it is not an employee of the Commission itself, shall report to and be accountable to the Commission.

### **Term of office and remuneration of conservator**

**108.(1)** The term of office of the conservator shall continue, unless replaced by a successor, until such time as the Commission finds that -

- (a) the insurer is rehabilitated or reorganised, so that it may be returned to management or a new management under such conditions as are necessary to prevent recurrence of the conditions that gave rise to the conservatorship; or
- (b) the insurer is in such condition that its continuance in business would not involve

probable loss to its policyholders and other creditors.

(2) The remuneration of the conservator and the indemnification of the conservator from liability to third persons on account of all actions taken in good faith shall be borne by the insurer.

(3) On termination of the conservatorship, every director of the insurer shall resume his office except where a director is found by the Commission not to be fit and proper to resume his directorship.

### **Rehabilitation or reorganisation of insurer**

**109.(1)** The conservator shall seek authority from the Commission to -

- (a) rehabilitate the insurer and return it to management; or
- (b) reorganise the insurer in accordance with the other provisions of this section.

(2) Where the Commission authorises the conservator to proceed to reorganise the insurer, the conservator shall, after granting a hearing to all interested parties, propose a reorganisation plan and send a copy of it to all policyholders and other creditors who shall not receive full payment under the plan.

(3) The copy of the reorganisation plan shall be accompanied by a notice stating that where the reorganisation plan is not refused in writing within a period of 30 days by persons holding not less than one-third of the aggregate amount of claims of policyholders and creditors comprising not less than one-third in value of the aggregate of the claims of creditors other than subordinated creditors, the conservator shall, with the approval of the Commission, proceed to carry out the reorganisation plan.

(4) The approval of a reorganisation plan by the Commission shall be subject to its finding that the reorganisation plan shall -

- (a) be equitable under the circumstances, to policyholders, other creditors and shareholders;
- (b) provide for bringing in new funds so as to meet the minimum margin of solvency in accordance with section 15;
- (c) provide for the removal of any officer or employee responsible for the circumstances which necessitated the appointment of the conservator.

(5) Where in the course of reorganisation it appears that circumstances render the plan inequitable or its execution undesirable, the conservator may recommend the Commission to petition the Court under section 68.

### **Immunity of the administrator and the conservator**

**110.** The administrator and the conservator or any person acting on their behalf shall not be liable to any proceedings, whether civil or criminal, for, or on account of, or in respect of, an act done or statement made, or omitted to be done or made, in the bona fide performance of a function under his appointment.

## **PART XII – TERMINATION OF LICENCE**

### **Surrender of licence**

**111.(1)** A licensee may surrender its licence after giving the Commission notice of at least one month –

- (a) before adopting a resolution for the voluntary winding up;
- (b) prior to the cessation of business.

**(2)** A notice under subsection (1) shall specify the measures that the licensee shall take to discharge all its obligations under insurance policies and meet all of its other liabilities.

**(3)** The surrender of the licence shall be of no effect and the licensee shall continue to be subject to the requirements and obligations under this Act, the FSC rules, the conditions, restrictions and limitations of its licence and the directions of the Commission until the Commission after cancelling the licence gives public notice of the cancellation.

### **Revocation of licence**

**112.(1)** Where it appears to the Chief Executive that -

- (a) the licensee has ceased the business for which it was licensed;
- (b) the licensee has failed to commence business within 6 months from the date on which it was licensed;
- (c) there exists a ground which, under any provision of this Act and FSC Rules would have prevented the licensee from being licensed;
- (d) the licensee has failed to satisfy an obligation to which it is subject by virtue of this Act and FSC rules;
- (e) the licensee is unable to meet its financial obligation or the solvency margin;
- (f) the business of the license is not being carried on in accordance with sound insurance principles;
- (g) the licensee is contravening or has contravened any of the provisions of this Act or any rules or any conditions imposed on its licence or any directions given by the Commission under this Act, regardless that there has been no conviction for an offence in respect of such contravention;
- (h) the licensee, or any of its officers responsible for its management has furnished false or misleading information or has concealed, or failed to disclose material facts in its application for a licence or in any returns filed under this Act or FSC rules;
- (i) the licensee, or any of its directors or officers responsible for its management has been convicted of an offence under this Act or an offence relating to a financial crime under any other enactment whether in Mauritius or elsewhere;
- (j) the licensee proposes to make or has made a composition or arrangement with its creditors or goes into receivership or liquidation, is wound up or is dissolved; or
- (k) an insurer, being a foreign company, has ceased to be authorised to issue insurance policies, or contracts of a particular description, in the country where it has its head office,

the Chief Executive shall forthwith refer the matter to the Enforcement Committee to determine whether the licence should be revoked.

