



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 77 1998

### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 5 of 1998: Long-term Insurance Act, 1998

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**LONG-TERM INSURANCE ACT, 1998****ACT**

**To regulate the carrying on of long-term insurance business in Namibia and to provide for matters incidental thereto.**

*(Signed by the President on 11 March 1998)*

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**BE IT ENACTED** by the Parliament of the Republic of Namibia,  
as follows:-

**PART I**  
**PRELIMINARY**

**Definitions**

1. (1) In this Act, unless the context otherwise indicates -

“actuary” means any person who is a fellow of the Institute of Actuaries of England or of the Faculty of Actuaries in Scotland or of any like institute, faculty, society or other association regulating the admission to, the qualification or registration for, and the practise of, the profession of actuaries and which is recognized by the Registrar for the purposes of this Act;

“advisory committee” means the Advisory Committee on Long-term Insurance established by section 12(1);

“auditor” means an auditor who -

- (a) is registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951);
- (b) is a member of an institution recognized by the Registrar, for the purposes of this Act, as a controlling body for auditors; and
- (c) is resident in Namibia;

“Companies Act” means the Companies Act, 1973 (Act 61 of 1973);

“deposit premium” means a provisional premium which is agreed upon in

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the event of it being impossible at the due date of the premium to determine the exact premium, and which represents a reasonable estimate of the premium;

“director” means a person holding office as director or alternate director of a company incorporated in terms of the Companies Act;

“disability event” means the event of the functional ability of the mind or body of a person or an unborn becoming impaired;

“disability insurance business” means the business of providing or undertaking to provide policy benefits under disability policies;

“disability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event, and includes a reinsurance policy in respect of such a contract;

“domestic policy” means a policy issued in Namibia and which is payable in Namibia in the currency of Namibia, and includes a policy which was issued anywhere by an existing insurer in the course of carrying on long-term insurance business in Namibia -

- (a) on or after 21 March 1990 but before the commencement of this Act, other than such a policy in respect of which the owner thereof has before such commencement in writing requested the existing insurer concerned that it not be made payable in Namibia in the currency of Namibia; or
- (b) before 21 March 1990 and which policy has after the date of issue thereof been made payable in Namibia in the currency of Namibia at the request of the owner thereof;

“due date” means -

- (a) in relation to a premium -
  - (i) in the case of a new policy, the inception date of the policy;
  - (ii) in the case of an existing policy which has been renewed, the renewal date of the policy; and
  - (iii) in the case of any extension or other change of an existing policy, the inception date of such extension or other change; and
- (b) in relation to an instalment of a premium, the commencement date of the period in respect of which the instalment is payable;

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“existing insurer” means a person who at any time before the commencement of this Act carried on long-term insurance business in Namibia;

“financial year” means -

(a) in relation to -

- (i) a registered insurer and reinsurer; and
- (ii) an insurance agent, an insurance broker and a reinsurance broker to which the provisions of section 285(1) of the Companies Act apply,

the financial year of the registered insurer or reinsurer, or the insurance agent or insurance broker or reinsurance broker, determined in terms of the said section 285(1); and

(b) in relation to an insurance agent, an insurance broker and a reinsurance broker other than an insurance agent, an insurance broker and a reinsurance broker referred to in subparagraph (ii) of paragraph (a), the annual accounting period of 12 months of the insurance agent or insurance broker or reinsurance broker, the first such period commencing on the first day of the month immediately following the month during which the insurance agent or insurance broker or reinsurance broker was registered as such;

“foreign insurer” means a person registered in terms of the laws of a country other than Namibia to carry on insurance business;

“foreign reinsurer” means a person registered in terms of the laws of a country other than Namibia to carry on reinsurance business;

“fund” means -

- (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act 25 of 1956);
- (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act 24 of 1956);
- (c) a medical aid fund registered under the Medical Aid Funds Act, 1995 (Act 23 of 1995);
- (d) a permanent fund established for the purposes of providing benefits to its members in the event of sickness, accident or unemployment, or of providing benefits to surviving spouses, children, dependants or nominees of deceased members, or mainly for these purposes; or

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(e) any other prescribed person, arrangement or business;

“fund insurance business” means the business of providing or undertaking to provide policy benefits under fund policies;

“fund policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purposes of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund, and includes a reinsurance policy in respect of such a contract;

“funeral insurance business” means the business of providing or undertaking to provide policy benefits under funeral policies;

“funeral policy” means a contract in terms of which a person, in return for a premium, undertakes to provide on the death of a particular person policy benefits, not exceeding such amount as may be prescribed, consisting mainly of the provision of a funeral for the deceased person or the granting 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 the reinsurer or any other person, of a sum of money instead of the provision of such funeral or the granting of such other non-monetary benefit; or
- (b) the payment of a sum of money in addition to the provision of such funeral or the granting of such other non-monetary benefit,

and includes a reinsurance policy in respect of such a contract;

“health event” means an event relating to the health of the mind or body of a person or an unborn;

“health insurance business” means the business of providing or undertaking to provide policy benefits under health policies;

“health policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, and includes a reinsurance policy in respect of such a contract;

“insurance agent” means a person who on behalf of one or more insurers -

- (a) solicits long-term insurance business; or
- (b) performs any act relating to the receiving of proposal forms for

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such business or the issue of policies or the collection of premiums in respect of such business,

but does not include an employee of an insurer unless the remuneration of that employee comprises commission;

“insurance broker” means a person who on behalf of any other person negotiates long-term insurance business other than reinsurance business with one or more insurers, but does not include an insurance agent or an employee of an insurer unless the remuneration of that employee comprises commission;

“life event” means the event of the life of a person or an unborn -

- (a) having begun; or
- (b) continuing; or
- (c) having continued for a period; or
- (d) having ended;

