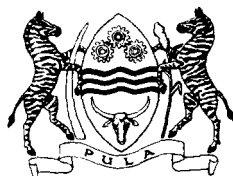


# THE INSURANCE ACT, 1969

No. 21



of 1969

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**AN ACT TO MAKE PROVISION RELATING TO THE CARRYING ON OF INSURANCE BUSINESS IN BOTSWANA: FOR THE PROTECTION TO BE AFFORDED IN RESPECT OF POLICIES OF LIFE INSURANCE; TO AMEND THE MERCANTILE LAW AMENDMENT ACT (CHAPTER 15) AND THE INSOLVENCY PROCLAMATION (CHAPTER 82); AND FOR MATTERS INCIDENTAL THERETO.**

Date of Assent: 8.7.69.

Date of Commencement: On a date to be Appointed.

ENACTED by the Parliament of Botswana.

## **PRELIMARY**

### **Short Title and Commencement**

1. This Act may be cited as the Insurance Act, 1968, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

### **Application of this Act**

2. The provisions of this Act shall not extend or apply to —

- (a) a person or a class of persons declared by the President by order in the *Gazette* to be exempt from the provisions of this Act ; or
- (b) a class of insurance business declared by the President by order in the *Gazette* to be exempt from the provisions of this Act.

### **Interpretation of Terms**

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

“agent for brokers” means a person acting as an agent for brokers who are authorized by an association of underwriters to place insurance business with members of the association ;

“approved securities” means securities issued by the Government of Botswana and such other securities as the Registrar may approve ;

“association of underwriters” means an association of individual underwriters in which every underwriting member of a syndicate of the association becomes liable for a separate part of the sum insured by every policy subscribed to by that syndicate limited or proportionate to the whole sum thereby insured.

“chairman”, in relation to an association of persons, includes the individual presiding over the board of directors or other governing body of the association ;

“contingent obligation dependent on human life” means —

(a) an obligation to pay to a particular person certain sums of money at specified intervals or a certain sum of money or to provide for a particular person a certain other benefit —

(i) on the occurrence of the death of a particular person or on the occurrence of the birth of a child to a particular person at any time or within a specified period ; or

(ii) in the event of a particular person continuing to live throughout a specified period or specified periods ; or

(b) an obligation assumed —

(i) until the occurrence of the death of a particular person ; or

(ii) during a specified period or until the occurrence of the death of a particular person before the expiration of that period ;

“director” includes an individual occupying the position of director or alternate director of an association of persons or a member or alternate member of a committee of management or of any other governing body of an association of persons by whatever name he may be called ;

“external insurer” means a registered insurer whose head office is not in Botswana ;

“financial year”, in relation to a person, means each period at the end of which the balance of the accounts of the person is struck, whether that period is a year or not;

“funeral policy” means a policy 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, not exceeding in value a total of R200, which consist principally of provision for the funeral of that person or the grant to another person of some other non-monetary benefit, whether or not the policy provides for —

- (a) the payment, at the option of the insurer or any other person, of a sum of money instead of the provision of a funeral or the grant of a non-monetary benefit; and
- (b) the payment of a sum of money in addition to the provision of a funeral or the grant of some non-monetary benefit;

“industrial policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium payable from time to time, at intervals not exceeding two months, a contingent obligation dependent on human life, not exceeding in amount the sum of R200, if the insurer has expressly or tacitly undertaken to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums;

“insurance agent” means a person who —

- (a) initiates insurance business; or
- (b) does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;  
on behalf of a person carrying on insurance business;

“insurance business” —

- (a) means any transaction in connection with the business of assuming the obligations of an insurer under a policy;
- (b) includes re-insurance business;

“insurer” means a person carrying on insurance business, otherwise than as an agent for brokers or as an insurance agent, who is not a person or a member of a class of persons declared to be exempt from the provisions of this Act by order made in terms of paragraph (a) of section 2;

“life insurance business” means the business of assuming the obligations of an insurer under life policies, funeral policies, industrial policies or sinking fund policies;

“life insurance fund” means the fund to which the receipts of an insurer in respect of his life insurance business are carried;

“life insurer” means a registered insurer carrying on life insurance business;

“life policy” means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money or the promise of a periodical payment of a certain premium, a contingent obligation dependent on human life and includes any contract of insurance customarily regarded as a life insurance contract, but does not include a funeral policy, an industrial policy, a personal accident policy, a sinking fund policy or an insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy;

“local insurer” means a registered insurer whose head office is in Botswana;

“local policy” means a policy issued in or outside Botswana upon an application made or presented to an insurer, an insurance broker or an insurance agent at any place in Botswana, but does not include a life policy payable outside Botswana which the owner has agreed in writing shall not be treated as a local policy for the purpose of this Act or any other Act relating to insurance business in Botswana that was in force at the time of the agreement;

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

“personal accident policy” means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money and otherwise than incidentally to an insurance effected by means of some other class of policy, an obligation to pay a certain sum or certain sums of money to, or provide any other benefit for, a particular person in the event of an accident or sickness causing the death or injury or disability of a particular person;

“policy” means a valid insurance contract whatever the form in which the rights and obligations of the parties thereto are expressed or created and shall be deemed to include –

- (a) a sinking fund policy; and
- (b) any form of bond, guarantee or undertaking in terms of which the insurer binds itself as surety for the discharge of the debts or other obligations of any person in return for the payment or the promise of the payment of a sum or sums of money;

but does not include an insurance contract in which –

- (a) a person or a member of a class of persons declared to be exempt from the provisions of this Act by order made in terms of paragraph (a) of section 2 assumes the obligations of the insurer; or
- (b) a person assumes the obligations of an insurer in a class of insurance business declared to be exempt from the provisions of this Act by order made in terms of paragraph (b) of section 2;

“principal officer” means the principal officer of a registered insurer appointed in terms of section 15;

“registered insurer” means an insurer registered in terms of Part I;

“Registrar” means the Registrar of Insurance appointed in terms of section 4.

“sinking fund policy” means a contract whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment or the promise of a payment from time to time of a certain sum of money by the other party to the contract;

“underwriting liabilities”, in relation to a member of an association of underwriters means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the committee of the association and approved —

(a) in the case of an association constituted in Botswana, by the Registrar; and

(b) in the case of an association constituted in a country outside Botswana, by the appropriate authority in whom is vested the administration of the insurance law relating to associations of underwriters in that country.

(2) For the purposes of this Act, an association of underwriters shall be treated as an insurer.

## **PART I**

### **REGISTRATION AND CANCELLATION OF REGISTRATION OF INSURERS**

#### **Appointment of Registrar**

4. The Minister shall appoint a Registrar of Insurance for the purposes of this Act.

#### **Insurers to be Registered**

5. (1) Subject to the provisions of subsection (2), no person shall carry on insurance business in Botswana unless he is registered as an insurer in the class of insurance business carried on by him or is a member of an association of underwriters registered as insurer in the class of insurance business carried on by him.

(2) Nothing in subsection (1) contained shall apply to —

(a) a person who carried on, on or after the date of commencement of this Act, a class of insurance business in Botswana which he was lawfully carrying on in Botswana immediately before that date if —



- (i) within three months of that date, he or, as the case may be, the association of underwriters of which he is a member applies to the Registrar to be registered as an insurer in that class of insurance business; and
- (ii) within nine months of that date, he or, as the case may be, the association of underwriters of which he is a member is so registered;

or

- (b) an agent for brokers; or
- (c) an insurance agent; or
- (d) the carrying on by —

- (i) a person whose registration as an insurer in a class of insurance business has been cancelled; or
- (ii) a member of an association of underwriters, the registration of which as an insurer in a class of insurance business has been cancelled;

of business relating to policies in that class of insurance business which were issued by him before the date of the cancellation of his registration as an insurer in that class of insurance business or, as the case may be, before the date of the cancellation of the registration of the association as insurer in that class of insurance business.

### **Registration of Insurers**

6. (1) An application to be registered as an insurer in a class of insurance business shall be made to the Registrar in the form prescribed and shall be accompanied by such documents as may be prescribed.

(2) If the Registrar is satisfied that —

- (a) an applicant for registration as an insurer is not disqualified in terms of section 12 to be registered as an insurer in the class of insurance business for which application for registration is made; and
- (b) the class of insurance business for which application for registration is made is being conducted or, as the case may be, will be conducted by the applicant, or, in the case of an applicant who is an association of underwriters, by the members of the association, in accordance with sound insurance principles;

he shall register the applicant as an insurer in that class of insurance business and shall notify the applicant in writing accordingly.

(3) If the Registrar is satisfied that —

- (a) an applicant for registration as an insurer is disqualified in terms of section 12 to be registered as an insurer in the class of insurance business for which application for registration is made; or

- (b) the class of insurance business for which application for registration is made is not being conducted or, as the case may be, will not be conducted by the applicant or, in the case of an applicant who is an association of underwriters, by the members of the association, in accordance with sound insurance principles ;

he shall notify the applicant in writing that he proposes to reject the application for registration and of his reasons for so doing.

(4) If an applicant for registration as an insurer, who has been notified of the Registrar's proposal to reject his application fails to lodge with the Registrar a notice of his intention to refer his case for review by the Minister as in subsection (1) of section 8 is provided within the period mentioned in that subsection or, having lodged such a notice within that period, withdraws the notice before the Minister gives his decision in the case, the Registrar shall reject his application and notify the applicant in writing accordingly.

