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An Act to make provision for authorisation to carry on international insurance business and the supervision of international insurance firms and other matters connected therewith.

Date of assent: 16.05.05

Date of commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and
commencement

1. This Act may be cited as the International Insurance Act, 2005, and shall come into operation on such date as the Minister may, by statutory order, appoint.

Interpretation
Cap. 61:05

2. (1) In this Act, unless the context otherwise requires —
“accountant” has the same meaning as in the Accountants Act;
“applicant international insurance firm” means an undertaking that applies, under section 9, for authorisation to operate as an international insurance firm;
“auditor” means an accountant who holds a current practising certificate in terms of section 19 of the Accountants Act and who is approved by the regulatory authority;
“authorisation” means an authorisation granted under section 10;
“authorised officer” means a person appointed, under section 21, to be an authorised officer;
“captive insurance business” means insurance business where the insured is a holding or affiliated company of the registered insurer or is a person in respect of whom the registered insurer is authorised by the regulator to provide insurance;

“controller”, in relation to an international insurance firm, means a director or any person entitled to exercise or control the exercise of one third or more of the votes at any general meeting of the international insurance firm;

“code of practice” means a code of practice issued by the regulatory authority under section 13;

“condition” means a condition of authorisation imposed under section 10 or 12;

“direction” means a direction issued by the regulatory authority under section 14 (1);

“director” means —

- (a) any person occupying the position of director;
- (b) any person who effectively directs or has a material influence over the business of an international insurance firm; and
- (c) any person in accordance with whose directions or instructions the directors of an international insurance firm are accustomed to acting;

“former international insurance firm” means an undertaking whose authorisation to operate as an international insurance firm has been revoked under section 14 (2);

“general insurance business” means insurance business other than long-term insurance business;

“insurance agent” means a person appointed by an insurer, and not being an employee of the insurer, to solicit applications for insurance or negotiate insurance on behalf of the insurer, and to effectuate and countersign insurance contracts;

“insurance business” means the business of effecting and carrying out contracts under which one party, the insurer, accepts an insurance risk by agreeing with another party, the policyholder, to compensate the policyholder or other specified beneficiary if a specified uncertain future event adversely affects the policyholder or other beneficiary (other than an event that is only a change in one or more of a specified interest rate, security price, commodity price, foreign exchange rate, index of process or rates, a credit rating or credit index or similar variable) and includes reinsurance, general insurance business and long-term insurance business;

“insurance manager” means a company operating in or from within Botswana which provides insurance expertise to or for insurers and which has, in its employment, a person who —

- (a) is qualified as a fellow or an associate of the Insurance Institute of South Africa, the Chartered Insurance Institute of the United Kingdom or of some other professional insurance association recognised, by the Registrar of Insurance, by regulations, for the purposes of this Act, and who is a current member of good standing of such association; or
- (b) is a person of good standing and has been approved by the regulator;

- “insurer”** means an undertaking that carries on insurance business;
- “international insurance business”** means the carrying on or the conducting, whether from within or outside Botswana, of any insurance business where each of the insured, the person to whom the policy moneys are payable and the owner of the policy or any one or more of such persons is not domiciled or ordinarily resident in Botswana and includes reinsurance and captive insurance business;
- “international insurance firm”** means an undertaking which carries on international insurance business and includes an insurance manager, a principal insurance representative and an insurance agent;
- “international insurer”** means an undertaking carrying on international insurance business;
- “long-term business”** means insurance business of any of the following kinds, namely –
- (a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;
 - (b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as a result of an accident or of an accident of a specified class, or dying as a result of an accident or of an accident of a specified class, or becoming incapacitated in consequence of disease or disease of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminated by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;
 - (c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the persons insured in the future, not being contracts such as fall within either paragraph (a) or (b) of this definition; and
 - (d) any kind of insurance business declared by regulations to be long-term business;
- “officer”**, in relation to an international insurance firm, means a controller, chief executive officer, manager or secretary;
- “principal insurance representative”** means a person operating in or from within Botswana, who, on his or her own account and not as the employee of another person, maintains, for an insurer, full and proper records of the business activities of that insurer;
- “Register”** means the Register of International Insurance Firms;
- “regulatory authority”** means the person appointed as a regulatory authority under section 3;

“reinsurance” means the form of insurance where the primary insurer reduces the risk by sharing individual risks or portfolios of risks with a reinsurer against a premium; and

“undertaking” means a body corporate, a partnership, an unincorporated body of persons or a sole trader.

(2) For the purposes of this Act, references to books, records or other documents, shall be construed as including any document or information kept in a non-legible form (whether stored electronically or otherwise) which is capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such document or information is capable of being reproduced and to which the person whose books, records or other documents are inspected for the purposes of this Act, has access.

