

# **INSURANCE ACT, 2008**

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## PART 1 – PRELIMINARY

### Short Title

1. This Act may be cited as the Insurance Act, 2008 and shall come into operation on such date as the Minister may, by notice in the Official Gazette, appoint.

### 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 Authority in terms of section 40;

“administrator” means an administrator appointed under section 101;

“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 holding company or ultimate holding company 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 Seychelles and having a branch in Seychelles, means capital consisting of funds transferred from abroad and such other funds as may be determined by the Authority;

“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 the board of directors of which acts in accordance with his or her directions or instructions;

**(v)** a trust administered by him or her;

**(b)** a legal person -

**(i)** which is a company, means its subsidiary or its holding company and any other subsidiary or holding company thereof;

**(ii)** which is not a company, 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;

“auditor” means a person -

**(a)** who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants in England and Wales, Ireland and Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and who is a current member of good-standing of one of the above Institutes or a person of good standing with some other accountancy qualification who is recognised by the Authority as such for the purpose of this Act;

**(b)** appointed as auditor of an insurer with the approval of the Authority under section 40;

“Authority” means the Central Bank of Seychelles established by the Central Bank of Seychelles Act, 2004;

“bank” has the same meaning as in the Financial Institutions Act, 2005;

“captive insurance business” means an insurance business where the insured is an affiliated company of the insurer;

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

“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;

“Companies Act” means the Companies Act 1972, and any Act replacing the said Act;

“conservator” means a conservator appointed under section 104;

“Court” means the Supreme Court of Seychelles;

“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 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 unincorporate, 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;

“established surplus” and “established deficit”, in relation to section 18(4); 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;

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

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

“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;

“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 policyholder, 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 Seychelles, 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 sub-agent" means, a person (not being an insurer, insurance manager, insurance agent or insurance broker) who solicits directly or through advertising or other means, domestic business on behalf of an insurer, insurance agent or insurance broker;

"insurer" means a person carrying on a category of insurance business;

"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;

"managing agent" has the same meaning as in section 310(1)(c) of the Companies Act;

"matching assets" means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realisable in the same currency;

"Minister" means the Minister responsible for Finance;

"non-domestic insurance business" means insurance business which is restricted by a licence issued under the Act and subject to such other restrictions or limitations as may be prescribed, to only non-Seychelles policies, and includes captive insurance business;

"non-Seychelles policy" means an insurance policy which is issued by an insurer licensed under this Act in relation to risks situated outside Seychelles;

"principal officer" means a director, the chief executive officer, the senior manager or the chief internal auditor, and includes a person however designated holding similar position and responsibilities;

"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” means prescribed by regulations;

“principal insurance representative” means a person who maintains for an insurer carrying on non-domestic insurance business under this Act, full and proper records of the insurance business of the insurer and who is not an employee of that insurer;

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

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

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

“Protection Fund” means the Policy Owners’ Protection Fund established under section 88;

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

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

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

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

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

“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” means a person who alone or with associates, in relation to an insurer-

- (a) holds shares in the insurer of which the amount subscribed in respect of the stated capital represents 35 percent or more of the total amount subscribed in respect of the stated capital of the insurer;
- (b) holds shares which entitle such person to exercise more than 35 percent of the voting rights attached to the amount subscribed in respect of the stated capital of that insurer;
- (c) in the case of an insurer being a protected cell company, holds 50 percent or more of the cell shares issued in respect of any cell of that company; or
- (d) has the power to determine the appointment of 50 percent or more of the directors of that insurer, including the power -
  - (i) to appoint or remove, without the concurrence of another person, 50 percent or more of the directors; or
  - (ii) to prevent a person from being appointed as a director without the consent of another person;

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

“solvency regulations” means regulations made under section 23;

“stated capital” means such amount required as stated capital and expressed in Seychelles rupees or, notwithstanding any provision of the Companies Act, in any other currency approved by the Authority, 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 Authority;
- (d) a sole proprietorship, a deposit or a professional indemnity insurance cover as may be specified by the Authority;

“subsidiary” has the meaning assigned to it by the Companies Act;

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

“technical provisions”, in the case of a long term insurance business, 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)** In administering this Act, the Authority shall have regard to the following 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, any unlawful activity; and
- (e) ensuring orderly growth of the insurance industry in Seychelles.

**(2)** The Authority shall discharge its functions under this Act in a manner which it considers most appropriate for achieving the objectives set out in subsection (1), taking into account -

- (a) the need to balance those 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 Seychelles as a financial centre and of enhancing its competitive position; and
- (f) the best economic interests of Seychelles.

### **Category of insurance business**

**4.(1)** For the purposes of this Act -

- (a) insurance business is divided into two main categories, i.e. long term insurance business and 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 category 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 one 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 re-insurer.

**(3)** The Authority may by a determination in writing declare that a contract of insurance shall form part of a particular class of insurance business, and thereupon, 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 pension during the lifetime of employees as from their retirement and to their dependants should the employees die in service or on pension.

### **Application of Act**

**5.(1)** The Minister may, on the recommendation of the Authority, by regulations -

- (a) exclude from the application of this Act or any provision thereof -
  - (i) an association of underwriters carrying on any class of insurance business;
  - (ii) 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
  - (iii) a professional reinsurer, or any other corporation to the extent of its external insurance business;
  - (iv) any other person or class of persons;
- (b) impose restrictions on the insurance of risks relating to assets situated in Seychelles 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.

**(2)** 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 Seychelles, the matter shall be determined by the Authority which shall give public notice of its determination.

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

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

**6.(1)** No person shall carry on, or hold himself out as carrying on, insurance business of any category or class in or from Seychelles except under the authority of a licence issued by the Authority under section 10 in respect of that category or class of insurance business.

**(2)** A person resident in, or a body incorporated under the laws of, Seychelles shall not without the approval of the Authority carry on, or hold itself out as carrying on, insurance business of any class in or from a country outside Seychelles.

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

- (a) to carry on insurance business in or from Seychelles, where that person performs any act in Seychelles -
  - (i) the object or result of which is that another person enters into, or offers to enter into, or 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, 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 Seychelles, where -

- (i) by way of business as an insurer, he occupies premises in Seychelles, 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 Seychelles;
- (ii) he invites a person in Seychelles, 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 in or from Seychelles.

(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 subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding Rs 1,000,000 and to imprisonment for a term not exceeding 3 years.

### **Restrictions on composite insurance business**

7.(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 Authority 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 Authority 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 Authority.

(5) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding Rs 1,000,000 and to imprisonment for a term not exceeding 3 years.

### **Reinsurance**

**8.(1)** An insurer licensed under this Part shall not underwrite or reinsure risks from another insurer or otherwise carry on reinsurance business except where it is otherwise authorised expressly by the Authority on such conditions as it may impose.

(2) Notwithstanding section 7, a professional reinsurer licensed under section 10 may carry on reinsurance business of any category or of any classes except where specifically restricted.

(3) Nothing in this section shall be construed as a requirement for a reinsurer organised under the laws of any country outside Seychelles and underwriting risks from insurers in Seychelles to be licensed under this Act.

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

**9.(1)** An application for a licence under this Part shall be made in such form, manner and medium as the Authority may specify and shall be accompanied by -

- (a) a statement of the applicant's proposed insurance business, including details of the class of insurance business to be carried on,
- (b) particulars of any substantial shareholder or of any person being proposed to act as principal officer of the proposed insurer;
- (c) a business plan or a feasibility study conducted by an actuary, as may be applicable to any particular insurance business or class of business as determined by the Authority;
- (d) such other information and documents as may be specified in regulations; and
- (e) the prescribed fee.

(2) On receipt of an application, the Authority may require 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 Authority 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 specify.

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

(5) The applicant shall notify the Authority 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, in relation to an application under this section -
- (a)* makes a statement which he knows to be false in a material particular; or
  - (b)* recklessly makes a statement which is false in a material particular,

commits an offence punishable under section 119.

### **Grant of a licence**

**10.(1)** Where the Authority is satisfied that an application under section 9 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 11, 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 Seychelles, or in or from a country outside Seychelles;
- (b)* in the case of an applicant organised under the laws of a country outside Seychelles, in or from Seychelles.

**(3)** The Authority 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 information requested by the Authority in relation to the proposed business and the 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 and organisational and management capacities that are necessary to carry on the business;
- (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 fulfill all requirements under, this Act;
- (f)* in the case of a foreign company, it is registered as an overseas company 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 law it is organised.

**(4)** In determining an application under this Part, the Authority 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 this Act or guidelines issued by the Authority; and
- (c) any information obtained from a foreign regulator or enforcement agency.

### **Conditions of a licence**

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

**(2)** The Authority may, by notice in writing to the insurer, add, delete, vary or determine any condition, restriction or limitation 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 or limitation imposed under subsection (1), it commits an offence punishable under section 119.