#### **Cancellation of Registration**

7. (1) The Registrar shall notify a registered insurer in writing that he proposes to cancel his registration as an insurer and of his reasons for so doing if at any time —

(a) the Registrar is satisfied that —

- (i) the registered insurer would, if he were an applicant for registration as an insurer, be disqualified in terms of section 12 to be registered as an insurer in the class of insurance business with respect to which he is registered ; or
- (ii) the class of insurance business with respect to which the insurer is registered is not being conducted by the registered insurer or, in the case of a registered insurer who is an association of underwriters, by a member of the association, in accordance with sound insurance principles ; or
- (iii) the registered insurer and, additionally or alternatively, in the case of a registered insurer who is an association of underwriters, a member of the association has or have, as the case may be, failed to comply with a provision of this Act or of any insurance law of a foreign country outside Botswana applying to the registered insurer or, as the case may be, the member of the association which relates to the maintenance of a life insurance fund or the holding in trust of insurance premiums ;

or

- (b) the registered insurer is convicted of an offence against section 77 and an appeal against the conviction is not brought or, if brought, is abandoned or dismissed ; or
- (c) a judgment is obtained against the registered insurer or, in the case of a registered insurer who is an association of underwriters, a member of the

association, in any court in Botswana and remains unsatisfied for twenty-one days and an appeal from the judgment is not brought, or, if brought, is abandoned or dismissed.

(2) If a registered insurer who has been notified of the Registrar's proposal to cancel his registration as an insurer fails to lodge with the Registrar a notice of his intention to refer his case for review by the Minister as in subsection (1) of section 8 is provided within the period mentioned in that subsection or, having lodged such a notice within that period, withdraws the notice before the Minister gives his decision in the case, the Registrar shall cancel his registration and notify the insurer in writing accordingly.

#### **Proposal of Registrar Subject to Review**

8. (1) A person who is aggrieved by the proposal of the Registrar to —

- (a) reject his application for registration as an insurer; or
- (b) cancel his registration as an insurer;

may, within sixty days of the date of the notice informing him of the Registrar's proposal, lodge a notice with the Registrar of his intention to refer his case for review by the Minister.

(2) A notice of review lodged in terms of subsection (1) shall be in writing and shall specify in detail the grounds on which it is made.

(3) The Registrar shall transmit to the Minister a notice of review lodged with him in terms of subsection (1).

(4) The Minister shall in his discretion determine whether an application for registration as an insurer shall be rejected or, as the case may be, the registration of an insurer shall be cancelled.

(5) The Registrar shall give notice in writing to a person who has referred a case for review under this section of the Minister's decision in the case and of the Minister's reasons for the decision.

(6) If in giving effect to the decision of the Minister in a case reviewed under this section the Registrar registers an applicant as an insurer or cancels the registration of an insurer, he shall notify the applicant or, as the case may be, the insurer in writing accordingly.

#### **Cancellation of Registration at the Request of an Insurer, etc.**

9. (1) The Registrar may, at the request of a registered insurer or his liquidator, trustee or judicial manager, cancel his registration in any or all of the classes of insurance business carried on by him in Botswana.

(2) The Registrar shall cancel the registration of an insurer in a class of insurance business if he is satisfied that the insurer has ceased to carry on that class of insurance business in Botswana.

### **Registration or Cancellation to be Published in Gazette**

10. The Registrar shall cause a notice of the registration of an insurer or the cancellation of the registration of an insurer to be published in the *Gazette*.

### **No Person to Continue to Carry On Insurance Business in Botswana if Application for Registration Rejected**

11. (1) Notwithstanding the provisions of paragraph (a) of subsection (2) of section 5, a person referred to in that paragraph shall not, save as is provided in subsection (2), continue to carry on a class of insurance business in Botswana if he has been notified in writing in terms of subsection (4) of section 6 or subsection (5) of section 8 that his application for registration in that class of insurance business or, as the case may be, the application for registration in that class of insurance business of the association of underwriters of which he is a member has been rejected.

(2) The provisions of paragraph (d) of subsection (2) of section 5 shall, *mutatis mutandis*, apply to a person referred to in subsection (1).

### **Persons Disqualified to be Registered as Insurers**

12. (1) The Registrar shall not register as an insurer —

- (a) an applicant other than a person referred to in paragraph (a) of subsection (2) of section 5 if the name under which the applicant desires to be registered is identical with the name of a person referred to in that paragraph or of a registered insurer or so nearly resembles the name of that person or registered insurer as to be likely to be mistaken for it, unless that person or registered insurer is being or is to be wound up or dissolved or, as the case may be, has ceased to carry on insurance business in Botswana and consents to the registration of the applicant under the name in question; or
- (b) an applicant other than an association of underwriters, unless the applicant's margin of solvency is, in terms of section 13, sufficient for the purposes of the class or, as the case may be, classes of insurance business for which application for registration is made; or
- (c) an applicant who is an association of underwriters, unless —
  - (i) the regulations constituting the association and governing the operations of the members provide for the matters referred to in sections 23, 26, 27 and 24 or, as the case may be, 25; and
  - (ii) the committee of the association holds, under a document creating a trust the terms of which have been approved by the committee, a deposit from each member of the association of money or approved securities or both to the value of R10,000 as security in respect of each member's underwriting liabilities; and
- (iii) in the case of an association constituted in a country outside Botswana —

A. the association was constituted not less than five years before the date of the association's application for registration; and

B. the insurance law of the country in which the association was constituted provides for the regulation of associations of underwriters;

or

(d) an applicant who is a corporate body with share capital, unless the applicant —

(i) is lawfully constituted in accordance with the laws of the country in which the head office of the applicant is situate; and

(ii) has a paid-up share capital of not less than R100,000.

(2) Notwithstanding the provisions of paragraphs (b) and (d) of subsection (1), the Registrar may register as an insurer an applicant other than an association of underwriters —

(a) whose margin of solvency is not sufficient for the class of insurance business for which application for registration is made in the case of an applicant whose head office is outside Botswana if the Registrar is satisfied from information furnished by the applicant that the applicant has complied and is complying with the insurance laws of the country where the head office is situated;

(b) whose paid-up share capital, in the case of an insurer having a share capital, is less than R100,000 if the applicant was, immediately before the date of this Act, carrying on in Botswana the class of insurance business for which application for registration is made.

#### **Margin of Solvency Sufficient for the Purposes of Carrying On Insurance Business**

13. (1) An insurer other than an association of underwriters shall be treated as having a margin of solvency sufficient for the purposes of carrying on —

(a) any class of insurance business other than life insurance business, if the value of his assets in respect of the classes of insurance business carried on by him exceeds the amount of his liabilities in respect of the classes of insurance business carried on by him by —

(i) R100,000; or

(ii) one-tenth of his premium income in his last preceding financial year; whichever is the greater amount;

(b) life insurance business only, if his liabilities under unmaturing life, funeral, industrial and sinking fund policies do not exceed the amount of his life insurance fund;

(c) any class of insurance business, including life insurance business, if —

(i) in respect of his life insurance business, he has a margin of solvency referred to in paragraph (b); and

- (ii) the value of his assets in respect of all classes of insurance business carried on by him exceeds the amount of his life insurance fund, together with all his liabilities other than his liabilities in respect of unmatured life, funeral, industrial and sinking fund policies, by —

A. R100,000 ; or

B. one-tenth of his premium income, other than life insurance premium income, in his last preceding financial year ;

whichever is the greater amount.

(2) In calculating the margin of solvency referred to in paragraph (a) and subparagraph (ii) of paragraph (c) of subsection (1) —

(a) all contingent and prospective liabilities of an insurer, but not liabilities in respect of share capital, shall be taken into account in assessing the amount of the liabilities of the insurer ; and

(b) an insurer's premium income, other than life insurance premium income, in any financial year shall be assessed as the net amount, after deduction of any premiums paid by the insurer in re-insurance, of the premiums received by the insurer in his last preceding financial year in respect of all insurance business, other than life insurance business, carried on by him in that last preceding financial year.

## **PART II**

### **PROVISIONS GOVERNING THE CARRYING ON OF INSURANCE BUSINESS BY REGISTERED INSURERS OTHER THAN ASSOCIATIONS OF UNDERWRITERS**

#### **Application of Part II**

14. The provisions of this Part shall apply to registered insurers who are not associations of underwriters.

#### **Registered Insurers to Maintain Principal Office and Appoint Principal Officer**

15. (1) A registered insurer shall maintain a principal office in Botswana and shall appoint a principal officer who shall be ordinarily resident in Botswana.

(2) A registered insurer shall notify the Registrar in writing of the situation of his principal office and the name of his principal officer.

(3) If a registered insurer changes the situation of his principal office in Botswana or appoints a new principal officer, he shall, within twenty-one days of the change or appointment, give notice thereof to the Registrar in writing.

#### **Registered Insurers to Notify Registrar of Certain Changes and Particulars**

16. A registered insurer shall, within six months of the end of each financial year, notify the Registrar in writing of any change which occurred in that year in any matter prescribed in relation to the insurer for the purposes of this section.