PART II — *Establishment of Regulatory Authority*

3. The Registrar of Insurance appointed under the Insurance Industry Act shall be the regulatory authority for the purposes of this Act, and shall carry out all functions of the regulatory authority under this Act and such other functions as the Minister may consider appropriate and prescribe in relation to the operation of this Act.

Appointment of regulatory authority
Cap. 46:01

4. The regulatory authority shall administer the system of regulation and supervision of international insurance firms in accordance with the provisions of this Act in order to promote —

General duties of regulatory authority

- (a) the maintenance of the proper and orderly regulation and supervision of international insurance firms; and
- (b) the best economic interests of Botswana.

5. The regulatory authority may, in writing, and subject to such conditions as the regulatory authority may consider appropriate, delegate to any named person or body such of the functions of the regulatory authority under this Act as the regulatory authority considers appropriate.

Delegation of functions

6. Notwithstanding the other provisions of this Act, or of any other written law, the regulatory authority shall cooperate with other regulatory authorities in Botswana, and may cooperate with equivalent regulatory authorities in other States in respect of international insurance business so that the responsibilities of the regulatory authority may be more effectively discharged.

Cooperation with other regulatory authorities

7. (1) The regulatory authority, or any employee or officer of the regulatory authority or any authorised officer appointed by the regulatory authority, or any person to whom a function of the regulatory authority has been delegated under section 5, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any of their functions under this Act unless it is shown that the act or omission was in bad faith.

Exemption from liability for damages

(2) Without prejudice to the generality of subsection (1), the authorisation, supervision, regulation or revocation of authorisation of an international insurance firm under this Act shall not constitute a warranty as to the solvency or performance of an international insurance firm, and neither the State nor the regulatory authority shall be liable in respect of any loss or losses incurred through the insolvency, default or performance of the international insurance firm.

PART III — *Authorisation of International Insurance Firms*

Restriction on carrying on international insurance business

8. (1) No undertaking operating within or from Botswana shall carry on international insurance business, or claim or hold itself out to be carrying on international insurance business, within or outside Botswana, unless that undertaking is acting under, and in accordance with, the conditions and terms of an authorisation to do so granted by the regulatory authority under section 10.

(2) An undertaking referred to in subsection (1) that contravenes the provisions of that subsection shall be guilty of an offence.

Application for authorisation

9. (1) An undertaking operating within or from Botswana that intends to carry on international insurance business within or outside Botswana shall apply to the regulatory authority for authorisation to do so.

(2) An application under subsection (1) shall be in the prescribed form.

(3) The regulatory authority may, at any time prior to granting or refusing to grant an authorisation, request further information from the applicant international insurance firm concerned and the applicant international insurance firm shall provide the information requested.

(4) The regulatory authority may, at any time prior to the granting or refusing to grant an authorisation, commission an independent assessment of the capacity of the applicant international insurance firm to engage in the activity for which it seeks authorisation.

(5) An applicant international insurance firm that applies for authorisation under this section using false or misleading information, or making false or misleading statements, in the course of, or in relation to, an application for an authorisation shall be guilty of an offence.

Decision on application for authorisation

10. (1) The regulatory authority may grant, with or without conditions, or refuse to grant, an authorisation to an applicant international insurance firm to operate as an international insurance firm.

(2) An authorisation to operate as an international insurance firm shall not be granted unless the applicant international insurance firm satisfies the regulatory authority —

(a) that if applying to carry on only captive insurance business, it shall underwrite a maximum of 30% of unrelated business;

(b) that it has the minimum level of capital which shall be specified by the regulatory authority;

(c) as to its financial resources;

- (d) as to the probity, competence and management skills of each of its controllers and managers;
 - (e) as to the suitability of each of its shareholders;
 - (f) as to the location of its head office and the places where it carries on or intends to carry on business;
 - (g) as to the nature and scope of the activities and business which it proposes to carry on;
 - (h) that adequate levels of staff and expertise will be employed to carry out its proposed activities and business;
 - (i) that it has, and will follow, established procedures to enable the regulatory authority to be supplied with all information necessary for the proper discharge of the regulatory functions;
 - (j) that the organisation of the business structure of the applicant international insurance firm is such that the applicant international insurance firm is capable of being supervised adequately by the regulatory authority; and
 - (k) as to such other matters as the regulatory authority considers necessary in the interests of the proper and orderly regulation and supervision of international insurance firms.
- (3) Without prejudice to the generality of subsection (1), the conditions that may be imposed by the regulatory authority may include all or any of the following —
- (a) conditions which limit the classes of international insurance business which may be carried on by the international insurance firm;
 - (b) conditions which relate to the capital of the international insurance firm;
 - (c) conditions for requiring the international insurance firm to maintain a specified composition of assets and of liabilities;
 - (d) conditions which relate to the management of risk;
 - (e) conditions which relate to the persons employed or to be employed by the international insurance firm including, but not limited to, the levels of staff and expertise to be employed;
 - (f) conditions for requiring the international insurance firm to notify the regulatory authority, in writing, and obtain the prior written approval of the regulatory authority before appointing any person as chairman, chief executive officer, controller, secretary or manager of the international insurance firm or any post equivalent thereto;
 - (g) conditions for requiring the international insurance firm to notify the regulatory authority, in writing, and obtain the prior written approval of the regulatory authority before changing its auditors;
 - (h) conditions for requiring the international insurance firm to notify the regulatory authority, in writing, and obtain the prior written approval of the regulatory authority before any change in its shareholding occurs;