“life insurance business” means the business of providing or undertaking to provide policy benefits under life policies;

“life policy” means a contract in terms of which a person, in return for a premium, undertakes to -

- (a) provide policy benefits upon, and solely for the reason of, a life event; or
- (b) pay an annuity for a period,

and includes a reinsurance policy in respect of such a contract;

“long-term insurance business” means the business of providing or undertaking to provide policy benefits under long-term policies, but does not include -

- (a) the activities of an association of persons established for the purposes of rendering aid to its members or their dependants, commonly called a friendly society, which is registered under the Friendly Societies Act, 1956 (Act 25 of 1956), or which is exempted in terms of section 3(2) of that Act from the requirement to be so registered, and which does not at any time after the commencement of this Act employ a person whose main remunerated occupation consists of inducing persons to become members of the association or collecting from

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those members contributions or subscriptions towards the funds of the association;

- (b) the activities of a pension fund, a provident fund or a retirement annuity fund as defined in section 1 of the Income Tax Act, 1981 (Act 24 of 1981), which is registered as a pension fund organization under the Pension Funds Act, 1956 (Act 24 of 1956), or which is exempted in terms of section 2(3)(a)(i) of that Act from the requirement to be so registered, if and so far as it acts in accordance with the provisions of that Act;
- (c) any activity connected with and subsidiary to any business other than insurance or reinsurance, which in the opinion of the Registrar is not long-term insurance business as ordinarily understood;
- (d) any such business as may be prescribed which shall be deemed not to be long-term insurance business for the purposes of this Act;

“long-term policy” means a disability policy, fund policy, funeral policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of these policies;

“Minister” means the Minister of Finance;

“net liabilities” means the liabilities of a registered insurer or reinsurer reduced to the extent that any such liabilities have been reinsured with another registered insurer or reinsurer;

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

“Permanent Secretary” means the Permanent Secretary: Finance;

“policy” means a contract, irrespective of the form in which the rights and obligations of the parties thereto are expressed or created;

“policy benefits” means one or more sums of money, services or other benefits, including an annuity;

“policyholder” means the owner of a policy;

“premium” means the consideration given or to be given in return for an undertaking to provide policy benefits and includes a deposit premium;

“prescribed” means prescribed by regulation;

“principal officer” means the person appointed by a registered insurer or reinsurer in terms of section 19;

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“public company” means a public company with a share capital incorporated in Namibia in terms of the Companies Act or any law repealed by that Act;

“registered” means registered in terms of this Act, and “registration” shall have a corresponding meaning;

“registered insurer” means a person registered as an insurer in terms of section 16(3) to carry on long-term insurance business;

“registered reinsurer” means a person registered as a reinsurer in terms of section 16(3) to carry on long-term insurance business;

“Registrar” means the Registrar of Long-term Insurance or a Deputy Registrar of Long-term Insurance, as the case may be, designated in terms of section 4;

“reinsurance broker” means a person who on behalf of any insurer negotiates reinsurance business with one or more reinsurers;

“reinsurance business” means the business of insuring any insurer or reinsurer in respect of the insurer's or reinsurer's contractual obligations under any long-term policy;

“sinking fund insurance business” means the business of providing or undertaking to provide policy benefits under sinking fund policies;

“sinking fund policy” means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money on a fixed or determinable future date as policy benefits, and includes a reinsurance policy in respect of such a contract;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act 13 of 1995);

“this Act” includes the regulations;

“unborn” means a human fetus, conceived but not born, and for the purposes of this Act the life of an unborn is deemed to begin at conception;

“unimpaired reserves” means funds which have been set aside, and which are disclosed as such in the balance sheet of a registered insurer or reinsurer, or which are included in the funds set aside and attributed to policyholders by the registered insurer or reinsurer in its balance sheet, otherwise than for the purposes of meeting its net liabilities under unmatured domestic policies, as calculated in terms of section 35, or any other particular known or determinable obligation for which the registered insurer or reinsurer is or expects to become liable;

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“valuator” means a valuator referred to in section 24(1).

(2) Except where it is inconsistent with the context or clearly inappropriate, a reference in this Act to a reinsurer shall be construed as a reference to a registered reinsurer.

**Unregistered person may not carry on long-term insurance business**

2. (1) No person shall, after the expiry of 90 days from the commencement of this Act, carry on long-term insurance business in Namibia unless such person is registered to carry on such business.

(2) Notwithstanding the provisions of subsection (1), the Registrar may, if he or she is satisfied that no registered insurer or reinsurer can in any particular case provide long-term insurance cover at equitable terms, grant exemption to any foreign insurer or foreign reinsurer to issue a policy payable in Namibia in the currency of Namibia to provide such cover.

(3) For the purposes of subsection (1), a person shall, in the absence of evidence to the contrary, be deemed to carry on long-term insurance business in Namibia, if such person performs in Namibia -

- (a) any act the object or result of which is that another person enters into or varies a long-term policy in terms of which such first-mentioned person undertakes to provide policy benefits; or
- (b) in relation to a long-term policy in terms of which such first-mentioned person has undertaken to provide policy benefits, any act directed towards -
  - (i) maintaining, servicing, surrendering, or otherwise dealing with, or providing a loan in respect of, or on the security of, such policy; or
  - (ii) collecting or accounting for premiums payable under such policy; or
  - (iii) receiving, submitting, settling, assisting or otherwise dealing with, a claim under such policy.