(2) For the purpose of making a determination under subsection (1), the Enforcement Committee shall follow the procedures set out under section 53 of the Financial Services Act 2007.

(3) Where a licence is revoked, the Chief Executive may give –

- (a) public notice of the revocation;
- (b) such directions to ensure that the interests of policyholders and the public are preserved.

(4) Where a licence is not revoked, the Enforcement Committee may recommend such restrictions on the licence as it deems appropriate in the circumstances.

#### **Review of decision to revoke licence**

**113.** A licensee who is dissatisfied with a decision to revoke its licence may apply to the Review Panel for review of the decision in accordance with section 53(4) of the Financial Services Act 2007.

#### **Effect of revocation**

**114.(1)** A person whose licence has been revoked shall not, unless otherwise directed by the Commission, be allowed to underwrite new insurance policies or renew any existing insurance policy, but shall continue to be subject to this Act and the FSC rules to the same extent as a licensee and shall continue to discharge its obligations for so long as its liabilities remain unsatisfied.

(2) The Commission may direct the licensee whose licence has been revoked to take such measures as circumstances may warrant to ensure the orderly winding up or the transfer of its business.

### **PART XIII – SANCTIONS AND DUE PROCESS**

**115.** *Repealed*

#### **Notification of decisions**

**116.(1)** Unless otherwise provided under this Act, or under any FSC Rule, the Commission shall give notice of and publish its decisions in such form, manner and medium as it thinks fit.

(2) A notice under subsection (1) shall -

- (a) set out the decision;
- (b) set out the reasons for the decision;
- (c) where the Financial Services Act provides that the person to whom the notice is given may apply to the Review Panel for review of the decision, state the right to apply for review of the decision.

(3) Nothing in this section shall be construed as a requirement for the Commission to specify any reason which in its opinion involves confidential information the disclosure of which would be prejudicial to -

- (a) any criminal or regulatory investigation whether in Mauritius or elsewhere;
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place; or
- (c) duty of confidentiality imposed on the Commission by section 83 of the Financial Services Act 2007, or under any arrangement with any supervisory body.

117. *Repealed*

118. *Repealed*

#### **PART XIV – MISCELLANEOUS**

119. *Repealed*

#### **Prohibitions on use of certain words**

**120.(1)** No person shall without the approval of the Commission apply to his business or undertaking a name or description which includes the word “insure” “reinsure” “assure” or “underwrite” or any derivative thereof.

**(2)** Where the proposed name of an applicant under section 10, or a translation, shortened form or derivative thereof -

- (a) is identical to that of another insurer;
- (b) is identical to that under which another insurer was previously licensed and reasonable grounds exist for objection to its use by the person concerned; or
- (c) is misleading or undesirable,

the Commission may require the applicant to adopt another name which does not offend the provisions of this subsection.

#### **Advertisement**

**121.** Where any advertisement, brochure or similar document which relates to the business of a licensee or registered person, or to an insurance policy and which is being, or is to be, published by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Commission may by notice direct that person not to publish it or to cease publishing it or to effect the changes to it which the Commission deems fit.

#### **Power to extend time limit**

**122.** Where the Commission is satisfied that failure by a person to comply with the provisions of this Act, the FSC rules and guidelines within the prescribed time limit was due to a just or reasonable cause, it may, upon written application being made by the person, by notice to the person, extend the time limit to such time and on such conditions as it may determine.

### **Insurance business conducted in breach of Act**

**123.(1)** Where a person has contravened or is contravening section 7, the Commission may by notice direct that person to make arrangements satisfactory to the Commission to discharge all or any part of the obligations under insurance policies already entered into by that person.