- (i) conditions for requiring the international insurance firm to make specified returns at specified intervals;
- (j) conditions relating to the organisational structure and management of the business structure of the international insurance firm;
- (k) conditions relating to any undertaking related to the international insurance firm, whether authorised or not pursuant to this section; and
- (l) conditions for ensuring that the international insurance firm is capable of being supervised by the regulatory authority.

(4) The regulatory authority shall notify the applicant international insurance firm of the decision of the regulatory authority on its application for authorisation, within 30 days of the date of receipt of the application and, if it refuses to grant authorisation, such notification shall include the reasons for that decision.

(5) An applicant international insurance firm or an international insurance firm that is aggrieved by a decision of the regulatory authority refusing to grant it authorisation, or imposing any condition on its authorisation, may within 30 days of receipt of notification of the decision, appeal therefrom, by petition in writing, to the Minister.

(6) The Minister hearing an appeal made to him or her under subsection (5) shall consider the matter as if it had been made to him or her in the first instance, and subsections (1), (2) and (3) of this section shall apply, subject to any necessary modifications, in relation to the determination by the Minister, of the appeal.

(7) The Minister shall notify his or her decision on an appeal, in writing, to the applicant international insurance firm or the international insurance firm concerned within 60 days of receipt of the appeal, and the applicant international insurance firm or the international insurance firm aggrieved by the decision of the Minister may, if it involves a point of law, appeal therefrom to the High Court within 30 days of receipt of notification of the decision.

11. (1) The regulatory authority shall keep and maintain a register to be known as the “Register of International Insurance Firms” in which international insurance firms authorised under section 10 shall be registered.

(2) The Register referred to in subsection (1) shall be open for inspection by members of the public during normal business hours.

(3) The Register shall include the names and addresses of international insurance firms and such other particulars as the regulatory authority may consider appropriate.

(4) The Register may be kept in electronic form.

PART IV — Regulation of International Insurance Firms

Conditions

12. (1) Without prejudice to the provisions of section 10, the regulatory authority may, at any time, amend or rescind a condition previously imposed on the authorisation of an international insurance firm or may impose a condition not previously imposed where the regulatory authority considers it necessary or appropriate to do so in the interests of the proper and orderly regulation and supervision of international insurance firms.

(2) The conditions which may be imposed by the regulatory authority under subsection (1) shall include, but shall not be limited to, those enumerated in section 10.

(3) Where the regulatory authority decides to amend or rescind a condition previously imposed on the authorisation of an international insurance firm or to impose a condition not previously imposed, the regulatory authority shall notify the international insurance firm in writing.

(4) An international insurance firm that is aggrieved by a decision of the regulatory authority to amend a condition previously imposed on the authorisation of the international insurance firm or to impose a condition not previously imposed may, within 30 days of receipt of notification of the decision, appeal therefrom by petition in writing to the Minister, and the Minister may uphold, confirm or vary the decision.

(5) The Minister shall notify his or her decision on an appeal under subsection (4), to the international insurance firm, in writing, within 60 days of receipt of the petition of appeal, and a person aggrieved by the decision of the Minister may, if it involves a point of law, appeal therefrom to the High Court within 30 days of receipt of notification of the decision.

13. (1) The regulatory authority may, by regulations, set out a code of practice for international insurance firms.

Code of
practice

(2) The regulatory authority may, as the regulatory authority considers appropriate, approve of any code of practice or guidelines, or any part of a code of practice or guidelines, drawn up by any other body and issue it as a code of practice for international insurance firms.

(3) Any code of practice issued under this section shall be for the purpose of providing guidance with respect to the requirements or prohibitions of the provisions of this Act or any condition imposed on the authorisation of an international insurance firm.

(4) Where the regulatory authority issues a code of practice, or revises an existing code of practice, the regulatory authority shall send a copy of the code of practice, as issued or revised, to all international insurance firms on the Register.

(5) Where the regulatory authority revokes a code of practice, it shall send, without undue delay, notice of the withdrawal of the code of practice to all international insurance firms on the Register.

