



LESOTHO

Government Gazette

Vol. 59

Friday – 26th September, 2014

No. 57

CONTENTS

No. **Page**

ACT

12 Insurance Act, 2014..... 863

GOVERNMENT NOTICE

55 Statement of Objects and Reasons of the 964
Insurance Bill, 2014

OTHER NOTICES

(See Supplement of the Gazette)

Published by the Authority of His Majesty the King
Price: M82.00

ACT NO. 12 OF 2014

Insurance Act, 2014

Arrangement of Sections

Sections

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II - POWERS AND FUNCTIONS OF COMMISSIONER

3. Powers and functions of Commissioner
4. Annual report by Commissioner

PART III - REGISTRATION OF INSURER

5. Classification of insurance
6. Insurer to be public company resident in Lesotho
7. Registration of existing insurer
8. Registration of new insurer
9. Conditions attached to licence
10. Variation of conditions of licence
11. Restriction on name of insurer
12. Publication of issue, suspension or revocation of licence
13. Display of licence
14. Validity of licence
15. Renewal of licence
16. Refusal to issue or renew a licence
17. Surrender of licence
18. Revocation or suspension of licence
19. Effect of revocation or suspension of insurer's or insurance intermediary's licence
20. Delivery of licence to Commissioner
21. Review of revocation or refusal to register insurer

PART IV - CAPITALISATION, SOLVENCY
AND FINANCIAL RESOURCES

22. Capital requirements
23. Shares to be fully paid for in cash
24. Maintenance of financially sound condition
25. Solvency margin
26. Reserves
27. Value of assets to be held in Lesotho by short term insurer
28. Value of assets to be held in Lesotho by long-term insurer
29. Statement of assets
30. Valuation of assets of short-term and long-term insurer
31. Assets not to be pledged or encumbered
32. Liabilities to be recorded separately
33. Certain liabilities not to be incurred without approval
34. Statement of liabilities
35. Calculation of liabilities
36. Calculation of unmatured domestic policy liabilities in the case of short term insurance
37. Calculation of unmatured domestic policy liabilities in the case of long term insurance
38. Distribution
39. Prohibitions relating to advances and loans to connected persons

PART V - APPOINTMENT AND
RESPONSIBILITIES OF KEY EMPLOYEE

40. Appointment of key employee
41. Qualifications of key employee
42. Obligations of key employee
43. Conflict of interest
44. Suspension of key employee or insurer
45. Termination of appointment of key employee
46. False and misleading statements
47. Responsibilities of key employee
48. Responsibilities of board of directors

PART VI - OBLIGATIONS OF AND
RESTRICTIONS ON INSURER

49. Insurer to carry on insurance business only
50. Insurer to carry on insurance business in accordance with business plan
51. Trading in derivatives
52. Head office or registered office
53. External insurer to appoint representative
54. Authorisation to open representative office
55. Disposal or acquisition of significant interest in an insurer
56. Disposal or acquisition of significant interest in external insurer
57. Prohibition on payment of commission to unlicensed insurance intermediary
58. Internal control and culture
59. Essential elements of sound internal control system
60. Internal audit of control system
61. Approval of arrangements of reinsurance by Commissioner
62. Reinsurance statements and documents to be filed
63. Reinsurance of risks outside Lesotho
64. Assessment of policies

PART VII - ACCOUNTS AND AUDIT

65. Preparation and submission of financial statements, reports, returns etc
66. Appointment of auditor
67. Accounts and audit provisions of the Companies Act

PART VIII - APPOINTMENT AND
RESPONSIBILITIES OF ACTUARY

68. Appointment of actuary

PART IX - REGISTRATION
OF INSURANCE INTERMEDIARY

69. Categories of insurance intermediaries
70. Prohibition on unlicensed business as insurance intermediary
71. Registration of existing insurance intermediary
72. Registration of new insurance intermediary
73. Registration requirements for insurance intermediary

- 74. Restrictions on persons who may be licensed
- 75. Status of personnel of insurance broker
- 76. Maintenance of professional indemnity policy
- 77. Maintenance of deposits
- 78. Conduct of brokerage business
- 79. Provisions of insurer licence applicable to intermediary licence
- 80. Revocation of registration of insurance intermediary
- 81. Surrender of licence
- 82. Maintenance of capital
- 83. Accounts and audit
- 84. Collection of premiums by insurance broker
- 85. Commissions to insurance agent and insurance broker
- 86. Merger, sale, transfer and takeover of insurance intermediary
- 87. Liquidation and winding up of insurance broker

PART X - SUPERVISION OF INSURER AND INSURANCE INTERMEDIARY

- 88. Interpretation
- 89. Inspection
- 90. Duties of relevant persons, directors and employees in relation to inspection
- 91. Report on inspection
- 92. Power of Commissioner to gather information
- 93. Examination under oath
- 94. Provision of assistance to foreign regulatory authority
- 95. Search warrant
- 96. Appointment of inspector to conduct investigation
- 97. Order of court

PART XI - ENFORCEMENT PROVISIONS

- 98. Enforcement action
- 99. Directives
- 100. Advertisements
- 101. Change of name
- 102. Directive to change name by Commissioner
- 103. Filing of returns and reporting of information to the Commissioner
- 104. Defective returns

-
105. Insurer or insurance intermediary to notify Commissioner of any judgement

PART XII - MERGER, SALE, TRANSFER
AND TAKEOVER BY INSURER ETC.

106. Merger, sale, transfer and takeover by insurer etc.
107. Details of scheme
108. Service of notices
109. Compromise with creditor under section 78 of the Companies Act by insurer

PART XIII - LIQUIDATION AND JUDICIAL MANAGEMENT

110. Winding up and Judicial Management

PART XIV - ABANDONED PROPERTY

111. Unclaimed funds and property
112. Reports and disposition
113. Failure to make a report or payment

PART XV - OFFENCES AND PENALTIES

114. General offences and penalties
115. Penalty for failure to submit certain document or to furnish certain information
116. False or misleading representations, statements, reports or returns
117. Penalty for failure to comply with certain financial requirements
118. Other offences
119. Powers of court

PART XVI - MISCELLANEOUS

120. Prohibition of transacting certain business with or securing certain business for unregistered concern
121. Restriction on use of certain names and terms
122. Incorporation, use and change of name of company
123. Change or alteration
124. Use and change of registered name

- 125. Request for information
- 126. Use of prescribed forms
- 127. Registers
- 128. Inspection of registers and information held by Commissioner
- 129. Fees payable to Commissioner
- 130. Power of Commissioner to extend time periods
- 131. Restrictions on disclosure of information
- 132. Right of appeal to Financial Institutions Tribunal
- 133. Notices
- 134. Regulations
- 135. Code of Practice
- 136. Market conduct rules
- 137. Transitional provisions
- 138. Savings
- 139. Repeals

SCHEDULE 1 - CLASSES OF INSURANCE BUSINESS

PART A - Classes of Long Term Business

PART B - Classes of General Business

PART C - Classes of Micro-Insurance

ACT NO. 12 OF 2014

Insurance Act, 2014

An Act to make provision for the consolidation, administration, supervision, regulation, control, protection and development of insurance business, and for incidental matters.

Enacted by the Parliament of Lesotho.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Insurance Act, 2014 and shall come into operation on the date of its publication in the Gazette, except that different dates may be appointed by the Minister for different provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires-

“accounting records” includes books, vouchers, invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and such working papers and other documents as are necessary to explain the methods and calculations by which financial statements are made up and such other documents as may be prescribed;

“actuary” means a person having an actuarial qualification and a member of a professional actuarial body or institute recognised as such by the Commissioner under section 68;

“approved securities” means securities issued by Government and such other securities or investments as the Commissioner may approve;

“auditor” means a member of the Lesotho Institute of Accountants certified to provide auditing functions recognised by the Institute or a member of any other professional body as the Commissioner may approve;

“class” means a class of insurance business specified in Schedule 1;

“capital” means -

- (a) in the case of a company with share capital, its fully paid-up share capital; and
- (b) in the case of a mutual company, its uncommitted reserves;

“code” means a code of practice issued by the Commissioner under section 135;

“Commissioner” means the Central Bank of Lesotho continued into existence by the Central Bank Act, 2000¹ ;

“company” has the meaning assigned to it in section 2(1) of the Companies Act, 2011² ;

“derivatives” means a financial instrument whose value is based on the performance of underlying assets such as stocks, bonds, currency exchange rates and real estate;

“external insurer” means an insurance company incorporated under the laws of any other country than Lesotho provided such any insurer is regulated by an authorised supervisor of that other country;

“facultative reinsurance” means a type of reinsurance whereby each and every offer of reinsurance is considered individually by the reinsurer who has the option either to accept or to reject the offer;

“financial statement” in relation to an insurer and to a financial year means -

- (a) a statement made in accordance with the International Financial Reporting Standards (IFRS);
- (b) a statement of cash flows for an insurer in relation to a financial year;
- (c) such statement relating to the prospects for the business of an insurer as may be specified by prescribed ac-

counting standards; and

- (d) such other statements as may be prescribed.

“financial year” in relation to this Act, means each period of 12 months beginning on 1st January and ending on 31st December of each year and includes any lesser or greater periods as the Commissioner may approve;

“funeral policy” means a contract of insurance whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide, on the death of any person, benefits to be determined by the Commissioner by regulations;

“Government” means Government of the Kingdom of Lesotho;

“gross liability” means the liability assessed by an actuary at a valuation made by him or her and approved by the Commissioner;

“gross premium” means premium after deduction of discounts, refunds and rebates of premium but before deduction of any premium paid or payable by any insurer for reinsurance ceded and includes premiums receivable by the insurer under reinsurance contracts accepted by that insurer and any premium in respect of annuity contracts;

“insolvency” has the meaning assigned to it under the Insolvency Proclamation, 1957³;

“insurance agent” means a person appointed and authorised by an insurer to solicit applications for insurance or negotiate for insurance business on behalf of the insurer and to perform such other functions as may be assigned to him or her by the insurer but does not include an individual who is a salaried employee of the insurer;

“insurance broker” means a person who is licensed to act as an independent contractor or consultant for commission or other compensation, and not being an agent of an insurer, carries out any of the following activities -

- (a) the soliciting or negotiating of insurance business, including the renewal and continuance of such business,

on behalf of an insured or a prospective insured other than himself or herself;

- (b) the bringing together, either directly or through the agency of a third party, with a view to the insurance of risks of persons seeking insurance and insurers, and carries out work preparatory to the conclusion of contracts of insurance;

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

“insurance company” means a public company incorporated under the laws of Lesotho and licensed under this Act to carry out insurance business;

“insurance intermediary” means an insurance broker, insurance agent, insurance loss adjuster, insurance loss assessor or risk consultant registered under this Act;

“insurance loss adjuster or loss assessor” means a person who, for commission or other compensation, including a salary, investigates and negotiates settlement of claims under insurance contracts solely on behalf of either an insurer or insured but does not include an insurance agent who is authorised to settle claims on behalf of the insurer for whom he acts as an agent;

“insurer” means a person, including an association of underwriters and reinsurers, who carries on, or holds himself, herself or itself out as carrying on insurance business, other than an insurance intermediary registered under this Act;

“key employee” includes a managing director, chief executive officer, chairman of the board of directors, director, president, principal officer, chief financial officer or treasurer and their deputies or equivalents and any other person who occupies the same level of management or holds a position of decision making;

“life insurance business” means the business of assuming the obligations of an insurer classified under section 5 as transacting long term insurance business;

“life insurance fund” means a fund established under a particular life business, receipts from which are used by an insurer in respect of that life business only;

“life policy” means a contract of insurance made or agreed to be made by an insurer classified under section 5 as transacting long term business;

“micro-insurance” means an insurance that is accessed by the low income population and is provided by variety of different entities, but run in accordance with generally accepted insurance policies;

“management expenses” means expenses incurred by an insurer in the administration of an insurance business which are not commission payable and, in the case of general insurance business, are not incurred in claims paid, claims outstanding, or expenses for settling claims outstanding;

“Minister” means the minister responsible for finance;

“net premiums” means the balance of gross premium after deduction from the gross premium of any premium paid or payable by an insurer for reinsurance ceded;

“net liability” means the liability assessed by an actuary at a valuation made by him and approved by the Commissioner;

“person” includes a juristic person;

“place of business” means the principal office or any branch office of an insurer or an insurance intermediary open to the public and is located in Lesotho;

“policyholder” means a person who is the owner of a policy and, for the time being, has the legal title to the policy and includes any person to whom a policy is for the time being assigned;

“policy” means a contract of insurance, irrespective of the form in which the rights and obligations of the parties are expressed or created, including a writing where any valid contract of insurance is made or agreed to be made;

“prescribed” means prescribed by regulations under section 134;

“principal officer” means a person responsible for the daily management of a principal office in Lesotho of an insurer or insurance intermediary;

“regulations” means regulations made by the Minister under section 134;

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

“reinsurance business” means the business of undertaking liability to pay money to reinsurers in respect of insurance business incurred by insurers or reinsurers and includes a retrocession;

“risk consultant” means a person who advises his client or employer with regard to a programme of minimising losses arising through unforeseen events and of minimising the cost of such protection by physical or financial means through insurance or other means;

“rules” means market conduct rules issued by the Commissioner under section 136;

“scheme” means a scheme for merger, sale, transfer, takeover or any other similar arrangement that an insurer may enter into under section 107;

“short term insurer” means an insurer authorised by its licence to carry on any class of short term insurance business;

“subsidiary” has the meaning set out in the Companies Act, 2011;

“treaty reinsurance” means a reinsurance under which a ceding company agrees to cede and a reinsurer agrees to accept all reinsurances offered in accordance with the terms of a treaty agreement;

“trustee” in relation to an estate in insolvency, includes an assignee or a trustee in a deed of arrangement of a person having the conduct of an order of composition;

“underwriter” includes a person named in a policy or other contract of insurance as liable to pay or contribute towards the payment of the sum secured by the policy or contract.

PART II - POWERS AND FUNCTIONS OF COMMISSIONER

Powers and functions of Commissioner

3. (1) The Commissioner shall be responsible for the general administration and enforcement of this Act, and for that purpose -

- (a) shall ensure effective supervision, regulation, control and protection of insurance business;
- (b) may appoint technically qualified personnel for the effective administration of this Act.