**(2)** For the avoidance of doubt, no transaction in the course of effecting or carrying out an insurance policy shall be void or voidable by reason only that at the time of that transaction any party thereto is in breach of any provision of or any requirement arising under this Act or the FSC rules.

**124.** *Repealed*

### **Civil liability**

**125.** Where a body corporate carries on business in contravention of sections 7 or 70 every officer of the body corporate who has knowledge of the fact or is concerned in the management of the body corporate shall be jointly and severally liable for the payment and discharge of every debt and liability incurred by the body corporate in so carrying on business.

### **Miscellaneous offences**

**126.** Any person who contravenes any provision of this Act or any FSC rule shall commit an offence, and shall on conviction be liable, where no other penalty is specifically provided, to a fine of 500,000 rupees or to imprisonment for a term not exceeding 2 years.

### **Jurisdiction**

**127.** Notwithstanding -

- (a)* section 114(2) of the Courts Act; and
- (b)* section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided under this Act.

### **Public notice**

**128.(1)** The Commission may, having regard to the interest of the public and of the policyholders or potential policyholders, and to the reputation of Mauritius, give public notice of the fact that a particular person –

- (a)* has ceased to be a licensee, whether by way of cancellation, revocation, surrender or by any other form of termination of licence;
- (b)* has had its licence or registration suspended;
- (c)* has been sanctioned or been subject to any administrative sanction other than a private

censure;

- (d) is not or has not been a licensee or registered person; or
- (e) has been granted or refused a licence or registration.

(2) Where the Commission is required to give public notice of any matter, it shall cause a notice to be published in the Gazette and two daily newspapers.

(3) By a notice under subsection (2), the Commission may state that the matter may be read or consulted at the office of the Commission or on its website or on the Bulletin of the Commission, or at such other place.

### **Regulations**

**129.(1)** The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under this Act may -

- (a) provide for the taking of fees, and levying of charges;
- (b) provide that any person who contravenes them shall commit an offence, and shall on conviction be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years;
- (c) prescribe those services and activities ancillary to or connected with insurance business as not constituting insurance business;
- (d) prescribe the persons who may carry out certain services and activities ancillary to insurance business and to whom such services may be provided;
- (e) provide for the setting up of an arbitration panel to deal with disputes relating to claims on insurance contracts;
- (f) make such provision, not inconsistent with this Act, as may appear to him necessary or expedient to remove any difficulty which arises in giving effect to the provisions of this Act;
- (g) provide for rules to be made by the Commission.
- (h) amend the Schedules to this Act other than the First Schedule.

### **FSC Rules and guidelines**

**130.(1)** The Commission may, for the purposes of this Act, make rules to be known as the FSC Rules not inconsistent with any regulations to give effect to this Act.

(2) The Commission may issue such guidelines as it thinks fit for the purposes of this Act.

(3) The Commission –

- (a) shall as far as is practicable publish for consultation any FSC Rules or guidelines that it proposes to make or issue;
- (b) shall, by public notice, state where a copy of the proposed FSC Rules or guidelines may be available for consultation by all those concerned; or

- (c) may publish in the Gazette such FSC rules as the Commission may determine.
- (4) The Commission may exempt any person from the application of any FSC rule made under this Act.

### **Transitional Provisions**

**131.(1)** In this section –

“Category 1 Global Business Licence” has the same meaning as in the Financial Services Act 2007;

“existing insurance intermediary” means an insurance agent, an insurance broker and an insurance salesman registered under the repealed Act;

“existing insurance manager” means a captive management company holding a Category 1 Global Business Licence issued under the Financial Services Act 2007 immediately before the coming into operation of this Act;

“existing insurer” means an insurer or reinsurer registered under the repealed Act, and includes an insurer or reinsurer holding a Category 1 Global Business Licence issued immediately before the coming into operation of this Act.

(2) Subject to the other provisions of this section, and to the limitations, variations and exceptions set out in the Third Schedule, this Act shall apply to –

- (a) an existing insurer;
- (b) an existing insurance intermediary;
- (c) an existing insurance manager.

(3) Nothing in this Act shall affect the operation of a Category 1 Global Business Licence granted under the Financial Services Act 2007 to any person to which this Act otherwise applies.