14. (1) Where the regulatory authority is of the opinion that —

- (a) an international insurance firm has not complied with, is not complying with, or may not comply with any provision of this Act;
- (b) an international insurance firm has not complied with, is not complying with or may not comply with a condition of its authorisation;
- (c) an international insurance firm has not complied with, is not complying with or may not comply with a code of practice; or
- (d) it is otherwise necessary to do so in the interests of the proper and orderly regulation and supervision of international insurance firms,

the regulatory authority may, in writing, issue a direction to any or all of the following —

- (i) international insurance firms,
- (ii) applicant international insurance firms,
- (iii) former international insurance firms,
- (iv) any undertaking purporting to act, or whom the regulatory authority reasonably believes is acting, as an international insurance firm,
- (v) controllers and those responsible for the management of the international insurance firms referred to in subparagraphs (i), (ii) or (iii), or
- (vi) any employee or agent of the international insurance firms referred to in subparagraphs (i), (ii) or (iii).

(2) A direction issued under subsection (1) may direct any person or undertaking to whom this section applies to do or not to do, or to cease to do, as the case may be, any matter specified therein, related to the operation of an international insurance firm or the carrying on of international insurance business or any provision of this Act.

(3) Without prejudice to the generality of subsection (2), a direction issued under subsection (1) may direct any person or undertaking to whom this section applies to cease or suspend, for such period as shall be specified in the direction —

- (a) the provision of any international insurance service or any category of international insurance services;
- (b) the making of any payment or category of payments;
- (c) the acquisition or disposal of any assets or liabilities;
- (d) the entering into transactions or agreements of any specified kind;
- (e) the soliciting of business from specified persons; or
- (f) the carrying on of business in a specified manner, without the prior sanction of the regulatory authority.

(4) A direction issued under subsection (1) shall be in writing and shall remain in force for such period as is specified in it, but it may be revoked by the regulatory authority at any time.

- (5) While a direction under this section is in force —
 - (a) no winding-up proceedings in relation to an international insurance firm or related undertaking may be commenced;
 - (b) no resolution for winding-up in relation to the international insurance firm or related undertaking shall be passed; and
 - (c) no receiver shall be appointed over the assets or over any part of the assets of the international insurance firm or related undertaking, and such assets shall not be attached, sequestered or otherwise distrained except with the prior sanction of the High Court.
- (6) Any person who knowingly or recklessly fails to comply with a direction issued under this section shall be guilty of an offence.

15. (1) A person to whom a direction has been issued under section 14 may, within 30 days of such issue, apply to the High Court for a variation or rescission of the direction, and the Court may grant an order varying or rescinding the direction.

Application to vary or rescind a direction

(2) The Court may hear proceedings under this section in private.

16. (1) Where a condition or a direction has not been complied with, is not being complied with, or is likely not to be complied with, by any person or undertaking, the High Court may, on the application of the regulatory authority, order any person or undertaking to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order to ensure that the condition or direction is complied with or will be complied with.

Order to enforce compliance with a condition or direction

(2) Where the regulatory authority makes an application under this section, the Court may make such interim or interlocutory order, if any, as the court considers appropriate.

(3) The Court may hear proceedings under this section in private.

17. (1) Without prejudice to any other written law, an international insurance firm shall have an auditor.

Auditors of international insurance firms

(2) Without prejudice to any condition that may be imposed under this Act, an international insurance firm shall, where there is a change in its auditor, notify the regulatory authority, in writing, within 7 days, of any such change and of the reasons therefor, and the circumstances surrounding such change.

(3) Where an auditor of an international insurance firm resigns, is not re-appointed or otherwise ceases to act as auditor of an international insurance firm, the auditor shall notify the regulatory authority, in writing, within 7 days, of the reasons for ceasing to act as auditor.

(4) If, at any time, an auditor of an international insurance firm, has reason to believe that —

- (a) there exist circumstances which are likely to affect, to a material degree, the ability of the international insurance firm to pay its debts as they fall due or to meet any of its financial obligations;
- (b) there are material defects in the accounting records or systems of control of the business and records of an international insurance firm;

- (c) the international insurance firm is in material breach of any condition of its authorisation;
 - (d) the international insurance firm is in material breach of any code of practice; or
 - (e) the international insurance firm is in material breach of any direction, the auditor shall, as soon as is practicable, report the matter to the regulatory authority in writing.
- (5) Without prejudice to subsection (4), the regulatory authority may commission an auditor on any matter related to the carrying on of any international insurance business by a reinsurer, or where —
- (a) there exist circumstances which are likely to affect, to a material degree, the ability of the international insurance firm to pay its debts as they fall due or to meet any of its financial obligations;
 - (b) there are inadequate or no accounting records or systems of control of the business and records of the international insurance firm;
 - (c) the international insurance firm is in breach of any condition;
 - (d) the international insurance firm is in breach of any code of practice; or
 - (e) the international insurance firm is in breach of any direction.
- (6) An auditor shall send, to the international insurance firm concerned, a copy of any report made by the auditor to the regulatory authority under subsection (4) or (5).
- (7) An auditor of an international insurance firm shall not be regarded as having contravened any duty to which the auditor may be subject, and shall not be liable to the international insurance firm or to shareholders, creditors, investors or clients of any international insurance firm by reason of the auditor's compliance with any obligation imposed on the auditor under this section.
- (8) Any report of an auditor commissioned by the regulatory authority under subsection (5) shall be prepared at the expense of the international insurance firm concerned and the cost thereof may be recovered by the auditor, from the international insurance firm, as a simple contract debt in a court of competent jurisdiction.
- (9) Every international insurance firm and every controller, officer and employee of an international insurance firm shall co-operate with the auditor in the discharge of the auditor's duties and functions under this section and provide such assistance as the auditor may reasonably require.
- (10) The regulatory authority may issue a code of practice for the purpose of providing guidance to auditors and international insurance firms as to the duties and obligations imposed on the auditor by this section, and an auditor shall have regard to any such code of practice in discharging those duties and obligations.
- (11) An international insurance firm, controller, officer or employee of an international insurance firm that contravenes the provisions of subsection (9) shall be guilty of an offence.