(2) In furtherance of the satisfactory performance of his responsibility under subsection (1) and the functions related to him, the Commissioner shall perform the following functions and duties and any others under this Act -

- (a) registration and renewals for insurers and insurance intermediaries;
- (b) formulation and enforcement of appropriate directives and codes of standards in the conduct of the insurance business, at all levels and for all categories of insurance and service providers in the insurance market;
- (c) regulation and control, offering advice and guidance to insurers and insurance intermediaries on matters involving insurance underwriting and claims business in general;
- (d) promoting healthy competition and sound business cooperation within the local insurance market, and also

ensuring fair and adequate protection for the insurance business;

- (e) advising the Minister on regulations and policies on matters relating to the sound development and growth of insurance industry;
- (f) offering protection, enlightenment and guidance to policyholders and the public in matters of insurance policies and their application or implications;
- (g) advising Government and all parastatal authorities on the essence and the need for adequate insurance coverage and security for all national strategic assets and properties against any contingencies or risks;
- (h) monitoring compliance by insurers and insurance intermediaries with legislation relating to money laundering and financing of terrorism;
- (i) monitoring insurance business and to take action against persons carrying on the business without a licence;
- (j) establishing standards for the conduct of insurance business for compliance by insurers and insurance intermediaries;
- (k) monitoring the effectiveness of this Act and the regulations in enabling, and providing for, the supervision of insurance business and the business of insurance intermediaries in accordance with internationally accepted standards;
- (l) making recommendations to Government concerning -
 - (i) amendment or revision of this Act, regulations or any other law relating to insurance business;
 - (ii) enactment of new legislation relating to insurance business; or

-
- (iii) proposals made otherwise than by the Commissioner in respect of matters specified in subparagraphs (i) and (ii);
 - (m) maintaining contact and developing relations with foreign insurance supervisors, international and regional associations of insurance supervisors and other international and regional associations or groups relevant to the functions of the Commissioner and, maintaining a general review of internationally accepted standards for the supervision of insurance business;
 - (n) providing regulatory assistance to foreign regulatory authorities in accordance with this Act; and
 - (o) providing such information and advice to licencees and the public concerning insurance including insurance intermediaries as the Commissioner considers appropriate.

(3) The Commissioner may take into account any matter which he considers to be appropriate but shall, in particular, have regard to the protection of the public against financial loss arising out of dishonesty, incompetence, malpractice or insolvency of persons -

- (a) engaged in insurance business; or
- (b) acting as insurance intermediaries.

(4) The Commissioner may, by notice published in the Gazette, determine the minimum and maximum commission rates payable by insurers to other insurers, brokers or agents in respect of all or any class of insurance, whether insurance or reinsurance.

(5) The Commissioner may, by notice in writing, require an insurer to deposit with the Commissioner, within such time as the Commissioner may consider reasonable, such securities as the Commissioner may stipulate in the requisition in respect of any or each class of insurance business being carried on by that insurer.

(6) After consideration of the extent and duration of a business carried on by an insurer and a provision generally made for management expenses in the premium rates of insurers, the Commissioner may, by notice published in the Gazette -

- (a) require an insurer to limit its management expenses to an amount contained in the notice;
- (b) in writing to an insurer, allow dispensation from the provisions of paragraph (a) to any other amount and for any period as the Commissioner may consider reasonable, except that such period shall not exceed 2 consecutive years.

Annual report by Commissioner

4. The Commissioner shall, within 6 months after the end of each year ending on 31st December, furnish to the Minister a report on the enforcement of the Act during that year, together with summaries of annual returns of insurers and insurance intermediaries deposited with the Commissioner during that year.

PART III - REGISTRATION OF INSURER

Classification of insurance

5. (1) For the purposes of this Act, insurance business is divided into long-term, short-term and micro-insurance business.

(2) Subject to subsection (3) -

- (a) “long-term insurance business” means a life insurance business comprising of all types of life policies of a class specified in Part A of Schedule 1;
- (b) “short-term insurance business” means a general business which is non-life insurance of a class specified in Part B of Schedule 1; and
- (c) “micro insurance” means all types of micro-insurance business specified in Part C of Schedule I.

(3) Notwithstanding subsections (1) and (2), if the Commissioner is satisfied that any part of the business of an insurer ought to be treated as belonging to a different type or class of insurance business other than that provided for in Schedule I, the Commissioner may direct, in writing, that part of the business be so treated for the purposes of this Act, regulations, the code and rules.

(4) Where an insurer or a person applies for registration as an insurer, and the Commissioner does not agree as to the class to which any class of insurance business belongs, or if such insurer or person so requests, the Commissioner shall determine the class under which such business shall be dealt with.

Insurer to be public company resident in Lesotho

6. (1) Subject to section 9, no person shall knowingly or intentionally operate an insurance business unless the person is registered as an insurer and is incorporated as a public company under the Companies Act, 2011 or under the law of any other country and has obtained a licence from the Commissioner.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine of M500,000.00 or to imprisonment for 10 years or to both.

Registration of existing insurer

7. (1) An insurer registered to carry on insurance business under the Insurance Act, 1976⁴ shall, on the date on which this Act comes into operation, be deemed to have been registered under this Act.

(2) Subject to subsection (1), an existing insurer deemed to have been registered under this Act, shall, upon renewal of his licence, be registered in accordance with this Act.

Registration of new insurer

8. (1) A person who intends to carry on any class of insurance business shall, subject to this Act, apply to the Commissioner for registration.

(2) An application for registration referred to in subsection (1) shall -

- (a) be in writing and made in such a manner and form as may be prescribed by the Commissioner;
- (b) state the address of the place of business of the applicant;
- (c) state the names and addresses of persons holding five per cent or a higher percentage of the share capital of the applicant and the number of shares allotted to each such person;
- (d) be accompanied by -
 - (i) a certified copy of documents of incorporation of the company or, in the case of a foreign insurance company, such similar documents relating to its incorporation;
 - (ii) a list of names, addresses and occupations of persons constituting its board of directors and key employees, and, where the applicant is a foreign insurance company, the name and address of the principal officer in Lesotho and the name and address of one person resident in Lesotho who is authorised to accept any notice required to be served upon the applicant;
 - (iii) a statement of the class of insurance business for which the applicant seeks to be registered;
 - (iv) a statement duly certified by an auditor that the relevant capital requirements specified in section 22 has been complied with by the applicant;
 - (v) an original copy of the premium rates, rating plans, rules and the standard policy forms of each class or subclass of insurance business to be carried out by the applicant duly verified and signed by the principal officer;

-
- (vi) if the applicant intends to carry out long-term insurance business, a statement on -
 - (aa) the basis of calculations of premium rates;
 - (bb) the calculation of non-forfeiture values;
 - (cc) the method of distributing profits to policyholders and shareholders;
 - (vii) a statement showing particulars of proposed reinsurance agreements;
 - (viii) a statement as to the prospective administrative costs and commission;
 - (ix) a statement showing qualification and experience in insurance business of the key employee of the applicant;
 - (x) a business plan -
 - (aa) including detailed financial projections which demonstrate medium-term viability and sufficient information on the financial resources of its founding directors to support the company through its initial stage;
 - (bb) describing how the company is to be organised and controlled internally, including its internal policies and procedures;
 - (xi) prescribed investigation and application fees; and
 - (xii) such documents, statements or information as the Commissioner may require.

(3) The Commissioner may, subject to section 9, issue an insurance licence to -

- (a) a public company incorporated under the Companies Act, 2011; or
- (b) an external insurer incorporated under the laws of any other country.

(4) When considering an application for registration, the Commissioner shall satisfy himself that -

- (a) subsection (3) is complied with;
- (b) the applicant intends to carry on insurance business and has a principal office in Lesotho;
- (c) the key employees who shall be engaged in the day-to-day management of the company are resident in Lesotho and are also persons who, in the opinion of the Commissioner, have insurance knowledge and experience as may be prescribed by regulations;
- (d) the applicant has complied with all the capital and financial requirements prescribed by this Act;
- (e) where the applicant is associated with one or more other persons, the relationship between the applicant and those persons shall not affect the effective supervision of the insurance business to the policyholders;
- (f) the organisation, management and financial resources of the applicant are adequate for the carrying on of the relevant insurance business;
- (g) key employees of the applicant are fit and proper persons to be engaged in the management of insurance business;
- (h) it will not be contrary to the public interest for the

applicant to carry on any class of insurance business;

- (i) the manner in which the applicant intends to carry on any class of insurance business is not likely to be inconsistent with the provisions of this Act, regulations, the code and the rules and sound insurance principles;
- (j) the memorandum of association and articles of association are not inconsistent with this Act and that the main objects of the company include the following -
 - (i) to carry on any class of insurance business and conduct all affairs relating to it in accordance with sound insurance practices and methods and this Act;
 - (ii) to, in so far as practicable, protect the interests of policyholders;
 - (iii) to, at all times, maintain a margin of solvency sufficient for the purposes of meeting all obligations to policyholders; or
- (k) the name under which the applicant intends to carry on any class of insurance business is not -
 - (i) identical to the name of any other insurer;
 - (ii) a name which so closely resembles the name of any other insurer that the one insurer is likely to be mistaken for the other;
 - (iii) a name which is likely to mislead the public.

Conditions attached to licence

9. (1) The Commissioner may issue a licence under section 8(3) subject to such conditions as he considers appropriate.

(2) The Commissioner may, by written notice, require an applicant,

either prior to the issue of a licence or as a condition of issuing the licence -

- (a) to increase its capital to an amount greater than the prescribed minimum; or
- (b) to maintain a solvency margin greater than the prescribed minimum.

(3) A notice under subsection (2) shall have the effect of a directive under section 22(3) or 25(8) upon the issuance of a licence to the applicant.

(4) Without limiting subsection (1), a licence may be restricted -

- (a) to reinsurance business; or
- (b) to insurance business, excluding reinsurance business.

(5) Where a licence is issued subject to a condition -

- (a) the Commissioner shall issue, together with the licence, a written notice specifying the condition; and
- (b) where, in respect of any condition, the Commissioner considers that it is in the public interest to do so, the Commissioner may state that condition on the licence.

Variation of conditions of licence

10. (1) The Commissioner may, upon giving written notice to a licensee -

- (a) vary or revoke a condition of a licence; or
- (b) impose new conditions on the licensee.

(2) An insurer may apply to the Commissioner, in writing, for a condition of a licence to be revoked or varied.

(3) Where, on an application made under subsection (2), the Commissioner is satisfied that a condition of a licence is no longer necessary or

should be varied, the Commissioner may revoke or vary the condition.

(4) Where the Commissioner revokes or varies a condition of a licence or imposes a new condition, the insurer shall, if requested to do so by the Commissioner, deliver its licence to the Commissioner for re-issue.

Restriction on name of insurer

11. A person shall not be registered as an insurer under a name which so closely resembles the name of an existing insurer as would be likely, in the opinion of the Commissioner, to mislead the public or cause confusion in the insurance market.

Publication of issue, suspension or revocation of licence

12. The Commissioner shall cause to be published in the Gazette -

- (a) a notice of licences issued under sections 9 and 10; and
- (b) a notice of suspension or revocation of a licence.

Display of licence

13. A copy of a licence issued under section 7, 8, 10, 72 or 73 shall be conspicuously displayed to the public at an office of the insurer or insurance intermediary.

Validity of licence

14. A licence is valid for a period of 5 years from the date of issue unless -

- (a) it is suspended, surrendered or revoked; or
- (b) a condition of a licence provides for any other period of duration.

Renewal of licence

15. (1) A licence may be renewed upon application to and approval by the Commissioner on payment of a prescribed renewal fee.

(2) The Commissioner may, in issuing or renewing a licence, impose conditions to be satisfied by an insurer.

Refusal to issue or renew a licence

16. Where an applicant does not meet the licensing requirements for registration or renewal and the Commissioner -

- (a) refuses to issue a licence; or
- (b) issues a licence but refuses to authorise any of the classes of insurance business specified in the application, the Commissioner shall notify the applicant, in writing, of his refusal, stating the reasons for the refusal.

Surrender of licence

17. (1) An insurer or insurance intermediary may apply to the Commissioner, in writing, to surrender its licence.

(2) Where an insurer intends to cease carrying on insurance business, the insurer shall, at least 90 days before the proposed cessation, apply to the Commissioner, in a manner and form as may be determined by the Commissioner, for surrender of the licence.

(3) The Commissioner may refuse an application under subsection (1) if, in his opinion -

- (a) the insurance liabilities of the insurer have not been discharged or transferred;
- (b) the surrender would not be in the best interests of the public or the insurer's policyholders or potential policyholders;
- (c) the insurer or insurance intermediary is in breach of this Act, regulations, the code or the rules; or
- (d) the licence should, for any other reason, be surrendered.

(4) Where the Commissioner approves an application under subsection (1), the Commissioner shall notify the insurer, in writing, and shall publish a notice of approval in the Gazette.

(5) A surrender shall under this section take effect from such a date as may be specified by the Commissioner in a notice.

(6) Where the Commissioner refuses to approve a surrender of a licence, the Commissioner shall notify the applicant, in writing, of its refusal, stating the reasons for the refusal.

Revocation or suspension of licence

18. (1) No insurer or insurance intermediary shall carry on an insurance business other than in connection with or for purposes of its insurance business or in accordance with a licence of the insurer or insurance intermediary.

(2) The Commissioner may, at any time and by notice published in the Gazette, revoke or suspend a licence of an insurer or insurance intermediary if -

- (a) the insurer fails to comply with or carries on the insurance business contrary to the provisions of this Act;
- (b) the insurer has ceased to carry on insurance business and the liabilities of the insurer in respect of insurance business have been satisfied or are otherwise provided for;
- (c) any claim upon the insurer arising in Lesotho under any policy of insurance remains unpaid for one month after final judgment in a court of law;
- (d) the margin of solvency as defined in section 25 is inadequate;
- (e) the insurer refuses to submit to inspection under section 89;
- (f) after appropriate investigations, there is reason to believe that the insurance business is not being conducted in

accordance with sound insurance principles;

- (g) the insurer makes default in complying with, or acts in contravention of any requirement of this Act, regulations, the code or rules;
- (h) the insurer fails to apply for renewal of licence within one month after its expiry;
- (i) the insurer has requested, in writing, the cancellation of the registration;
- (j) the Commissioner is entitled to take enforcement action against the insurer or insurance intermediary under section 98;
- (k) the insurer or insurance intermediary fails to commence the business for which it was licensed within 6 months of the licence being issued or ceases to carry on the business for which it was licensed; or
- (l) requested to do so by the insurer or insurance intermediary.