**Accounts and Balance Sheets, etc., of Registered Insurers to be Submitted to Registrar**

17. (1) Subject to the provisions of subsection (3), a registered insurer shall, within six months of the end of each financial year, prepare and furnish to the Registrar in the appropriate forms prescribed —

- (a) a certificate as to the solvency of the insurer, certified, in the case of a life insurer, by an actuary approved by the Registrar; and
- (b) a balance sheet showing the financial position of the insurer's insurance business at the close of that year; and
- (c) a profit and loss account in respect of insurance business carried on by the insurer in that year; and
- (d) a revenue account in respect of life insurance business, if any, carried on by the insurer in that year; and
- (e) a statement of life insurance business, other than business in connexion with funeral, industrial and sinking fund policies, if any, carried on by the insurer in Botswana in that year; and
- (f) a revenue account in respect of insurance business, other than life insurance business, if any, carried on by the insurer in that year; and
- (g) such other documents and information relating to the accounts and balance sheet referred to in this subsection as may be prescribed.

(2) A registered insurer shall furnish to the Registrar with the documents referred to in subsection (1) a copy of any report on the affairs of the insurer submitted to the policy-owners or shareholders of the insurer in respect of the financial year to which those documents relate.

(3) The provisions of paragraph (c) of subsection (1) shall not apply to a registered insurer who —

- (a) carries on only one class of insurance business and no business other than insurance business; or
- (b) has no share capital.

(4) If, in the opinion of the Registrar, an account or balance sheet furnished by a registered insurer in terms of subsection (1) is incorrect or is not prepared in accordance with the provisions of this Act, the Registrar may, by notice in writing, call upon the insurer to amend the account or balance sheet or to furnish a correct account or balance sheet or, as the case may be, an account or balance sheet prepared in accordance with the provisions of this Act.

(5) If a registered insurer fails to comply with a notice referred to in subsection (4) to the satisfaction of the Registrar, the Registrar may himself either amend the document in question, giving the insurer particulars of the amendments, or reject the document.

(6) An account or balance sheet amended by the Registrar or by a registered insurer in terms of this section shall be treated as having been submitted to the Registrar in its amended form.

(7) If the account or balance sheet of a registered insurer has been rejected by the Registrar in terms of subsection (5), the insurer shall be treated as having failed to comply with the provisions of subsection (1) in relation to that account or balance sheet unless and until he has furnished another account or balance sheet in accordance with the directions of the Registrar.

(8) A registered insurer liable under a local life, funeral, industrial or sinking fund policy shall, at the request of the owner, furnish him free of charge with a copy of the revenue account, profit and loss account or balance sheet prepared by the insurer in terms of subsection (1) in respect of his last preceding financial year.

#### **Keeping of Records by External Insurers**

18. (1) An external insurer shall keep —

(a) a record of all local policies issued by him showing his rights and obligations thereunder; and

(b) a record of the premiums received on all local policies issued by him; and

(c) documentary evidence of his assets in Botswana.

(2) The Registrar may at any time by notice require an external insurer to furnish him with the records and evidence referred to in subsection (1) or any part thereof.

(3) Should the external insurer fail to comply with such requirement within three months after such notice has been served upon him, he shall be guilty of an offence.

#### **Audit of Accounts of Local Insurers**

19. (1) The accounts of a local insurer shall be audited annually by an auditor approved by the Registrar. The auditor shall not be an employee, manager or director of the insurer.

(2) The auditor of a local insurer shall satisfy himself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(3) The auditor of a local insurer shall certify whether —

(a) he has obtained adequate information from the books and records of the insurer; and

(b) the accounts of the insurer accord with the information given to him by the insurer for the purposes of his audit; and



- (c) the balance sheet and profit and loss account respectively of the insurer give a true and fair view of the insurer's financial position and profit and loss.

#### **Audit of Accounts of External Insurers**

20. An external insurer shall furnish evidence to the satisfaction of the Registrar that his accounts are subject to an annual audit by an independent auditor.

#### **Publication of Authorized Capital, etc., of Registered Insurers**

21. A registered insurer shall not within Botswana publish a statement or issue a document on which is printed a statement –

- (a) of his authorized capital, unless the statement also sets forth the amount of his subscribed capital and of his paid-up capital; or
- (b) of his subscribed capital, unless the statement also sets forth the amount of his paid-up capital.

### **PART III**

#### **PROVISIONS GOVERNING ASSOCIATIONS OF UNDERWRITERS WHICH ARE REGISTERED INSURERS AND THE CARRYING ON OF INSURANCE BUSINESS BY THEIR MEMBERS**

#### **Application of Part III**

22. The provisions of this Part shall apply to associations of underwriters which are registered insurers and their members.

#### **Premiums Received by Members of Associations of Underwriters to be held in Trust**

23. All premiums received by each member of an association of underwriters shall be held in trust in the names of trustees for the payment of the underwriting liabilities attached thereto of each member and the expenses of his insurance business.

#### **Audit of Accounts of Members of Associations of Underwriters constituted in Botswana**

24. (1) The accounts of a member of an association of underwriters constituted in Botswana shall be audited annually by an auditor approved by the Registrar. The auditor shall not be an employee, manager or director of the member.

(2) The auditor of a member of an association of underwriters constituted in Botswana shall satisfy himself that the accounts of the member have been properly prepared in accordance with the books and records of the member.

(3) The auditor of a member of an association of underwriters constituted in Botswana shall certify to the committee of the association whether —

- (a) he has obtained adequate information from the books and records of the member; and
- (b) the accounts of the member accord with the information given to him by the member for the purposes of his audit; and
- (c) the balance sheet and profit and loss account respectively of the member give a true and fair view of the member's financial position and profit and loss.

**Audit of Accounts of Members of Associations of Underwriters constituted outside Botswana**

25. An association of underwriters constituted outside Botswana shall furnish evidence to the satisfaction of the Registrar that the accounts of each member of the association are subject to an annual audit by an independent auditor.

**Certificates of Auditors of Members of Associations of Underwriters as to Underwriting Assets**

26. The auditor of a member of an association of underwriters shall certify to the committee of the association whether the underwriting assets held by the member at the close of each financial year were sufficient to cover the underwriting liabilities attached at that time to the member's underwriting accounts.

**Information Relating to the Insurance Business of Members of Associations of Underwriters to be furnished to the Registrar**

27. An association of underwriters shall furnish annually to the Registrar —

- (a) in the case of an association constituted in Botswana, such returns relating to the insurance business carried on by each of the members the association as the Registrar may specify; and
- (b) in the case of an association constituted outside Botswana —
  - (i) a certified copy of the returns relating to the insurance business carried on by the members of the association prepared and furnished each year to the appropriate authority in whom is vested the administration of the insurance law relating to associations of underwriters in that country; and
  - (ii) a certificate signed by the chairman of the association and by the authority referred to in sub-paragraph (i) that the members of the association have, in respect of the preceding year, complied with the provisions of the insurance law relating to associations of underwriters in that country.

**Agents for Brokers to be Registered**

28. (1) Subject to the provisions of subsection (2), no person shall act in Botswana as agent for brokers unless he is registered as an agent for brokers in terms of section 29.

(2) Nothing in subsection (1) contained shall apply to a person who acts as an agent for brokers on or after the date of commencement of this Act, if —

- (a) immediately before that date he was acting in Botswana as an agent for brokers ; and
- (b) within three months of that date he applies for registration as an agent for brokers ; and
- (c) within nine months of that date he is so registered.

#### **Registration and Cancellation of Registration of Agents for Brokers**

29. (1) An application for registration as agent for brokers shall be made to the Registrar in the form prescribed.

(2) The Registrar shall not register, and shall cancel, the registration of any person as agent for brokers who —

- (a) has, in terms of any enactment in force in the Commonwealth or the Republic of South Africa relating to insolvency or bankruptcy, been adjudged or otherwise declared insolvent or bankrupt, and has not been rehabilitated or discharged or has, in terms of any enactment in force in the Commonwealth or the Republic of South Africa relating thereto, made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside ; or
- (b) has been convicted by any court wheresoever situate of any offence involving dishonesty or has been convicted of an offence against section 77 or 78, an appeal against the conviction having been abandoned or dismissed.

#### **Accounts to be kept by Agents for Brokers**

30. A registered agent for brokers shall —

- (a) keep regular and special accounts of all insurance business placed through his agency with members of associations of underwriters and other insurers ; and
- (b) prepare and furnish, in the form prescribed, to the Registrar, within six months of the end of each financial year, a return of all insurance business referred to in paragraph (a).

### **PART IV**

#### **SPECIAL PROVISIONS GOVERNING THE CARRYING ON OF LIFE INSURANCE BUSINESS BY REGISTERED INSURERS OTHER THAN ASSOCIATIONS OF UNDERWRITERS**

#### **Application of Part IV**

31. The provisions of this Part shall apply to life insurers who are not associations of underwriters.

### **Life Insurers carrying on Business other than Life Insurance Business**

32. (1) A life insurer who carries on, in addition to his life insurance business, whether insurance business or otherwise, shall keep a separate account of all receipts in respect of his life insurance business.

(2) The receipts in respect of the business of a life insurer referred to in subsection (1) which are receipts in respect of his life insurance business shall be carried to and form part of the life insurance fund.

(3) The life insurance fund of a life insurer referred to in subsection (1) shall be absolutely the security of the owners of the life, funeral, industrial and sinking fund policies issued by the life insurer as though it belonged to a life insurer carrying on no other business than life insurance business. Payments from the life insurance fund of a life insurer referred to in subsection (1) shall not be made in pursuance of the contracts of the life insurer which would not be made if the business of the life insurer were only that of life insurance, and the life insurance fund shall not be applied directly or indirectly to any purposes other than those of life insurance.

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

### **Periodical Investigations to be made into Financial Position of Life Insurers**

33. (1) A life insurer shall, once in every five years, cause an investigation to be made into his financial position by an actuary approved by the Registrar.