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

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

- (a) shall not, without the approval of the Authority, open a branch or agency or set up or acquire any subsidiary in any country outside Seychelles;
- (b) shall display its licence, at all times, at its principal place of business in Seychelles and in every branch or office that it may have.

**(2)** Where an insurer fails to comply with subsection (1), it commits an offence punishable under section 119.

### **Registers**

**13.(1)** The Authority 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 Authority 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 Authority may make such addition, erasure or other alteration to the register as it considers necessary to ensure its accuracy.

**(5)** The Authority may post on its website, parts or extracts of the register updated from time to time.



## **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 be deemed to contravene subsection (1) where it fails to meet any requirement under this Act 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 Authority thereof in writing.

### **Solvency margin**

**15.(1)** Subject to subsection (2), an insurer shall -

- (a) at all times maintain a solvency margin of such value as may be prescribed;
- (b) furnish to the Authority a return on its solvency margin in such form, manner and medium, and within such time after its financial year as may be prescribed.

**(2)** For the purposes of this Act, the solvency margin of an insurer shall be the excess of the value of its assets over the amount of its liabilities, that value and amount being determined in accordance with such method as is prescribed.

### **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 contingent liabilities for policy benefits which have not become claimable, computed in accordance with a method specified in solvency regulations.

**(2)** An insurer shall, at all times hold unencumbered assets to the value of its technical provisions, 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 parts of 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 regulations.

(4) The technical provisions of an insurer, other than a captive insurer or a professional re-insurer, shall at all times be covered by equivalent and matching assets except where, with the approval of the Authority, an insurer holds non-matching assets to cover a sum not exceeding an amount specified in solvency regulations.

(5) Solvency regulations 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 funds**

**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 Seychellois policies and for its non-Seychellois policies.

(2) The Authority may, having regard to the small number of insurance policies and their relative value in any one of the insurance funds, allow the insurer to maintain only one insurance fund for both the Seychellois and the non-Seychellois 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 regulations in respect of each insurance fund as if they were separate businesses;
- (b) pay into the corresponding insurance fund all moneys 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 regulations, 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 regulations.

### **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 moneys 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 by or with the approval of, the Authority.

(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 any regulations.

(4) A long term insurer shall not -

- (a) transfer or otherwise apply assets 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 a 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 deficits 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 cent of that surplus or such other amount as the Authority may approve.

#### **Statutory reserve fund**

**19.(1)** A general insurer shall -

- (a) establish and maintain a statutory reserve fund of such an amount as may be specified under solvency regulations;
- (b) not declare or distribute any dividend or bonus out of its profits from its insurance business, except after any deficit existing in the statutory reserve fund at its balance sheet date, has been met.

(2) No distribution to shareholders or transfer to other reserves or shareholders' fund shall be made from the

statutory reserve fund except as may be provided under solvency regulations.

### **Prohibitions concerning assets**

**20.(1)** An insurer shall not, without the approval of the Authority, given generally or in a particular case, and on such conditions as the Authority 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 to 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 in accordance with sound insurance business principles.

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

**(3)** Where the Authority 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 Authority may give such directions as it considers fit, including a direction requiring the termination or modification of the reinsurance treaties or requiring additional reinsurance cover or prohibiting the insurer from entering into a contract with a particular reinsurer or through a particular reinsurance broker.

**(4)** In issuing a direction under subsection (3), the Authority 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

financial year 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 Authority such returns in respect of its reinsurance treaties including its facultative reinsurance as the Authority 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 regulations, the insurer shall not -

- (a) 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 Seychelles in the form of profits.

**(2)** No insurer shall declare or distribute any bonus or dividend to its shareholders, or remit any profits out of Seychelles where the declaration or distribution, or the transfer of money out of Seychelles, as the case may be, results or is likely to result in reducing the solvency margin to less than that required to be maintained:

Provided that an insurer may declare or distribute a bonus or dividend or remit a profit if the actuary has certified that in so doing the insurer shall remain in a financially sound condition 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 Authority is informed by an officer as required under section 14(3) or where the Authority reasonably suspects that an insurer is failing to comply, or is likely to fail to comply, with section 14, the Authority may direct the insurer to furnish the Authority with -

- (a) information relating to the nature and causes of the failure or to such matters as may, in the opinion of the Authority, 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 Authority;
- (c) a plan acceptable to the Authority for restoring the insurer's business to a financially sound condition.

**(5)** Where the Authority has received the information or the plan referred to in subsection (4), the Authority may, without prejudice to any of the other powers of the Authority 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 Authority 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 Authority 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 Authority 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 Authority may consult the auditor and actuary of the insurer.

(7) A Judge in Chambers may, on application by this Authority and on being 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) make an order restraining an insurer from contravening this section or a direction of the Authority under this section;
- (b) order compliance with a direction made by the Authority in enforcing the provisions of this Part;
- (c) make such other order as the Judge 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 the payment or distribution of a dividend or bonus;
- (b) consenting to a remission of profits out of Seychelles,

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 regulations**

**23.(1)** The Minister may make solvency regulations for the purpose of this Part.

(2) Regulations 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 Seychelles;
- (c) 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 at 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 Seychellois 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 Seychelles policy and which debt the policyholder has been unable to recover in any other way.

##### **Shares and debentures**

**25.** An insurer shall not, without the approval of the Authority or otherwise than in accordance with the conditions notified by the Authority -

- (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 Authority, 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 operation 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 period of time;
- (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 Authority the name of the beneficial shareholder on whose behalf shares are held; or
- (d) to any other person for a purpose approved by the Authority.

**(3)** An insurer who knowingly issues, allots or registers its shares in breach of subsection (1) commits an offence punishable under section 119.

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

**27.(1)** No person shall, without the approval of the Authority, acquire or hold such number of shares in an insurer so as to make that person 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 under subsection (1) may be given -

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

**(4)** Where the Authority 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 specified therein his shareholding to a percentage of the stated capital of the insurer below the percentage that makes him 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 the entire amount subscribed in respect of the stated capital of the insurer below that qualifying the shareholder as a significant shareholder.

(5) A person who fails to comply with -

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

commits an offence under section 119.

#### **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 Authority 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) commits an offence punishable under section 119.

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

**29.(1)** The Authority may require an insurer to furnish it in such form, manner and medium as it may specify, 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 normally exercises his rights as such.

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

**(3)** Where, without a reasonable excuse, an insurer fails to comply with subsection (1) or a person fails to comply with a request under subsection (2), the insurer or the person, as the case may be, commits an offence punishable under section 119.

### **Management of an insurer**

**30.** No insurer shall be managed by any person other than -

- (a)* in the case of an insurer established under the laws of Seychelles, 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, an authorised agent who is appointed by the parent insurer with the approval of the Authority;
- (c)* an insurance manager licensed under Part VIII.

### **Duties of director**

**31.(1)** Without limiting the duties of directors 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 Act and directions of the Authority and with the controls, strategies, policies, processes and procedures referred to in paragraph (b);
- (d)* set up such committees as they deem necessary to discharge their responsibilities effectively;
- (e)* approve measures for the maintenance of the undertaking in a sound financial condition in accordance with section 14;
- (f)* establish and maintain procedures 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) ensuring the sound and sustainable conduct of business.

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

(3) Without prejudice to any of their other fiduciary duties, the directors and other principal 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 contract or proposed contract with the insurer;
- (b) is an officer or a substantial shareholder of any entity that is a party to a contract or proposed contract with the insurer; or
- (c) has a material interest in any person, who is a party to a contract or proposed 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 referred to in subsection (1) is a director, the disclosure required by subsection (1) shall be made, -

- (a) at the meeting of directors at which the proposed contract is first considered;
- (b) where the director was not then interested in the proposed contract, at the first meeting after the director becomes so interested;
- (c) where the director becomes interested after the contract is made, at the first meeting after the director becomes so interested; or
- (d) where a person who is interested in the 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 become aware that the proposed contract is to be considered or a contract has been considered at a meeting of directors;
- (b) where the officer becomes interested after the contract is made, forthwith after the officer becomes so interested; or

- (c) where a person who is interested in the contract later becomes an officer, immediately after the person becomes an officer.

(4) An officer who knowingly fails to make a disclosure in breach of this section commits an offence punishable under section 119.

### **Requirement to abstain**

**33.(1)** Where section 32 applies to a director in respect of a 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) commits an offence punishable under section 119.

(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 or whom 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 sections 171 or 172 of the Companies Act; or
- (c) it was not in the interest of the insurer at the time it was approved.

### **Avoidance of contract**

**35.** Where an officer of an insurer fails to disclose an interest in a contract in accordance with section 32, a Court may set aside the contract on such terms as the Court thinks fit.

### **Appointment of principal officers**

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

**(2)** An insurer shall declare to the Authority 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 as a principal officer.