(3) Before suspending or revoking a licence under subsection (1), the Commissioner shall give written notice to the insurer or insurance intermediary stating -

- (a) the grounds upon which the Commissioner intends to revoke or suspend the licence; and
- (b) that unless the insurer or insurance intermediary, by written notice filed with the Commissioner, shows good reason why its licence should not be revoked or suspended, on a date not less than 14 days after the date of the notice.

(4) Where the Commissioner revokes or suspends a licence, he shall send a written notice to an insurer or insurance intermediary stating -

-
- (i) that the licence has been revoked or suspended;
and
 - (ii) the grounds upon which and the date on which
the licence has been revoked or suspended.

Effect of revocation or suspension of insurer's or insurance intermediary's licence

19. (1) Where a licence of an insurer or insurance intermediary is suspended or revoked, the insurer or insurance intermediary shall not, after the date of revocation or suspension -

- (a) enter into a new contract of insurance or solicit new insurance business; or
- (b) renew or vary a contract of insurance entered into before the commencement of this Act.

(2) A suspension or revocation shall take effect on the date stipulated in the notice of suspension or revocation.

(3) Where a licence is suspended or revoked, and an insurer remains under any liability in respect of any insurance policies, the insurer shall take such action as it considers necessary or as may be required by the Commissioner to ensure that reasonable provision is made for that liability and that adequate arrangements exist or will exist for payment of premiums and expenses on those policies.

(4) Where a licence of an insurance broker is suspended or revoked, and the broker remains under any liability in respect of any premiums, the insurance broker shall take such action as it considers necessary or as may be required by the Commissioner to ensure that reasonable provision has been or will be made for payment of such premiums to the insurer concerned and that adequate arrangements exist or will exist for payment of premiums to the insurer concerned.

Delivery of licence to Commissioner

20. An insurer or insurance intermediary shall deliver its licence to the Com-

missioner if -

- (a) the licence is suspended, revoked or surrendered; or
- (b) it is required by the Commissioner to do so.

Review of revocation or refusal to register insurer

21. The Commissioner may -

- (a) review a licence which was revoked; or
- (b) register a licence that was refused, if satisfied that the circumstances which warranted the revocation or refusal no longer exist, and the insurer or insurance intermediary has complied with any directives which may have been given by the Commissioner to rectify non-compliance.

PART IV - CAPITALISATION, SOLVENCY AND FINANCIAL RESOURCES

Capital requirements

22. (1) A person shall not be registered or carry on any insurance business unless the person has and maintains, at all times and while carrying on such insurance business, an unimpaired paid-up capital or assigned capital.

(2) The Commissioner may, for the purposes of subsection (1), prescribe different amounts in respect of long-term and short term insurance business.

(3) Where the Commissioner, having regard to the nature and extent of the insurance business carried on by an insurer, considers it appropriate, the Commissioner may direct the insurer to increase its capital to an amount greater than the prescribed minimum capital and shall specify a reasonable time period for compliance with the directive.

(4) Where the capital of an insurer falls below the amount that is re-

quired under subsection (1), the insurer shall notify the Commissioner in writing.

(5) An insurer who contravenes subsection (1) commits an offence and on conviction, in addition to a penalty set out under sections 117(1)(a), is liable to have its licence suspended or revoked.

Shares to be fully paid for in cash

23. (1) Subject to subsection (2), every share of an insurer issued on or after the commencement of this Act shall be fully paid for in cash.

(2) The Commissioner may, on the application of an insurer, authorise the insurer to issue one or more shares otherwise than in accordance with subsection (1).

Maintenance of financially sound condition

24. (1) An insurer shall, at all times, maintain its business in a financially sound condition by -

- (a) having assets;
- (b) providing for its liabilities; and
- (c) generally conducting its business so as to be in a position to meet its liabilities.

(2) If an insurer fails to comply with subsection (1), the insurer shall immediately notify the Commissioner in writing.

(3) Sections 22, 25, 26, 27 and 28 shall not limit the generality of this section.

Solvency margin

25. (1) For the purposes of this Act, a reference to approved assets includes a reference to any property, security, item or interest of a person but does not include a reference to -

- (a) an unsecured or, in the opinion of the Commissioner, in adequately secured loan;
- (b) an asset that is mortgaged or charged for the benefit of a person other than the insurer to the extent that it is so mortgaged;
- (c) a loan to, debenture of, or share in any insurer who is related to such a person;
- (d) an unpaid premium that became due to the insurer more than three months previously except in so far as that premium is secured under automatic non-forfeiture conditions against the surrender value of a life assurance policy;
- (e) a guarantee given to an insurer other than a bank guarantee issued by a bank licensed under the Financial Institutions Act, 2012 or a guarantee given by a reinsurer in the course of reinsurance transactions;
- (f) an intangible asset;
- (g) unsecured loans to intermediaries;
- (h) prepaid preliminary and organisational expenses;
- (i) such other assets as may be prescribed by regulations.

(2) For the purposes of this Act, a reference to approved liabilities of an insurer means liabilities shown as current, contingent and prospective liabilities in the accounts of an insurer and includes, in the case of long term insurance business, the liabilities in respect of the policies of long term insurance business.

(3) For the purposes of this Act, a reference to approved liabilities does not include a reference to -

- (a) a liability in respect of a share capital;

-
- (b) such other liabilities as may be prescribed by regulations.

(4) An insurer shall ensure that it maintains a solvency margin and approved assets in accordance with this section and as the Commissioner may, by regulations, determine.

(5) A solvency margin to be maintained by an insurer shall be not less than the greater of -

- (a) the solvency margin calculated in accordance with regulations; or
- (b) such solvency margin as the Commissioner may direct under subsection (4).

(6) Where an insurer requests the Commissioner to approve the whole or part of an asset excluded in subsection (1) as an approved asset, the Commissioner may, by notice in writing given to the insurer, approve the asset or such part of the asset as the Commissioner may determine.

(7) An insurer shall make adequate provision in its accounts for liabilities in respect of unexpired risks, outstanding and incurred claims, including provision for claims incurred but not reported, computed in accordance with a method approved by the Commissioner.

(8) Where, having regard to the nature and extent of the insurance business carried on by an insurer, the Commissioner considers it appropriate, the Commissioner may direct the insurer to maintain a larger solvency margin than that prescribed.

(9) A directive issued under subsection (8) shall specify a period for compliance with the directive.

(10) If the solvency margin of an insurer falls below the amount that it is required to maintain under subsection (4), the insurer shall immediately notify the Commissioner in writing.

(11) For the purposes of subsection (5), an insurer is deemed to be insolvent if the total value of its approved assets does not exceed the total amount

of its approved liabilities by at least the minimum margin of solvency that the insurer is required to maintain under this section.

Reserves

26. (1) An insurer shall establish and maintain the following reserves in respect of each class of insurance business -

- (a) reserves for unexpired risks;
- (b) reserves for outstanding claims;
- (c) contingency reserves to cover fluctuations in securities and variations in statistical estimates;
- (d) reserves for claims incurred but not reported; and
- (e) any other reserves that the Commissioner may prescribe to be established and maintained in respect of any class of insurance business.

(2) An insurer shall maintain such reserves in respect of short-term or general insurance and long-term or life insurance business as the Commissioner may by regulations prescribe and remember sequentially.

Value of assets to be held in Lesotho by short term insurer

27. (1) A short term insurer shall hold assets in Lesotho having such an aggregate value as may be prescribed by regulations.

(2) A short term insurer shall hold assets in Lesotho having such an aggregate value of not less than a total amount as may be prescribed by the Commissioner.

Value of assets to be held in Lesotho by long-term insurer

28. (1) A long term insurer shall hold assets in Lesotho having such an aggregate value as may be prescribed by the Commissioner.

(2) The assets required in terms of subsection (1) shall, subject to the

prescribed limits of investment in particular kinds or categories of assets, be assets of one or more of the kinds prescribed by regulations.

Statement of assets

29. (1) An insurer shall annually, within three months after the end of its financial year, submit to the Commissioner a statement of the assets held by the insurer as at the end of that financial year.

(2) A statement referred to in subsection (1) shall be prepared by the insurer concerned in such form as may be determined by the Commissioner.

Valuation of assets of short-term and long-term insurer

30. (1) Subject to section 31(2) and subsections (2) and (3) in the case of a short and long term insurers, the determination of the value of the assets of an insurer shall, for the purposes of section 27 and of a statement of assets referred to in section 29, be made by the insurer on such basis as the insurer considers the most reasonable and appropriate in any particular case, but, in the case of movable or immovable assets, such value shall not exceed the price that would be paid upon the sale of such assets between a willing buyer and willing seller as estimated by the insurer.

(2) In determining the value of assets in terms of subsection (1) -

- (a) the assets shall not include -
 - (i) any amount representing any payments made in advance in respect of expenses of administration, organisation or business extension;
 - (ii) the purchase price of any business, except the value of any property belonging to such business or any goodwill;
 - (iii) any debt owing to an insurer;
 - (iv) any amount representing an outstanding premium, irrespective of whether or not it has been debited to an insurance broker or is a

deferred installment of a premium;

- (b) the value of any outstanding premium or premiums debited to insurance brokers shall, subject to the provisions of paragraph (a)(iv), be shown at an amount which in the aggregate does not exceed the full amount of such premiums, reduced by -
 - (i) the amount or estimated amount of any commission which the insurer owes or is likely to become liable for in connection with such premiums;
 - (ii) the amount or estimated amount of the corresponding outstanding premiums under any reinsurances of the policies in question, less the corresponding commission payable under those reinsurances, as a liability in a statement of liabilities referred to in section 34;
 - (iii) a reserve, in an amount deemed by the Commissioner to be adequate, but not less than seven and a half per cent of the said full amount, to cover the risk of loss arising from non-receipt by the insurer of any such premium.

(3) Where, in the opinion of the Commissioner, a value determined in respect of an asset by an insurer is not a fair estimate, the value of such asset shall be the amount as determined by the Commissioner.

Assets not to be pledged or encumbered

31. (1) No person shall hold on behalf of an insurer, pledge, hypothecate or otherwise encumber an asset of an insurer, except with the prior written approval of the Commissioner and to the extent authorised by the Commissioner.

(2) Where an asset of an insurer is held, pledged, hypothecated or otherwise encumbered as contemplated in subsection (1), the value of that asset shall, for the purposes of this Act, be reduced proportionately to the extent to which it is so held, pledged, hypothecated or otherwise encumbered.

Liabilities to be recorded separately

32. An insurer shall identify the liabilities under domestic policies in respect of its long-term insurance business in Lesotho and those relating to any long-term insurance business carried on by it elsewhere, and such liabilities shall be stated separately in the accounts or other records of the insurer and in the statement of liabilities.

Certain liabilities not to be incurred without approval

33. An insurer shall not, without the prior written approval of the Commissioner -

- (a) borrow money; or
- (b) guarantee to discharge or bind himself or herself as surety for the discharge of the debts or other obligations of any person, except in terms of a guarantee policy.

Statement of liabilities

34. (1) An insurer shall annually, within three months after the end of its financial year, submit to the Commissioner a statement of the liabilities held by the insurer as at the end of that financial year -

- (a) in a case of short term insurer, signed by directors and duly certified by its auditor together with a written report by that auditor; and
- (b) in a case of long term insurer signed by directors and duly certified by its auditor and actuary together with a written report by that auditor and by that actuary.

(2) Notwithstanding subsection (1), an insurer shall, if so requested in writing by the Commissioner, submit a statement of its liabilities on a day to be specified by the Commissioner.

(3) The statement referred to in subsections (1) and (2) shall be prepared by the insurer in such form as may be determined by the Commissioner.

Calculation of liabilities

35. (1) Subject to subsection (2), the liabilities of an insurer shall, for the purposes of a statement of liabilities referred to in section 34, be calculated by the insurer and shall include -

- (a) the amount of its net liabilities under unmatured domestic policies calculated in accordance with section 37; and
- (b) an amount, estimated by the insurer, in respect of -
 - (i) claims under policies which had been intimated to the insurer or the agent of the insurer, but had not been paid by the insurer before the expiry of the financial year; and
 - (ii) income tax or any other tax which has not been finally assessed.

(2) Where the amount estimated by an insurer in respect of the liabilities referred to in paragraph (b)(ii) is, in the opinion of the Commissioner, not a fair estimate, the amount of such liabilities shall be determined by the Commissioner.

Calculation of unmatured domestic policy liabilities in the case of short term insurance

36. (1) The liability of an insurer under unmatured domestic policies in a short-term insurance business on any particular date shall be an amount calculated as the Commissioner may prescribe.

(2) The amount to be calculated for the purposes of subsection (1) shall be the amount of the premium to which an insurer was entitled under each such policy, after deducting the amount of any refund of premium, discount or other allowance made to the policyholder in his or her capacity as the policyholder, but without making any deduction in respect of commission, brokerage or other remuneration paid to an insurance broker or an agent of the insurer, reduced by -

- (a) an amount equal to the premiums paid by the insurer in

respect of any reinsurance business;

- (b) an amount approved by the Commissioner as representing the expenses incurred by the insurer in conducting short term insurance business, but which amount shall not exceed 20 percent of the amount obtained after the deduction in terms of paragraph (a);
- (c) such an amount as bearing the same ratio to the amount obtained after the deduction in terms of paragraph (b) as the expired part of the insurance period covered by such premium bears to the whole of the said period.

(3) Notwithstanding subsection (1), the Commissioner may, in writing, authorise or direct an insurer to adopt, for the purposes of calculating its liabilities under all unmatured domestic policies in any particular class or classes of short-term insurance business or part of such business, a different method of calculation which, in the opinion of the Commissioner, will provide a more accurate calculation of such liabilities, and the insurer shall thereupon adopt no other method in calculating such liabilities without the prior written approval of the Commissioner.