(4) Where an existing insurer, carrying on both long term and general insurance business immediately before the coming into operation of this Act, transfers any of its property or assets in furtherance of a plan acceptable to the Commission to separate its business in accordance with section 8, it shall be exempt from any duty that would be otherwise payable under the Registration Duty Act.

(5) This Act shall not affect –

- (a) any proceedings started for the winding up of an existing insurer, insurance intermediary or manager immediately before the coming into operation of this Act, and the provisions of the repealed Act shall continue to apply to the winding up and the application of funds of the insurer;
- (b) any proceedings started by the Commission in the exercise of its powers under the repealed Act against an existing insurer, insurance intermediary or manager;
- (c) any proceedings in any court of law against an existing insurer, insurance intermediary or manager.

### **Consequential amendments**

**132.(1)** The Code Civil Mauricien is amended in Livre Troisième, Titre Douzième, Chapitre Troisième Section Troisième by deleting Article 1983-63 and replacing it by the following article –

1983-63. Les polices d'assurance garantissant des risques de responsabilité civile doivent prévoir qu'en ce qui concerne cette garantie aucune déchéance motivée par un manquement de l'assuré à ses obligations commis postérieurement au sinistre ne sera opposable aux personnes lésées ou à leurs ayants droit. Elles ne doivent contenir aucune clause interdisant à l'assuré de mettre en cause son assureur ni de l'appeller en garantie à l'occasion d'un règlement du sinistre.

Les polices d'assurance contre les accidents du travail doivent spécifier que l'assureur ne peut opposer aucune déchéance aux victimes ou à leurs ayants droit.

Les polices d'assurance garantissant des risques de responsabilité civile des administrateurs dirigeants des sociétés et des professionnels peuvent, selon le choix des parties, prévoir que la garantie est déclenchée soit par le fait dommageable, soit par la réclamation. Toutefois, lorsqu'elle couvre la responsabilité des personnes physiques en dehors de leur activité professionnelle, la garantie est déclenchée par le fait dommageable.

Le contrat doit, selon les cas, contenir des dispositions reprenant le sens des textes du cinquième ou du sixième alinéa du présent article.

La garantie déclenchée par le fait dommageable couvre l'assuré contre les conséquences pécuniaires des sinistres, dès lors que le fait dommageable survient entre la prise d'effet initiale de la garantie et sa date de résiliation ou d'expiration, quelque soit la date des autres éléments constitutifs du sinistre.

La garantie déclenchée par la réclamation couvre l'assuré contre les conséquences pécuniaires des sinistres, dès lors que le fait dommageable est antérieur à la date de résiliation ou d'expiration de la garantie, et que la première réclamation est adressée à l'assuré ou à son assureur entre la prise d'effet initiale de la garantie et l'expiration d'un délai subséquent à sa date de résiliation ou d'expiration mentionné par le contrat, quelle que soit la date des autres éléments constitutifs des sinistres. Toutefois, la garantie ne couvre les sinistres dont le fait dommageable a été connu de l'assuré postérieurement à la date de résiliation ou d'expiration que si, au moment où l'assuré a eu connaissance de ce fait dommageable, cette garantie n'a pas été resouscrite ou l'a été sur la base du déclenchement par le fait dommageable. L'assureur ne couvre pas l'assuré contre les conséquences pécuniaires des sinistres s'il établit que l'assuré avait connaissance du fait dommageable à la date de la souscription de la garantie.

Le délai subséquent des garanties déclenchées par la réclamation ne peut être inférieur à deux ans. Le plafond de la garantie déclenchée pendant le délai subséquent ne peut être inférieur à celui de la garantie déclenchée pendant l'année précédant la date de la résiliation du contrat. Un délai plus long et un niveau plus élevé de garantie subséquente peuvent être fixés dans les conditions définies sous l'Insurance Act 2005.

Les dispositions du présent article ne s'appliquent pas aux garanties d'assurance pour lesquelles la loi dispose d'autres conditions d'application de la garantie dans le temps.

L'Attorney-General peut par décret étendre le champ d'application du troisième alinéa.