**Limitation of insurance business and policies**

3. (1) No registered insurer or reinsurer shall -
- (a) in Namibia carry on insurance business other than long-term insurance business;

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- (b) in Namibia issue policies other than written domestic policies;
- (c) vary a domestic policy so that it becomes payable either outside Namibia or in a currency other than the currency of Namibia, or both:

Provided that at the request of the registered insurer or reinsurer concerned, the Registrar may, if he or she is satisfied that it will not be detrimental to the interests of policyholders and will not be contrary to the public interest-

- (i) grant, subject to the provisions of any law, prior approval to that registered insurer or reinsurer to effect or renew reinsurance business outside Namibia subject to such conditions or limitations as may be determined by the Registrar;
  - (ii) grant exemption for a policy to be issued in a currency other than the currency of Namibia, provided every premium payable in respect of the policy is payable in Namibia in the same currency as that in which the policy is issued.
- (2) The provisions of subsection (1) shall apply *mutatis mutandis* in relation to an existing insurer.

**PART II  
ADMINISTRATION OF ACT**

**Registrar and Deputy Registrar of Long-term Insurance**

4. (1) The Minister shall designate a staff member to be the Registrar of Long-term Insurance and who shall exercise the powers and perform the duties conferred or imposed upon the Registrar by or under this Act.

(2) The Minister may designate one or more staff members to be Deputy Registrar or Deputy Registrars of Long-term Insurance and who shall, subject to the control and directions of the Registrar, be competent to exercise any power and perform any duty which the Registrar is permitted or required to perform.

**Objects of Registrar**

5. The objects of the Registrar are to ensure -
- (a) that long-term insurance business in Namibia -

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- (i) is carried on in accordance with the provisions of this Act; and
  - (ii) is efficiently administered, controlled and regulated; and
- (b) that every registered insurer, reinsurer, insurance agent, insurance broker and reinsurance broker at all times maintains a sound financial position with regard to any long-term insurance business carried on in terms of this Act.

**Power of Registrar to obtain information**

6. The Registrar may by written notice require -
- (a) any registered insurer, reinsurer, insurance agent, insurance broker or reinsurance broker;
  - (b) any other person who the Registrar has reason to suspect is carrying on business or is engaged in activities in contravention of a provision of this Act,

to submit or furnish to the Registrar, within a period specified in the notice, any such document or information relating to the affairs of the registered insurer, reinsurer, insurance agent, insurance broker or reinsurance broker or such other person as the Registrar may reasonably require for the purposes of the performance of his or her functions in terms of this Act.

**Power of Registrar to extend certain periods**

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

**Powers of inspection of Registrar**

8. In addition to the powers and duties conferred or imposed upon the Registrar by or under this Act, the Registrar shall, for the purposes of the performance of his or her functions in terms of this Act, have powers and duties in all respects corresponding to the powers and duties conferred or imposed by or under the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984), upon a registrar referred to in the last-mentioned Act.

**LONG-TERM INSURANCE ACT, 1998****Delegation of powers and assignment of duties**

9. The Registrar may, subject to such conditions as he or she may determine, delegate any power or assign any duty conferred or imposed upon him or her by or under this Act to a staff member, but the Registrar shall not thereby be divested or relieved of the power or duty so delegated or assigned.

**Appeal against decisions of Registrar or staff members**

10. (1) Any person aggrieved by a decision of the Registrar, or of any staff member acting by virtue of a delegation or an assignment under section 9, may appeal against the decision to the Minister.

(2) The appeal shall be in the form of a written statement which shall -

- (a) contain a full description of the subject matter of the decision to which the appeal relates and the grounds of appeal; and
- (b) be submitted to the Minister within 30 days after the appellant has received notification of the decision to which the appeal relates.

(3) Upon receipt of the appeal, the Minister shall transmit a copy thereof to the Registrar, who shall forthwith furnish the Minister with a written statement of the reasons for the decision to which the appeal relates.

(4) After consideration of the statements referred to in subsections (2) and (3) and of such other evidence, information or representations as the Minister may deem relevant or may require, including, if the Minister so chooses, any comments of the advisory committee on the appeal, the Minister may confirm, vary or set aside the decision to which the appeal relates.

(5) The Minister shall notify the appellant in writing of his or her decision on the appeal.

**Annual report by Registrar**

11. The Registrar shall annually, not later than 31 July of each year, submit to the Minister a report on his or her activities in terms of this Act during the period of 12 months preceding 31 March of that year and shall furnish such other information relating to anything done by the Registrar in terms of this Act as the Minister may require.

**LONG-TERM INSURANCE ACT, 1998****Advisory committee**

12. (1) There is hereby established a committee to be known as the Advisory Committee on Long-term Insurance.
- (2) The advisory committee shall consist of -
- (a) the Registrar, who shall be the chairperson; and
- (b) at least four other members appointed from time to time by the Minister in terms of subsection (3).
- (3) The Minister shall appoint as members of the advisory committee persons who in his or her opinion possess the necessary expertise in long-term insurance business to represent the interests of policyholders and to make a substantial contribution towards the functions of the advisory committee.
- (4) The members of the advisory committee shall designate as secretary to the advisory committee a staff member nominated by the Registrar from among the staff of his or her office.
- (5) If the chairperson of the advisory committee is absent from any meeting of such committee, the members present thereat may elect one of their number to preside at that meeting.
- (6) A member of the advisory committee appointed by the Minister shall -
- (a) hold office for a period of three years and shall be eligible for reappointment upon the expiry of his or her term of office;
- (b) vacate his or her office if he or she resigns or if the Minister removes him or her from office under subsection (7).
- (7) The Minister may at any time remove a member of the advisory committee appointed by him or her from office if he or she is of the opinion that there are sufficient reasons for doing so.
- (8) Each member of the advisory committee appointed by the Minister may, with the concurrence of the Minister, nominate as alternate member a person who is equally capable of representing the field of expertise for which the member has been appointed, and any alternate member so nominated may during the absence of the member by whom he or she has been nominated or his or her inability to act as member, act as member in the place of that member.
- (9) The remuneration and allowances of a member of the

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advisory committee not being in the full-time employment of the State shall be determined from time to time by the Minister.