**(3)** For the purposes of this section, in determining whether a person is a fit and proper person regard shall be had to -

- (a)* the person's probity, competence, experience and soundness of judgment for fulfilling the responsibilities of the relevant position;
- (b)* the diligence with which the person is fulfilling or is likely to fulfil those responsibilities;
- (c)* the person's educational and professional qualifications, and membership of professional or other relevant bodies as applicable;
- (d)* the person's knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (e)* any evidence that the person has committed any offence involving dishonesty or violence or has contravened any law designed to protect members of the public arising from dishonesty, incompetence, malpractice or conduct of discharged or undischarged bankrupts or otherwise insolvent persons.

### **Fit and proper person**

**37.(1)** The Authority 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 Authority considers that a person referred to in section 36 is not fit and proper, it shall inform the insurer and the person concerned of its intention to object to such appointment, and the appointment shall be of no effect unless the objection is withdrawn.

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

**(4)** The Authority may, after taking into consideration the representations made under subsection (3), withdraw its objection to the appointment.

### **Board sub-committees**

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

#### **Internal control systems**

**39.** An insurer shall maintain adequate internal control systems commensurate with the nature and volume of its activities and the 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 relevant regulations, 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 unless it is approved by the Authority.

**(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 the appointee's functions;
- (b) is independent of the insurer in that the appointee, or in the case of a firm any of its 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 that could reasonably be perceived as materially affecting the exercise by the appointee of an independent mind and judgment in the performance of the appointee's duties;
- (c) is fit and proper in accordance with section 36(3).

**(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 Authority may

reasonably require.

**(5)** Except where an appointment is expressly objected to by the Authority within 15 days of the submission of an application under subsection (4), the appointment shall be deemed to have been approved and shall become effective from the date of appointment.

**(6)** In determining an application under subsection (4), the Authority 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.

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

**41.** An insurer shall give the Authority written notice of the termination of appointment or resignation of its auditor or actuary within 15 days of the termination or resignation.

#### **Termination of appointments by Authority**

**42.(1)** Subject to subsection (2), the Authority may require an insurer to terminate the appointment of an auditor or actuary of the insurer where it has reason to believe that the person or firm concerned is not fit and proper to hold the office concerned in accordance with section 36(3).

**(2)** The Authority shall not make a request under subsection (1) without -

- (a)* giving prior notice of its intention to act in accordance with subsection (1) and the reasons for so doing; and
- (b)* giving the insurer and the person or firm concerned an opportunity to make representations.

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

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

- (a)* where a report or return is made to the insurer or to any public authority, provide a copy thereof to the Authority;
- (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 Authority.

**(2)** A person being the auditor or the actuary of an insurer shall forthwith inform and as soon as practicable submit a report to the Authority whenever in the performance of the person's functions the person 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 regulations 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 a breach of any of the provisions of this Act or any other enactment relating to the keeping of accounting records or to audit;
- (d) directions given by the Authority have not been properly complied with;
- (e) losses have been incurred which reduce the amount paid as stated capital or assigned capital, as the case may be, by 50 per cent or more;
- (f) the insurer is unable or is not likely to meet the margin of solvency.

**(3)** A reference in this section to an auditor or actuary carrying out an audit or assessment includes an auditor or actuary who was engaged to carry out such an audit or assessment or who was in the course of carrying out such an audit or assessment but resigned before carrying out or completing the audit or assessment or whose contract to carry out or complete the audit or assessment was otherwise terminated.

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

- (a) the auditor or the actuary shall not be deemed to be in contravention of any enactment or in breach of -
  - (i) any code of professional conduct to which he is subject whether in Seychelles 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.

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

**44.(1)** The Authority may impose all or any of the following duties on an auditor -

- (a) to submit such additional information in relation to the auditor's audit as the Authority considers necessary;
- (b) to enlarge or extend the scope of the auditor's audit of the business and affairs of the insurer;
- (c) to carry out at any other examination;
- (d) to submit a report on any of the matters referred to in paragraphs (b) and (c),

and the insurer shall remunerate the auditor in respect of the discharge by the auditor of all or any of these duties.



### **Actuarial assessment**

- 45.(1) An insurer shall cause an assessment of its financial condition to be made annually by the insurer's actuary.
- (2) An assessment 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, where required by the Authority, 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 regulations.
- (3) Where an assessment into an insurer's financial position is made, the insurer shall -
- (a) furnish to the Authority a copy of the report of the insurer's actuary; and
  - (b) prepare and furnish to the Authority a statement of the insurer's business in the form to be determined by the Authority, 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 regulations.
- (5) The actuary who makes the valuation shall certify whether in the actuary's 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**

**46.(1)** An insurer carrying on more than one category of insurance business shall keep separate accounts of all receipts and payments in respect of each category of insurance business.

**(2)** The Authority 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 apportionable between the different classes, the insurer shall, with the authorisation of the Authority for the purpose of this subsection, 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**

**47.(1)** An insurer shall, at the expiration of each financial year, 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 category of insurance business, or part thereof, for which the insurer is required by section 46 to keep a separate account of receipts and payments, a revenue account.

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

**(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 Authority, 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 Seychelles currency to the nearest rupee or in such other currency as may be approved by the Authority.

**(5)** An insurer that 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, within 3 months of having done so, furnish to the Authority certified copies of every abstract, statement, account and return furnished to that public authority.

**(6)** No insurer shall change its financial year without the approval of the Authority.

(7) The Authority 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**

**48.(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 financial year 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, regulations and guidelines and give particulars of any matters that do not appear to him to be in accordance with those requirements;
- (b) amounts required by section 46(3) to be apportioned have been equitably apportioned and, where they have not been so apportioned, give particulars of the failure;
- (c) every reserve has been calculated in accordance with section 47(3) and, where they have not been so calculated, give particulars of the failure.

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

**49.(1)** A copy of every account, balance sheet, certificate, report, return or statement required to be prepared under section 45, 46 and 48 shall be signed by two directors and, in the case of a foreign company, the managing 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 Authority within 3 months after the end of the period to which they relate.

(2) An insurer shall furnish forthwith to the Authority 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 Authority requires it also to be signed by the auditor or the actuary of the insurer.

(4) Notwithstanding any written law, a foreign company incorporated under the Companies Act or otherwise licensed under this Act carrying on non-domestic insurance business shall submit such financial statements and returns as required in this Act only to the Authority.

#### **Examination of returns**

**50.(1)** The Authority may, by notice in writing, require any registered insurer to furnish it with information about any matter related to any business carried on by the insurer in Seychelles or elsewhere if in the opinion of the Authority it requires that information for the discharge of its functions under this Act.

(2) Where it appears to the Authority that any return or report furnished to it under this Part is inaccurate or incomplete in any respect, the Authority 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 Authority at its registered office or its principal place of business in Seychelles, or to supply any statement;
- (c) examine any principal officer of the insurer in relation to the return or report.

(3) Any person who, in making a return or report under subsection (1) -

- (a) makes a statement which he knows to be false in a material particular; or
- (b) recklessly makes a statement which is false in a material particular, commits an offence punishable under section 119.

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

**51.(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 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 sub-agents authorised to act on behalf of the insurer; and
- (d) any other record that may be specified by the Authority.

(3) Every record under subsection (1) shall be kept 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 Seychelles at its registered office in Seychelles.

(5) Regulations may provide for the manner in which books, records and registers shall be kept and the entries that shall be made.

## **PART VI -TRANSFER AND AMALGAMATION**

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

**52.(1)** The whole or part of the insurance business of a registered insurer may be transferred to another insurer registered in respect of the class or classes of business to be transferred only if the transfer is effected by a scheme

under this section.

(2) Any registered insurer shall, by virtue of this section, have the power to make such a transfer by a scheme under this section, and the directors shall have the authority on behalf of the insurer to arrange for and do all things necessary to give effect to such a transfer; and this subsection shall apply notwithstanding the absence of that power or authority under the constitution of the insurer or any limitation imposed by its constitution on its powers or the authority of its directors.

(3) A scheme under this section may provide for the business in question to be transferred to a body not registered as an insurer under this Act in respect of the relevant class of business (including a body not yet in existence) if the scheme is so framed as to operate only in the event of the body becoming so registered.

(4) A scheme under this section for the transfer of any insurance business may extend to the transfer with it of any other business, not being insurance business, where the other business is carried on by the insurer as ancillary to the insurance business transferred.

(5) A scheme under this section may include provision for matters incidental to the transfer thereby effected, and provision for giving effect to that transfer, and in particular -

(a) for any property, rights or liabilities of the transferor (including assets comprised in an insurance fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee; and

(b) for the registration by the transferee of policies transferred, for the amounts to be included in respect of those policies in the transferee's insurance fund and for other matters arising under this Act out of the transfer.