Calculation of unmatured domestic policy liabilities in the case of long term insurance

37. (1) In calculating the liabilities of an insurer under unmatured domestic policies of long-term insurance business, the insurer shall adopt any reasonable valuation basis which its actuary considers, according to generally accepted actuarial standards and principles, actuarially sound and which places a proper and adequate value on such liabilities having regard to the expected -

- (a) income from premiums payable to and investments made by the insurer;
- (b) expenses and benefits payable by the insurer in respect of the carrying on of his insurance business; and
- (c) rates of mortality and morbidity among the various persons whose lives are insured under policies issued by the insurer.

- (2) In the calculation of liabilities in terms of subsection (1) -
- (a) a policy shall not be treated as an asset; and
 - (b) the capitalised value of any bonuses standing to the credit of the owner of an unmaturred domestic policy on the date of calculation, and the capitalised value of any reduction of premiums which has been granted as a bonus or which has been obtained by the surrender of a bonus or by the giving of any valuable consideration or in any other way, shall be included in the liability of the insurer under such policy.

Distribution

38. (1) For the purposes of this section, “distribution”, in relation to distribution by a company to a shareholder, means -

- (a) a direct or indirect transfer of money or property, other than the shares of the company, to or for the benefit of the shareholder; or
- (b) the incurring of a debt to or for the benefit of a shareholder in relation to shares held by that shareholder and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness or by some other means.

(2) An insurer shall not make a distribution to a shareholder unless after the distribution -

- (a) its capital exceeds the capital that the insurer is required to maintain under section 22;
- (b) its solvency margin exceeds the solvency margin that the insurer is required to maintain under section 25;
- (c) it continues to meet the approved assets requirements specified in section 25(6); and

-
- (d) its reserves equal or exceed the reserves that the insurer is required to maintain under section 26.

Prohibitions relating to advances and loans to connected persons

39. (1) For the purposes of this section “connected persons”, in relation to an insurance means -

- (a) a firm, partnership, syndicate, association, company or other body of persons corporate or unincorporated in which it or any one or more of its affiliates, insiders or principal shareholders is interested as principal shareholder, owner, director, officer, partner, manager, agent or member; and
- (b) any persons related to the persons referred to in subparagraphs (a) and (b) as the Commissioner may determine.

(2) An insurer shall have in place policies approved by the board in respect of connected persons which -

- (a) clearly set out that -
 - (i) the insurer will avoid transactions with connected persons where reasonable alternative transactions are available;
 - (ii) no transaction with connected persons may be entered into without the approval of the board and satisfaction of the directors that the criteria set out in paragraph (b) has been satisfied.
- (b) establish the following criteria that will be met in cases where transactions with connected persons are being proposed -
 - (i) the transaction is at a value that does not exceed market value;

- (ii) the transaction has a benefit for the insurance company and the connected persons;
- (iii) the potential exposure of the insurer from the transaction is not material relative to its equity base.

PART V - APPOINTMENT AND RESPONSIBILITIES OF KEY EMPLOYEES

Appointment of key employee

40. (1) No insurer shall appoint a key employee without prior written approval of the Commissioner.

(2) An approval under subsection (1) may be granted on such conditions as the Commissioner considers fit.

(3) The Commissioner shall not grant an approval under subsection (1) unless it is satisfied that the person concerned is a fit and proper person to hold the proposed appointment.

Qualifications of key employee

41. (1) A person shall not be appointed as a key employee of an insurer if the person -

- (a) has contravened any law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of insurance or other services or the management of companies or against financial loss due to the conduct of discharged or undischarged insolvents;
- (b) has been convicted of an offence involving fraud, dishonesty or breach of trust;
- (c) has been found mentally incompetent to manage his or her affairs and has not recovered from such condition;

-
- (d) is, for more than two months, a delinquent without adequate cause as determined by the Commissioner, with respect to any loan, extension of credit, guarantee or other obligation to that person by any licensed institution for which that person is liable;
 - (e) is under suspension or removal from office by order or directive of the Commissioner pursuant to this Act;
 - (f) has engaged in any business practice appearing to the Commissioner to be deceitful or oppressive, or otherwise improper, or which otherwise reflects discredit on his method of conducting business;
 - (g) has an employment record which led the Commissioner to believe that the person carried out an act of impropriety in the handling of the business of his or her employer;
 - (h) has engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence and soundness of judgment;
 - (i) is an unrehabilitated insolvent; or
 - (j) in the opinion of the Commissioner, is not a fit and proper person to hold the office.

(2) A person who is a key employee of an insurer shall immediately cease to hold office upon -

- (a) becoming insolvent;
- (b) being convicted of an offence involving fraud, dishonesty or breach of trust;
- (c) being declared mentally incompetent in any official proceeding under the laws of Lesotho or elsewhere; or

- (d) being suspended or removed from office by order of the Commissioner pursuant to this Act.

(3) A person who has been a key employee of, or directly or indirectly concerned in the management of an insurer, the licence of which has been revoked, shall not, without the approval of the Commissioner, act or continue to act as a employee or indirectly concerned in the management of the insurer.

Obligations of key employee

42. (1) A key employee of an insurer, in exercising the powers and discharging the duties of his or her office shall -

- (a) be a fit and proper person to hold the particular position;
- (b) act honestly and in good faith to the best interests of the insurer; and
- (c) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) In determining whether a person is a fit and proper person under subsection (1), regard shall be had to the probity, competence and soundness of judgment of the person for fulfilling the responsibilities of that position, the diligence with which he or she is fulfilling or is likely to fulfill those responsibilities and whether the interests of policyholders or creditors or potential policyholders or creditors of insurers are or are likely to be jeopardised by the person holding that position.

Conflict of interest

43. (1) A key employee of an insurer who -

- (a) is a party to a material loan, contract or transaction, or a proposed material loan, contract or transaction with the insurer; or
- (b) has a material interest in or a material relation to, any person who is a party to a material loan, contract or

transaction, or a proposed material loan, contract or transaction with the insurer, shall disclose, in writing, to the insurer the nature and extent of the material interest or relation.

(2) The disclosure required by subsection (1) shall be made by the key employee when the matter or proposed contract comes or ought reasonably to come to the attention of the key employee.

(3) A general notice in writing to the board of directors by a key employee, disclosing at the time that person assumes or is appointed to office and from time to time, but in no event less than annually, every material, commercial, financial, agricultural, industrial or other business or family interest that such person has at the time, stating that the person is to be regarded as interested in any material contract between the insurer and any person named in the disclosure, shall be a sufficient declaration of material interest in relation to any such contract.

(4) A key employee who has a material interest or a material relation within the scope of subsection (1) or (3) shall leave any meeting at which the matter is discussed, and shall refrain from voting on any matter related to such a matter which becomes the subject of attention by the board of directors of the insurer:

Provided that such an interest, if so disclosed, shall not disqualify the interested director for purposes of constituting a quorum.

(5) For the purposes of subsections (1) and (3), an interest, loan, contract or transaction shall be material if it is material with reference to the wealth, business, or family interest of the person with the interest, and a person has material interest in any company of which the person is, directly or indirectly, a shareholder or equity holder with a ten percent or more interest in such company, or a key employee of that company.

(6) Where a key employee fails to disclose a material conflict of interest in accordance with this section, the Commissioner may, by written order, suspend the key employee from office for any period not exceeding one year.

Suspension of key employee or insurer

44. The Commissioner may, by written order, suspend from office for any period not exceeding one year, any key employee or an insurer who fails to take all reasonable steps to secure compliance by the insurer with the requirements of this Act:

Provided that before the suspension, the key employee is given a reasonable opportunity of being heard in their defence.

Termination of appointment of key employee

45. Where an insurer terminates the appointment of a key employee, the insurer shall, within 14 days of such termination, submit a written notification of the termination to the Commissioner.

False and misleading statements

46. A key employee or agent of an insurer who, with intent to deceive, makes any false or misleading statement or entry or omits any statement or entry that should be made in any book, account, report or statement of the insurer or obstructs or endeavours to obstruct the performance by an auditor of his duties in accordance with this Act, or a lawful inspection of the insurer by a duly authorised examiner appointed by the Commissioner, commits an offence.

Responsibilities of key employee

47. A key employee shall have responsibility for -

- (a) implementing strategies and policies approved by board of directors of the company of which he is an employee;
- (b) developing processes that identify, measure, monitor and control risk incurred by an insurer;
- (c) maintaining an organisational structure that depicts clear responsibilities, authority and reporting relationships;
- (d) ensuring that delegated responsibilities are effectively carried out;

- (e) setting appropriate internal control policies; and
- (f) monitoring the adequacy and effectiveness of an internal control system.

Responsibilities of board of directors

48. (1) A board of directors shall include in its activities -
- (a) periodic discussion with management concerning the effectiveness of the internal control system;
 - (b) a timely review of evaluations of internal controls made by management, internal and external auditors;
 - (c) periodic efforts to ensure that management has promptly followed up on recommendations and concerns expressed by auditors or the Commissioner on internal control weaknesses; and
 - (d) a periodic review of the appropriateness of the financial strategy of an institution and risk limits.
- (2) A board of directors of an insurance company shall manage and supervise the management of the company in accordance with this Act and applicable international best practices, codes and standards.

PART VI - OBLIGATIONS OF AND RESTRICTIONS ON INSURERS

Insurer to carry on insurance business only

49. No insurer shall carry on any business or activities, whether in Lesotho or elsewhere, other than in connection with or for the purposes of its insurance business.

Insurer to carry on insurance business in accordance with business plan

50. (1) The Commissioner may, at any time, request an insurer to file -

- (a) a business plan clearly stating the assumptions underlying the plan, and an insurer shall carry on its business in accordance with the most recent business plan submitted to and approved by the Commissioner;
 - (b) an attestation by an auditor in respect of a short-term insurer or actuary in respect of a long-term insurer to the effect that in the opinion of the auditor or actuary the assumptions underlying the plan are reasonable and that the auditor or actuary is not aware of any reason why the plan cannot not be achieved.
- (2) An insurer may, at any time, submit an amended business plan together with an application to the Commissioner for approval.
- (3) On receipt of the application, the Commissioner may require the insurer to provide it with such further information or documentation as he may require to assess the application.
- (4) The Commissioner may refuse to approve an amended business plan or may approve it subject to such conditions as it may consider appropriate.

Trading in derivatives

51. An external insurer shall not, without the written approval of the Commissioner, invest or trade in derivatives, other than derivatives which are approved assets.

Head office or registered office

52. (1) An insurer shall establish and maintain its head office or registered office in Lesotho.

(2) An insurer shall notify the Commissioner of the address of its head office or of its registered office.

(3) If the address of the head office or the registered office of an insurer changes, the insurer shall notify the Commissioner of the new address within 14 days of the change.

External insurer to appoint representative

53. (1) For the purposes of this section, “external insurer”, means an insurance company incorporated under the laws of any other country and the insurer is regulated by an authorised supervisor of that other country.

(2) An external insurer shall appoint, and at all times have, a representative approved by the Commissioner who is authorised to act generally on behalf of the insurer and to accept service of any documents on behalf of the insurer.

(3) A representative appointed by an external insurer under subsection (1) shall be responsible for submitting to the Commissioner any documents required to be submitted under this Act or regulations.

Authorisation to open representative office

54. An insurer shall not open, maintain or carry on an insurance business through a representative, branch or contact office outside Lesotho unless it has obtained written approval of the Commissioner.

Disposal or acquisition of significant interest in an insurer

55. (1) A person who owns or holds a significant interest in an insurer shall not sell, transfer, charge or otherwise dispose of his or her interest in the insurer, or any part of his or her interest, without written approval of the Commissioner.

(2) A person shall not, whether directly or indirectly, acquire a significant interest in an insurer without written approval of the Commissioner.

(3) An insurer shall not, without written approval of the Commissioner -

- (a) cause, permit or acquire a right or an interest in a sale, transfer, charge or other disposition referred to in subsection (1);
- (b) issue or allot any shares or cause, permit or acquire a right or an interest in any other reorganisation of its share

capital that results in -

- (i) a person acquiring a significant interest in the insurer; or
- (ii) a person who already owns or holds a significant interest in the insurer, increasing or decreasing the size of his or her interest.

(4) An application to the Commissioner for approval under subsection (1), (2) or (3) shall be made, in writing, by the insurer.

(5) The Commissioner shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition of disposal -

- (a) the insurer will continue to meet the criteria for licensing specified in section 10; and
- (b) any person who will acquire a significant interest is a fit and proper person to have an interest in an insurer.

(6) An approval under subsection (1), (2) or (3) may be granted by the Commissioner on such terms and conditions as he may consider fit.

Disposal or acquisition of significant interest in external insurer

56. An external insurer shall notify the Commissioner, within the prescribed period of time, if -

- (a) a person who owns or holds a significant interest in the insurer sells, transfers, changes, or otherwise disposes of his or her interest in the insurer, or any part of his interest; or
- (b) a person, whether directly or indirectly, acquires a significant interest in the insurer.

Prohibition on payment of commission to unlicensed insurance intermediary

57. Subject to any regulations made in relation to payment of commission, no insurer shall pay any commission to an insurance intermediary that is not licensed under Part IX.

Internal control and culture

58. A board of directors and key employee are responsible for promoting high ethical and integrity standards, and establishing a culture within an organisation that emphasises and demonstrates to all levels of personnel the importance of internal controls and, to this effect shall, by administrative guidelines, ensure that adequate and effective system of internal controls is established and maintained.

Essential elements of sound internal control system

59. An internal control system of an insurer shall, among other things, include, as a minimum -

- (a) risk recognition and assessment;
- (b) control activities such as top level reviews, activity controls, physical controls, risk exposure, approvals and authorisation, verifications and reconciliations;
- (c) appropriate segregation of duties and responsibilities;
- (d) adequate and comprehensive internal financial, operational and compliance data, as well as external market information;
- (e) reliable management information systems which shall be secure, monitored independently and supported by adequate contingency arrangements;
- (f) effective channels of communication - upward, downward and across the organisation; and

- (g) continuous monitoring and evaluation of the effectiveness of the internal control system.

Internal audit of control system

60. An insurer shall establish an effective and comprehensive internal audit of the internal control system carried out by operationally independent, appropriately trained and competent staff as may be prescribed by regulations.

Approval of arrangements of reinsurance by Commissioner

61. (1) For the purposes of this section, “business as an insurer” means -

- (a) in the case of a Lesotho licensed insurer, its entire business; and
- (b) in the case of an external insurer, its domestic business.