(10) The advisory committee may with the prior approval of the Minister conduct any investigation into, and advise or make recommendations to the Minister on, any matter relating to long-term insurance business, and shall advise or make recommendations to the Minister on any such matter referred to it by the Minister, but no advice or recommendation so given or made by the advisory committee shall be binding upon the Minister unless otherwise provided in this Act.

(11) The Registrar may, at the request of the advisory committee, submit to such committee any information which is in his or her possession or which he or she may obtain and which is relevant to any matter which such committee is investigating or considering.

(12) Meetings of the advisory committee shall be held at such times and places as the chairperson of such committee may determine.

(13) The advisory committee may, with the approval of the Minister, make rules relating to the procedure at its meetings, including the quorum for such meetings and its decisions thereat.

**PART III**  
**CLASSIFICATION OF LONG-TERM INSURANCE**  
**BUSINESS AND REGISTRATION AND**  
**CANCELLATION OF REGISTRATION OF**  
**INSURERS AND REINSURERS**

**Classes of long-term insurance business**

**13.** (1) The classes of long-term insurance business in respect of which -

- (a) an insurer may be registered to carry on business other than reinsurance business;
- (b) a reinsurer may be registered to carry on reinsurance business only,

in Namibia are -

- (i) disability insurance business;
- (ii) fund insurance business;
- (iii) funeral insurance business;

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- (iv) health insurance business;
- (v) life insurance business;
- (vi) sinking fund insurance business.

(2) If a registered insurer or reinsurer or a person applying for registration and the Registrar do not agree as to the class to which any particular long-term insurance business belongs, or if such insurer or reinsurer or person so requests, the Registrar shall determine the class under which such business shall be dealt with.

**Registration of existing insurers**

14. (1) Every person who immediately before the commencement of this Act was lawfully carrying on any particular class of long-term insurance business in Namibia as a registered insurer in terms of the Insurance Act, 1943 (Act 27 of 1943), shall, within 30 days after such commencement, notify the Registrar in writing whether such person intends to continue to carry on that particular class of long-term insurance business in terms of this Act.

(2) Where a person referred to in subsection (1) notifies the Registrar that such person intends to continue to carry on business as a long-term insurer or reinsurer in any particular class of long-term insurance business, such person shall, within 60 days after the commencement of this Act, apply to the Registrar for registration in respect of that particular class of long-term insurance business.

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

- (a) be made in such manner and form as may be determined by the Registrar; and
- (b) be accompanied by -
  - (i) such documents and information as the Registrar may require in the particular case; and
  - (ii) the prescribed application fees.

(4) Where a person referred to in subsection (1), in circumstances other than the circumstances contemplated in subsection (7), notifies the Registrar that such person does not intend to continue to carry on business as a long-term insurer or reinsurer in any particular class of long-term

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insurance business, that notification shall be deemed to be an application by a registered insurer or reinsurer in terms of subsection (1) of section 17 for cancellation of its registration and shall be dealt with in accordance with the provisions of that section.

(5) Where a person referred to in subsection (1) fails to notify the Registrar of such person's intention as required by that subsection, the Registrar shall by written notice inform such person that he or she intends to cancel such person's registration, and such person may thereupon, within 30 days from the date of receipt of that notice, make written representations to the Registrar in connection with the matter.

(6) After consideration of the representations referred to in subsection (5) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may -

- (a) permit the person concerned to apply for registration within such period as may be determined by the Registrar, but within a period not exceeding 45 days from the date on which such person has been permitted to apply for registration; or
- (b) by written notice to the person concerned and by notice in the *Gazette* cancel such person's registration with effect from a date specified in those notices.

(7) Where a person referred to in subsection (1) intends to continue to carry on any particular class of long-term insurance business but is disqualified from being registered as an insurer or a reinsurer solely by reason of the fact that such person is not a public company, as required in terms of section 16(1)(a), such person shall, within 30 days after the commencement of this Act, in writing notify the Registrar accordingly and state in that notice which of the arrangements contemplated in subsection (9) such person intends to make.

(8) Upon receipt of a notice referred to in subsection (7), the Registrar shall by written notice to the person concerned and by notice in the *Gazette* prohibit such person, with effect from a date specified in those notices, from -

- (a) issuing policies or policies relating to any particular class of long-term insurance business; and
  - (b) varying, in whatever way, domestic policies issued by such person, which variation has the effect of increasing the liabilities of such person in respect of domestic policies.
- (9) Where the Registrar prohibits a person in terms of subsection

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(8) from issuing and varying policies, the Registrar shall require such person to make proper arrangements for ensuring that such person's liabilities under policies or policies relating to the particular class of long-term insurance business, as the case may be, issued by such person will be met, either -

- (a) by the transfer, notwithstanding the provisions of section 36, but subject to the written approval of the Registrar and to the provisions of subsection (10), of such person's long-term insurance business in Namibia to a registered insurer or reinsurer, as the case may be; or
- (b) by continuing, subject to the prohibition imposed in terms of subsection (8) and to such conditions as may be determined by the Registrar, to carry on any particular class of long-term insurance business only -
  - (i) in respect of the domestic policies issued by such person before the date as from which such person is prohibited from issuing policies; and
  - (ii) until such person's liabilities under the policies referred to in subparagraph (i) have been met,

and until such person's liabilities have been met in terms of this subsection, such person shall be deemed to have been registered to carry on long-term insurance business subject to the provisions of this Act.