(2) An investigation into the financial position of a life insurer made in terms of subsection (1) shall include —

- (a) a valuation of the liabilities in respect of the whole of his life insurance business; and
- (b) a valuation of the liabilities in respect of his life insurance business in Botswana.

(3) A life insurer whose financial position is investigated in terms of this section, shall prepare and furnish to the Registrar in the appropriate forms prescribed, within six months of the date to which his accounts are made up for the purposes of the investigation, an abstract of the report of the actuary approved by the Registrar by whom the investigation was made, and a statement of his insurance business at that date.

(4) The provisions of subsections (1) to (3) shall, subject to the provisions of subsection (5), apply at any time an investigation into the financial position of a life insurer is made with a view to a distribution of profits.

(5) A life insurer whose financial position is investigated with a view to a distribution of profits shall not be required to furnish to the Registrar a statement of his insurance business such as is referred to in subsection (3) more than once in every five years.

## **Amalgamation and Transfers of Life Insurance Business**

34. (1) No local insurer shall —

- (a) amalgamate with one or more insurers if one or more or all of the insurers to be amalgamated are persons carrying on life insurance business; or
- (b) transfer his life insurance business or a part of his life insurance business to or take transfer of the life insurance business or a part of the life insurance business of another insurer;

unless the amalgamation or, as the case may be, the transfer is sanctioned by the Minister in accordance with the provisions of this section.

(2) If it is intended to amalgamate two or more insurers carrying on life insurance business, one or more or all of whom are local insurers, or to transfer the life insurance business or a part of the life insurance business of one insurer to another insurer one or both of whom are local insurers, the directors of the insurers concerned may apply to the Minister to sanction the proposed amalgamation or, as the case may be, transfer.

(3) Before an application to the Minister is made in terms of subsection (2) —

- (a) notice of the intention to make the application shall be published in the *Gazette*; and
- (b) a statement of the nature of the amalgamation or, as the case may be, transfer, together with —
  - (i) an abstract containing the material facts embodied in the agreement under which the amalgamation or transfer is proposed to be effected; and
  - (ii) copies of the actuarial reports upon which the agreement referred to in sub-paragraph (i) is founded, including a report by an actuary approved by the Registrar;

shall be posted to the registered or last known address of each life, funeral, industrial or sinking fund policy-owner in Botswana of each insurer and to the Registrar; and

- (c) the agreement under which the amalgamation or, as the case may be, transfer is proposed to be effected shall be open for inspection by policy-owners and shareholders at the offices of the insurers in Botswana for a period of twenty-one days after the publication of the notice in the *Gazette*.

(4) The Minister, after considering the application and such representations as may be made by policy-owners and shareholders of the insurers concerned and by other persons whom he considers are entitled to be heard, may sanction the arrangement if he is satisfied that no sufficient objection to the arrangement has been established.

(5) The Minister shall not sanction an amalgamation or, as the case may be, transfer if it appears to him that the life, funeral, industrial and sinking fund policy-owners, representing one-fifth or more of the total amount insured by any of the insurers carrying on life insurance business concerned, dissent from the amalgamation or transfer.

(6) If an amalgamation or transfer has taken place in accordance with the provisions of this section, no life, funeral, industrial or sinking fund policy-owner shall be regarded as having abandoned any claim which he would have had against the original insurer or to have accepted in place thereof the liability of another insurer, unless he or his agent has signed a written document abandoning that claim and accepting in place thereof the liability of that other insurer.

### **Statement in Case of Amalgamation or Transfer of Business**

35. Within three months after the date of the completion of an amalgamation or transfer referred to in section 34, the combined insurer or, as the case may be, the purchasing insurer shall deposit with the Registrar —

- (a) certified copies of statements of the assets and liabilities of the insurers concerned in the amalgamation or transfer, together with a statement of the amalgamation or transfer; and
- (b) a certified copy of the agreement or deed under which the amalgamation or transfer was effected; and
- (c) certified copies of the actuarial or other reports upon which the agreement or deed was founded; and
- (d) a declaration under the hand of the chairman of each insurer and of the principal officer of each insurer that —
  - (i) to the best of their knowledge and belief, every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and no other payments, except those set forth, have been made or are to be made, either in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the amalgamation or transfer; and
  - (ii) due notice of the proposed amalgamation or transfer was given to the shareholders, if any, and policy-owners of each insurer concerned in compliance with the provisions of section 34.

## **PART V**

### **SPECIAL PROVISIONS RELATING TO LIFE AND OTHER POLICIES**

#### **Interpretations of Terms in Part V**

36. (1) In this Part, unless inconsistent with the context —

“children” includes illegitimate children, stepchildren and children adopted in terms of any enactment whatsoever relating to the adoption of children;

“insolvency” includes an assignment to, or composition with, creditors made in terms of the Insolvency Proclamation (Chapter 82); and “insolvent” shall be construed accordingly;

“minor” means a person who, by reason of his youth, is under a legal disability;

“trustee”, in relation to an estate in insolvency or bankruptcy, includes an assignee or, as the case may be, the person having the conduct of an offer of composition.

(2) If the proceeds on realization of an asset, which was acquired with moneys paid by the insurer under a life policy and with other moneys, exceed in amount the moneys paid under the policy which were used for the purpose of acquiring the asset, a reference in this Part to the proceeds on realization of the asset shall be construed as a reference to the amount of the moneys paid under the policy which were used for the purpose of acquiring the asset, and a reference to the value of any such asset shall be construed accordingly.

#### **Minor may Insure his Life**

37. (1) A minor who has attained the age of eighteen years may, without the consent of his guardian, effect a life policy upon his own life and pay any premium due under the policy with money he has earned or with any other money at his disposal.

(2) Subject to the provisions of subsection (3), a minor who has effected a life policy upon his own life as in subsection (1) is provided, shall be as competent in all respects to be a policy-owner and to have and to exercise all the powers and privileges of a policy-owner in relation to the policy as if he were of full age.

(3) A minor who has effected a life policy upon his own life shall not, without the consent of his guardian, pledge, cede or surrender the policy while he is a minor.

(4) If any money becomes payable to a minor who has attained the age of eighteen years under a life policy effected by him on his own life, the insurer liable under the policy shall pay that money to the minor, who may, without the consent of his guardian, deal therewith as he thinks fit.

#### **Life Policies effected by Married Persons**

38. (1) Notwithstanding any provisions to the contrary in any written law or of the common law, but subject to the provisions of this Part —

(a) a married woman may —

(i) effect and own a life policy; and

(ii) hold and, by way of gift or otherwise, acquire from or dispose of to any person, including her husband, any interest in a life policy; and

(iii) hold —

- A. any moneys paid by the insurer in respect of any interest held by her in a life policy or any assets acquired by her with those moneys;
- B. any moneys or assets acquired by her in respect of the disposal of any interest held by her in a life policy or any assets acquired by her with those moneys;

and

(iv) dispose of to any person, including her husband, by way of gift or otherwise, any moneys or assets referred to in sub-paragraph (iii);

in all respects as if she were not a married woman;

(b) a man married out of community of property may, by way of gift, acquire from or dispose of to his wife —

- (i) any interest in a life policy; and
- (ii) any moneys paid by the insurer in respect of any interest in a life policy or any assets acquired with those moneys; and
- (iii) any moneys or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those moneys;

in all respects as if he were not a married man.

(2) It is hereby declared that —

(a) a man married in community of property may, subject to the provisions of this Part —

(i) dispose of to his wife, by way of gift or otherwise —

- A. his share in any interest in a life policy effected or held by him on behalf of the community; and
- B. any moneys paid by the insurer in respect of his share in any interest referred to in sub-paragraph A or any assets acquired with those moneys; and
- C. any moneys or assets acquired in respect of the disposal of any interest referred to in sub-paragraph A or any assets acquired with those moneys;

(ii) acquire from his wife, by way of gift or otherwise, and hold and dispose of for his own benefit any moneys or assets referred to in sub-paragraph (iv) of paragraph (a) of subsection (1);

in all respects as if he were not a married man.

(b) the provisions of paragraph (a) of subsection (1) shall apply in relation to —



- (i) a life policy effected by a married woman before her marriage ; or
- (ii) any interest in a life policy acquired by a married woman before her marriage ;
- (iii) any moneys due or paid to a married woman before her marriage in respect of a life policy referred to in sub-paragraph (i) or any interest in a life policy referred to in sub-paragraph (ii) or acquired by her before her marriage in respect of the disposal of any interest in a life policy ;  
or
- (iv) any assets acquired by a married woman before her marriage with moneys referred to in sub-paragraph (iii) ;

as if the policy, interest, moneys or assets was or were effected or paid to or acquired by her or became due during her marriage.

#### **Life Policy on Own Life ; Protection afforded during Life**

39. (1) If a life policy effected by a person, whether married or not, on his or her own life which has insured for three years from the date of the payment of the first premium or longer —

- (a) is attached in execution of a judgment or order of any court at the instance of a creditor of that person ; or
- (b) becomes part of that person's estate in insolvency and, if that person is married in community of property, of the joint estate of the insolvent and his wife ;

during the lifetime of that person, the proceeds on realization of the policy shall, to the extent specified in subsection (2), be protected against that person's creditors and against any claim in connexion with the attachment or the insolvency.

(2) The protection afforded by the provisions of subsection (1) in respect of a life policy referred to in that subsection —

- (a) shall extend to so much of the proceeds on realization of the policy as does not exceed an amount of R4,000 ; and
- (b) shall, subject to the provisions of paragraph (a), extend, if the policy is pledged, to so much of the proceeds on realization of the policy as exceeds the amount of the liability, the payment of which the pledge secures, but no further.