(6) A scheme under this section shall be of no effect unless confirmed by the Authority, but may be prepared and submitted for confirmation to the Authority by any of the insurers concerned; and if so confirmed, the scheme shall have effect according to its tenor notwithstanding anything in the preceding sections of this Act and be binding on any person thereby affected.

### **Confirmation of schemes**

**53.(1)** Before an application is made to the Authority for the confirmation of a scheme under section 52 -

(a) a copy of the scheme shall be lodged with the Authority together with copies of the actuarial and other reports, if any, upon which the scheme is founded;

(b) not earlier than one month after the copy is so lodged, notice of the intention to make the application (containing such particulars as are prescribed) shall be published in the Official Gazette and in not less than one daily newspaper approved by the Authority; and

(c) for a period of 15 days after the publication of the notice a copy of the scheme shall be kept at each office of every insurer concerned in or from which the insurer carries on insurance business under this Act, and shall be open to inspection by all members and policy owners of such insurer who are affected by the scheme;

(2) The Authority may cause a report on the scheme to be made by a qualified actuary independent of the parties to the scheme and, if it does so, shall cause a copy of the report to be sent to each of the insurers concerned.

(3) Copies of the scheme and any such report is mentioned in subsection (1)(a) or (2), or summaries approved

by the Authority of the scheme and any such report shall, except in so far as the Authority upon application made in that behalf otherwise directs, be transmitted by the insurers concerned, at least 15 days before application is made for confirmation of the scheme to every policy, owner affected by the scheme.

(4) An application to the Authority with respect to any matter connected with the scheme may, at any time before confirmation by the Authority, be made by any person who in the opinion of the Authority is likely to be affected by the scheme.

(5) The Authority may confirm the scheme without modification or subject to modifications agreed to by the insurers concerned, or may refuse to confirm the scheme.

(6) The insurers concerned shall be jointly and severally liable to reimburse the Authority any expenses incurred by it under this section in connection with any scheme or proposed scheme and a scheme shall include provision as to how that liability is, as between the insurers, to be borne.

### **Documents to be filed when scheme is confirmed**

**54.(1)** Where by a scheme under section 52 the insurance business of an insurer is transferred to another, the transferee shall, within one month after the scheme takes effect, lodge with the Authority -

- (a) a statement of the assets and liabilities of each insurer concerned as at the time immediately before the transfer; signed on behalf of the insurer and, in the case of the transferor, indicating whether the transfer is of the whole of the transferor's business and, if not, the extent to which transferor's assets and liabilities relate to the business transferred;
- (b) a copy of the scheme as confirmed by the Authority and a certified copy of the letter of the Authority confirming the scheme;
- (c) copies of any actuarial or other reports upon which the scheme was founded being reports made since a copy of the scheme was lodged under section 53(1); and
- (d) a statutory declaration made by the chairman of the board of directors of the transferee, or by its principal officer in Seychelles, fully setting forth every payment made or to be made to any person on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set forth has been, or is to be, made on account thereof by or with the knowledge of any insurer concerned.

(2) In subsection (1)(d), references to the making of a payment include references to the transfer of property or rights of any description.

(3) On the confirmation of a scheme under section 52, each of the insurers concerned, if they are companies, shall file a copy of the scheme with the Registrar of Companies.

(4) This section 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 Seychelles.

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

**55.** The Authority may apply to the Court for directions in relation to any particular matter arising under a

transfer or amalgamation under this Part.

## **PART VII - WINDING UP**

### **Sub Part A - General Provisions**

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

**56.(1)** Subject to this Part, the Companies Act shall apply to the winding up of an insurer.

**(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**

**57.(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 directions of the Authority 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 directions as the Authority may issue, 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 so order 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, the liquidator may apply to the Court, and the Court may thereupon appoint a special manager of that business to act during such time as the Court may direct, with such powers, as may be entrusted to the special manager 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**

**58.** 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 strict proof of debt were required, the liquidator 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**

**59.(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 Authority;
- (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 such method and upon such basis as may be determined by an actuary appointed by the Authority; and
- (c)* the liabilities of the insurer in respect of general insurance business shall be determined by the liquidator in consultation with the Authority.

**(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 Authority; and
- (c)* any directions which the actuary may be given by the Court.

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

**60.(1)** Notwithstanding any other written law, 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 written law, the provision of this section shall, to the extent of the inconsistency, prevail over the other provision.

**(2)** Any debts 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 Seychelles or with respect to policy liabilities outside Seychelles shall be applied only for meeting the liabilities of the fund to which they relate;
- (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 rotating 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 those funds;
- (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**

**61.(1)** Notwithstanding the Companies Act, no insurer shall be wound up voluntarily without the prior written authorisation of the Authority.

(2) The Authority may authorise an insurer to wind up where the insurer is solvent and submits a declaration to the effect that arrangements satisfactory to the Authority have been made by the insurer to meet all of 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 Authority 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 60; 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, furnishing such information as the Authority 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 Authority may specify.

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

**62.(1)** The authorisation under section 61(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 period as the Authority may determine.

### **Distribution of assets**

**63.(1)** Where, in the opinion of the Authority, the insurer has discharged all 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 Authority, or to any other person proposed by the insurer and, approved by the Authority, 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 Authority or to any other person proposed by the insurer and approved by the Authority;
- (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 Authority, or to any other person proposed by the insurer and approved by the Authority, 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**

**64.** Where the Authority finds that the assets of an insurer whose voluntary winding up has been authorised shall not be sufficient for the full discharge of all its obligations or that the completion of the voluntary winding up is unduly delayed, it may petition the Court for a winding up of the insurer under section 65 and for the appointment of a liquidator.

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

### **Winding up by Court**

**65.(1)** Without prejudice to the provisions of the Companies Act relating to winding up of companies, the

Authority may make application 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 Authority, a copy of the application shall, at the same time, be served on the Authority and the Authority shall be entitled to be heard on the petition.

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

(4) In the petition by the Authority 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 Seychelles 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**

66.(1) Where an insurer is unable to pay its debt, 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 referred to in section 15(2).

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

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

67.(1) Except under the authority of a licence to that effect, no person in Seychelles shall act as or hold himself out as -

- (a) an insurance manager;
- (b) an insurance agent;
- (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 Seychelles, where that person -

- (a) by way of business, as an insurance manager, insurance agent or insurance broker, occupies premises in Seychelles, 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 Seychelles;
- (b) invites a person, by issuing an advertisement (in any place or country whatsoever) or otherwise, to do in or from within Seychelles 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 Seychelles.

**(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 documents and information as the Authority may specify.

**(4)** Where the Authority 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 Authority shall not grant a licence under subsection (4) except where it is satisfied that -

- (a) the applicant's objects 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 regulations;
- (c) the applicant is covered by a professional indemnity insurance policy acceptable to the Authority and meeting such requirements as may be prescribed;
- (d) the applicant meets such requirements as may be prescribed;
- (e) the applicant has disclosed such information as the Authority 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 principal 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.

**(6)** In considering an application under this section, the Authority may take into account -

- (a) any guidelines or standards, relating to the regulation of insurance managers, insurance agents and insurance brokers, as the case may be, issued by an international body;

- (b) the provisions of the Act or directions issued by the Authority; and
- (c) any information obtained from a foreign regulator or enforcement agency.

(7) The Authority may, in granting a licence under this section, impose such conditions and restrictions 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 attached to the person's licence,

commits an offence punishable under section 119.

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

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

commits an offence punishable under section 119.

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

**68.(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 Authority on demand with a copy of the list.

(2) An insurer shall notify forthwith the Authority of any contravention of this Act or any direction thereunder committed by its insurance agents of which it has knowledge.

(3) An insurer shall notify the Authority of any termination of appointment of an insurance agent and the reason for the termination within 14 days of the date of 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**

**69.(1)** No licensee under this Part shall change its financial year without the approval of the Authority.

(2) An insurance manager, insurance agent or insurance broker, as the case may be, shall submit to the Authority not later than 3 months after the expiry of each financial year and with reference to that year -

- (a) its audited financial statements;
- (b) any other statements or returns as the Authority may specify.

(3) The Authority 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; and

(b) furnish to the Authority such statements and returns relating to its business in such form and at such interval, as may be prescribed.

#### **Separate accounts for premiums received**

70.(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 or directions 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 as agreed to in advance by the insurer.

#### **Obligations of insurance broker**

71.(1) No insurance broker shall provide 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 the broker is likely to receive from an insurer in the event that the prospective policyholder enters into an insurance policy for which the broker has provided services.

#### **Registration of Insurance Representative**

72.(1) No person shall act as an insurance representative for an insurer carrying on non-domestic insurance business unless that person is registered with the Authority.

(2) The Authority shall keep and maintain a register of insurance representatives.