(10) Before a transfer of long-term insurance business in terms of subsection (9)(a) is approved by the Registrar -

- (a) a statement setting out the nature of the proposed transfer together with -
  - (i) an abstract containing the terms and conditions of the scheme for the proposed transfer; and
  - (ii) where applicable, copies of the actuarial reports upon which such scheme is founded, including, if so required by the Registrar, a report by a valuator, approved by the Registrar,

shall, within 60 days after the commencement of this Act, be submitted by the registered insurers or reinsurers concerned to the Registrar and, if so directed by the Registrar, be published in one or more newspapers, as the Registrar may direct;

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- (b) the scheme for the proposed transfer, together with the actuarial reports, shall be open for inspection, free of charge, by policyholders, shareholders and creditors of the registered insurers or reinsurers concerned at the principal offices of such insurers or reinsurers for a period of not less than 21 days; and
- (c) the Registrar shall satisfy himself or herself that the scheme for the proposed transfer will not be detrimental to the interests of policyholders and will not be contrary to the public interest.

(11) The provisions of subsections (7) and (9) of section 36 shall apply *mutatis mutandis* in respect of a transfer of long-term insurance business in terms of subsection (9)(a), and for that purpose any reference in those subsections to the High Court shall be construed as a reference to the Registrar.

(12) Notwithstanding anything to the contrary in any law contained, no tax, or transfer or stamp duty, or registration, licence or other fees, shall be payable upon the effecting or recording of the transfer of any property, mortgage, other right, appointment or licence in terms of subsection (9)(a).

**Application for registration of new insurers and reinsurers**

**15.** (1) Any person who intends to carry on business as a long-term insurer or reinsurer in any particular class of long-term insurance business in Namibia shall, subject to the provisions of this Act, apply to the Registrar for registration in respect of that particular class of long-term insurance business.

- (2) An application for registration referred to in subsection (1) shall -
  - (a) be made in such manner and form as may be determined by the Registrar; and
  - (b) be accompanied by -
    - (i) such documents and information as the Registrar may require in the particular case; and
    - (ii) the prescribed application fees.

**LONG-TERM INSURANCE ACT, 1998****Requirements for registration of insurers and reinsurers, including capital and reserves**

**16.** (1) No person shall be registered as an insurer or a reinsurer in respect of any class of long-term insurance business unless such person -

(a) is a public company managed by a board of directors of which -

(i) the managing director; and

(ii) at least 50 per cent of the other directors,

shall, having regard to the provisions of section 19(1)(b), be Namibian citizens resident in Namibia: Provided that the Registrar may in exceptional circumstances grant written permission that a managing director may, for such period as may be determined by the Registrar, be a person other than a Namibian citizen; and

(b) has in respect of such business in Namibia capital consisting of paid-up shares, or other funds approved by the Registrar, set aside solely for that purpose subject to such conditions as may be determined by the Registrar, amounting to not less than -

(i) in the case of a person applying for registration in respect of funeral insurance business only, N\$100 000; or

(ii) in the case of a person applying for registration in respect of any one class of -

(aa) long-term insurance business other than funeral insurance business and reinsurance business, N\$1 000 000; or

(bb) reinsurance business, N\$5 000 000; or

(iii) in the case of a person applying for registration in respect of any two or more classes of -

(aa) long-term insurance business other than reinsurance business, N\$4 000 000; or

(bb) reinsurance business, N\$10 000 000; and

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- (c) has, subject to such conditions as may be determined by the Registrar, deposited with the Treasury an amount, or securities approved by the Registrar having an aggregate value, of not less than -
- (i) in the case of a person applying for registration in respect of funeral insurance business only, N\$50 000; or
  - (ii) in the case of a person applying for registration in respect of any one class of -
    - (aa) long-term insurance business other than funeral insurance business and reinsurance business, N\$100 000; or
    - (bb) reinsurance business, N\$500 000; or
  - (iii) in the case of a person applying for registration in respect of any two or more classes of -
    - (aa) long-term insurance business other than reinsurance business, N\$200 000; or
    - (bb) reinsurance business, N\$1 000 000.

(2) When considering an application for registration referred to in section 14(2) or 15(1), as the case may be, the Registrar shall satisfy himself or herself that -

- (a) it will not be contrary to the public interest for the applicant to carry on any particular class of long-term insurance business;
- (b) the manner in which the applicant intends to carry on long-term insurance business is not likely to be inconsistent with the provisions of this Act;
- (c) the memorandum of association and articles of association or the regulations of the applicant, as the case may be, are not inconsistent with the provisions of this Act and that the main objects of the applicant stated therein include the following, namely -
  - (i) to carry on any particular class or classes of long-term insurance business;

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- (ii) to carry on long-term insurance business and conduct all affairs relating thereto in accordance with sound insurance practices and methods and the provisions of this Act;
  - (iii) to in so far as practicable protect the interests of policyholders; and
  - (iv) to at all times maintain a margin of solvency sufficient for the purposes of meeting all obligations to policyholders; and
- (d) the name under which the applicant intends to carry on long-term insurance business is not -
- (i) identical to the name of any other registered insurer or reinsurer; or
  - (ii) a name which so closely resembles the name of any other registered insurer or reinsurer that the one insurer or reinsurer is likely to be mistaken for the other; or
  - (iii) a name which is likely to be misleading to the public.

(3) Subject to the provisions of subsection (1), the Registrar shall, after having satisfied himself or herself as contemplated in subsection (2), register the applicant as an insurer or a reinsurer in accordance with the provisions of section 13(1) to carry on business in the class or classes of long-term insurance in respect of which registration is required.

(4) Upon registration of an applicant in terms of subsection (3), the Registrar shall issue to the applicant a certificate of registration in a form determined by the Registrar.

**Cancellation of registration of insurers and reinsurers**

**17.** (1) Where a registered insurer or reinsurer intends to cease carrying on long-term insurance business or any particular class of long-term insurance business, the registered insurer or reinsurer shall, at least 90 days before the proposed cessation, apply to the Registrar, in a manner and form determined by the Registrar, for cancellation of its registration or its registration in respect of the particular class of long-term insurance business, as the case may be.