18. (1) In this section —

“acquiring transaction” means any direct or indirect acquisition by a person, or more than one person acting together, of shares or other interests in an international insurance firm such that after the proposed acquisition, the proportion of voting rights or capital held by the person or persons making the acquiring transaction would reach or exceed 10 per cent, or the international insurance firm would become a subsidiary of the person or persons making the transaction; and

“disposal” means any direct or indirect disposal by a person or more than one person acting together which would reduce the proportion of voting rights or capital held by the person or persons in the international insurance firm below 10 per cent, or so that the international insurance firm would cease to be its subsidiary.

(2) Any person who intends to make an acquiring transaction shall notify the regulatory authority, in writing, of the proposal prior to entering into the transaction and shall include, with the notification, such information as may be specified by the regulatory authority.

(3) Any person who proposes to make a disposal shall notify the regulatory authority, in writing, of the proposal to do so, prior to entering into the transaction, and shall include, in the notification, such information as may be specified by the regulatory authority.

(4) An international insurance firm shall, on becoming aware of a proposed acquiring transaction or proposed disposal, as soon as is practicable, notify the regulatory authority, in writing, of the proposal and shall include, in the notification, such information as may be specified by the regulatory authority.

(5) No person shall proceed with an acquiring transaction or disposal unless the regulatory authority has informed, in writing, the international insurance firm, the person making the acquiring transaction and the person making the disposal that it approves of the acquiring transaction or disposal.

(6) Where it has received a notification under subsection (4), the regulatory authority may, within 30 days of the date of such receipt, require any one or more of the persons concerned with the proposed acquiring transaction or proposed disposal to provide further information on the transaction, and such persons shall provide the information sought.

(7) The regulatory authority may approve of, with or without conditions, or may refuse to approve of, an acquiring transaction or disposal.

(8) Where a notification has been made to the regulatory authority in accordance with subsection (4), the regulatory authority shall give notice to the international insurance firm, in writing, of the decision of the regulatory authority within 60 days of the date of receipt of the notification or 30 days of the receipt of further information requested in accordance with subsection (6), whichever is the later, and if notice in writing has not been given within this period, a decision by the regulatory authority to grant approval shall be regarded as having been given on the last day of the period.

(9) A person who is notified of the decision of the regulatory authority in respect of an acquiring transaction or disposal and is aggrieved by a decision of the regulatory authority to refuse to grant approval or to grant it subject to conditions may, within 30 days of receipt of notification of the decision, appeal therefrom by petition in writing to the Minister.

(10) The Minister shall, when hearing an appeal made to him or her under subsection (9), consider the matter as if the notification had been made to him or her in the first instance, and subsections (7) and (8) of this section shall apply, subject to any necessary modifications, in relation to the determination by the Minister of the appeal.

(11) The Minister shall notify his or her decision on an appeal, in writing, within 60 days of receipt of the petition of appeal and a person aggrieved by the decision of the Minister may if it involves a point of law, appeal therefrom to the High Court within 30 days of receipt of notification of the decision.

PART V — *Revocation of Authorisation and Winding Up*

Revocation of
authorisation

19. (1) The regulatory authority may revoke the authorisation of an international insurance firm where —

- (a) a request is made to it in that behalf by the international insurance firm; or
- (b) the international insurance firm —
 - (i) has failed to operate as an international insurance firm within 12 months of the date on which it was authorised under this Act,
 - (ii) has failed to operate as an international insurance firm for a period of more than six months, or
 - (iii) is being wound up.