(3) No insurer shall appoint a person in Seychelles to act as an insurance representative unless that person is registered as such with the Authority.

(4) An insurer shall, before appointing a person to act as its insurance representative, apply to the Authority for the registration of that person as its insurance representative in such form, manner and medium as may be specified by the Authority.

- (5) The application under subsection (3) shall be accompanied by –
- (a) information or document establishing the fact that the representative is fit and proper and such other information or document as the Authority may specify; and
  - (b) such fee as may be prescribed.
- (6) Where the Authority considers that a person is not fit and proper to be an insurance representative, it may –
- (a) refuse to register the person as an insurance representative; or
  - (b) where a person has already been appointed as an insurance representative, direct the insurer to terminate the appointment and remove the name of the insurance representative from its register of representatives.
- (7) Where an insurer terminates the appointment of an insurance representative, it shall, within 14 days after the date of the termination, notify the Authority.
- (8) Any person who contravenes subsection (1), (3), (4) or (7) of this section commits an offence punishable under section 119.

#### **Annual fee for insurance representative**

- 73.(1) There shall be prescribed an annual fee to be paid in respect of every insurance representative.
- (2) The annual fee under subsection (1) shall be paid by the insurer or the insurance representative on such date as may be prescribed.
- (3) The registration of an insurance representative shall be deemed to have lapsed where the annual fee under subsection (1) remains unpaid one month after the date on which it became due.
- (4) Where the registration of an insurance representative lapses under subsection (3), the name of that person shall be removed from the register of insurance representatives maintained by the Authority.
- (5) An insurer shall not allow a representative whose name has been removed from the register to act for or on its behalf.

#### **Obligations of insurance representative**

- 74.(1) An insurance representative shall -
- (a) keep such records; and
  - (b) furnish to the Authority such statements and returns relating to the insurance representative's business in such form and at such intervals, as may be prescribed.
- (2) An insurance representative shall not collect and keep premiums on behalf of an insurer.

### **Registration of sub-agents**

- 75.(1)** No person shall act as an insurance sub-agent for an insurer or an insurance agent unless that person is registered with the Authority to act as such for the insurer or the insurance agent.
- (2)** The Authority shall keep and maintain a register of insurance sub-agents.
- (3)** No insurer or insurance agent shall appoint a person in Seychelles to act as an insurance sub-agent unless that person is registered as such with the Authority.
- (4)** An insurer or insurance agent shall, before appointing a person to act as its insurance sub-agent, apply to the Authority for the registration of that person as its insurance sub-agent in such form, manner and medium as may be specified by the Authority.
- (5)** The application under subsection (3) shall be accompanied by -
- (a)* information or document establishing the fact that the sub-agent is fit and proper and such other information or document as the Authority may specify; and
  - (b)* such fee as may be prescribed.
- (6)** Where the Authority considers that a person is not fit and proper to be an insurance sub-agent, it may -
- (a)* refuse to register the person as an insurance sub-agent; or
  - (b)* where a person has already been appointed as an insurance sub-agent, direct the insurer or insurance agent to terminate the appointment and remove the name of the insurance sub-agent from its register of sub-agents.
- (7)** Where an insurer or insurance agent terminates the appointment of an insurance sub-agent, it shall within 14 days after the date of the termination, notify the Authority of that fact.
- (8)** Any person who contravenes a provision of this section commits an offence punishable under section 119.

### **Annual fee for sub-agent**

- 76.(1)** There shall be prescribed an annual fee to be paid in respect of every insurance sub-agent.
- (2)** The annual fee under subsection (1) shall be paid by the insurer or insurance agent or insurance sub-agent, on such date as may be prescribed.
- (3)** The registration of an insurance sub-agent shall be deemed to have lapsed where the annual fee under subsection (1) remains unpaid one month after the date on which it became due.
- (4)** Where the registration of an insurance sub-agent lapses under subsection (3), the name of that person shall be removed from the register of insurance sub-agents maintained by the Authority.
- (5)** An insurer or insurance agent shall not allow a sub-agent whose name has been removed from the register to act for or on its behalf.



### **Obligations of sub-agents**

**77.(1)** An insurance sub-agent shall -

- (a) keep such records as may be specified; and
- (b) furnish to the Authority such statements and returns relating to the sub-agent's business in such form and at such intervals as may be prescribed.

**(2)** A sub-agent 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 claims professionals and the conduct of their business.

**(2)** For the purpose of this Act, a reference to a claims professional shall be construed as a reference to a person who for remuneration carries on the business of, or holds himself out as, loss surveyors or loss adjusters, or otherwise advises on, or investigates, the cause and circumstances of a loss and ascertains 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 if it seeks to provide that -

- (a) an insurer is exempt 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 the person 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 representations were regarded by the 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 and commissions 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 commits an offence punishable under section 119.

### **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 –
  - (i) entering into a new policy and making it available for that purpose, or
  - (ii) making available an existing policy of the appropriate value for that purpose, or
  - (iii) utilising 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, shall 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 or other obligation that the policyholder -

- (a) was given prior written notification of the policyholder's 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 (2) 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 that person 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. Where a policyholder has invested in a "with profit" life insurance product which entitles the policyholder 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.

#### **Undesirable business practice**

**83.(1)** Notwithstanding anything to the contrary in any written law, the Authority 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 Authority 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 Authority may by notice direct that insurer or person -

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

commits an offence punishable under section 119.

#### **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 Official Gazette and in one daily newspaper.

**(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 to the Curator of Vacant Estates to be dealt with by the Curator.

#### **Protection of policyholder**

**85.(1)** Without prejudice to any other written law, the Authority may issue general directions on sound insurance principles and practice.

**(2)** Without derogating from the generality of subsection (1), the general directions may provide for -

- (a) the disclosure of fees, commissions and other costs on insurance policies;

- (b) advertisements and canvassing in relation to 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 agreed.

**(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 the 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 agreed.

**(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 or 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 is paid on or before the commencement of the risk to the insurance agent it 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 its actuary as being in accordance with sound insurance business and actuarial principles.

**(2)** A long term insurer shall provide the Authority with particulars of every 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 Authority may specify, at least 30 days before offering the product to the public.

**(3)** Where it appears to the Authority that a long term insurance product is not appropriate for any reason, the Authority 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 Authority may specify before it is offered to the public.

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

- (5) The Authority 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 Authority may specify in its request.
- (6) The Authority may after considering the report of the actuary take such measures as are referred to in subsection (3).

### **Policy Owners' Protection Fund**

**88.(1)** The Authority shall establish and maintain in accordance with this section, a Policy Owners' Protection Fund for the purposes of -

- (a) indemnifying and compensating in whole or in part or otherwise assisting or protecting policy owners and others who have been or may be prejudiced in consequence of the inability of registered insurers to meet their liabilities under life policies and compulsory insurance policies issued by them;
  - (b) subject to section 91(1), compensating persons in respect of damage arising out of the use of a motor vehicle on a road, whether or not such use is required to be covered by a policy of insurance in respect of third party risks under the Motor Vehicles Insurance (Third Party Risks) Act.
- (2) Subject to such exceptions or restrictions as may be prescribed, the Authority shall -
- (a) ensure that a sum equal to -
    - (i) the full amount of any liability of a registered insurer in liquidation or in financial difficulties, in respect of a sum payable to any person entitled to the benefit under the terms of any compulsory insurance policy, being a liability arising in respect of a liability of the policy owner which is subject to compulsory insurance; and
    - (ii) 90% of the amount of any liability of a registered insurer in liquidation or in financial difficulties towards a policy owner under the terms of any life policy which was a Seychelles policy or an offshore policy and not being a contract of reinsurance,is paid to the person or policy owner as soon as reasonably practicable after the beginning of the liquidation; and
  - (b) make arrangements so far as reasonably practicable for securing continuity of insurance for every policy owner of a registered insurer in liquidation or in financial difficulties who is a policy owner in respect of a life policy which was a Seychelles policy or an offshore policy and not being a contract of reinsurance, and for this purpose the Authority may take measures to secure or facilitate the transfer of the life business of the insurer, or part of that business, to another registered insurer or to secure the issue by another registered insurer to the policy owners of life policies in substitution of their existing policies;

- (c) ensure that a sum equal to such amount of compensation payable to a person eligible under subsection (1)(a) or (b) as determined by the Authority is paid to the person as soon as reasonably practicable after the determination.

### **Contribution to the Policy Owners' Protection Fund**

**89.(1)** For the purposes of financing the expenditure of the Policy Owners' Protection Fund, a levy may be imposed from time to time by regulations on registered insurers carrying on -

- (a) general business under this Act (referred to in this section as “a general business levy”); and
- (b) life business under this Act (referred to in this section as “a life business levy”).

**(2)** The proceeds of the general business levy and life business levy under subsection (1) shall be paid into the Policy Owners' Protection Fund.