(2) Upon receipt of an application referred to in subsection (1), the Registrar shall, after the registered insurer or reinsurer has complied

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with such conditions as may be determined by the Registrar, by written notice to such insurer or reinsurer and by notice in the *Gazette* prohibit such insurer or reinsurer, with effect from a date specified in those notices, from issuing policies or policies relating to the particular class of long-term insurance business in respect of which such insurer or reinsurer is registered.

- (3) If the Registrar -
  - (a) is satisfied that a registered insurer or reinsurer has -
    - (i) within one year after its registration, failed to commence to carry on long-term insurance business or any particular class of long-term insurance business in respect of which it is registered; or
    - (ii) ceased to carry on long-term insurance business or any particular class of long-term insurance business in respect of which it is registered, or that the volume of business it transacts in any particular class of long-term insurance business is less than the volume of business a registered insurer or reinsurer can reasonably be expected to maintain; or
  - (b) on reasonable grounds suspects that the business of a registered insurer or reinsurer is in an unsound financial position or is being conducted in a manner which is likely to result in such business being placed in an unsound financial position,

the Registrar may by written notice to the registered insurer or reinsurer inform such insurer or reinsurer that he or she intends to cancel such insurer's or reinsurer's registration or its registration in respect of the particular class of long-term insurance business, as the case may be, and in such notice state the grounds for such intended action.

(4) A registered insurer or reinsurer may, within 30 days from the date of receipt of a notice referred to in subsection (3), make written representations to the Registrar in connection with the matter.

(5) After consideration of the representations referred to in subsection (4) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may -

- (a) if he or she is satisfied that it is just and equitable to do so in the particular case, by written notice to the registered insurer or reinsurer withdraw the notice referred to in subsection (3); or

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- (b) by written notice to the registered insurer or reinsurer and by notice in the *Gazette* prohibit such insurer or reinsurer, with effect from a date specified in those notices, from issuing policies or policies relating to the particular class of long-term insurance business in respect of which such insurer or reinsurer is registered.

(6) Where the Registrar prohibits a registered insurer or reinsurer in terms of subsection (2) from issuing policies, the Registrar shall require such insurer or reinsurer to make proper arrangements for ensuring that its liabilities under policies or policies relating to the particular class of long-term insurance business, as the case may be, issued by it will be met and, if the Registrar is satisfied that such arrangements have been made, he or she shall by written notice to such insurer or reinsurer and by notice in the *Gazette* cancel such insurer's or reinsurer's registration or its registration in respect of the particular class of long-term insurance business, as the case may be, with effect from a date specified in those notices.

(7) Where the Registrar prohibits a registered insurer or reinsurer under subsection (5)(b) on the grounds mentioned in subsection (3)(a)(i) or (ii) from issuing policies, the Registrar may by written notice to the registered insurer or reinsurer and by notice in the *Gazette* -

- (a) withdraw the prohibition if the registered insurer or reinsurer satisfies the Registrar that it will, within a period which the Registrar considers reasonable -
  - (i) commence to carry on long-term insurance business or the particular class of long-term insurance business in respect of which it is registered; or
  - (ii) increase or restore the volume of business it transacts in respect of the particular class of long-term insurance business to a reasonable level; or
- (b) cancel the registered insurer's or reinsurer's registration or its registration in respect of the particular class of long-term insurance business if the Registrar is not satisfied as contemplated in paragraph (a),

with effect from a date specified in those notices.

(8) Where the Registrar prohibits a registered insurer or reinsurer under subsection (5)(b) on the grounds mentioned in subsection (3)(b) from issuing policies, the Registrar shall by written notice to such insurer or reinsurer direct such insurer or reinsurer to furnish the Registrar, within a period specified in the notice, with a written proposal of the course of action

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it proposes to take for restoring its business to a sound financial position or preventing it from being placed in an unsound financial position.

(9) If the Registrar, after consultation with the auditor and the valuator of the registered insurer or reinsurer concerned, is satisfied that the course of action proposed by such insurer or reinsurer is, within a period which the Registrar considers reasonable, likely to restore its business to a sound financial position or prevent it from being placed in an unsound financial position, the Registrar may approve such proposal and by written notice to such insurer or reinsurer and by notice in the *Gazette* withdraw the prohibition with effect from a date specified in those notices.

(10) Where a registered insurer or reinsurer fails to propose any course of action as contemplated in subsection (8), or fails to adopt or adhere to a proposal approved by the Registrar under subsection (9), or if the Registrar refuses to approve the registered insurer's or reinsurer's proposed course of action under subsection (9), the Registrar may -

- (a) require the registered insurer or reinsurer to make proper arrangements for ensuring that its liabilities under policies or policies relating to the particular class of long-term insurance business, as the case may be, issued by it will be met and, if the Registrar is satisfied that such arrangements have been made, he or she shall by written notice to such insurer or reinsurer and by notice in the *Gazette* cancel such insurer's or reinsurer's registration or its registration in respect of a particular class of long-term insurance business, as the case may be, with effect from a date specified in those notices; or
- (b) apply to the High Court in accordance with the provisions of section 38 for an order placing the registered insurer or reinsurer under judicial management or for the winding-up of the registered insurer or reinsurer,

whichever course appears to the Registrar to be in the best interest of the owners of policies issued by such insurer or reinsurer.