- (2) The Non-Citizens (Property Restriction) Act is amended in section 2 –
- (a) by deleting the definition of “business certificate” and replacing it by the following definition –  
“business certificate” means –  
  
a Category 1 Global Business Licence as defined under the Financial Services Act 2007 or a banking licence issued under the Banking Act 2004, in so far as it relates to its banking transactions with non-residents and corporations holding a Category 1 Global Business Licence or a Category 2 Global Business Licence;
  - (b) by deleting the definition of “qualified corporation” and replacing it by the following definition –  
“qualified corporation” means -

a corporation holding a Category 1 Global Business Licence as defined under the Financial Services Act 2007 or a bank holding a banking licence issued under the Banking Act 2004, in so far as it relates to its banking transactions with non-residents and corporations holding a Category 1 Global Business Licence or a Category 2 Global Business Licence;

**(3)** The Protected Cell Companies Act is amended –

- (a)* in section 2, by deleting the definition of “qualified global business”;
- (b)* in section 4, by deleting subsection (1) and replacing it by the following –
  - (1) For the purpose of conducting a business activity specified in the Schedule and subject to such restrictions as are imposed therein –
    - (a)* a company may be incorporated under the Companies Act 2001 as a protected cell company; or
    - (b)* a company established in a jurisdiction other than Mauritius may be registered by way of continuation as a protected cell company; or
    - (c)* an existing company may, if it is authorised by its constitution, be converted into a protected cell company.
- (c)* in section 7, by numbering the existing section as subsection (1) and adding the following new subsection as subsection (2) –
  - (2) Notwithstanding subsection (1), no cell shall be created –
    - (a)* for a business activity different from the business activity of the protected cell company;
    - (b)* without the approval of the Commission, subject to such exemption as it may be determined.
    - (c)* by deleting the Schedule and replacing it by the Fourth Schedule-

**(4)** The Road Traffic Act is amended in section 57 -

- (a)* in subsection (1), by deleting paragraphs (a) and (b) and replacing them by the following paragraphs -
  - (a)* be issued by an insurer licensed under the Insurance Act 2005;
  - (b)* notwithstanding any other enactment, insure such person, persons or classes of persons as may be specified in the policy in respect of any liability of not less than 150 million rupees, for each occurrence or event, which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by, or arising out of, the use of the motor vehicle; and
- (b)* in subsection (2), by inserting after the words “shall be liable to indemnify” the words “up to the maximum amount specified under section 57(1)(b)”.
- (c)* in section 58, in subsection (1), in paragraph (a), by deleting subparagraph (i) and replacing it by the following subparagraph -
  - (i)* an insurer licensed under the Insurance Act 2005; or

### **Repeal and savings**

**133.(1)** Subject to subsection (2), the Insurance Act 1987 is repealed.

**(2)** Anything done before the coming into operation of this Act pursuant to a provision of the repealed Act by or in relation to persons registered under that repealed enactment shall be deemed to have been done pursuant to this Act.

**(3)** The following regulations shall be deemed to have been made under section 129 to the extent that they are not inconsistent with this Act and any provisions of the regulations which are inconsistent with this Act shall be void to the extent of the inconsistency -

- (a)* the Insurance Regulations 1959;
- (b)* the Insurance (Exemptions) Regulations 1975;
- (c)* the Insurance Regulations 1988.

### **Commencement**

**134.(1)** Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

**(2)** Different dates may be fixed for the coming into operation of different sections of this Act.

## FIRST SCHEDULE

(sections 2 and 4)

### CLASSES OF POLICIES

#### Part I

#### Long term insurance business

LONG TERM INSURANCE BUSINESS	
Class of business	Descriptions
Life assurance business	The business of undertaking liability under contracts upon human life or contracts to pay annuities on human life, but excludes permanent health insurance business and personal accident insurance business;
Pension business	The business of effecting and carrying out of -  (a) contracts to manage pension funds or the investment of pension funds;  (b) contracts of the kind mentioned in paragraph (a) that are combined with contract of insurance covering either conservation of capital or payment of a minimum interest; or  (c) contracts on a group basis to provide pensions during the lifetime of employees as from their retirement and to their dependants should they die in service or on pension;
Permanent health insurance business	The business of undertaking liability under contracts to provide specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that either are not expressed to be terminable by the insurer or are expressed to be so terminable only in special circumstances mentioned in the contract;
Linked long term insurance business	The business of effecting and carrying out contracts of insurance under which the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description, or by reference to fluctuations in, or in an index of, the value of property of any description.