(2) An insurer shall make arrangements by way of treaty or facultative, approved by its board of directors in accordance with regulations for the reinsurance of liabilities in respect of risks insured by the insurer in the course of its business as an insurer.

(3) The Commissioner may, by written notice, exempt reinsurance contracts of a type specified in the notice from the requirements for approval under subsection (2).

(4) The insurer shall, subject to subsection (2), submit a written selection criterion supporting the selected reinsurance company together with attestation from the insurer that due diligence was undertaken in ensuring that the selected company is financially stable.

Reinsurance statements and documents to be filed

62. (1) An insurer shall, on or before such date each year as may be determined by the Commissioner, for that insurer, file with the Commissioner statements setting out such details as to its reinsurance arrangements as may be prescribed.

(2) The statement filed under subsection (1) shall be accompanied by a copy of every reinsurance agreement referred to in the statement.

Reinsurance of risks outside Lesotho

63. (1) Subject to subsection (2), an insurer shall not enter into a contract of reinsurance, as the reinsurer, with any person other than another insurer.

(2) Subsection (1) does not apply to an insurer whose licence is restricted to reinsurance business.

Assessment of policies

64. (1) An insurer shall not have a new insurance policy in place unless the Commissioner has given a written approval of the policy.

(2) An insurer wishing to have a new policy shall submit the policy to the Commissioner for assessment.

(3) Where the provisions of a policy are, in the opinion of the Commissioner contrary to the interests of the public, the Commissioner may require the policy to be amended or the product to be withdrawn from the market.

PART VII - ACCOUNTS AND AUDIT

Preparation and submission of financial statements, reports, returns etc.

65. An insurer or insurance broker shall prepare financial statements, reports and annual return for each financial year that comply with the prescribed accounting standards which shall be submitted to the Commissioner in such form and manner as may be prescribed.

Appointment of auditor

66. (1) An insurer shall, subject to the approval of the Commissioner and regulations made in relation to the appointment, power, functions and duties of an auditor, appoint, and at all times have, an auditor for its business in Lesotho and shall notify the Commissioner in writing within 14 days of such appointment.

Accounts and audit provisions of the Companies Act

67. Except to the extent that this Act and regulations provide otherwise, PART VII does not limit the application of the provisions of the Companies Act 2011 relating to accounts and audit of an insurer that are subject to the Companies Act.

PART VIII - APPOINTMENT AND RESPONSIBILITIES OF ACTUARY

Appointment of actuary

68. (1) A long term insurer shall, subject to the written approval of the Commissioner and regulations made in relation to an actuary, appoint, and at all times have, an actuary for the purposes of this Act.

(2) The Commissioner shall not approve the appointment of an actuary under subsection (1) unless he is satisfied that the individual concerned has sufficient experience and is competent to act as actuary of a long-term insurer.

(3) A long-term insurer shall, within 14 days of -

(a) the appointment of his actuary; or

(b) a person ceasing to be his actuary,

submit a notice to that effect, in writing, to the Commissioner.

(4) Where for any reason, a person ceases to be an actuary of a long-term insurer, the long-term insurer shall not be in breach of subsection (1), in appointing another qualified actuary within 6 weeks of the date that person who was previously appointed actuary ceases to hold that appointment.

PART IX - REGISTRATION OF INSURANCE INTERMEDIARY

Categories of insurance intermediaries

69. A licence of an insurance intermediary shall be issued in one of the fol-

lowing categories -

- (a) insurance broker;
- (b) insurance agent;
- (c) insurance loss adjuster;
- (d) insurance loss assessor; or
- (e) insurance risk consultant.

Prohibition on unlicensed business as insurance intermediary

70. (1) No person shall, after the expiry of three months from the commencement of this Act, carry on business as, or hold himself out as carrying on business as, an insurance intermediary in or from Lesotho unless that person -

- (a) is registered to carry a business in the category set out in section 69 and in accordance with this Act; or
- (b) has not been suspended under section 80.

(2) For the purposes of subsection (1), but without limiting that subsection, a person carries on business as an insurance intermediary in Lesotho if -

- (a) he or she for such purposes occupies premises in Lesotho; or
- (b) in a case of an insurance broker, the applicant is a company incorporated under the Companies Act 2011.

(3) Regulations may exempt from the application of this section, either generally or in respect of such activities as may be specified -

- (a) a person whose business as an insurance intermediary is incidental to some other business and is confined to the insurance of goods or services sold by that person;

- (b) the sale of a policy of insurance as part of a contract to provide goods or services;
- (c) such other activities as may be prescribed.

Registration of existing insurance intermediary

71. (1) An existing insurance intermediary registered to carry on insurance business in Lesotho under the Insurance Act, 1976 shall, on the date of commencement of this Act, be deemed to have been registered under this Act.

(2) Subject to subsection (1), an existing insurance intermediary deemed to have been registered under this Act shall, upon renewal of its licence, be registered in accordance with the provisions of this Act.

Registration of new insurance intermediary

72. (1) An application for a licence as an insurance intermediary may be made in writing to the Commissioner and shall -

- (a) state the category of licence for which application is made;
- (b) where the application is for a licence to act as an insurance agent or an insurance broker, state the type and the class or classes of business in respect of which the applicant wishes to be authorised.

(2) An application for a licence to act as an insurance agent shall be supported by a letter from the insurer with which the applicant is or will be contracted.

(3) The Commissioner may make such amendments to an application as it considers necessary to ensure that it complies with the requirements of this Act.

Registration requirements for insurance intermediary

73. (1) Subject to section 74, the Commissioner may issue a licence to an applicant under section 72, if satisfied that -

-
- (a) in the case of an insurance broker, the applicant -
 - (i) is a company registered under the Companies Act;
 - (ii) has an acceptable and properly managed office in Lesotho;
 - (iii) has key employees who handle the day-to-day management of the company resident in Lesotho;
 - (iv) has complied with all capital and financial requirements including bank deposits under this Act;
 - (v) complied with the qualifications prescribed by regulations for a key employee of a broker;
 - (vi) has ensured that the relevant trust accounts will be operated;
 - (vii) has submitted a copy of an agreement between the insurance broker and insurer to solicit business on behalf of such insurer;
 - (b) a key employee of the insurance intermediary is a fit and proper person under the Insolvency Proclamation;
 - (c) the applicant intends to carry on insurance business, if issued with a licence as an insurance intermediary in Lesotho;
 - (d) the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act, regulations, the code and rules;
 - (e) the organisation, management and financial resources of the applicant are adequate for an insurance intermediary in the relevant category;

- (f) the name of the applicant does not suggest that the applicant is carrying on insurance business as an insurance intermediary in a different category to that which he or she is applying;
- (g) the issuing of the licence is not against public interest; and
- (h) the applicant -
 - (i) is not seeking to be registered under a name identical to the name of any other person registered in terms of this Act or a name so closely resembling the name of any such person as to be mistaken for it;
 - (ii) is not an unrehabilitated insolvent;
 - (iii) has not been convicted by any court of law of any offence involving dishonesty, or of an offence in terms of this Act, for which the applicant has been imprisoned without the option of a fine;
 - (iv) has, in the case of an application for registration as an insurance broker, not entered into an agreement relating to the preferential offer of long-term insurance business with any other person carrying on long-term insurance business so as to impair his or her impartiality in operating long-term insurance business.

(2) Subject to the provisions of subsection (1), the Commissioner shall, after having satisfied himself as contemplated in subsection (4), register the insurance intermediary to carry on insurance business under the category in respect of which registration is required.

(3) Upon registration of an applicant in terms of subsection (2), the Commissioner shall issue to the applicant a licence in a form determined by the

Commissioner.

(4) The Commissioner shall not issue a licence to an applicant under subsection (2) if he is of the opinion that a director or key employee of the applicant is not a fit and proper person to be concerned with the management of an insurance intermediary.

(5) A licence issued under subsection (2) shall be in writing and shall specify -

- (a) the category in respect of which the licence is issued;
- (b) where the category of the licence is insurance agent or insurance broker, the class or classes of insurance business in respect of which the licensee is authorised as an insurance intermediary; and
- (c) where the category of the licence is insurance agent, the insurer by which the insurance agent is or will be appointed.

Restrictions on persons who may be licensed

74. (1) A licence for an insurance broker shall only be granted to a company.

(2) A director or employee of a company holding a licence as an insurance broker and a person holding a significant interest in an insurance broker shall not be granted a licence as an insurance intermediary.

(3) A director or employee of an insurer and a person holding a significant interest in an insurer shall not be granted a licence as an insurance broker and shall not be a director or employee of a person holding a licence as an insurance broker.

(4) A person holding a licence as an insurance agent shall not hold a licence as an insurance broker, risk consultant, insurance loss adjuster or insurance loss assessor.

(5) A person holding a licence as an insurance broker shall not hold

a licence as an insurance agent.

(6) A person holding a licence as an insurance loss adjuster or insurance loss assessor shall not hold a licence as an insurance broker or an insurance agent.

(7) A person holding a licence as a risk consultant shall not hold a licence as an insurance broker, insurance agent, insurance loss adjuster or insurance loss assessor.

Status of personnel of insurance broker

75. An insurance broker may not employ as his key employee, a person who -

- (a) has been adjudged an unrehabilitated insolvent in any country;
- (b) has made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside;
- (c) has been convicted by any court in any country of an offence involving fraud or dishonesty; or
- (d) is in the opinion of the Commissioner an unfit person to hold the office.

Maintenance of professional indemnity policy

76. (1) A person shall not be registered as an insurance broker unless that person has insured himself or herself against any liability referred to under subsection (2).

(2) A broker is liable for his acts or omissions and for the acts or omissions of his employees in transacting insurance business, and shall have and maintain a professional indemnity insurance policy of such an amount as the Commissioner may prescribe.

(3) A policy in respect of professional indemnity insurance con-

templated in subsection (2) shall be issued by an insurer in Lesotho.

Maintenance of deposits

77. A person shall not be registered as an insurance broker unless that person has deposited with a bank in Lesotho such an amount of money and subject to such conditions as the Commissioner may prescribe.

Conduct of insurance business by insurance intermediaries

78. (1) All insurance brokerage business or services required by Lesotho residents or Lesotho resident companies shall, within three months of coming into force of this Act, be transacted or handled by insurance brokers registered in Lesotho under this Act.

(2) A special broker may place business with an insurer outside Lesotho, if the special broker has evidence that the required coverage is not available in Lesotho, and shall seek a written authority to do so from the Commissioner.

(3) The Commissioner shall before granting a special broker permission to place business with an insurer outside Lesotho satisfy itself of the unavailability of that class of business in the local market by seeking written submissions from insurers registered in Lesotho.

(4) The special broker in placing business outside Lesotho shall obtain an approval signed by the insured stating that the insured understands that the placement is with an unlicensed foreigner and not protected under this Act.

(5) The Commissioner -

- (a) shall issue guidelines in respect of fair treatment of a client and policyholder by a licensed intermediary;
- (b) may prescribe conduct that constitutes a misconduct on the part of a licensed intermediary for the purposes of this section.

(6) A licensed intermediary shall -

- (a) hold, in strict confidence, all information concerning the business affairs of his clients acquired in the course of their professional relationship and shall not divulge the information unless authorised by the client or required by law to do so, or it is necessary in order to arrange for the insurance required by the client;
- (b) not stipulate, charge or accept any fee the basis of which is not fully disclosed prior to the service being rendered or which so disproportionate to the service provided as to be reasonably excessive;
- (c) maintain accounts and keep financial records in respect of the insurance business for a period of, at least, 2 years after the period to which those accounts and records relate.
- (d) comply with such other specific accounting, financial and records requirements as may be issued by the Commissioner;
- (e) produce its licence when so required by the Commissioner or any other person authorised by it.

(7) A licensed intermediary who engages in a business or occupation other than the intermediary business shall not allow the other business interest to jeopardise the integrity, independence or competence of the intermediary.

Provisions of insurer licence applicable to intermediary licence

79. The provisions of sections 9(1) and (5), 10, 12, 13, 14, 15, 20 and 21 applicable to an insurer relating to the following -

- (a) conditions of a licence;
- (b) variation of conditions of a licence;
- (c) publication of issue, suspension or revocation of a licence;

-
- (d) display of a licence;
 - (e) validity of a licence;
 - (f) renewal of a licence;
 - (g) review of revocation or refusal to register insurer; or
 - (h) delivery of a licence to the Commissioner,

shall apply with such modifications, where necessary, to an insurance intermediary licence.

Revocation of registration of insurance intermediary

80. (1) If the Commissioner is satisfied that an insurance intermediary -

- (a) does no longer satisfy one or more of the requirements for registration specified in section 73(1); or
- (b) has in the case of an insurance agent or insurance broker, in his or her capacity as an insurance agent or insurance broker made a material misrepresentation to members of the public in connection with the entering into of any policy;
- (c) has failed to comply with a condition subject to which he has been registered as an insurance agent or an insurance broker; or
- (d) contravened or failed to comply with a provision of this Act,

the Commissioner may, by written notice to the insurance intermediary, inform the insurance intermediary that the Commissioner intends to revoke the licence of the insurance intermediary and in such notice state the reasons for such intended action.

(2) An insurance intermediary may, within 30 days from the date of

receipt of the notice referred to in subsection (1), make written representations to the Commissioner.

(3) After consideration of the representations referred to in subsection (2) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Commissioner may, despite the provisions of subsection (4) -

- (a) if the Commissioner is satisfied that it is just and equitable to do so in the particular case, by written notice to the insurance intermediary, withdraw the notice referred to in subsection (1); or
- (b) by written notice to the insurance intermediary,

revoke the licence of the insurance intermediary with effect from a date specified in that notice.

(4) Subject to the provisions of subsection (5), the Commissioner may, at the written request of an insurance intermediary, a liquidator or trustee of the insurance intermediary, revoke the licence of an insurance intermediary.

(5) The Commissioner shall not revoke a licence of an insurance intermediary under subsection (4) unless the Commissioner is satisfied that the insurance intermediary has made proper arrangements for ensuring that its liabilities relating to the business in respect of which revocation of the licence is required, will be met.

Surrender of licence

81. (1) An insurance intermediary may apply to the Commissioner, in writing, to surrender licence.

(2) The Commissioner may refuse an application under subsection (1) if the insurance intermediary is in breach of this Act, regulations, the code or rules or if he considers that for any other reason, the licence should not be surrendered.