(2) Without prejudice to the provisions of subsection (1), the regulatory authority may apply to the High Court for an order revoking the authorisation of an international insurance firm where —

- (a) it is expedient to do so in the interests of the proper and orderly regulation and supervision of international insurance firms;
- (b) the international insurance firm or any controller thereof has been convicted of any offence under this Act or any offence involving fraud, dishonesty or breach of trust;
- (c) the international insurance firm or any controller thereof has failed to pay any fine imposed for contravention of any provision of this Act;
- (d) circumstances have materially changed since the granting of the authorisation such that, if an application for authorisation were made at the time of the application to the Court, a different decision would be taken in relation to the application for authorisation;
- (e) the authorisation of the international insurance firm was obtained by knowingly or recklessly making false or misleading statements, or by knowingly or recklessly using false or misleading information;

- (f) the international insurance firm does not or has not complied with a condition imposed under this Act;
- (g) the international insurance firm does not or has not complied with a direction imposed under this Act;
- (h) the regulatory authority has concerns as to the probity or competence of any or all of the controllers or managers of the international insurance firm or the suitability of its shareholders; or
- (i) the international insurance firm has organised its business or corporate structure in such a way that the international insurance firm is no longer capable of being supervised to the satisfaction of the regulatory authority under this Act.

(3) Where the regulatory authority intends to revoke the authorisation of an international insurance firm or intends to apply to the High Court for an order to revoke the authorisation of an international insurance firm, the regulatory authority shall serve notice, in writing, on the international insurance firm, of the regulatory authority's intention, and shall state reasons thereof in the notice.

(4) Where an application is made to the High Court under subsection (3), the Court may make such interim or interlocutory orders as the circumstances may require.

(5) An application under subsection (3) may be heard in private.

(6) The regulatory authority shall, within 30 days of the revocation of authorisation of an international insurance firm, remove the name of the international insurance firm from the Register.

(7) An international insurance firm whose authorisation has been revoked shall cease to operate as an international insurance firm and any former international insurance firm that operates as an international insurance firm shall be guilty of an offence.

(8) A former international insurance firm shall continue to be responsible for arranging the discharge of all contracts that it entered into before the revocation of the authorisation, unless the regulatory authority states otherwise.

(9) A former international insurance firm shall continue to be subject to the duties and obligations imposed by or under this Act and any conditions imposed or directions issued under this Act until all the liabilities, duties and obligations of the former international insurance firm have been discharged to the satisfaction of the regulatory authority.

(10) A former international insurance firm shall, as soon as possible after the revocation of the authorisation, notify the regulatory authority and such other persons, if any, as the regulatory authority indicates are to be notified, of the measures being taken to discharge, without undue delay, the liabilities, duties and obligations of the international insurance firm.

20. (1) Notwithstanding any provision to the contrary contained in any other written law, the regulatory authority may apply to the High Court to have an international insurance firm or a former international insurance firm wound up where —

Winding up
on application
to High Court

- (a) the international insurance firm or the former international insurance firm is, or, in the opinion of the regulatory authority may be, unable to meet its obligations to its clients or creditors;
- (b) the authorisation of the international insurance firm has been revoked and the former international insurance firm has ceased to operate as an international insurance firm;
- (c) the regulatory authority considers that it is in the interest of the proper and orderly regulation and supervision of international insurance firms that the international insurance firm or the former international insurance firm be wound up; or
- (d) the international insurance firm or the former international insurance firm has failed to comply with any direction given by the regulatory authority under this Act.

(2) Where an international insurance firm or former international insurance firm is being wound up voluntarily and the regulatory authority has reason to believe that any of the grounds set out in subsection (1) apply, the regulatory authority may apply to the High Court to have that international insurance firm wound up by the Court.

(3) Where a person, other than the regulatory authority, applies to the High Court for the winding up of an international insurance firm or a former international insurance firm, a copy of the application shall be served on the regulatory authority which shall be entitled to be heard on the application.

(4) Where an international insurance firm or a former international insurance firm is being wound up and the regulatory authority is not a creditor, any notice or document which is required to be sent to a creditor of the international insurance firm or a former international insurance firm shall be sent also to the regulatory authority.

(5) An officer of the regulatory authority may attend any meeting of creditors of an international insurance firm or a former international insurance firm which is being wound up, whether or not the regulatory authority is a creditor.

(6) For the purposes of subsections (4) and (5), the regulatory authority may become a creditor when it is owed fines, that are unpaid, by an international insurance firm or former international insurance firm.

PART VI — Enforcement and Miscellaneous Provisions

21. (1) The regulatory authority, or any person appointed by the regulatory authority for that purpose, may appoint, in writing, such persons as the regulatory authority considers appropriate to be authorised officers for the purposes of this Act.

(2) Any appointment of an authorised officer under subsection (1) shall be for such period as may be specified in the instrument appointing him or her and such appointment may be extended or renewed in writing.

(3) Every person who is appointed to be an authorised officer under subsection (1) shall be furnished with a certificate of appointment and shall, if so required, when exercising any power conferred on him or her by this Act, produce such certificate or a copy of it duly authenticated by the regulatory authority or a person appointed by the regulatory authority for that purpose, and such certificate shall be proof of identity and appointment.