## Part II

### Classes of general insurance business

GENERAL INSURANCE BUSINESS	
Policy	Description
Accident and health policy	<p>(a) means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where -</p> <ul style="list-style-type: none"><li>(i) an injury event;</li><li>(ii) a health event; or</li><li>(iii) a death event,</li></ul> <p>contemplated in the contract as a risk, occurs; and</p> <p>(b) includes any contract under which the policy benefits are-</p> <ul style="list-style-type: none"><li>(i) benefits other than a stated sum of money;</li><li>(ii) to be provided upon a person having incurred, and having to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and</li><li>(iii) to be provided to any provider of a health service in return for the provision of such service;</li></ul>
Engineering policy	<p>means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where an event contemplated in the contract as a risk relating to-</p> <ul style="list-style-type: none"><li>(i) the possession, use or ownership of machinery or equipment, other than a motor vehicle required to be registered under any other enactment, in the carrying on of a business;</li><li>(ii) the erection of buildings or other structures or the undertaking of other works;</li><li>(iii) the installation of machinery or equipment; or</li><li>(iv) machinery breakdown and boiler pressure plants, occurs;</li></ul>
Guarantee policy	<p>means a contract in terms of which a person, other than a bank, in return for a premium, undertakes to provide policy benefits where an event, contemplated in the policy as a risk relating to the failure of a person to discharge an obligation, occurs;</p>
Liability policy	<p>means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where an event, contemplated in the contract as a risk relating to the incurring of a liability, otherwise than as part of a policy relating to a risk more specifically contemplated in another definition in this</p>

	section, occurs;
Miscellaneous policy	means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where an event, contemplated in the contract as a risk relating to any matter not otherwise defined in this section, occurs;
Motor policy	means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where an event, contemplated in the contract as a risk relating to the possession, use or ownership of a motor vehicle required to be registered under any other enactment, occurs;
Property policy	means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where an event, contemplated in the contract as a risk other than a risk more specifically contemplated in another definition in this section relating to the use, ownership, loss of or damage to movable or immovable property occurs;
Transportation policy	means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where an event, contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft or for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed, occurs;

## SECOND SCHEDULE

(section 2 and 27)

### Meaning of “significant shareholder” and “associate”

(1) For the purposes of this Act, a significant shareholder in an insurer means a person who alone or with associates -

- (a) holds shares in the insurer of which the amount subscribed in respect of stated capital represents 20 per cent or more of the total amount subscribed in respect of stated capital of the insurer;
- (b) holds shares which entitle such person to exercise more than 20 per cent of the voting rights attached to the amount subscribed in respect of stated capital of that insurer;
- (c) in the case of a protected cell company, holds 50% of more of the cell shares issued in respect of any cell of that company; or
- (d) has the power to determine the appointment of 20 per cent or more of the directors of that insurer, including the power -
  - (i) to appoint or remove, without the concurrence of another person, 20 per cent or more of the directors; or
  - (ii) to prevent a person from being appointed as a director without the consent of another person.

(2) For the purposes of this Act “associate”, in relation to -

- (a) a natural person, means -
  - (i) his or her spouse;
  - (ii) his or her child, parent, brother, sister, stepchild or stepparent and any spouse of any such person;
  - (iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the insurer concerned;
  - (iv) a legal person whose board of directors acts in accordance with his directions or instructions;
  - (v) a trust administered by him;
- (b) a legal person -
  - (i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof;
  - (ii) which is not a company or a close corporation, means another legal person which would have been its subsidiary or holding company -
    - (A) had it been a company; or
    - (B) in the case where that other legal person, too, is not a company, had both it and that other legal person been companies;

- (iii) means any person in accordance with whose directions or instructions its board of directors acts;
- (iv) means another legal person whose board of directors acts in accordance with its directions or instructions;
- (v) means a trust controlled or administered by it.