- (11) If the Registrar is satisfied that -
- (a) the certificate of registration of a registered insurer or reinsurer was obtained by means of fraud or misrepresentation;
  - (b) a registered insurer or reinsurer is contravening or has contravened, or is failing or has failed to comply with, any provision of this Act, continues with or repeats such contravention or failure;

- (c) a registered insurer or reinsurer has made a material misrepresentation to members of the public in connection with the entering into of any policy;
- (d) a registered insurer or reinsurer is carrying on long-term insurance business which is not appropriate to any class of long-term insurance business in respect of which such insurer or reinsurer is registered and that such insurer or reinsurer, notwithstanding a written notice from the Registrar to that effect, has, within a period specified in the notice, failed to rectify the situation either by applying for registration in respect of the appropriate class of long-term insurance business or by any other means acceptable to the Registrar;
- (e) any class of long-term insurance business in respect of which an insurer or a reinsurer is registered is not being carried on by the registered insurer or reinsurer in accordance with sound insurance practices and methods; or
- (f) a judgment obtained against a registered insurer or reinsurer in any court in Namibia has remained unsatisfied for 21 days from the date of the judgment or, in the event of an appeal, from the date on which the appeal is abandoned or dismissed,

the Registrar may by written notice to the registered insurer or reinsurer inform such insurer or reinsurer that he or she intends to cancel such insurer's or reinsurer's registration or its registration in respect of the particular class of long-term insurance business, as the case may be, and in such notice state the grounds for such intended action.

(12) A registered insurer or reinsurer may, within 30 days from the date of receipt of a notice referred to in subsection (11), make written representations to the Registrar in connection with the matter.

(13) After consideration of the representations referred to in subsection (12) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Registrar may -

- (a) if he or she is satisfied that it is just and equitable to do so in the particular case, by written notice to the registered insurer or reinsurer withdraw the notice referred to in subsection (11); or
- (b) by written notice to the registered insurer or reinsurer and by notice in the *Gazette* prohibit such insurer or reinsurer, with effect from a date specified in those notices, from issuing

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policies or policies relating to the particular class of long-term insurance business in respect of which such insurer or reinsurer is registered.

(14) Where the Registrar prohibits a registered insurer or reinsurer under subsection (13)(b) on any of the grounds mentioned in subsection (11) from issuing policies, the Registrar may by written notice to the registered insurer or reinsurer and by notice in the *Gazette* -

- (a) withdraw the prohibition if the registered insurer or reinsurer satisfies the Registrar that it will, within a period which the Registrar considers reasonable, rectify the situation by reason of which it is prohibited from issuing policies; or
- (b) cancel the registered insurer's or reinsurer's registration or its registration in respect of the particular class of long-term insurance business if the Registrar is not satisfied as contemplated in paragraph (a),

with effect from a date specified in those notices.

(15) When the Registrar is satisfied that -

- (a) all of the long-term insurance business of a registered insurer or reinsurer has been -
  - (i) discontinued by virtue of its amalgamation with that of, or the transfer of its long-term insurance business to, another registered insurer or reinsurer, as the case may be, in accordance with the provisions of section 36; or
  - (ii) wound up in accordance with the provisions of section 38; or
- (b) any class of long-term insurance business of a registered insurer or reinsurer has been discontinued by virtue of the transfer of such class of business to another registered insurer or reinsurer in accordance with the provisions of section 36,

the Registrar shall by written notice to the registered insurer or reinsurer and by notice in the *Gazette* cancel such insurer's or reinsurer's registration or its registration in respect of the class of long-term insurance business that has been transferred with effect from a date specified in those notices.

**PART IV**  
**MANNER OF CARRYING ON LONG-TERM INSURANCE**  
**BUSINESS**

**Use and change of registered name**

**18.** (1) Subject to the provisions of subsection (2), every registered insurer and reinsurer shall for all purposes and in every public document issued by it use the name under which it is registered.

- (2) No registered insurer or reinsurer shall -
- (a) change the name under which it is registered;
  - (b) use or refer to itself by a name other than the name under which it is registered; or
  - (c) use or refer to itself by a shortened form or derivative of the name under which it is registered,

without the prior written approval of the Registrar.

(3) An application for a change of name contemplated in subsection (2)(a) shall -

- (a) be made in such manner and form as may be determined by the Registrar; and
- (b) be accompanied by -
  - (i) such documents and information as the Registrar may require in the particular case; and
  - (ii) the prescribed application fees.

(4) Upon receipt of an application referred to in subsection (3), the Registrar shall, if he or she is satisfied -

- (a) as contemplated in paragraph (d) of section 16(2) (as if he or she were considering an application for registration under that section); and
- (b) that the provisions of any other law relating to such a change of name have been complied with,

register the registered insurer or reinsurer concerned under its new name and issue to such insurer or reinsurer, in a form determined by the Registrar, a new certificate of registration under that name.

**LONG-TERM INSURANCE ACT, 1998****Principal office and principal officer**

**19.** (1) Every registered insurer and reinsurer shall -

- (a) establish and maintain a principal office in Namibia; and
- (b) appoint a fit and proper person to be its principal officer in Namibia and who shall, unless the Registrar in exceptional circumstances otherwise determines, be a person who is a Namibian citizen.

(2) Every registered insurer and reinsurer shall notify the Registrar in writing of the address of its principal office and the name of its principal officer prior to the establishment of such office or the appointment of such officer.

(3) Every registered insurer and reinsurer shall, prior to any change in -

- (a) the address of its principal office; or
- (b) the appointment of its principal officer,

notify the Registrar in writing of such intended change.

(4) The Registrar shall, upon request and without charge, inform any person of the address of the principal office of a registered insurer or reinsurer or of the name of its principal officer.

(5) The principal officer of a registered insurer or reinsurer is authorized to act for such insurer or reinsurer in all matters in so far as may be necessary to ensure the compliance by such insurer or reinsurer with the provisions of this Act, and in any case where a person, including the Registrar, is permitted or required to address such insurer or reinsurer, that person may do so by addressing himself or herself to the principal officer who shall ensure that the matter is attended to by such insurer or reinsurer.

(6) Process in any legal proceedings against a registered insurer or reinsurer may be served by delivering a copy thereof to its principal officer or, in the absence of such officer, to any other responsible employee at its principal office or, if no such office is in existence, by service on the Registrar which shall be deemed to be a service on the registered insurer or reinsurer.