**(3)** The amounts required to be paid by any registered insurer under the general business levy or the life business levy in any financial year shall not exceed one per cent of any income of the insurer for the year ending last before the beginning of that financial year which income is liable to the general business levy or the life business levy, as the case may be.

**(4)** The amount each registered insurer may be required to pay under the general business levy imposed in any financial year shall be calculated by reference to the gross premium income of Seychelles policies of the insurer for the year ending last before the beginning of that financial year in respect of general business carried on under this Act other than reinsurance business; and any such income as is hereafter in this section referred to, in relation to any registered insurer, as income of the insurer for the year in question which is income liable to the general business levy.

**(5)** The amount each registered insurer may be required to pay under life business levy imposed on any financial year shall be calculated by reference to the gross premium income of the insurer for the year ending last before the beginning of that financial year in respect of life business carried on under this Act other than reinsurance business; and any such income as is hereafter in this section referred to, in relation to any registered insurer, as income of the insurer for the year in question which is income liable to the life business levy.

**(6)** In subsections (4) and (5), the gross premium income of a registered insurer for any year in respect of any class of insurance business carried on under this Act other than reinsurance business means the gross amounts after deducting any return of premiums recorded in the accounts of the insurer during that year as paid or due to the insurer by way of premiums under that class.

### **Management of the Policy Owners' Protection Fund**

**90.(1)** Subject to subsection (2), the proceeds of the general business levy may be applied only on expenditure incurred by the Authority under section 88(2)(a)(i) and the proceeds of life business levy may be applied only on expenditure incurred by the Authority under section 88(2)(a)(ii).

**(2)** The Authority may deduct any expenditure incurred by it in performing its functions under this section from the Fund.

**(3)** Without prejudice to the generality of section 124, regulations made under this Act may provide -

- (a) for the imposition, distribution and enforcement of the general business levy and life business levy and other matters in connection with or in relation to those levies; and
- (b) for the investment of such part of the Fund as appears to the Authority to be a surplus over its requirements for the time being.

**(4)** For the purposes of this section -

- (a) “compulsory insurance policy” means any policy or security which satisfies the requirements of the Motor Vehicles Insurance (Third Party Risks) Act;
- (b) references to a registered insurer in liquidation are references to an insurer in whose case -
  - (i) a resolution has been passed after the commencement of this Act in accordance with the provisions of the Companies Act for the voluntary winding up of the insurer, otherwise than merely for the purpose of reconstruction of the insurer or of amalgamation with another insurer;
  - (ii) without any such resolution having been passed beforehand, an order has been made after that date for the winding up of the insurer by the Court under the Companies Act on a petition presented after that date; or
- (c) references, in relation to a registered insurer in liquidation, to the beginning of the liquidation are references to the passing of any such resolution or the making of any such order as is referred to in paragraph (b), as the case may be; and
- (d) a registered insurer, not being an insurer in liquidation, is an insurer in financial difficulties if -
  - (i) in the case of a company -
    - A. a provisional liquidator has been appointed in respect of the insurer under the Companies Act;
    - B. it has been proved, in any proceedings on a petition for the winding up of the insurer under the Companies Act, to be unable to pay its debts; or
    - C. an application has been made to the Court under the Companies Act for the sanction of a compromise or arrangement proposed between the insurer and its creditors or any class of them (whether or not any of its members are also parties thereto) and the terms of the compromise or arrangement provide for reducing the liabilities or the benefits provided for under the insurer’s life policies;
  - (ii) in the case of any other corporate body, the corporate body is in the opinion of the Authority, unable to pay its debts.

**Prescription of claims**

**91.(1)** No compensation shall be paid under section 88(1)(b) in relation to a motor vehicle the use of which is covered by a policy of insurance in respect of third party risks under the Motor Vehicle Insurance (Third Party



Risks) Act, where the owner or driver of the motor vehicle at the time of such use -

- (a) has been identified;
- (b) is resident in Seychelles;
- (c) would, on the balance of probability, be liable in damages in proceedings instituted against the owner or driver in a court in respect of the damages arising out of such use; and
- (d) would be covered in respect of the liability by the policy of insurance.

(2) Where the Authority pays any money out of the Fund to any person eligible for payment out of the Fund, the Authority shall be subrogated to the extent of such payment to the rights and remedies of that person in relation to the matter for which the payment was made.

## **PART X - INSPECTION AND INVESTIGATION**

### **Power of Authority to issue direction**

**92.(1)** Where the Authority is of the view that a licensee or registered person is not complying with any provision of this Act, it may direct the licensee or registered person to comply with such provision.

(2) A licensee or registered person who fails to comply with a direction issued under subsection (1) commits an offence punishable under section 119.

### **Request of information**

**93.(1)** The Authority may, for the purpose of discharging its functions, by notice in writing, require a licensee or registered person to provide it -

- (a) with such information or document as may be specified in the notice in the manner specified therein;
- (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 approved by the Authority on, or on any aspect of, any matter in relation to which the Authority may require information under paragraph (a).

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

(3) The power to require information and documents under subsection (1) shall extend to any person who, in the opinion of the Authority, appears to be in possession of such information and documents.

(4) Where documents are provided, the Authority may take copies of or extracts from them and require -

- (a) any person who is a present or past principal officer, controller, partner, manager or

employee of that licensee;

- (b) the person providing a 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 any explanation on such document.

(5) Where the information or document requested is not in the possession of the person who is required to provide 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 commits an offence punishable under section 119.

### **On-site inspection**

**94.(1)** The Authority may, at any time, inspect the affairs of a licensee or registered person in order to verify whether the licensee or registered person -

- (a) is complying with the provisions of this Act, or the conditions of the licence or the registration;
- (b) is conducting its business according to sound insurance principles;
- (c) satisfies criteria or standards set out in or made under this Act or any other applicable written law including the Anti-Money Laundering Act, 2006 and the Prevention of Terrorism Act, 2004.

(2) For the purpose of carrying out an inspection under subsection (1), the Authority may appoint as inspector any person, whether or not an employee of the Authority who is an auditor, actuary or any person of required competence.

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

(4) For the purpose of the inspection, the inspector may -

- (a) request such information and documents in such form and medium and 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 a 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 or a registered person shall, for the purpose of an inspection under this Part, provide the

inspector with such facilities and assistance as may be necessary for him to carry out the inspection effectively.

**(6)** Any person who obstructs an inspector in the performance of his duties under this section commits an offence punishable under section 119.

### **Investigation**

**95.(1)** Where the Authority has a reasonable suspicion that a licensee or registered person -

- (a)* has committed, is committing or is likely to commit a breach of any provision of this Act or any condition attached to the person's licence or registration;
- (b)* has failed, is failing or is likely to fail, to comply with any direction issued by the Authority under section 93(1);
- (c)* has committed, is committing or is likely to commit an offence against any other written law;
- (d)* has carried on, is carrying on or is likely to carry on any activity which may cause serious prejudice to its customers, or to the soundness, stability and integrity of the insurance business sector;
- (e)* in the case of an insurer, has failed, is failing or is likely to fail to maintain a financially sound condition in accordance with Part III; or
- (f)* has failed to provide any information or document requested by the Authority,

the Authority 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 Authority 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 the investigation; and
- (b)* any principal officer of the licensee or registered person to furnish information or to produce any document in such officer's custody or control.

**(3)** The Authority may take copies of or extracts from any document produced under subsection (1) 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 Authority shall be deemed to require the person named therein to produce it 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 to furnish information or to produce any specified documents or any documents of a specified class shall not, without reasonable excuse, refuse or 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 the business of the licensee or registered person is conducted or records are maintained by the licensee or registered person.

**(8)** For the purposes of this section, the Authority may -

- (a)* seize any document, article, object or any electronically stored information which the Authority finds necessary; and
- (b)* summon any person under investigation, the person's officers or employees, or any witness necessary for the conduct of the investigation.

**(9)** The Authority may appoint any member of the staff of the Authority or any other person to be an investigator who shall have all the powers of the Authority under this section.

**(10)** An investigator shall on request show his designation as investigator duly signed by the Authority or any other person authorised by the Authority.

**(11)** An investigator shall, in respect of every investigation carried out under this Part, make a written report to the Authority together with such observations, comments and recommendations as he thinks fit.

**(12)** A statement made by a person in compliance with a requirement under this section may be used in evidence.

**(13)** 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;
- (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 -
    - (A)* that the person knows to be false or misleading in a material particular;  
or
    - (B)* recklessly as to whether it is false or misleading in a material particular;
  - (ii)** refuses, without reasonable excuse, to answer,

commits an offence and shall on conviction, be liable to a fine not exceeding 1 million rupees and to imprisonment for a term not exceeding 3 years.