(3) If moneys due or paid by the insurer under a life policy referred to in subsection (1) or assets acquired with those moneys or with those moneys and other moneys —

- (a) are attached in execution of a judgment or order of any court at the instance of a creditor of a person by whom the policy was effected ; or

- (b) become part of the estate in insolvency of the person by whom the policy was effected and, if that person is married in community of property, of the joint estate of the insolvent and his wife;

during the period of five years from the date the moneys due or paid under the policy first became due, the moneys due or paid under the policy or the proceeds on realization of the assets shall, to the extent specified in subsection (4), be protected against that person's creditors and against any claim in connexion with the attachment or the insolvency.

(4) The protection afforded by the provisions of subsection (3) in respect of moneys or assets of a person referred to in that subsection —

- (a) shall extend to those moneys or the proceeds on realization of those assets in so far as those moneys and proceeds, together with —

- (i) all other moneys due or paid to that person under life policies referred to in subsection (1); and
  - (ii) the value of all other existing assets of that person acquired with moneys paid under life policies referred to in subsection (1) or with such moneys and other moneys; and
  - (iii) the realizable value of all life policies referred to in subsection (1) of which that person is the owner;

do not exceed R4,000; and

- (b) shall, subject to the provisions of paragraph (a), extend, in the case of an asset which is pledged or mortgaged, to so much of the proceeds on realization of the asset as exceeds the amount of the liability, the payment of which the pledge or mortgage secures, but no further; and
- (c) shall not extend to any moneys due or paid under a life policy referred to in subsection (1) on surrender of the policy or to any assets acquired with those moneys or with those moneys and other moneys.

(5) For the purposes of this section —

- (a) a life policy which an insurer issues in exchange for or in consideration of the surrender of another life policy under which the insurer was previously liable shall be regarded as having been effected on the date on which the surrendered policy was issued if the insurer received no payment other than the value of the surrendered policy as a consideration for the new policy;
- (b) a life policy which an insurer issues in terms of subsection (3) of section 46 shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.

#### **Life Policy on Own Life; Protection afforded on Death**

40. (1) In this section —

“beneficiary” means —

- (a) the surviving spouse of an owner ; or
- (b) a dependant under the will of an owner ; or
- (c) a dependant by right of succession on intestacy ; or
- (d) a dependant under or by virtue of an order made in terms of any enactment in force in Botswana relating to inheritance or succession ;

“dependant” means the surviving spouse, parents children or grandchildren of an owner ;

“owner” means an owner of a life policy, moneys or assets in respect of which protection is afforded by the provisions of section 39.

(2) If —

- (a) a beneficiary has, on the death of the owner, a claim —
  - (i) under a life policy ; or
  - (ii) to moneys or assets ;
 in respect of which protection is afforded by the provisions of section 39 ; and
- (b) the life policy, moneys or assets referred to in paragraph (a) —
  - (i) are attached in execution of a judgment or order of any court at the instance of a creditor of the deceased owner ; or
  - (ii) become part of the deceased owner’s estate in insolvency and, if the deceased owner was married in community of property, of the joint estate of the deceased insolvent and his wife ;

the beneficiary shall, in respect of his claim, enjoy the protection afforded by the provisions of section 39.

#### **Protection afforded in respect of Life Policy inuring to Spouse or Children**

41. (1) If —

- (a) before or during marriage a man effects or cedes for the benefit of his wife or his wife and children, including children to be born to him and his wife, or any of them ; or
- (b) before or during marriage a woman effects or cedes for the benefit of her husband or her husband and children, including children to be born to her and her husband, or any of them ; or
- (c) a person effects or cedes for the benefit of his or her children, including children to be born to him or her ;

a life policy on his or her life or on the life of his or her spouse, the policy or moneys due or paid thereunder by the insurer or any asset acquired with those moneys shall not, subject to the provisions of this section and, in the case of a policy which is ceded, to the terms of the cession —

- (i) be liable to be attached in execution of a judgment or order of any court at the instance of a creditor of the person by whom the policy was effected or ceded; or
- (ii) form part of the estate in insolvency of the person by whom the policy was effected or ceded and, if that person is married in community of property, of the joint estate of the insolvent and his wife.

(2) A benefit conferred or purported to be conferred upon a spouse or child under a life policy referred to in subsection (1) or by virtue of the cession of a life policy referred to in that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject, in the case of a policy which is ceded, to the terms of the cession, be enforceable against the insurer liable under the policy at the suit of the spouse or child or the legal representative of the spouse or child, notwithstanding that the spouse or child has not accepted the benefit and is not a party to the contract of insurance.

(3) A life policy shall not be treated for the purposes of this section as having been effected for the benefit of the spouse and, additionally or alternatively, the children, including unborn children, or any of them, of the person by whom the policy was effected unless, at the time of its issue, the policy expressly so provides.

(4) The provisions of this section shall not apply to a life policy issued before the date of commencement of this Act and, notwithstanding the provisions of sections 81 to 84, the provisions of the enactment or enactments referred to in those sections which applied to the policy immediately before that date shall continue to have effect with respect to the protection afforded to policies of life insurance effected or ceded for the benefit of a spouse and, additionally or alternatively, children, including unborn children, or any of them.

#### **Protection afforded in respect of Life Policy insuring to Wife**

42. (1) If, before or during marriage, a man effects or cedes for the benefit of his wife a life policy on his or her life and the policy —

- (a) is attached in execution of a judgment or order of any court at the instance of her creditors; or
- (b) becomes part of her state in insolvency;

the proceeds on realization of the policy shall, to the extent specified in subsection (2) of section 39, be protected against her creditors and against any claim in connexion with the attachment or the insolvency.

(2) The provisions of subsections (3) to (5) of section 39 and of subsections (2) to (4) of section 41 shall, *mutatis mutandis*, apply to a life policy referred to in subsection (1) or moneys due or paid thereunder by the insurer or any assets acquired with those moneys or with those moneys and other moneys.

### **Special Provisions relating to Persons married in Community of Property**

43. (1) If a premium paid under a life policy effected by a spouse married in community of property or in which a spouse married in community of property holds any interest is paid out of moneys which belong to the joint estate and the liabilities of the spouses continuously exceed the value of their assets from the time of the payment of the premium until the joint estate is sequestrated as insolvent, the spouse by whom the policy was effected or who holds the interest in the policy shall be liable to pay into the estate in insolvency the amount of every such premium in so far as its payment created or increased the excess of liabilities over assets.

(2) If a woman married in community of property who has effected a life policy or has acquired and holds any interest in a life policy earns or otherwise acquires any money without utilizing for the purpose any assets belonging to the joint estate, she may, without her husband's consent, use that money for the purpose of paying any premium due under the policy.

(3) Save as is provided in subsection (4), nothing in this section shall be construed as obliging the husband of a woman married in community of property to pay any premium due under a life policy referred to in this section out of the joint estate, unless he has undertaken to do so.

(4) If the husband of a woman married in community of property has effected or ceded for the benefit of his wife and, additionally or alternatively, children, including unborn children, or any of them a life policy on his life or on the life of his wife, he shall be obliged during the marriage to pay out of the joint estate any premium under the policy so long as the value of the joint estate exceeds their joint liabilities and, if he fails to make the payment, his wife may, without her husband's consent, make the payment out of any money she may have earned or otherwise acquired without utilizing for that purpose any assets belonging to her and her husband jointly or which may otherwise be at her disposal.

### **Claim of Beneficiary named in Life Policy not protected except as in section 41 or 42 is provided**

44. Save as is provided in section 41 or 42, a life policy issued on or after the date of commencement of this Act in which a person is named as a beneficiary shall not, either during the lifetime of the insured or on his death, confer any benefit on the person named as against the claims of —

- (a) the owner of the policy or his legal representative ; or
- (b) the creditors of the owner of the policy or of his estate ; or
- (c) a beneficiary as defined in subsection (1) of section 40.

**Selection for Realization of Life Policies in respect of which Protection is afforded**

45. If —

- (a) two or more life policies or assets in respect of which protection is afforded by the provisions of section 39, 40 or 42, being the property of one person, are attached in execution of a judgment or order of any court at the instance of a creditor; or
- (b) the owner of two or more life policies or assets in respect of which protection is afforded by the provisions of section 39, 40 or 42 is adjudged or otherwise declared insolvent;

and a part only of the aggregate realizable value of the policies or assets is protected, the judgment creditor or, as the case may be, the trustee of the estate in insolvency shall determine which policy or policies or other asset or other assets shall be realized, wholly or partly, in order to make available to him so much of the aggregate realizable value as is not protected.

**Partial Realization and Partial Conversion of Life Policies**

46. (1) A judgment creditor of the owner of a life policy or the trustee of his estate in insolvency who is entitled to a part of the realizable value of the policy may, if he is in possession of the policy, deliver it to the insurer who is liable under the policy for the purposes of the payment to him of the sum to which he is entitled.

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of the life policy to which the provisions of that subsection relate, the owner or any other person in possession of the policy shall, at the request of the judgment creditor or trustee, deliver it to the insurer who is liable under the policy for the purposes of the payment to the judgment creditor or trustee of the sum to which he is entitled.