(3) Where the Commissioner approves an application under subsection (1), he shall issue a notice of approval to the insurance intermediary and

the surrender shall take effect from such date as may be specified by the Commissioner in the notice.

(4) If the Commissioner refuses to approve a surrender, he shall notify the insurance intermediary, in writing, of his refusal, stating the reasons for such refusal.

Maintenance of capital

82. (1) A company holding a licence as an insurance broker shall ensure that its capital is maintained in such an amount as may be prescribed by the Commissioner.

(2) If a capital of an insurance broker falls below the amount that it is required to maintain under subsection (1), it shall immediately notify the Commissioner in writing.

(3) The Commissioner may, by notice in writing, require an insurance broker to deposit the balance of the capital either in money or in prescribed securities or security in a value prescribed by the Commissioner, within such time as the Commissioner may consider reasonable.

Accounts and audit

83. The provisions of Part VII relating to accounts of an audit shall apply with modifications, where necessary, to a licensed insurance intermediary.

Collection of premiums by licensed insurance intermediary

84. (1) An insurance intermediary shall not receive, hold or in any way deal with a premium payable under an insurance policy entered into or to be entered into with an insurer unless -

- (a) the insurance intermediary is authorised by the insurer concerned to receive, hold or deal with the premium; and
- (b) the insurance intermediary receives, holds or deals with the premium in accordance with the regulations.

(2) Notwithstanding subsection (1), no insurance agent shall collect

a premium from a policyholder.

(3) Where a licensed intermediary receives a premium under paragraphs (a) and (b), the intermediary shall follow the procedure for receipt of premiums set out in the regulations.

Commission to insurance intermediary

85. A company or an individual not a party to any contract of insurance except an insurance intermediary registered under this Act, shall not be paid any commission or other payment by any insurer for the effecting or renewing of any policy of insurance.

Merger, sale, transfer and takeover of insurance intermediary

86. The provisions of Part XII relating to a merger, sale, transfer and takeover of an insurer shall apply with necessary modifications, where necessary, to an insurance intermediary.

Liquidation and winding up of insurance intermediary

87. The provisions of Part XIII relating to liquidation and winding up of an insurer shall apply, with modifications, where necessary, to an insurance intermediary.

PART X - SUPERVISION OF INSURER AND INSURANCE INTERMEDIARY

Interpretation

88. In this Part -

“inspection” means an inspection of a relevant person undertaken pursuant to section 89;

“foreign regulatory authority” means an authority in a jurisdiction outside Lesotho which exercises functions corresponding or similar to those exercised by the Commissioner;

“relevant person” means -

-
- (a) a licensee;
 - (b) a former licensee; and
 - (c) a subsidiary or holding company of a licensee or a former licensee; and
 - (d) a director and employee of a licensee or former licensee.

Inspection

89. (1) The Commissioner may, at any time and for the purposes of prudential supervision of relevant persons, inspect -

- (a) any premises, business and affairs, including the procedures, systems and controls, of a person, whether in or outside Lesotho;
- (b) the assets, including cash, belonging to or in the possession or control of a relevant person; and
- (c) make copies of documents, including accounting records, belonging to or in the possession or control of a relevant person.

(2) The Commissioner shall, from time to time, appoint examiners to inspect, with or without any prior notice, the books or other documents, accounts and transactions of a relevant person and of any office outside Lesotho of an insurer.

(3) An inspection shall be conducted in respect of a relevant person in order to determine that the person is in a sound financial condition and that the requirements of this Act have been complied with in the administration of his or her affairs.

(4) For the purpose of determining the financial conditions of a relevant person and its compliance with this Act in the course of an inspection undertaken pursuant to subsection (1), the Commissioner may cause an inspection to be made of any of affiliates of the relevant person in Lesotho to the same extent that an inspection shall be made of the relevant person.

(5) The Commissioner shall also cause such an inspection to be made under subsection (1) where an application containing such evidence as the Commissioner may consider necessary to justify an inspection is made by one-fifth of the total number of policyholders or creditors, or by any number of policyholders or creditors holding not less than one-third of the liabilities to the public in Lesotho of the relevant person.

(6) When undertaking an inspection, the Commissioner may have regard to any matters which are relevant to the prudential supervision of insurers and insurance intermediaries including -

- (a) verifying the capital and deposits, and in the case of an insurer, the solvency margin and reserves of a relevant person;
- (b) satisfying itself that the relevant person is in compliance with this Act, regulations, the Code and the Rules, any conditions to which his or her licence is subject and directives that the Commissioner may have issued to the relevant person; and
- (c) satisfying himself that the relevant person has adequate procedures in place to prevent him from being used for the purposes of money laundering and for processing of terrorist funds.

(7) The Commissioner may give reasonable notice to a relevant person of its intention to exercise its powers under subsection (1).

(8) Subject to section 131, the Commissioner may employ such suitably qualified and experienced persons to assist it with an inspection as it considers appropriate.

(9) In undertaking an inspection, the Commissioner shall exercise reasonable care to avoid hindrance to the day to day activities of a relevant person.

Duties of relevant persons, directors and employees in relation to inspection

90. (1) Where the Commissioner is undertaking an inspection in relation to a relevant person, the relevant person concerned shall -

- (a) give the Commissioner access to its premises and to all assets that the Commissioner, in his opinion, needs access to for the purposes of the inspection;
- (b) give the Commissioner access to all documents, including accounting records, and produce to the Commissioner such documents as the Commissioner may require;
- (c) provide the Commissioner, with all information and explanations that the Commissioner may require.

(2) Where documents required by the Commissioner for the purposes of an inspection are held by a person other than a relevant person, the relevant person shall ensure that that other person produces those documents to the Commissioner and provides the Commissioner with such information and explanation as the Commissioner may require.

(3) When undertaking an inspection, the Commissioner may, by written notice, require any director or employee of the relevant person, actuary or auditor to provide it with such information and explanation as the Commissioner may require.

(4) A person who fails to give access or furnish information when directed to do so under this section commits an offence, and is liable, on conviction, to a penalty set out in section 115.

(5) A relevant person who contravenes subsection (1) commits an offence and is liable on conviction to a penalty set out in section 115.

Report on inspection

91. (1) The Commissioner shall, upon completion of an inspection, forward a report to a relevant person concerned setting out a summary of his find-

ings.

- (2) The report issued under subsection (1) -
 - (a) may contain such recommendations to a relevant person concerning the conduct of his or her business, systems, procedures or controls or concerning such other matters as the Commissioner may consider appropriate; and
 - (b) shall specify whether or not the Commissioner requires a response from the relevant person concerning the report and, if the Commissioner does require a response, he may indicate particular aspects of the report or particular recommendations in respect of which a response is required.

(3) Where the Commissioner specifies in his report that he requires a response to the report, the relevant person concerned shall provide a response to the Commissioner within 14 days of receiving the report, or within such longer period as may be specified in the report.

Power of Commissioner to gather information

92. (1) Subject to section 94, where a relevant person is required by the Commissioner for the performance of the functions of the relevant person under this Act or any other law, or on the written request of a foreign regulatory authority, the Commissioner may, by notice in writing given to a person specified in subsection (2), require the person -

- (a) to provide specified information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (2) A notice under subsection (1) -
- (a) may be issued to -
 - (i) a relevant person;

-
- (ii) a person connected with a relevant person;
 - (iii) a person carrying on insurance business or the business of an insurance intermediary; or
 - (iv) a person reasonably believed to have the information or documentation to which the notice relates; and
- (b) shall specify the place where, and the period within which the information or documents shall be provided or produced.
- (3) The Commissioner may require -
- (a) any information provided under this section to be provided in such form as the Commissioner may require;
 - (b) any information provided or documents produced under this section to be verified or authenticated in such manner as he may reasonably require; and
 - (c) the person to whom the notice is issued, or any person who is or has been a director, auditor or actuary of that person, to provide such explanation relating to the information provided or the documents produced as the Commissioner may require.

(5) The Commissioner may take copies or extracts of any documents produced under this section.

(6) Where a person claims a lien on a document, its production under this section is without prejudice to the lien.

Examination under oath

93. (1) Where, in connection with a directive given under section 92, the Commissioner considers it necessary to examine a person under oath, the Commissioner may apply to court to have that person examined by the court and to have the results of that inspection transmitted to the Commissioner.

(2) The Court may, on an application under subsection (1), order an examination of a person under oath on such terms and conditions as it considers fit.

Provision of assistance to foreign regulatory authority

94. (1) Where a foreign regulatory authority requests the Commissioner in writing to provide it with assistance in connection with the exercise of its regulatory functions, the Commissioner may disclose information, or provide documentation, in its possession to the foreign regulatory authority in accordance with this section.

(2) The Commissioner shall not -

- (a) issue a notice under section 92 on the request of a foreign regulatory authority; or
- (b) disclose information or provide documentation to a foreign regulatory authority under subsection (1),

unless the Commissioner is satisfied that the information or documentation to which the request relates is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(3) In deciding whether or not to issue a notice under section 92 on the request of a foreign regulatory authority or to disclose information or provide documentation to a foreign regulatory authority under subsection (1), the Commissioner may take into account, in particular -

- (a) whether corresponding assistance would be given to the Commissioner in the country or territory of the foreign regulatory authority concerned;
- (b) whether the request relates to the breach of law, or other requirement, which has no close parallel in Lesotho or involves the assertion of a jurisdiction not recognised by Lesotho;
- (c) the seriousness of the case and its importance to persons in Lesotho; and

-
- (d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(4) For the purposes of subsection (3)(a), the Commissioner may require the foreign regulatory authority making the request to give a written undertaking, in such form as the Commissioner may require, to provide corresponding assistance to the Commissioner.

(5) Where a foreign regulatory authority fails to comply with a requirement of the Commissioner made under subsection (4), the Commissioner may refuse to provide the assistance sought by the foreign regulatory authority.

(6) The Commissioner may decide that he will not, on the request of a foreign regulatory authority, exercise its powers under section 92 or subsection (1) unless -

- (a) he is satisfied that any information provided to the foreign regulatory authority will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence under this section or for an offence of perjury or any like offence; and
- (b) the foreign regulatory authority undertakes to make such contribution towards the cost of exercising its powers as the Commissioner considers appropriate.

(7) The Commissioner shall not exercise his powers under subsection (1) unless he is satisfied that the information or documentation provided to a foreign regulatory authority will be subject to safeguards equivalent to those contained in this Act.

Search warrant

95. (1) In this section, “premises” includes a vehicle, vessel or aircraft.

(2) A Magistrate may issue a search warrant under this section if he is satisfied that information on oath or affirmation given on behalf of the Commissioner that there are reasonable grounds for believing that the conditions specified in subsection (3) exist.

- (3) The conditions referred to in subsection (2) are -
- (a) that a person has failed to comply with a notice of the Commissioner issued under section 92(1) within the time period specified in the notice and that on the premises specified in the warrant -
 - (i) there are documents that have been required to be produced, or
 - (ii) there is information that has been required to be provided; or
 - (b) that -
 - (i) the notice could be issued by the Commissioner against a person;
 - (ii) there are documents, or there is information, on the premises specified in the warrant in respect of which the notice could be issued; and
 - (iii) if the notice was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed; or
 - (c) that -
 - (i) a relevant offence has been, or is being, committed by a person;
 - (ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence; and
 - (iii) if the notice was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(4) A warrant issued under this section shall authorise a named representative of the Commissioner, together with a police officer and any other person named in the warrant -

- (a) to enter the premises specified in the warrant at any time within one week from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary.

(4) Unless the court, on the application of the Commissioner, otherwise orders, any document of which possession is taken under this section may be retained -

- (a) for a period of three months; or
- (b) if, within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

Appointment of inspector to conduct investigation

96. (1) Where the Commissioner is entitled to take enforcement action

against a relevant person under section 98, he may appoint one or more competent persons as inspectors to conduct an investigation on his behalf.

(2) The matter investigated by an inspector appointed under subsection (1) may include one or more of the following -

- (a) the nature, conduct or state of the business of the relevant person;
- (b) a particular aspect of the business of the relevant person; and
- (c) the ownership or control of the relevant person.

(3) An inspector appointed under subsection (1) may, if he or she considers it necessary for the purposes of his investigation, also investigate the business of any person who is, or at any relevant time has been a member of the group of which the person under investigation is a member.

(4) The appointment of an inspector shall be made on such terms and conditions as the Commissioner may consider appropriate.

Order of court

97. (1) If a person fails to comply with a notice issued by the Commissioner under section 92, the Commissioner may apply to the Court for an order requiring the person to comply with the notice.

(2) On an application by the Commissioner under subsection (1), the Court may order the person to whom the notice was issued -

- (a) to comply with the notice; or
- (b) to comply with such part of the notice as it considers appropriate.

(3) A person who, without reasonable excuse, fails to comply with an order of the Court made under subsection (2) commits an offence.

(4) A person who purported non-compliance with a notice issued by

the Commissioner under section 92 or an order of the Court under subsection (2) -

- (a) provides information which he knows to be false or misleading in a material respect; or
- (b) recklessly provides information which is false or misleading in a material respect,

commits an offence.

(5) A person who, for the purpose of obstructing or frustrating compliance with a notice issued by the Commissioner under section 92 or compliance with an order of the Court under subsection (2) destroys, mutilates, defaces, hides or removes a document commits an offence.