### **Suspension of licence**

**96.(1)** Where, at any time, it appears to the Authority that -

- (a) it has grounds under section 95 to carry out an investigation into the business of a licensee; or
- (b) there are grounds under section 110 for the revocation of a licence or under section 101 for the appointment of an administrator,

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

**(2)** The Authority shall not suspend a licence under subsection (1) unless it has given prior written notice to the licensee of its intention and its reasons for doing so, and has afforded the licensee reasonable opportunity to make representations on the matter to the Authority.

**(3)** Subsection (2) shall not apply where the Authority 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 on the business or the part of the business to which the suspension relates;
- (b) continue to be subject to any provisions of 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 Authority shall give written notice of any decision to suspend a licence under subsection (1).

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

**97.** A suspension of a licence 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 96, 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.

### **Power to enter premises**

**98.(1)** For the purpose of carrying out an inspection under section 94 or an investigation under section 95, 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 in order to -

- (a) inspect, take possession of 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 the premises of the licensee or registered person commits an offence punishable under section 119.

### **Tampering with evidence**

99. 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 know, to be relevant to an inspection or investigation under this Part commits an offence punishable under section 119.

### **Meaning of certain words**

100. For the purposes of this Part -

- (a) any reference to a licensee shall, except for sections 96 and 97, 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 principal officer, partner, manager, employee or controller of that licensee;
- (b) any reference to the “Authority” shall include any person designated from among the staff of the Authority or appointed by the Authority.

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

### **Appointment of administrator**

101.(1) Where a licence is wholly or partly suspended under section 96 or revoked under section 110, the Authority may, subject to subsection (2), appoint a person as administrator -

- (a) in relation to the whole of the business of the licensee; or
- (b) in relation to the part of the business of the licensee which is subject to a suspension or revocation.

(2) The Authority shall not appoint as administrator -

- (a) a body corporate;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any property of the licensee;
- (d) an auditor or actuary of the licensee;
- (e) an officer of the licensee or of any body corporate which is a mortgagee of the property of the licensee; or
- (f) a person prohibited from managing a company under the Companies Act.

(3) The remuneration payable to an administrator shall be determined by the Authority.

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

**102.(1)** An administrator appointed under section 101 shall manage the whole or part of the business entrusted to his administration and for that purpose -

- (a) shall carry on the activities of a licensee in accordance with section 97;
- (b) shall comply with directions given under subsection (2); and
- (c) shall manage the business or part of the business efficiently.

(2) The Authority may give such directions to the administrator as to the administrator's powers and duties as it deems fit in the circumstances of the case, and the administrator may apply to the Authority for instructions as to the manner in which the administrator shall conduct the management of the business of the licensee or in relation to any matter arising in the course of that management.

#### **Cancellation of suspension of licence**

**103.** Where the Authority cancels any suspension of a licence -

- (a) the powers and duties of the administrator in relation to the licensee shall thereupon cease; and
- (b) the administrator shall take all actions necessary to facilitate the return of the management of the whole or, as the case may be, the part of the business to the licensee.

### **Appointment of conservator**

**104.** Where the Authority 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 salespersons to contravene any provision of this Act or any direction of the Authority or any other written law;
- (c) contraventions referred to in paragraph (b) are likely to occur;
- (d) the assets of the insurer are not being maintained in accordance with solvency regulations, or are 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 Authority or any other suitable person.

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

**105.(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 the 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, save as it is necessary to carry on the business of the insurer with a view to its rehabilitation or re-organisation.

(5) The conservator shall report to and be accountable to the Authority.

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

**106.(1)** The term of office of the conservator shall continue, unless the conservator is replaced, until such time as the Authority finds that -

(a) the insurer is rehabilitated or re-organised, so that it may be returned to the insurer's management or a new management under such conditions as are necessary to prevent a 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 the termination of the conservatorship, every director of the insurer shall resume his office except where a director is found by the Authority not to be fit and proper to resume his directorship.

#### **Rehabilitation or re-organisation of insurer**

**107.(1)** The conservator shall obtain the authorisation of the Authority to -

(a) rehabilitate the insurer and return it to the management; or

(b) re-organise the insurer in accordance with the other provisions of this section.

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

(3) The copy of the re-organisation plan shall be accompanied by a notice stating that where the re-organisation 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 Authority, proceed to carry out the re-organisation plan.

(4) The approval of a re-organisation plan by the Authority shall be subject to its finding that the re-organisation 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 a re-organisation it appears that circumstances render the plan inequitable or its execution undesirable, the conservator may recommend that the Authority petition the Court under section 65.

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

**108.** The administrator, the conservator or any person acting on their behalf shall not be liable to any proceedings, whether civil or criminal, in respect of anything done or omitted to be done in the bona fide performance of a function under their appointment.

### **PART XII - TERMINATION OF LICENCE**

#### **Surrender of licence**

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

- (a) before appointing 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 to 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 and the conditions of its licence and the directions of the Authority until the Authority after cancelling the licence gives public notice of the cancellation.

#### **Revocation of licence**

**110.(1)** Where it appears to the Authority that -

- (a) the licensee has ceased to carry on 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, would have prevented the licensee from being licensed;
- (d) the licensee has failed to fulfil an obligation to which it is subject by virtue of this Act;

- (e) the licensee is unable to meet its financial obligations or to keep the solvency margin;
- (f) the business of the licensee is not being carried on in accordance with sound insurance principles;
- (g) the licensee has contravened any of the provisions of the Act or any conditions imposed on its licence or any directions given by the Authority under this Act, regardless of whether there has been any conviction for an offence in respect of such contravention;
- (h) the licensee has furnished false or misleading information or has concealed, or failed to disclose material facts in its application for a licence or in any return filed under this Act;
- (i) the licensee has been convicted of an offence under this Act or any other written law whether in Seychelles 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 to make contracts of a particular description as a result of being convicted of any offence under the law governing insurance business or an offence under any other written law in the country where it has its head office, the Authority may forthwith revoke the licence.

(2) Where a licence is revoked, the Authority shall give -

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

#### **Effect of revocation**

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

(2) The Authority 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 - MISCELLANEOUS**

#### **Freezing order**

**112.(1)** Where, the Authority is making an investigation, an application may be made by the Authority to a Judge in Chambers and if the Judge is satisfied that the Authority has reasonable grounds to suspect that a licensee or any substantial shareholder of a licensee has committed an offence under this Act, the Judge may order -

- (a) the prohibition of the licensee or the substantial shareholder or any other person acting or holding assets on its behalf from disposing, transferring or pledging any of its assets or making any withdrawal from any account or deposit at any bank or financial institution;
- (b) the attachment in the hands of any person named in the order of all moneys and other property due or owing, or belonging to, or held on behalf of, the licensee or substantial shareholder;
- (c) the licensee to make a full disclosure, within such time as may be specified in the order, of all its possessions and the nature and source of such possessions;
- (d) any person named in the order to make a full disclosure of any offence under the law governing insurance business or an offence under any other written law in the country where it has its head office, all moneys and property held by the person on behalf of the licensee or substantial shareholder; or
- (e) the opening, in the presence of a person authorised by the Authority, of any safe deposit box held on behalf of the licensee or substantial shareholder.

(2) Where an order is made under subsection (1)(a), (b), (d) or (e) the Authority shall give notice thereof to the licensee or the person named in the order.

(3) Where notice is given under subsection (2), any person who allows, procures or facilitates the disposal of money or property belonging to the licensee commits an offence punishable under section 119.

(4) The Judge in Chambers may, on the application of the Authority or the licensee and on good and sufficient cause shown, authorise such reasonable amounts to be withdrawn from a bank or other financial institution for the ordinary running of the business of the licensee, on such conditions as the Judge deems fit.

(5) The order may be revoked at any time by a Judge in Chambers on application by the Authority upon reasonable cause shown.

(6) The Authority shall be a party to any application under subsection (4).

### **Injunctive relief and locus**

**113.(1)** The Authority may apply to a Judge in Chambers for an interim order in respect of any matter relating to its objectives under section 3.

(2) Without prejudice to subsection (1), an order under that subsection may direct the person to do a specified act or refrain from doing a specified act, for the purpose of -

- (a) preventing a contravention;
- (b) compelling any person to comply with a lawful request or direction made or issued by the Authority under this Act;
- (c) remedying the effects of a contravention;
- (d) preserving the assets held by a relevant person.

(3) The Authority shall not be required to give an undertaking as to damages as a condition for obtaining an

interim order under this section.

(4) A person affected by an order made under subsection (2) shall within 21 days of being served with the order have a right to show cause why the order should not be maintained.

(5) Without prejudice to other provisions of this 'section, the Authority shall have the power -

- (a) to ask for and obtain declaratory orders from the Court;
- (b) to seek guidance and directions from the Court on any point of law or as to the interpretation of any provision of this Act;
- (c) to intervene in any proceedings in which a licensee or registered person is a party.