(3) On receipt of a life policy delivered to him in terms of subsection (1) or (2), the insurer shall —

- (a) at the request of the judgment creditor or trustee referred to in subsection (1), pay to him a sum equal to the part of the realizable value of the policy to which he is entitled; and
- (b) at the request of the owner of the policy, issue to him a new policy of the same class, but for a sum insured equal to the difference between —
  - (i) the full sum insured under the old policy, including any bonus which may have accrued in connexion therewith; and
  - (ii) an amount which bears the same ratio to the full sum insured under the old policy, including any bonus, as the amount paid by the insurer to the judgment creditor or trustee referred to in subsection (1) bears to the full realizable value of the old policy.

(4) If an insurer has made the payment and issued a new life policy as in subsection (3) is provided, the old life policy shall lapse.

**Provisions in Case a Life Policy Ceded or Trust Policy cannot be kept up**

47. If a person who —

- (a) has effected or ceded a life policy for the benefit of his spouse and, additionally or alternatively, children, including unborn children, or any of them; or
- (b) holds a life policy in trust for any other person and is obliged to pay the premiums on the policy;

is or has been unable to pay the premiums, that person may, with the consent of each person who has an interest in the policy, or, if any such person is a minor, with the consent of his guardian or the Master of the High Court, agree with the insurer liable under the policy —

- (i) to exchange the policy for a paid-up life policy of a value equal to that of the original policy according to the insurer's current tariff, payable at the time and in the manner stipulated in the original policy to the person or persons entitled to the sum insured by the original policy; or
- (ii) to borrow from the insurer upon security of the policy such sums as may be necessary to keep the policy in force or to revive it; or
- (iii) to apply any bonus which may have accrued in connexion with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

**Life Policies Ceded or Premiums Paid with Intent to Benefit Someone at the Expense of a Creditor**

48. (1) Nothing in this Part contained shall be construed as derogating from the power of a competent court to set aside, in terms of any enactment in force in Botswana relating to insolvency, any cession of a life policy made with intent to benefit someone at the expense of a creditor.

(2) If a premium upon a life policy was paid with intent to benefit a person at the expense of a creditor of the person making the payment, a competent court may order the owner of the policy to pay a sum equal to the aggregate of all premiums so paid, with interest at the rate of *six per centum per annum*, on the amount of each premium so paid from the date of its payment, to the person to whose detriment the premium was or the premiums were paid or, if the person has been adjudged or otherwise declared insolvent, to the trustee of his estate in insolvency.

(3) An order for the payment of a sum of money made in terms of subsection (2) shall have the effect of pledging the life policy referred to in that subsection to the person entitled to the payment as security for the payment and, until the payment is made, that person shall be entitled to possess the policy.

## **Proof of Age**

49. If —

- (a) a claim is made for a benefit under a life policy which has insured for a period of three years from the date of the payment of the first premium; and
- (b) the age or date of birth of the insured has not been admitted by the insurer liable under the policy; and
- (c) the person claiming the benefit shows that, owing to circumstances beyond the control and through no default either of himself or of the person by whom the policy was effected, there was, at no time after the date of the payment of the first premium under the policy, either in existence or available any documentary evidence affording reasonable proof of the age or date of birth of the insured;

any written statement made in the proposal or application for the policy as to the age or date of birth of the insured shall be accepted for the purposes of the claim as the correct age or date of birth of the insured, unless the contrary is proved by records of a medical examination of the insured, made at the instance of the insurer, within the period of three years referred to in paragraph (a) or in any other manner.

## **Age Incorrectly Stated**

50. (1) If after the issue of a life policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the sum insured and other benefits under the policy shall, subject to the provisions of subsection (2), be the same as those which the premiums payable under the policy would have secured had the policy been based upon a correct statement of the person's age.

(2) If the Registrar is satisfied that the actuarial nature of life policies of any particular kind is such as to render the application of the provisions of subsection (1) inequitable, he may direct an insurer to apply, in relation to policies of that kind, such other method of making adjustments in respect of incorrect statements of age as may appear to the Registrar to be equitable.

## **Death of Insured by his own act**

51. (1) No life policy in which it is provided that the policy shall be void in the event of the insured, whether sane or insane, dying by his own act within a stipulated period shall be void for that reason if the insured dies by his own act after the expiration of that period.

(2) A life policy in which no provision such as is referred to in subsection (1) is contained shall not be void by reason of the insured, whether sane or insane, dying by his own act at any time after the issue of the policy.



### **Lost or Destroyed Life Policies**

52. (1) If a local life policy is lost or destroyed and the loss or destruction is proved and advertised in the manner prescribed, the insurer liable under the policy shall, at the request of the policy-owner and on payment by the policy-owner to the insurer of the prescribed fee, issue to the policy-owner —

- (a) a correct and certified copy of the policy upon which shall be inscribed any endorsement made by the insurer on the original policy after its issue; and
- (b) a correct and certified copy of any record in the possession of the insurer of any dealings with the policy after its issue.

(2) A certified copy of a life policy issued in terms of subsection (1) shall for all purposes —

- (a) take the place of the policy lost or destroyed; and
- (b) be the sole evidence of the contract made by the policy.

### **Life Policy may include Disability Benefits**

53. (1) If a registered insurer by notice in writing —

- (a) informs the Registrar that he has issued on or before the date of commencement of this Act, or that he intends to issue, local life policies which provide benefits —
    - (i) on the total or partial permanent disablement of the person whose life such a policy insures; or
    - (ii) on the death of the person whose life such a policy insures as a result of an accident or a particular disease;
- and

- (b) requests the Registrar that the policies referred to in paragraph (a) shall be treated for the purposes of this Act as life policies only;

any such policy issued by the insurer on or before the date of commencement of this Act or after notification to the Registrar as in paragraph (a) is provided shall, subject to the provisions of subsection (2), be treated, for the purposes of this Act, as a life policy only.

(2) A policy referred to in paragraph (a) of subsection (1) shall not be treated for the purposes of this Act as a life policy only if the value of the benefits referred to in sub-paragraphs (i) and (ii) of that paragraph which it provides exceeds an amount equal to a waiver of claims to a premium under the policy in respect of the period of disability, together with —

- (a) a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date of termination of the risk of the life insurance proper effected by the policy, amounting

to one and one-quarter per centum of the sum payable under the policy on the death of the person; or

- (b) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures; or
- (c) in the case of a deferred annuity policy, a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date as from which the annuity will become payable, amounting to one-twelfth of the annuity.

(3) A local life policy providing benefits such as are described in paragraph (a) of subsection (1) which cannot, by reason of the provisions of subsection (2), be treated for the purposes of this Act as a life policy shall, for the purposes of this Act, be treated as both a life policy and a personal accident policy.

#### **Discrimination between Life Policies, etc., Prohibited**

54. (1) No insurer shall make or permit to be made any discrimination in respect of the rate of premiums charged or the bonuses granted between life policies which are of the same kind and under which the persons whose lives are insured have an equal expectation of life.

(2) Nothing in subsection (1) shall apply to life policies which —

- (a) are re-insurance contracts; or
- (b) are for large sums at preferential rates in accordance with the current tariff of the insurer concerned; or
- (c) insure at preferential rates the lives of employees of one employer or a combination of employers or members of the families of such employees or the lives of a group of persons carrying on the same occupation; or
- (d) are of a class prescribed.

(3) No insurer and no director, servant or agent of an insurer shall pay, allow or give or offer to pay, allow or give, directly or indirectly —

- (a) a rebate of the premium payable on a life policy; or
- (b) an advantage in the nature of a rebate of the premium payable on a life policy; or
- (c) preferential treatment in connexion with *bonus* or other benefit under a life policy;

as an inducement to insure.

(4) No person shall knowingly receive as such, any rebate of premium, advantage or preferential treatment referred to in subsection (3) as an inducement to insure.

(5) No director, servant or agent of an insurer shall accept any proposal or application for a life policy in respect of which —

(a) a promissory note, bill of exchange or other negotiable instrument, not being a cheque payable on the date of issue; or

(b) an acknowledgment of debt, not being a stop order;

in favour of the insurer or any person whatsoever has been given for the first year's premium or any part thereof.

(6) A person who contravenes any provision of this section shall be guilty of an offence and liable to a fine not exceeding double the amount of the annual premium normally payable on a life policy similar to the one in respect of which the offence is committed.

#### **Application of Certain Provisions of Part V to Industrial Policies**

55. The provisions of sections 37 to 51 and section 53 shall *mutatis mutandis*, apply to industrial policies.

#### **Application of Certain Provisions of Part V to Sinking Fund Policies**

56. The provisions of sections 52 and 54 shall, *mutatis mutandis*, apply to sinking fund policies.

#### **Application of Certain Provisions of Part V to Funeral Policies and other Provisions in Regard Thereto.**

57. (1) The provisions of sections 37 to 49 and sections 51 and 53 shall, *mutatis mutandis*, apply to funeral policies.

(2) If after the issue of a funeral policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the benefits under the policy shall not be affected thereby, but the premiums payable under the policy from the date on which the person became insured shall be deemed to be those which would have been required had the age been correctly stated, and the insurer liable under the policy shall —

(a) be entitled to recover from the policy-owner any resultant shortfall in the premiums actually paid; or, as the case may be,

(b) refund to the policy-owner any resultant overpayment of premiums.

(3) A funeral policy issued on or after the date of commencement of this Act —

(a) shall provide that the policy-owner shall, at his option, be entitled to a sum of money instead of each funeral or other non-monetary benefit for which provision is made in the policy; and

(b) may provide that the insurer liable under the policy shall likewise have the option to pay the sum of money referred to in paragraph (a) instead of

providing for each funeral or other non-monetary benefit for which provision is made in the policy.