## THIRD SCHEDULE

(section 131)

### Transitional Provisions

**1.** Meaning of “effective date”

For the purpose of this Schedule, “effective date” means 1 January 2011.

**2.** Existing insurers

- (a) An existing insurer shall, until the effective date, be deemed to hold a licence issued under this Act in respect of any category or class of insurance business for which it was registered under the repealed Financial Services Development Act 2001 immediately before the coming into operation of this Act or unless the licence is earlier cancelled or revoked under Part XII.
- (b) An existing insurer carrying on both long term and general insurance business, immediately before the coming into operation of this Act, shall be deemed to be authorised under section 8 of this Act until the effective date.
- (c) Any significant shareholder of an existing insurer shall be deemed to have obtained the authorisation of the Commission under section 27 of this Act.
- (d) For the purposes of section 24, the stated capital and the deposit required under the repealed Act shall, until the effective date, be deemed to be the capital and the deposit required by this Act in respect of existing insurers.
- (e) Section 26(6) of the repealed Act shall, until the effective date, remain in force in relation to an existing insurer as if it has not been repealed;
- (f) during the period referred to in paragraph (e) above, notwithstanding section 15, an existing insurer not maintaining the solvency margin determined in accordance with the solvency rules, shall satisfy the Commission that it has an appropriate contingency plan structured on an annual basis or as the Commission may determine, that will ensure the existing insurer’s compliance with section 15 by the effective date;
- (g) during the time specified for the contingency plan, the Commission may take any such action under the Act as it deems appropriate.

**3.** Existing insurance intermediaries and manager

An existing insurance intermediary or manager shall, until 1 January 2008, be deemed to be licensed or registered under this Act as an insurance manager, agent, broker or salesperson, as the case may be unless the licence or registration is earlier cancelled or revoked under this Act.

**4.** Existing registers

Any register held by the Commission relating to existing insurers, insurance managers and intermediaries shall be deemed to have been established and maintained under section 6 of this Act.

## FOURTH SCHEDULE

(section132)

### SCHEDULE

(section 4)

#### Qualifying activities

A protected cell company may be used for conducting any of the activities listed in the first column as described in the second column of the table below

ACTIVITIES	DESCRIPTIONS
Asset holding	<p>Holding and managing assets (or portfolios of assets) in different cells for such class of beneficial owners, high net worth individuals and institutional investors as may be defined by the Commission.</p> <p><b>Restriction:</b> Subject to a Category 1 Global Business Licence issued under the Financial Services Act 2007</p>
Structured finance businesses	<p>Businesses established principally for the purpose of issuing bonds, notes or loans or other debt securities or instruments, secured or unsecured, in respect of which the repayment of capital and interest is to be funded from the proceeds of the company's investments including, without limitation, debt or equity securities, royalties, income flows, derivatives, interest rate, currency or other swaps, or any other credit enhancement arrangements or financial assets.</p> <p><b>Restriction:</b> Subject to a Category 1 Global Business Licence issued under the Financial Services Act 2007.</p>
Collective investment schemes and close-ended funds	<p>A company, whether close-ended or open ended, whose business consists of investing its funds principally in securities with the aim of spreading investment risks and giving members of the company the benefit of the profits, income, returns or payments arising from the management of its funds by or on behalf of that company; and under which -</p> <p>(a) the participants do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;</p> <p>(b) the property is managed by the company or on behalf of the company by an investment manager; and</p> <p>(c) under which arrangement, the contributions of the participants and the profits and income from which payments are to be made to them are pooled.</p> <p><b>Restriction:</b> Subject to a Category 1 Global Business Licence issued under the Financial Services Act 2007</p>

<p>Specialised collective investment schemes and close-ended funds</p>	<p>Collective investment schemes and close-ended funds investing in such specialised financial products, or assets other than securities, as may be specified by the Commission.</p> <p><b>Restriction:</b> Subject to a Category 1 Global Business Licence issued under the Financial Services Act 2007</p>
<p>External insurance business</p>	<p>Corporation engaged in insurance business, including captive insurance business, restricted solely to non-Mauritian policies under the Insurance Act 2005.</p> <p><b>Restriction:</b> Subject to a licence issued under the Insurance Act 2005</p>