PART XI - ENFORCEMENT PROVISIONS

Enforcement action

98. (1) The Commissioner may take enforcement action against an insurer or insurance intermediary if -

- (a) in the opinion of the Commissioner, the insurer or insurance intermediary -
 - (i) has contravened this Act, regulations, the code or rules;
 - (ii) has contravened any law, the Guidelines or the Code Relating to Money Laundering and the Financing of Terrorism;
 - (iii) is carrying on business in a manner detrimental to the public interest or to the interests of any of its customers or creditors or, in the case of an insurance agent, the insurer on whose behalf he acts; or
 - (iv) is or is likely to become insolvent;

- (b) the insurer or insurance intermediary -
 - (i) has failed to comply with a directive given to it by the Commissioner under section 99; or
 - (ii) is in breach of any condition of its licence;
- (c) in the case of an insurer or insurance broker that is a company -
 - (i) passes a resolution for winding up;
 - (ii) the Commissioner is of the opinion that a person having a share or interest in the insurer or insurance intermediary, whether equitable or legal, or any director of the insurer or insurance intermediary is not a fit and proper person to have an interest in or be concerned with the management of the insurer or insurance intermediary;
- (d) the Commissioner is of the opinion that the key employee of the insurer or insurance intermediary is not a fit and proper person to be concerned with the management of the insurer or insurance intermediary;
- (e) an insurer or insurance intermediary proposes to make or has made any composition or arrangement with its creditors;
- (f) a receiver and manager have been appointed in respect of the business carried on by an insurer or possession has been taken of any of his property by or on behalf of the holder of a debenture secured by a charge;
- (g) an insurer or insurance intermediary or a relevant person has refused or failed to co-operate with the Commissioner on an inspection conducted by the Commissioner under section 89;
- (h) in the case of an insurer, the Commissioner is of the

opinion that -

- (i) its insurance business, or any part of its insurance business, is not being carried on in accordance with core insurance principles and international best practices;
- (ii) adequate arrangements have not been made, or will not be made, for the reinsurance of risks against which persons are insured by the insurer; or
- (iii) there has been a substantial departure from the business plan submitted to the Commissioner;
- (iv) the insurer has provided the Commissioner with false, inaccurate or misleading information, whether on making an application for a licence or subsequent to the issue of the licence.

(2) For the purposes of subsection (1)(a)(iv), an insurer is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 25.

(3) If the Commissioner is entitled to take enforcement action under subsection (1), it may exercise one or more of the following powers -

- (a) revoke or suspend the licence of an insurer or insurance intermediary under sections 18 and 80;
- (b) appoint an inspector to conduct an investigation under section 96;
- (c) appointment of a qualified person to advise an insurer or insurance intermediary on the proper conduct of his or her or its business; or
- (d) issue a directive under section 99.

Directives

99. (1) Where the Commissioner is entitled to take enforcement action against an insurer or insurance intermediary, the Commissioner may issue a written directive to the insurer or insurance intermediary -

- (a) in the case of an insurer, directing the insurer -
 - (i) to cease to engage in any class or type of insurance business;
 - (ii) not to enter into any new contracts for any class or type of insurance business;
 - (iii) not to vary any existing contracts of insurance;
 - (iv) to limit to a specified amount the aggregate premiums to be received by the insurer, whether before or after the deduction of reinsurance premiums payable by the insurer for reinsurance of the liabilities in respect of which premiums are to be received;
 - (v) to refrain from making investments of a specified class of description;
 - (vi) to realise before such date as may be specified in the directive, the whole or a specified portion of investments of a specified type or description held by the insurer;
 - (vii) to cause an actuary or such other person as may be prescribed by the Commissioner to undertake an investigation into his or her or its financial position in respect of his or her or its business or any part of his or her or its business and to submit a report of the investigation to the Commissioner;
 - (viii) to provide any return or other document the in-

surer is obliged to file with the Commissioner under this Act within a shorter period of time than that permitted under this Act;

- (ix) to deposit with the Commissioner such a sum as may be specified in the directive;
 - (x) to take such other action as the Commissioner may consider necessary to protect the assets of a licensee or to protect policyholders or potential policyholders of the insurer; or
- (b) in the case of an insurance intermediary, directing the insurance intermediary -
- (i) to cease to act as an insurance intermediary;
 - (ii) to cease accepting particular types of business; or
 - (iii) to take such other action as the Commissioner may consider necessary to protect the interests of their customers or, in the case of an insurance agent, the insurer on whose behalf he acts.
- (2) Unless the Commissioner otherwise directs -
- (a) an investigation under subsection (1)(a)(vii) shall comply with such requirements as may be prescribed for an investigation under section 89(2); and
 - (b) the report of an investigation under subsection (1)(a)(vii) shall contain such information and be in such form as may be prescribed for a report prepared under section 89(4),

with such modifications as may be appropriate if the insurer or insurance intermediary carries on short term insurance business.

- (3) An insurer or insurance intermediary who fails to comply with,

or carries on business in contravention of a directive issued by the Commissioner under this section commits an offence.

Advertisements

100. (1) An insurer or insurance intermediary shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commissioner is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of an insurer or insurance intermediary is misleading, contains an incorrect statement of fact or is contrary to the public interest, he may -

- (a) direct him or it in writing not to issue the document or to withdraw it; or
- (b) authorise him or it in writing to issue the document with such changes as the Commissioner may specify.

(3) An insurer or insurance intermediary that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence.

(4) An insurer or insurance intermediary that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document contrary to a directive or authorisation of the Commissioner under subsection (2), commits an offence.

Change of name

101. An insurer or insurance intermediary shall not, without the prior written approval of the Commissioner, change the name under which it carries on business.

Directive to change name by Commissioner

102. The Commissioner may, by written notice, direct an insurer or insurance intermediary forthwith to change the name under which it carries on business or

under which it is incorporated if the Commissioner is of the opinion that the name is -

- (a) identical to that of any other person, whether within or outside Lesotho, or it so nearly resembles that name as to be likely to deceive;
- (b) likely to suggest falsely the patronage of or connection with some person whether within or outside Lesotho;
- (c) likely to suggest falsely that he has special status in relation to or derived from Government or has the official approval of, or acts on behalf of, Government or any of its departments or officials; or
- (d) is otherwise misleading or undesirable.

Filing of returns and reporting of information to the Commissioner

103. An insurer or insurance intermediary shall report any information or furnish any returns or documentation prescribed by regulations or required by the code or the rules to the Commissioner within such time and verified in such form and manner as is prescribed or required by regulations, the code or the rules.

Defective returns

104. (1) If the Commissioner considers that any document furnished by an insurer or insurance intermediary for purposes of an audit report under Part VII is inaccurate or incomplete or is not prepared in accordance with this Act, regulations, the code or the rules the Commissioner may, by written notice, require the insurer or insurance intermediary to amend the document or to submit a replacement document.

(2) If an insurer or insurance intermediary fails to comply with a notice under subsection (1), the Commissioner may reject the document.

Insurer or insurance intermediary to notify Commissioner of any judgement

105. An insurer or insurance intermediary shall notify the Commissioner of

any judgement obtained against it and shall provide the Commissioner with evidence as to whether or not the judgement has been satisfied.

**PART XII - MERGER, SALE, TRANSFER
AND TAKEOVER BY INSURER ETC.**

Merger, sale, transfer and takeover by insurer etc.

106. (1) A scheme shall not be entered into by an insurer without the written approval of the Commissioner.

(2) An application to the Commissioner for the approval of a scheme under subsection (1) shall be made jointly by or on behalf of an insurer and each other person who is a party to the scheme.

(3) An application under subsection (2) shall be in such form, contain such information and be accompanied by such documentation as may be prescribed.

(4) The Commissioner may, as a condition for its approval, require that amendments, be made to the scheme.

(5) An application under subsection (2) shall be by notice published in the Gazette and in such other publications as may be specified by the Commissioner and the notice of the application together with an approved summary of the scheme shall be sent to policyholders affected by the scheme.

(6) A notice of a scheme shall contain a statement that representations be made to the Commissioner concerning the scheme two months after the date of the publication.

(7) Before determining an application under this section, the Commissioner may -

- (a) at the cost of an insurer, undertake an investigation into the desirability or otherwise of the scheme; and
- (b) require the insurer and each other party to the scheme to provide him with such documents and information as he may require.

(8) An investigation under subsection (7) may be carried out by the Commissioner or by one or more persons appointed by the Commissioner to act on his behalf.

(9) Any transaction to which an insurer is a party which has the effect of transferring any part of the business of the insurer to another person or amalgamating any part of the business of the insurer with the business of another person, is void and of no legal effect unless effected under a scheme approved by the Commissioner.

Details of scheme

107. A scheme shall set out -

- (a) the terms of the agreement or deed under which the proposed merger, sale or transfer is to be carried out;
- (b) particulars of such other arrangements as are necessary to give effect to the scheme; and
- (c) contain such other information as may be prescribed.

Service of notices

108. (1) Where a notice is required by this Act, regulations, the code or rules to be given by an insurer to a policyholder, it may be given to the last address of the policyholder notified by the policyholder to the insurer.

(2) Where a person claiming to be interested in a policy has given notice of his or her interest to an insurer, notice required to be given by the insurer to a policyholder shall also be sent to the person claiming an interest at the address specified by the policyholder in his notice to the insurer.

Compromise with creditor under section 161 of the Companies Act by insurer

109. (1) In this section “insurer” includes a former insurer.

(2) An insurer shall not propose a compromise or arrangement under section 161 of the Companies Act unless the Commissioner has given his ap-

proval, in writing, of the compromise or arrangement.

PART XIII - LIQUIDATION AND JUDICIAL MANAGEMENT

Winding up and Judicial Management

110. The provisions of the Companies Act, 2011 or any subsequent Act relating to the winding up and judicial management of companies shall by regulations be modified in respect of insurers and insurance intermediaries.

PART XIV - ABANDONED PROPERTY

Unclaimed funds and property

111. (1) Except as provided in subsection (2), the following items held or owing by an insurer or insurance intermediary, shall be presumed to be abandoned -

- (a) any general deposits or funds placed in Lesotho with an insurer or insurance intermediary, together with any interest or dividend, excluding any lawful charges;
- (b) any funds paid in Lesotho towards the purchase of shares or other interests in the insurer or insurance intermediary, together with any interest or dividend, excluding any lawful charges;
- (c) any sum payable on cheques certified in Lesotho, or on written instruments issued in Lesotho, on which such an insurer or insurance intermediary is directly liable;
- (d) any contents of a safe deposit box upon which the lease or rental period has expired and concerning which notice of the intent to deliver the said contents into the custody of the Commissioner has been sent by registered letter to the last known address of the lessee.

(2) The items enumerated in subsection (1)(a), (b) and (c) shall not be presumed to be abandoned if the owner has, within fifteen years of the date of -

-
- (a) initial deposit or any subsequent deposit or withdrawal;
 - (b) payment of funds; or
 - (c) issuance of instruments -
 - (i) increased or decreased the amount of the deposits or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in subsection (1)(a) or (b);
 - (ii) corresponded in writing with the licensed institution concerning the items enumerated in subsection (1)(a), (b) or (c); or
 - (iii) otherwise indicated an interest in the items enumerated in subsection (1)(a), (b) or (c), as evidenced by a memorandum concerning the items on file with the insurance company or insurance intermediary.

Reports and disposition

112. (1) An insurer or insurance intermediary holding any funds presumed to be abandoned under section 111 shall annually report such holding to the Commissioner, and pay or deliver to the Accountant-General all abandoned funds listed in the report, as may be prescribed by regulations.

(2) Upon paying or delivering abandoned funds into the custody of the Accountant General, an insurer or insurance intermediary shall be relieved of all liability to the extent of the value of such funds or other property for any claim in respect of the insurer or insurance intermediary.

(3) Any funds paid to the Accountant-General under subsection (1) (a) shall be credited to the consolidated fund as may be prescribed by regulations, but where a person entitled to such funds subsequently proves his claim to such funds to the satisfaction of the Accountant-General, he or she shall be paid from the fund.

Failure to make a report or payment

113. A licensed institution which wilfully fails to file a report with the Commissioner or to pay funds presumed to be abandoned into the custody of the Accountant-General, in accordance with section 112, commits an offence.

PART XV - OFFENCES AND PENALTIES**General offences and penalties**

114. (1) A person who -

- (a) contravenes or fails to comply with a provision of section 6, 8, 46, 55(1) and (2), 66, 68, 70, 119 and 124; or
- (b) prepares or issues any document required for the purposes of this Act, or participates in the preparation or issuing of any such document, knowing such document to be false or misleading in any material respect,

commits an offence and is liable on conviction to a fine of M500,000.00 or imprisonment for 10 years or both.

(2) An insurer who -

- (a) contravenes or fails to comply with a provision of section 20, 31, 32, 33, 36, 37, 49, 50, 51, 52, 53, 54, 57, 60, 62, 63, 65, 66, 68, 106(1), (2), (3), (4), (6) or (7), 121(1) or (2); or
- (b) fails to observe any prohibition imposed upon such insurer under a provision of this Act,

commits an offence and is liable on conviction to a fine of M5000,000.00 or imprisonment for 10 years or both.

(3) An insurance intermediary, an insurance broker or reinsurance broker who contravenes or fails to comply with a provision of section 76, commits an offence and is liable on conviction to a fine of M5000.00 or imprisonment for 12 months or both.

Penalty for failure to submit certain document or to furnish certain information

115. (1) In this section “person” includes an insurer and insurance intermediary.

(2) A person who fails to -

- (a) submit or furnish to the Commissioner any statement, report, return or other document or information; or
- (b) notify the Commissioner of any name, address, change of name or address, date, appointment, termination, termination of appointment or other particulars, in accordance with a requirement of this Act within the period determined by or under this Act or, if that period has been extended by the Commission under section 130, within the extended period,

is liable, on conviction, to a fine of M10,000.00 for each day during which such failure continues.

(3) An amount of penalty payable in terms of subsection (1) shall constitute a debt due to the Commissioner by the person concerned and may be recovered by the Commissioner by means of proceedings instituted in any competent court.

(4) Notwithstanding the provisions of subsections (1) and (2), the Commissioner may waive the payment of or refund the whole or any part of a fine payable in terms of subsection (1), if the Commissioner is satisfied that failure of the person concerned to comply with a requirement contemplated in subsection (1) was not due to willful conduct or want of reasonable care on the part of such person.

False or misleading representations, statements, reports or returns

116. (1) A person who makes or assists in making a representation, statement, report or return, whether oral or written -

- (a) that is required or permitted by this Act, regulations, the

code or rules to be made to or, in the case of a document to be filed with, the Commissioner; and

- (b) that -
 - (i) contains a false statement of a material fact; or
 - (ii) omits to state a material fact required to be disclosed to the Commissioner or necessary to avoid the statement or document being materially misleading, commits an offence and on conviction is liable to a fine of M50 000 or imprisonment for 6 months or both.