(4) An option referred to in subsection (3) and the sum of money to which it relates shall be stated expressly and clearly in the funeral policy and, in every premium receipt book issued in connexion therewith, in printed or typed letters no smaller than and as legible as, the letters of the provisions of the policy.

(5) A registered insurer who issued a funeral policy before the date of commencement of this Act shall, if the policy is still in force, within three months of that date declare to the Registrar the value in money of each funeral or other non-monetary benefit for which provision is made in the policy, and that value shall be stated in clear type and in distinct terms in every premium receipt book issued thereafter in connexion with the policy.

(6) If the Registrar is of the opinion that a sum of money stated in a funeral policy in terms of subsection (4), or that the value declared by a registered insurer in terms of subsection (5) with reference to a particular funeral or other non-monetary benefit for which provision is made in the policy, he shall declare the amount of money which is, in his opinion, equal to the value of the funeral or other benefit provided for in the policy.

(7) In a funeral policy the amount declared by the Registrar in terms of subsection (6), or if no amount is so declared, the sum of money stated in the policy in terms of subsection (4), or the value declared in terms of subsection (5), shall be deemed to be the sum insured.

#### **Days of Grace, Paid-up Policies and Non-Forfeiture Provisions: Life, Industrial and Sinking Fund Policies**

58. (1) If a premium under a local life, industrial or sinking fund policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full sum insured without payment of a further premium for a period of one month as from the due date of the first unpaid premium and if the premium is paid within the month the insurer shall renew the policy.

(2) If the premiums under a local life or sinking fund policy are payable at monthly intervals, or at intervals of less than one month, the provisions of subsection (1) shall have effect as if the references in that subsection to the words "one month" and "month" were references to the words "fifteen days".

(3) If a claim under a local life, industrial or sinking fund policy arises during the period of grace provided for in this section, the insurer liable under the policy shall be entitled to deduct the amount of the unpaid premium from the claim.

(4) If a premium under a local policy which is —

(a) a life policy under which at least three years' premiums have been paid; or

- (b) an industrial policy under which at least five years' premiums have been paid; or
- (c) a sinking fund policy under which at least three years' premiums have been paid;

has not been paid within the period specified in subsection (1) or, as the case may be, subsection (2), the insurer liable under the policy shall, in accordance with rules made by him and approved by the Registrar, either issue, in return for and instead of the policy, a paid-up policy which shall be free from the obligation to pay any premiums thereunder or, unless the policy is a sinking fund policy, apply the non-forfeiture value of the policy in maintaining the policy in force for a period and by a method to be determined in accordance with the rules.

(5) The owner of a policy referred to in subsection (4) may in writing waive the rights conferred upon him by that subsection.

(6) The rules referred to in subsection (4) shall specify the basis on which and the methods by which the amount of the non-forfeiture value and the amount of the paid-up policy are to be calculated and whether a paid-up policy such as is referred to in that subsection shall entitle the owner to any future bonuses thereon.

(7) The provisions of subsection (4) shall not apply in connexion with any particular kind of life or industrial policy which an insurer has issued or proposes to issue if the Registrar is satisfied that the actuarial nature of that kind of policy prevents the insurer from accumulating, in respect of policies of that kind, sufficient funds to enable him to grant any substantial benefit of a kind described in that subsection.

(8) If on or after the date of commencement of this Act a local life policy under which at least three years' premiums have been paid lapses or is dealt with as in subsection (4) is provided and the owner of the policy informs the Registrar within thirty days of the date on which he is notified by the insurer liable under the policy that the policy has lapsed, or has been so dealt with or, if he is not so notified, within six months of the date on which the policy lapsed or has been so dealt with that he received no written notice from the insurer a reasonable time before hand to the effect that the policy was due to lapse or be so dealt with, the Registrar may, unless the insurer satisfies him that the notice was duly dispatched to the owner at his last known residence or place of work a reasonable time before the policy was due to lapse or be so dealt with, require the insurer to revive the policy on payment of the premium required within a period to be fixed by the Registrar. A policy shall be revived in terms of this subsection without any alterations in its conditions with effect from the date of the payment of the premium required.

#### **Days of Grace, Paid-up Policies and Non-Forfeiture Provisions: Funeral Policies**

59. (1) If a premium under a local funeral policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement

to the contrary between the parties to the policy, maintain the policy in force for the full value of the benefits —

- (a) if the insurer is bound by an express or tacit undertaking to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums, for a period of one month as from the due date of the first unpaid premium; and
- (b) if the provisions of paragraph (a) do not apply, for a period expiring on a date specified for that purpose in a written notice which the insurer has served on the owner of the policy at least fourteen days before that date.

(2) If a premium referred to in subsection (1) is paid within the relevant period specified in paragraph (a) or (b) of that subsection, the insurer liable under the policy shall renew the policy, and if a claim under the policy arises during the period, the insurer shall be entitled to require the owner of the policy to pay the amount of the premium.

(3) If a premium under a local funeral policy which is issued on or after the date of commencement of this Act is not paid within the period specified in subsection (1), the policy shall, subject to the provisions of this section, nevertheless remain in force for the appropriate period fixed in terms of subsection (6) for the full sum insured without payment of further premiums.

(4) If an insurer's liability under a funeral policy is contingent upon the death of two or more persons and the policy provides for a benefit on the death of a person who is under the age of twenty-one years and who is not the owner of the policy or his wife or her husband, no benefit shall be claimable under that policy on that person's death if it occurs after he or she attained the age of twenty-one years.

(5) If an insurer's liability under a funeral policy is contingent upon the death of one person only, who was under nine years of age when the policy was issued, the period specified in subsection (6) shall be computed as if the policy had been issued on the anniversary of the date of its issue when that person was between nine and ten years of age.

(6) A funeral policy referred to in subsection (3) shall remain in force for the appropriate period listed in the first column of the following table in accordance with the number of years for which premiums were paid under the policy specified opposite thereto in the second column of the table —

| 6 months | 5 years or over and less than | 7 years |
|----------|-------------------------------|---------|
| 9 "      | 7 "                           | 9 "     |
| 12 "     | 9 "                           | 11 "    |
| 18 "     | 11 "                          | 14 "    |
| 24 "     | 14 "                          | 17 "    |
| 36 "     | 17 "                          | 21 "    |
| 48 "     | 21 "                          | 25 "    |
| 60 "     | 25 " or over.                 |         |

**Grant of more favourable Terms than those specified in Section 58 or 59 not Precluded**

60. Nothing in section 58 or 59 contained shall preclude an insurer from granting to an owner of a policy of a kind referred to in section 58 or 59 more favourable terms than those specified for that kind of policy in section 58 or, as the case may be, 59.

**PART VI**

**POWERS AND DUTIES OF THE MINISTER, THE REGISTRAR  
AND AN INSPECTOR APPOINTED IN TERMS OF THIS PART**

**Registrar may extend Certain Periods Specified for the Performance of Things to be done under this Act.**

61. (1) If a registered insurer or an applicant for registration as an insurer is required or entitled, in terms of a provision of this Act, to perform an act within a specified period, the Registrar may at his request extend the period from time to time.

(2) The Registrar may extend a period within which a registered insurer or an applicant for registration as an insurer is required or entitled, in terms of a provision of this Act, to perform any act after the period specified in that provision has expired.

**Registrar may classify Insurance Business**

62. (1) At the request of an insurer the Registrar may, subject to the provisions of subsection (2) and to such conditions and limitations as the Registrar may fix, determine that any insurance business of any particular class which the insurer carried on or intends to carry on shall be treated, for the purposes of this Act, as insurance business of another class.

(2) The Registrar shall not accede to a request referred to in subsection (1), unless he has satisfied himself that his determination will not be detrimental to the interest of any person and will not defeat the objects and purposes of this Act.

**Registrar may demand Information from Insurers**

63. The Registrar may, for the purposes of carrying out the provisions of this Act, demand from a registered insurer or an applicant for registration as an insurer any document or information relating to any matter connected with his business or transactions, whether insurance business or transactions or otherwise.

**Registrar may Alter or Adapt prescribed Forms**

64. On the application of or with the consent of a registered insurer or an applicant for registration as an insurer, the Registrar may alter any prescribed form for the purpose of adapting the form to meet the circumstances of the registered insurer or applicant.

### **Registrar may require information to be supplied in the English Language**

65. The Registrar may require any person who furnishes to the Registrar, in terms of this Act, any statement, certificate or other document whatsoever in a language other than the English language to provide a translation of that document in the English language at that person's expense.

### **Investigation of the Affairs of an Insurer**

66. (1) If —

- (a) an insurer, having failed to furnish the Registrar with any document or information required by or under a provision of this Act, within the period specified, has not furnished that document or information within a period of sixty days, commencing on the date upon which the Registrar reminded him in writing of his failure; or
- (b) an insurer, having furnished incorrect or incomplete information to the Registrar, has not furnished correct or complete information within a period of sixty days, commencing on the date upon which the Registrar called upon him in writing to correct or complete the information; or
- (c) an insurer has not within a period of sixty days, commencing on the date upon which the Registrar demanded from him in writing any document or information which the Registrar was entitled, in terms of this Act, to demand from him, furnished that document or information to the satisfaction of the Registrar; or
- (d) any document or information furnished by an insurer to the Registrar shows that the insurer has failed to comply with the provisions of this Act; or
- (e) the auditor or actuary of an insurer has informed the insurer of an irregularity that requires correction and the insurer has not corrected that irregularity within a period of sixty days, commencing on the date upon which the Registrar called upon him in writing to correct the irregularity; or
- (f) the Registrar is in possession of information which in his opinion, calls for an investigation into the affairs of an insurer and the insurer has failed to furnish within a period of sixty days, commencing on the date the Registrar called upon him in writing to do so, forms grounds for the Registrar's opinion;

the Registrar and, additionally or alternatively, an inspector, who shall be appointed by the Minister for the purpose, may investigate the affairs or any part of the affairs of the insurer.