Powers of
authorised
officers

22. (1) For the purposes of this section —
“agent”, in relation to an international insurance firm or any related undertaking, includes past as well as present agents, of an international insurance firm, and includes its bankers, accountants, solicitors, auditors and its financial and other advisers, whether or not those persons are officers of the international insurance firm;
“international insurance firm” means an international insurance firm, an applicant international insurance firm, a former international insurance firm, a person or undertaking that the regulatory authority has reasonable grounds to believe is carrying on, has carried on, or may carry on international insurance business, and a related undertaking of any of the foregoing;

“premises” means —

- (a) any premises or part of any premises which an authorised officer believes have been used, are being used, or may be used for the carrying on of international insurance business or the carrying out of any activity in connection with an international insurance firm, or
- (b) any premises where an authorised officer believes that books, records or other documents in relation to the carrying on of international insurance business or the carrying out of any activity in connection with an international insurance firm may be found.

(2) An authorised officer may, for the purpose of obtaining any information which in the opinion of the regulatory authority may be required to enable the regulatory authority to exercise any of the regulatory authority’s functions under this Act —

- (a) enter any premises at all reasonable times;
- (b) seal up any premises for later inspection;
- (c) search any premises;
- (d) remove, from any premises, for a reasonable period, any books, records or other documents which the authorised officer finds;
- (e) inspect and take copies of or extracts from any books, records or other documents which the officer finds on the premises;
- (f) require an international insurance firm, or any controller, officer, employee, agent or shareholder of an international insurance firm to —

- (i) give to the authorised officer such information as the authorised officer may reasonably require in relation to the international insurance firm or the carrying on of international insurance business,
 - (ii) give to the authorised officer any information which the authorised officer may reasonably require in relation to the compliance by the international insurance firm with the provisions of this Act, any condition, code of practice or direction, or
 - (iii) produce to the authorised officer any books, records or other documents which are in that person's control;
- (i) require any person by whom or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer reasonable assistance in relation thereto;
 - (j) require an international insurance firm, or a controller, officer, employee, agent or shareholder of an international insurance firm, to prepare a report on specified aspects of the business of the international insurance firm;
 - (k) summon a controller, officer, employee, agent or shareholder of an international insurance firm to meet, at any reasonable time, with the authorised officer at a specified place; or
 - (l) require, and for that purpose, summon to meet at any reasonable time, any person whom the authorised officer has reasonable grounds to believe may have information relating to the carrying on of an international insurance business by an international insurance firm, to provide such information, documents, material or explanations and provide such assistance as the authorised officer may reasonably require.

(3) An international insurance firm, and each controller, officer, employee, and agent of an international insurance firm, and any person whom the authorised officer has reasonable grounds to believe may have information relating to the carrying on of international insurance business by an international insurance firm, shall provide any information, document, material or explanation requested or sought by an authorised officer under this section and shall cooperate with an authorised officer and provide all assistance that an authorised officer may reasonably require.

(4) The duty to produce or provide any information, document, material or explanation under this section, to an authorised officer, extends to an examiner, liquidator, receiver, official assignee and any person who is or has been a controller, officer, employee, agent or shareholder of an international insurance firm.

(5) A requirement under this section may be imposed on an international insurance firm or a controller, officer, employee or agent of an international insurance firm outside Botswana.

(6) Where an authorised officer considers it appropriate to do so, he or she may be accompanied by a member of the Botswana Police Service when performing any powers conferred on him or her by this Act.

(7) Nothing in this section shall compel the production, by an attorney, of a book, record or other document containing privileged communication made by him or her or to him or her in that capacity, or compel such attorney to furnish information contained in any privileged communication so made.

23. (1) An authorised officer who intends to make a search under section 22 (2) shall make an application on oath to a magistrate for a warrant to search such premises.

Search with
warrant

(2) If a magistrate to whom an application is made under subsection (1) is satisfied that the information required will enable the regulatory authority to exercise any of the regulatory authority's functions under this Act, he or she may issue a warrant directing the authorised officer to enter and search such premises and to do anything which the authorised officer is empowered to do under section 22 (2).

24. Where an authorised officer has reasonable cause to believe that there is in any premises anything which will enable the regulatory authority to exercise any of its functions under this Act, he or she may, without warrant, if he or she considers that the special exigencies of the case so require, enter and search the premises and do anything which he or she is empowered to do under section 22(2).

Search without
warrant in
certain cases

25. In the exercise of the powers conferred on an authorised officer under section 22(2), an authorised officer may use such reasonable force as is necessary in the circumstances.

Exercise of
powers under
section 22

26. Any person who obstructs or interferes with an authorised officer in the exercise of his or her powers under this Part shall be guilty of an offence.