### **Exchange of information and mutual assistance**

**114.(1)** The Authority may exchange with a supervisory body any information relevant to the administration of this Act for the purpose of discharging the functions of the Authority or of that body.

(2) Any information under subsection (1) may be given subject to conditions specified by the Authority, including conditions restricting the use and disclosure of such information.

(3) The Authority may, in furtherance of its objects under this Act, enter into an agreement for the exchange of information with a foreign or domestic supervisory institution or a law enforcement agency or an international organisation, where the Authority is satisfied that the domestic or foreign supervisory institution, the law enforcement agency or the international organisation, as the case may be, would protect the confidentiality of the information.

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

**115.(1)** A person who, not having the approval of the Authority or not being a licensee -

- (a) uses or continues to use the words "insurance", "assurance", "underwriting", "reinsurance", "reassurance", "surety" or any other word which in the opinion of the Authority connotes insurance business, or any of their derivatives in English or in any other language, in the description or title under which the person carries on business in or from within Seychelles; or
- (b) makes or continues to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner, that he is carrying on insurance business,

commits an offence punishable under section 119.

(2) Before giving its approval under subsection (1), the Authority may require any person to furnish such references and information as it may specify.

### **Advertisement**

**116.** Where any advertisement, brochure or similar document which relates to the business of a licensee or registered person or to an insurance policy and is published by a person, is misleading or contains an incorrect statement of fact, the Authority may by notice direct that person not to publish it or to effect such changes in it as the Authority may specify.

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

**117.** Where the Authority is satisfied that failure by a person to comply with the provisions of this Act or any direction within the required time limit was due to a just or reasonable cause, it may, upon a written application made by the person, extend by notice to the person the time limit to such time and on such conditions as it may determine.

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

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

**(2)** No transaction in the course of effecting or carrying out an insurance policy shall be void or voidable merely by reason that at the time of that transaction any party thereto is in breach of any provision of or any requirement under this Act.

#### **Miscellaneous offences**

**119.** Any person who contravenes any provision of this Act or any regulation made under this Act commits an offence, and shall on conviction be liable, where no other penalty is specifically provided for in the Act or regulation as the case may be, to a fine of Rs100,000 and to imprisonment for a term not exceeding 1 year.

#### **Public notice**

**120.(1)** The Authority may, having regard to the interest of the public and the policyholders and to the reputation of Seychelles, give public notice of the fact that a particular person -

- (a)* has ceased to be a licensee, whether by the cancellation, revocation or surrender of the licence;
- (b)* has had its licence or registration suspended;
- (c)* is not or has not been a licensee or registered person; or
- (d)* has been granted a licence or registration.

**(2)** Where the Authority is required to give public notice of any matter, it shall cause a notice to be published in the Official Gazette and a daily newspaper.

**(3)** By a notice under subsection (2), the Authority may state that any document may be perused at the office of

the Authority or on its website or on the bulletin of the Authority, or at such other place as may be specified in the notice.

### **Confidentiality**

**121.(1)** Subject to subsection (2), neither the Authority nor any employee or agent of the Authority shall disclose any information or document acquired in the performance of its, his or her duties under this Act, including those in respect of any insurer or an insurance professional licensed under Part VIII or any policyholder.

(2) Subsection (1) shall not apply to any disclosure -

- (a) lawfully required by any written law or any court of competent jurisdiction in Seychelles;
- (b) in respect of the affairs of any licensed insurer or insurance professional licensed under Part VIII or a policyholder as the case may be, with the written consent of such person; or
- (c) where the information disclosed is in statistical form or in any other manner that does not enable the identity of any licensed insurer or other insurance professional licensed under Part VIII or any policyholder to which the information relates to be ascertained.

### **Special concession for certain insurers**

**122.** A person licensed to conduct and engage in non-domestic insurance business shall be entitled for to the exemptions and concessions specified in the Second Schedule.

### **Judicial review**

**123.** A person aggrieved by any decision of the Authority made in the discharge of its functions may apply to the Court for the review of the decision in exercise of the Court's supervisory jurisdiction under article 125 of the Constitution.

### **Regulations**

**124.(1)** The Minister may, in consultation with the Authority, make regulations for -

- (a) carrying into effect the provisions of this Act; or
- (b) amending the Schedules.

(2) Such regulations may provide for offences and penalties not exceeding fines of Rs100,000 and terms of imprisonment not exceeding 1 year.

### **Repeal**

**125.(1)** The Insurance Act, 1994 (Act 28 of 1994) is repealed.

**(2)** Notwithstanding subsection (1), an insurer lawfully carrying on insurance business under the repealed Act on the date of coming into operation of this Act may continue to do so for a period of 12 months from that date, and not later than 90 days before the expiration of that period any insurer wishing to continue carrying on such business shall apply for a licence under section 10.

#### **Transitional**

**126.** On the coming into operation of this Act, all the assets and liabilities of the Policy Owners' Protection Fund established under section 45 of the Insurance Act 1994 and existing immediately before the coming into operation of this Act shall vest in the Policy Owners' Protection Fund established under section 88 of this Act.



## FIRST SCHEDULE

(Sections 2 and 4)

### CLASSES OF POLICIES

#### Part I

##### Long term insurance business

| <b>Class of business</b>            | <b>Description</b>  |
|-------------------------------------|---|
| Life insurance business             | The business of undertaking liability under contracts upon human life or contracts to pay annuities on human life, but does not include permanent health insurance business and personal accident insurance business.   |
| Pension business                    | The business of effecting and carrying out –<br><br>(a) contracts to manage pension funds or the investment of pension funds;<br><br>(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<br><br>(c) contracts on a group basis to provide pensions during the lifetime of employees as from their retirement and to their dependents 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

##### General insurance business

| <b>Policy</b>              |   |
|----------------------------|---|
| Accident and health policy | A contract in terms of which a person, in return for a premium, undertakes to provide policy benefits where –<br><br>(i) an injury event; |

|   |  |
|---|--|
|   | <p>(ii) a health event; or</p> <p>(iii) a death event,</p> <p>contemplated in the contract as a risk, occurs; and includes a contract under which the policy benefits are –</p> <p>(i) benefits other than a stated sum of money;</p> <p>(ii) to be provided upon a person having incurred, and have to defray, expenditure in respect of any health service obtained as a result of the health event concerned; and</p> <p>(iii) to be provided to any provider of a health service in return for the provision of such service.</p>  |
| Engineering policy                                    | <p>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> <p>(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;</p> <p>(ii) the erection of buildings or other structures or the undertaking of other works;</p> <p>(iii) the installation of machinery or equipment; or</p> <p>(iv) machinery breakdown or boiler pressure plants, occurs</p> |
| Guarantee policy                                      | <p>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>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 section, occurs.</p>   |
| Motor policy  | <p>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 written law occurs.</p>   |
| Property policy                                       | <p>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.</p>  |
| Marine, Aviation, Inland Transit and Goods-in transit | <p>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</p>   |

|                      |   |
|----------------------|---|
| policies             | 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. |
| Miscellaneous policy | 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.                    |

**SECOND SCHEDULE**

*Section 122*

**Exemptions and Concessions applicable to Non-Domestic Insurance Business**

| <b>Column 1<br/>Law</b>                          | <b>Column 2<br/>Extent of exemption and non-applicability</b>  |
|--|--|
| 1. Business Tax Act                              | 1. The whole Act   |
| 2. Immovable Property (Transfer Restriction) Act | 2. Section 4, in so far as it prohibits a non-Seychellois from leasing immovable property in Seychelles or entering into an agreement to lease immovable property.   |
| 3. Social Security Act                           | 3. Section 3(1)(b) in so far as it subjects a licensed non-domestic insurer as an employer to pay contributions to the Social Security Fund in respect of its employees.   |
| 4. Stamp Duty Act                                | 4. The following shall be exempt from the payment of stamp duty: (a) all instruments evidencing a transfer or other transactions in respect of an equity interest or debt obligation in respect of a licensee; and (b) all transfers of other property to or by a licensee, in so far as it does not constitute transactions of property within the territory of Seychelles. |
| 5. Trade Tax Act                                 | 5. All furniture, stationery and equipment (including computers and communications equipment), for use by the licensee in its Seychelles office solely for its own licensed business purposes, shall be exempt from payment of any trades tax.   |
| 6. Goods and Services Tax Act                    | 6. The whole Act.  |
| 7. Immigration Decree                            | 7. A licensee shall be entitled to employ expatriate employees comprising up to 50 percent of its total number of employees; and there shall be an exemption from the requirement for payment of fees in respect of gainful occupation permits in respect of expatriate employees.   |
| 8. Exchange Control Act                          | 8. The whole Act.  |
| 9. Foreign Earnings (Regulations) Act            | 9. The whole Act.  |