(2) No investigation shall be made into the affairs of an insurer in terms of subsection (1) without the approval of the Minister.

(3) For the purposes of making an investigation as in subsection (1) is provided, the Registrar and, additionally or alternatively, as the case may be,



an inspector appointed in terms of that subsection, shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Law, 1961 (No. 33 of 1961) and the provisions of sections 4 and sections 10 to 15 and section 17 shall, *mutatis mutandis*, apply in relation to an investigation made in terms of this section and to any person summoned to give evidence or giving evidence at that investigation.

(4) On the completion of an investigation made in terms of this section, the Registrar and, additionally or alternatively, as the case may be, an inspector appointed in terms of subsection (1), shall furnish to the Minister a report of the investigation and to the insurer whose affairs are investigated a summary of the conclusions arrived at as a result of the investigation.

(5) The Minister may recover from an insurer whose affairs are investigated in terms of this section all expenses necessarily incurred in connexion with the investigation.

#### **Deposit of Approved Securities by Life Insurers**

67. (1) The Minister may, before an investigation is made or in the course of an investigation made into the affairs of a life insurer in terms of section 66, require the life insurer to deposit with the Registrar such approved securities as the Minister may deem sufficient to meet the liabilities of his life insurance business in Botswana.

(2) The Minister may require a life insurer who has been notified by the Registrar in writing in terms of section 7 that the Registrar proposes to cancel his registration as an insurer, to deposit with the Registrar such approved securities as the Minister may deem sufficient to meet the liabilities of his life insurance business in Botswana.

(3) The Minister may realize any approved securities deposited in terms of subsection (1) or (2) to meet the liabilities of the life insurance business in Botswana of an insurer whose registration is cancelled.

(4) If the registration of a life insurer who has deposited approved securities in terms of subsection (1) or (2) is not cancelled, the Minister shall cause the Registrar to return the approved securities to the life insurer at such time as the Minister may specify having regard to the financial position of the life insurer.

(5) When the Minister is satisfied that the liabilities of the life insurance business in Botswana of an insurer whose registration has been cancelled have been met, he shall cause the Registrar to return to the insurer such of the approved securities deposited by the insurer in terms of this section as the Minister has not caused to be realized to meet those liabilities.

## PART VII

### MISCELLANEOUS

#### **Service of Process against Registered Insurers**

68. (1) Process in any legal proceedings against a registered insurer, who is not an association of underwriters, may be served at the principal office of the insurer in Botswana.

(2) If the principal office in Botswana of a registered insurer, who is not an association of underwriters, has ceased to exist, process in any legal proceedings against the insurer may be served at the office of the Registrar.

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

#### **Action by Policy-Owners against Insurers**

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

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

(3) Notwithstanding the provisions of subsection (1), a local policy may validly provide that the amount of any liability under the policy shall be determined in accordance with the Arbitration Proclamation, 1959 (No. 86 of 1959).

(4) The Minister may by order published in the *Gazette* exempt from the provisions of subsections (1) and (2) any class of local policy specified in such order.

#### **Inspection of Documents, etc.,**

70. (1) A person may, on payment to the Registrar of the appropriate prescribed fee —

(a) inspect; or

(b) inspect and make a copy of;

any document furnished to the Registrar in terms of section 6, 7, 27 or 33.

(2) The Registrar shall on payment of the prescribed fee furnish, at the request of any person, a certified copy of or abstract from any document furnished to the Registrar in terms of section 6, 17, 27 or 33.

(3) The Registrar shall, without charge, furnish at the request of any person the names of the principal officer in Botswana of a registered insurer and the address of the principal office in Botswana of a registered insurer.

### **Effect of Registrar's Certificate on Documents**

71. A document purporting to be certified by the Registrar as a document furnished to the Registrar in terms of this Act or to be a copy of such a document shall, *prima facie*, be deemed to be such a document, or a copy thereof, and shall be admissible in evidence as if it were the original document.

### **Documents furnished to the Registrar in Terms of this Act to be Signed and Accompanied by Copies**

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

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

(i) the document is signed —

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

B. if the insurer is not an association of underwriters, by the principal officer of the insurer; and

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

and

(ii) the document is accompanied by two copies;

and

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

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

(ii) the document is accompanied by two copies; and

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

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

(2) The Registrar may, in such cases as he deems expedient, direct that a lesser number of copies of documents than that specified in paragraph (a), (b)

(c) or (d) of subsection (1) or that no copy of a document referred to in paragraph (a), (b) or (c) of subsection (1) be furnished to him.

**Sums Insured, etc., to be stated in Rands**

73. (1) In every local policy, the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in rands, unless the parties to the policy have, at the time of the issue or subsequent to the time of the issue of the policy, agreed that the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in some currency other than rands.

(2) If the parties to a local policy have agreed that the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in some currency other than the rand, that fact and the currency in question shall be stated in or endorsed on the policy in distinct terms and in printed or typed letters no smaller than, and as legible as, the letters of the other provisions of the policy.

**Policy not invalid owing to Failure to comply with Law**

74. A policy issued by any person, whether before, on or after the date of commencement of this Act, shall not be invalid merely because that person contravened or failed to comply with the provisions of any enactment in force applying to that policy.

**This Act to apply to Policies effected before Date of Commencement**

75. It is hereby declared that the provisions of this Act shall save as is otherwise provided in this Act, apply in relation to policies effected or ceded before the date of commencement of this Act as if they had been effected or ceded on or after the date of commencement of this Act.

**Policies to be printed or typed in clearly legible Letters, etc.**

76. No person shall issue a local policy in a form the printed provisions of which, whatever their nature, are not put in a clear type face in clearly legible letters.

**False Statements, etc.,**

77. (1) If a person issues a document referred to in this Act which is false in any material respect, that person and every other person who took part in the preparation or issue of the document or who signed it shall be guilty of an offence, unless it is proved that the accused, if an individual, or all the persons who acted on behalf of the accused, if the accused is not an individual, had no knowledge of the falsity of the document when it was issued.

(2) A person guilty of an offence specified in subsection (1) shall be liable, if the offender is an individual, to a fine of R2,000 or to imprisonment for four years or to such imprisonment without the option of a fine or to both such

fine and such imprisonment or, if the offender is not an individual, to a fine of R2,000.

#### **Persons acting on behalf of Unregistered Insurers**

78. (1) A person who causes a person to enter into or make an application to enter into a contract of insurance with a person who is not a registered insurer or a member of an association of underwriters which is a registered insurer or a person referred to in paragraph (a) of subsection (2) of section 5 shall, subject to the provisions of subsection (3), be guilty of an offence and liable to a fine of R1,000.

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

- (a) the insurance is placed by an insurance broker; and
- (b) the contract of insurance is without his knowledge or consent effected with a person who is not a registered insurer or a member of an association of underwriters which is a registered insurer or a person referred to in paragraph (a) of subsection (2) of section 5.

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

- (a) the insurance as a whole is placed by a broker who is authorized by an association of underwriters which is a registered insurer to place insurance business with members of the association; and
- (b) a substantial portion of the risk insured is placed with a registered insurer or with members of the association of underwriters referred to in paragraph (a) or with a registered insurer and with members of the association of underwriters referred to in that paragraph; and
- (c) the portion of the risk insured which is not placed in accordance with the provisions of paragraph (b) is placed with an insurer who does not solicit business, either directly or indirectly, in Botswana or advertise his business in any newspaper or other publication in Botswana.

#### **General Offences and Penalties**

79. A person who contravenes a provision of this Act or fails or neglects to comply with a provision of this Act with which it is his duty to comply shall be guilty of an offence and, if no penalty is specially provided for that contravention or default, shall be liable, if the offender is an individual, to a fine of R500 or to imprisonment for two years without the option of a fine or, if the offender is not an individual, to a fine of R500.

### **Regulatory Powers of the Minister**

80. (1) The Minister may make regulations prescribing anything which under this Act is to be, or may be, prescribed and generally for the better carrying out of the objects and purposes of this Act.

(2) In regulations made in terms of subsection (1), the Minister may make different provision for different classes of insurers and for different classes of insurance business.

(3) The Minister may for the purposes of this Act prescribe different classes of insurance business.

### **Amendment of Chapter 15**

81. The Mercantile Law Amendment Act (Chapter 15) is amended by the repeal of sections 2, 3 and 4.

### **Amendment of Chapter 82**

82. The Insolvency Proclamation (Chapter 82) is amended —

(a) by the addition to paragraph (a) of subsection (1) of section 20 of the following proviso —

“ Provided ~~that~~ any moneys or policy of life insurance or asset or, as the case may be, any moneys or proceeds in realization of any policy of life insurance or of any asset in respect of which protection is afforded by virtue of any provision of Part V of the Insurance Act, 1969, to the extent of that protection, shall be excluded from the estate;”;

(b) by the repeal of section 27.

Passed by the National Assembly on this day, 31st March, 1969.

G.T. MATENGE,  
Clerk of the National Assembly.