Penalty for
hindering or
interfering with
authorised
officer

27. If an international insurance firm within the meaning of section 22 (1), or a controller, officer, employee, agent or shareholder of an international insurance firm, or any person whom the authorised officer has reasonable grounds to believe may have information relating to the carrying on of an international insurance business by an international insurance firm, fails, refuses or neglects —

Enforcement
powers of
authorised
officers

- (a) to provide any such information or explanation relating to the carrying on of an international insurance business by an international insurance firm when requested to do so by an authorised officer;
- (b) to produce any book, record or document relating to the carrying on of international insurance business by an international insurance firm, when requested to do so by an authorised officer;

- (c) to answer any question relating to the carrying on of international insurance business by an international insurance firm, put to him or her by an authorised officer;
- (d) to meet an authorised officer when summoned to do so; or
- (e) to otherwise cooperate with or provide such assistance as the authorised officer may reasonably require,

the authorised officer may apply to the High Court, and the Court may grant an order requiring the person to do or not to do or to cease to do, anything that the Court considers necessary and specifies in the order to enable the authorised officer or the regulatory authority to carry out his or her duties and functions under this Act.

Offences
relating to
documents

28. (1) A person who, in the purported compliance with any provision of this Act, provides an answer or explanation, makes a statement or produces, lodges or delivers any return, report or certificate, balance sheet or other document relating to the carrying on of international insurance business by an international insurance firm, which is false in a material particular, knowing it to be false, or recklessly provides an answer or explanation, knowingly withholds or omits information, makes a statement or produces, lodges or delivers any such document false in a material particular shall be guilty of an offence.

(2) An officer of an international insurance firm, an applicant international insurance firm or a former international insurance firm that fraudulently disposes of, alters or makes an omission in any record or document relating to the carrying on of international insurance business by an international insurance firm, or who is privy to the disposal of, altering or making of an omission in any such record or document, shall be guilty of an offence.

Offences
punishable
by court

29. (1) A person or an undertaking that is guilty of an offence under section 8, 9 (5), 14 (6), 17 (11), 19 (7), 26 or 28 (2), shall be liable to a fine not exceeding P36,000 and, if the person is a body corporate, every controller of such body corporate shall each be personally liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding two years or to both, unless such controller proves, to the satisfaction of the Court, that he or she was unaware of the default and had taken all reasonable steps to keep himself or herself informed of any possibility of such default.

(2) No prosecution shall be commenced under this section by any person other than the regulatory authority or a person authorised in writing by the regulatory authority.

Offences
punishable by
regulatory
authority

30. (1) Notwithstanding the provisions of section 29(1), a person who contravenes any of the provisions of this Act shall be guilty of an offence and shall be liable to a fine not exceeding P5000 to be imposed by and at the discretion of the regulatory authority.

(2) Where an offence to which this section applies is committed by a body corporate, every controller and officer of such body corporate shall be guilty of an offence unless he or she proves, to the satisfaction of the regulatory authority, that he or she was not aware of the act or default which contravened the provisions of this Act and could not, with reasonable diligence, have become aware of it.

(3) Without prejudice to any other action taken or which can be taken by the regulatory authority under this Act, any fine imposed by the regulatory authority under the provisions of this section shall be recoverable as a fine imposed by a court under the provisions of subsections (1) to (4) of section 303 of the Criminal Procedure and Evidence Act, and an affidavit sworn by an officer of the regulatory authority shall be sufficient proof of the lawful imposition of the fine to enable the court to issue a warrant under those provisions, except that no warrant shall be issued until any appeal has been heard and disposed of or until the time within which an appeal may be made thereunder has expired.

31. (1) In the event that any act or step is required or permitted to be done or taken under this Act, and no form is prescribed or procedure laid down in this Act for doing the Act or taking the step, the regulatory authority may, in response to an application to him or her by an international insurance firm or a former international insurance firm, or on his or her own motion, give guidelines and directions as to the manner in which the act may be done or the step taken, and any act done or step taken in accordance with such guidelines shall be a valid performance of such act or step.

(2) Every document filed with the regulator, and all records and accounts required to be kept under this Act, shall be in the English language.

(3) Where a document is not in the English language it shall be accompanied by an authentic English translation, and in the event of any conflict in meaning between the foreign language and the English version, the English version shall prevail.

32. (1) The Minister may, by statutory instrument, make regulations for any matter which under this Act may be provided for by regulations or which is required for the better carrying out of the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may, on the recommendation of the regulatory authority, prescribe the fee to be paid to the regulatory authority by an applicant international insurance firm, and the Minister may prescribe different fees for different classes of international insurance firms.

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Guidelines
and directions
by regulatory
authority

Regulations

(3) Regulations made under subsection (1) may make different provisions for different classes of international insurance firms.

(4) Regulations made under subsection (2) may provide for such incidental or related matters as are, in the opinion of the Minister, necessary to give effect to such fees.

PASSED by the National Assembly this 15th of April, 2005.

A. MATLHAKU,
Clerk of the National Assembly.