(2) A person does not commit an offence under subsection (1) if he or she did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

Penalty for failure to comply with certain financial requirements

117. (1) An insurer who fails to comply with a provision of -
- (a) section 22 in that the amount of its unimpaired capital and reserves falls short of that required in terms of that section;
 - (b) section 25 in that the amount of its margin of solvency falls short of that required in terms of that section; or
 - (c) section 27 or 28 in that the amount of its assets falls short of that required in terms of any of those sections,

is liable to a fine of M500, 000 or 5 percent of the amount of the shortfall whichever is the greater amount, and in addition, to a fine of M500, 000 or 5 percent of the amount of the shortfall for each month or part of a month reckoned from the end of the financial year during which the shortfall occurred until the date on which the auditor of the insurer issues a certificate to the effect that the shortfall has been remedied during which the shortfall continues to exist, whichever is a greater amount.

(2) An amount of penalty payable in terms of subsection (1) shall constitute a debt due to the Commissioner by the insurer concerned and may be recovered by the Commissioner by means of proceedings instituted in a competent court.

(3) Notwithstanding the provisions of subsection (1) and (2), the Commissioner may waive the payment of or refund the whole or any part of a fine payable in terms of subsection (1) if the Commissioner is satisfied that it will be in the interests of policyholders to do so.

(4) An insurer who, while a shortfall contemplated in subsection (1) exists in respect of his insurance business, pays any dividend to his shareholders commits an offence and on conviction is liable to a fine of M100,000 or imprisonment for 24 months or both.

Other offences

118. A person who commits an offence under this Act for which no punishment is provided for elsewhere in this Act is liable to a fine of M500,000 or to imprisonment for 10 years or both.

Powers of court

119. Notwithstanding any penalty imposed by or under this Act, a court may, where circumstances warrant, impose a penalty less or greater than that stipulated by or under this Act.

PART XVI - MISCELLANEOUS

Prohibition of transacting certain business with or securing certain business for unregistered concern

120. (1) A person shall not transact any class of business with a person who is not a registered insurer or insurance intermediary unless an exemption has been granted to the insurer or insurance intermediary by the Commissioner under section 8(5) or 72.

(2) A person shall not induce or attempt to induce any person to enter into a domestic policy with a person who is not an insurer or insurance intermediary or to make an application to enter into a domestic policy with such

last-mentioned person.

Restriction on use of certain names and terms

121. (1) Subject to subsections (2) and (3), a person shall not, except with the written authority of the Commissioner or unless authorised by law -

- (a) use, whether in the name under which he is registered or in the description or title under which he carries on business in or outside Lesotho and whether in Sesotho, English or in any other language -
 - (i) the words “insurance”, “assurance” or “underwrite” or any combination or derivative of such words; or
 - (ii) any other word prescribed as a word that suggests insurance business or the business of an insurance intermediary; or
- (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he is carrying on, or that he is licensed or otherwise entitled to carry on -
 - (i) insurance business; or
 - (ii) business as an insurance intermediary.

(2) Subsection (1)(a) does not apply to an insurer holding a licence under Part III or to an insurance intermediary holding a licence under Part IX.

(3) Subsection (1)(b)(i) does not apply to an insurer holding a licence under Part III and subsection (1)(b)(ii) does not apply to an insurance intermediary holding a licence under Part IX.

Incorporation, use and change of name of company

122. The Registrar of Companies shall not register a memorandum of a company under, or register a change of name of a company to, a name that, whether

in Sesotho or English, includes -

- (a) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof; or
- (b) any other word prescribed under section 121(1)(a)(ii), unless the Registrar is satisfied that the company is or is going to be an insurer or insurance intermediary.

Change or alteration

123. (1) An insurer shall furnish the Commissioner with full particulars as to any change of registration particulars within a period of 30 days of such change.

(2) An insurer shall apply to the Commissioner in writing if he or she intends to make any alteration in the registration particulars, and such alteration shall not take effect until and except insofar as it has been approved by the Commissioner.

(3) Where, before a determination by the Commissioner of an application -

- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commissioner in connection with the application; or
- (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading, the applicant shall forthwith give the Commissioner written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

Use and change of registered name

124. (1) Subject to the provisions of subsection (2), an insurer and insurance intermediary shall, for all purposes and in every public document issued by the insurer or insurance intermediary, use the name under which it is registered.

- (2) An insurer or insurance intermediary shall not -
- (a) change the name under which it is registered;
 - (b) use or refer to itself by a name other than the name under which he is registered; or
 - (c) use or refer to itself by a shortened form or derivative of the name under which it is registered, without the prior written approval of the Commissioner.
- (3) An application for a change of name contemplated in subsection (2)(a) shall -
- (a) be made in such manner and form as may be determined by the Commissioner; and
 - (b) be accompanied by -
 - (i) such documents and information as the Commissioner may require in the particular case; and
 - (ii) the prescribed application fees.
- (4) Upon receipt of an application referred to in subsection (3), the Commissioner shall, if he is satisfied that the provisions of this Act and any other law relating to such a change of name have been complied with, register the insurer or insurance intermediary concerned under his name and issue to such insurer or insurance intermediary, in a form determined by the Commissioner a new licence under that name.

Request for information

125. (1) The Commissioner may, by notice in writing, require any insurer or insurance intermediary to supply him with any document or information in relation to any matter connected with the insurance business carried on by the insurer or insurance intermediary, and the insurer or insurance intermediary shall comply with such requirement within such period, after receipt of the notice, as may be prescribed in the notice.

(2) Any information supplied under this section shall be certified by a key employee, and, if the notice so requires, also by an auditor or actuary, or both.

Use of prescribed forms

126. (1) If a document required or permitted by this Act or regulations to be prepared or submitted to the Commissioner is of a type the form of which is prescribed, that form shall be used with such modifications as the circumstances may require.

(2) Notwithstanding subsection (1), a prescribed form shall not be varied so as to omit any information or guidance which the form gives to the intended recipient of the form.

Registers

127. (1) In this section “document in electronic form” means a document in a computer processable format that is capable of being transmitted electronically.

(2) The Commissioner shall maintain -

- (a) a register of insurance companies;
- (b) a register of insurance intermediaries; and
- (c) such other registers as may be prescribed, in which it shall record such information as may be prescribed.

(3) Registers and information contained in any document filed with the Commissioner may be kept in such form as the Commissioner may consider fit, including, either wholly or partly, by means of a device or facility -

- (a) that records or stores information in magnetic or electronic form; and
- (b) that permits the information to be inspected and reproduced in legible and useable form.

Inspection of registers and information held by Commissioner

128. (1) Subject to subsection (2), a person may, on payment of the prescribed fee during normal business hours -

- (a) inspect the registers and any records kept by the Commissioner that are prescribed as public records; and
- (b) require the Commissioner to furnish him with a copy or certified copy of, or extract from, any document that he would be entitled to inspect under paragraph (a).

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commissioner considers appropriate.

(3) A copy or reproduction of, or extract from, any document or record that is kept by the Commissioner and certified as such by the Commissioner is admissible in evidence in all legal proceedings to the same extent as the original document.

Fees payable to Commissioner

129. Any fee, charge or contribution which is owed to the Commissioner under this Act or regulations may be recovered as a debt due to the Commissioner.

Power of Commissioner to extend time periods

130. Where any person is obliged or entitled in terms of a provision of this Act to perform any act within a specified period or before or on a specified date, the Commissioner may, at any time, whether before or after the expiry of the period or date, extend that period or date if the Commissioner is satisfied that it is just and equitable to do so in any particular case.

Restrictions on disclosure of information

131. (1) For the purposes of this section,

“protected person” means -

-
- (a) a person who has applied for a licence;
 - (b) a licensee; or
 - (c) a policyholder or a former policyholder of a licensee;

“licensee” includes a person who has at any time been a licensee but who has ceased to be a licensee.

(2) Subject to subsection (3), the Commissioner and a person acting under the authority of the Commissioner shall not disclose to any person information concerning the affairs of a protected person that he has acquired in the course of his duties or in the exercise of his functions under this Act or under any other law.

- (3) Subsection (2) does not apply to a disclosure -
- (a) required or permitted by any court of competent jurisdiction in Lesotho;
 - (b) to any person for the purpose of discharging any duty or exercising any power under this Act;
 - (c) in respect of the affairs of a protected person made with the consent of that person;
 - (d) if the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a protected person to which the information relates to be determined; or
 - (f) made by the Commissioner to a foreign regulatory authority upon the written request of that authority in accordance with section 94.

Right of appeal to the Tribunal

132. (1) A person aggrieved by any decision taken by the Commissioner under this Act, including refusal or cancellation of registration of an insurer may, within 30 days from the date on which the decision is intimated to the person in writing, appeal against the decision by a petition, in writing to the Tribunal established in terms of section 76 of the Financial Institutions Act 2012 which may, subject to the limitations of this Act, uphold, reverse, revoke or vary that decision.

(2) Except as hereinafter provided, the decision taken under subsection (1) shall be final and shall within 30 days of its taking, be transmitted in writing to the applicant.

Notices

133. (1) Subject to subsection (2), all notices required or authorised to be given by or under this Act or regulations shall be in writing.

(2) Subsection (1) shall not apply where -

- (a) this Act or the regulations provide otherwise; or
- (b) the court requires or permits a notice to be given in some other way.

Regulations

134. The Commissioner may make regulations generally for giving effect to this Act.

Code of Practice

135. (1) The Commissioner shall, by notice published in the Gazette, issue a code with respect to the procedures to be followed by and the conduct expected of an insurer or insurance intermediary in the operation of its licensed business.

(2) Without limiting the generality of subsection (1), the code may provide for the matters specified in Schedule 2.

(3) The Commissioner may amend, add to or replace the code by notice published in the Gazette.

(4) Before issuing the code under subsection (1) or publishing a notice under subsection (3), the Commissioner shall -

- (a) send a draft of the code, or the proposed amendment, addition to or replacement of the code, to each body representing those licencees affected, specifying the period within which written representations are to be provided to the Commissioner; and
- (b) consider such written representations and decide as the Commissioner may find it appropriate.

Market conduct rules

136. (1) The Commissioner may, by notice published in the Gazette, issue rules.

(2) The Commissioner may amend, add to or replace the rules by notice published in the Gazette.

(3) Before issuing the rules under subsection (1) or publishing a notice under subsection (2), the Commissioner shall -

- (a) send a draft of the rules, or the proposed amendment, addition to or replacement of the rules, to each body representing those licencees affected, specifying the period within which written representations are to be provided to the Commissioner; and
- (b) consider such written representations and decide as the Commissioner may find it fit.

Transitional provisions

137. A person registered as an insurer or intermediary under the Insurance Act, 1976 shall adjust his insurance activities in accordance with the provisions of this Act within 1 year from the coming into operation of this Act.

Savings

138. Anything done before the commencement of this Act under or by virtue of the Insurance Act, 1976 or in relation to a person registered under that Act shall, insofar as it was done lawfully and unless it is clearly inappropriate to do so, be deemed to have been done under or in accordance with the corresponding provisions of this Act.

Repeals

139. The Insurance Act, 1976 is repealed.

NOTE

1. Act No. 2 of 2000
2. Act No. 18 of 2011
3. Proclamation No. 51 of 1957
4. Act No. 18 of 1976
5. Act No. 2 of 2012

SCHEDULE 1

(Section 5(2)(a))

CLASSES OF INSURANCE BUSINESS

PART A

Classes of Long Term Business

| Class | Description of Business |
|--------------|--------------------------------|
| 1 | Life |
| 2 | Health |
| 3 | Assistance |
| 4 | Disability |
| 5 | Fund |
| 6 | Sinking fund |

PART B

Classes of General Business

| Class | Description of business |
|--------------|--------------------------------|
| 1 | Property |
| 2 | Accident and health |
| 3 | Motor |
| 4 | Transportation |
| 5 | Engineering |
| 6 | Liability |
| 7 | Guarantee |
| 8 | Miscellaneous |

PART C

Classes of Micro-insurance

| Class | Description of business |
|--------------|--------------------------------|
| 1 | Funeral cover |
| 2 | Crop insurance |
| 3 | Credit life |
| 4 | Savings life |
| 5 | Health insurance |
| 6 | Miscellaneous |

SCHEDULE 2

(Section 135(2))

MATTERS PERMITTED
TO BE CONTAINED IN THE CODE OF PRACTICE

1. Commissioner's interpretation of "fit and proper".
2. Corporate governance, including appointment and functions of audit committee and other committees.
3. The persons considered by the Commissioner to be key employees of an insurer or an insurance intermediary.
4. The form and content of advertisements issued by insurers and insurance intermediaries.
5. The preparation of a business plan, including the matters to be contained in a business plan.
6. Persons who, even if qualified under the regulations for appointment as an auditor or as an actuary, would not be approved by the Bank whether by reason of their relationship with the licensee concerned or for any other reason.

GOVERNMENT NOTICE NO. 55 OF 2014

The Parliament of Lesotho
Statement of Objects and Reasons of the
Insurance Bill, 2014

**(Circulated by authority of the Honourable Minister of Finance
Leketekete Victor Ketso)**

The object is to repeal and replace the Insurance Act of 1976 in order to provide for the consolidation, administration, supervision, regulation, control, protection and development of insurance business in Lesotho, thus ensuring that the insurance industry in Lesotho prudently meet the demands of the economy for risk management and stimulation of growth in the investment sector.

The Bill aligns the Commissioner of Insurance's regulatory and supervisory roles in accordance with the international standards and practice, in particular, the Core Principles of International Association of Insurance Supervisors (IAIS) of which Lesotho has been a member since 1999. The IAIS Core Principles were designed to provide the international financial community with a benchmark against which the efficiency and effectiveness of insurance supervisory regimes could be assessed. The Legal framework for the supervision of insurance business in Lesotho as contained in the Insurance Act of 1976 is out of date and as a result does not comply with most of the Core Principle of the IAIS.

The Bill grants the Commissioner of Insurance, as the regulator, with necessary powers and tools to enable the Commissioner to achieve effective regulation and supervision of the insurance sector.

The Bill further grants the Commissioner power to inspect without prior notice, premises, including systems and controls whether in Lesotho or elsewhere in respect of a licensee, former licensee, subsidiary, directors and employees of a licensee or former licensee. This improvement is a major protection tool for the public as it will improve prudential supervision of insurers and insurance intermediaries by the Commissioner. Additional provisions have been developed in the Bill to provide clearer treatment of dormant accounts and unclaimed monies; the thrust of the improvement being to grant better protection to members of the public.

One of the lessons learned by regulators from the global financial crisis is that

there is heightened need to enhance corporate governance structures in insurance business. Through this Bill, the Commissioner has opportunity to make necessary regulatory changes to achieve desired governance improvements.