**Capital and reserves**

**20.** Every registered insurer and reinsurer shall make proper arrangements for ensuring that its net liabilities will at all times be met and

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shall in addition have and maintain in Namibia in respect of its long-term insurance business capital, and additionally or alternatively unimpaired reserves, amounting in the aggregate to not less than -

- (a) in the case of an insurer registered to carry on funeral insurance business only, N\$100 000; or
- (b) in the case of an insurer or a reinsurer registered to carry on any one class of -
  - (i) long-term insurance business other than funeral insurance business and reinsurance business, N\$1 000 000; or
  - (ii) reinsurance business, N\$5 000 000; or
- (c) in the case of an insurer or a reinsurer registered to carry on any two or more classes of -
  - (i) long-term insurance business other than reinsurance business, N\$4 000 000; or
  - (ii) reinsurance business, N\$10 000 000.

**Financial year**

**21.** (1) Every registered insurer and reinsurer shall, within 30 days after its registration, notify the Registrar in writing of the date on which its financial year ends.

(2) The financial year of a registered insurer and reinsurer shall not exceed a period of 12 months.

(3) No registered insurer or reinsurer shall without the prior written approval of the Registrar change its financial year.

**Accounts**

**22.** (1) Every registered insurer and reinsurer shall -

- (a) keep proper accounts of, and financial information relating to, its long-term insurance business; and
- (b) annually, within six months after the end of its financial year, submit to the Registrar -
  - (i) a revenue account for that year in respect of each

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- class of long-term insurance business in respect of which it is registered;
- (ii) a consolidated account for that year in respect of all its long-term insurance business;
  - (iii) unless it has no share capital, a profit and loss account for that year in respect of its long-term insurance business;
  - (iv) a balance sheet showing its financial position at the end of that year; and
  - (v) a statement of reinsurance business accepted, ceded and retroceded by or to it, containing the terms and conditions of any such acceptance, cession or retrocession,

duly audited and certified by its auditor and duly evaluated and attested by its valuator, together with a written report by that auditor and by that valuator.

(2) The accounts, balance sheet and statement referred to in subsection (1) shall be prepared by the registered insurer or reinsurer in such form as may be determined by the Registrar and shall be accompanied by such documents and information as the Registrar may require.

**Appointment and powers and duties of auditor**

**23.** (1) Every registered insurer and reinsurer shall, subject to the approval of the Registrar, appoint, and at all times have, an auditor for its business in Namibia and shall notify the Registrar in writing of such appointment.

(2) Upon receipt of a notice referred to in subsection (1), the Registrar shall, if he or she is satisfied that the auditor appointed by a registered insurer or reinsurer or any partner of a partnership of auditors so appointed, as the case may be, is not an employee or a director of such insurer or reinsurer, by written notice to such insurer or reinsurer, approve the appointment of that auditor.

(3) Whenever the appointment of an auditor is terminated by a registered insurer or reinsurer -

- (a) the registered insurer or reinsurer shall, within 30 days after the said termination, notify the Registrar in writing thereof and furnish the Registrar with a written statement of the reasons for the termination of the appointment;

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- (b) that auditor shall, within the period mentioned in paragraph (a), submit to the Registrar a written statement of what he or she believes to be the reasons for the termination of the appointment stating any matter relating to the affairs of the registered insurer or reinsurer which in the opinion of that auditor may be of concern to the Registrar.

(4) The auditor of a registered insurer or reinsurer shall, in addition to the duties imposed upon him or her by or under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) -

- (a) audit the accounts, balance sheet and statements of the registered insurer or reinsurer and, if the auditor is satisfied that they are prepared in the form determined by the Registrar and that -
- (i) the accounts, balance sheet and statement referred to in section 22 present fairly, or give a true and fair view of, or reflect correctly, the matters dealt with therein;
  - (ii) the statement of assets referred to in section 28 is a true and fair statement of the assets of the registered insurer or reinsurer;
  - (iii) the statement of liabilities referred to in section 33 is a true and fair statement of the liabilities of the registered insurer or reinsurer; and
  - (iv) the margin of solvency contemplated in section 20 is maintained by the registered insurer or reinsurer,

according to the books of the registered insurer or reinsurer, the auditor shall, if he or she is so satisfied, certify such accounts, balance sheet and statements to that effect, or, if he or she cannot so satisfy himself or herself, certify such accounts, balance sheet and statements subject to such qualifications as he or she may deem necessary; and

- (b) as soon as practicable after the audit -
- (i) furnish the registered insurer or reinsurer with a written report on his or her findings; and
  - (ii) submit to the Registrar a written report on any material irregularity, if any, that he or she believes has taken place or is taking place in the conduct of

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the affairs of the registered insurer or reinsurer which has caused or is likely to cause financial loss to it or to its policyholders or creditors.

(5) For the purposes of subsection (4)(a) the auditor may, in auditing the particulars contained -

- (a) in the statement of assets of the registered insurer or reinsurer, if the Registrar at the request of the registered insurer or reinsurer so directs; and
- (b) in the statement of liabilities of the registered insurer or reinsurer,

accept at face value, without further enquiry or examination, any of such particulars that have been attested by the valuator of the registered insurer or reinsurer, and in such event that auditor shall record the facts thereof in his or her report.

(6) In certifying any statement in terms of subsection (4)(a)(ii), the auditor shall satisfy himself or herself according to generally accepted auditing standards of the existence of the assets shown in the statement.

(7) The auditor of a registered insurer or reinsurer shall, at the cost of the registered insurer or reinsurer, undertake such other examination of the affairs of the registered insurer or reinsurer as may be requested by the Registrar for the purposes of satisfying himself or herself as contemplated in section 17(9).

(8) An auditor shall not incur any liability to any person in consequence of having furnished in good faith information on any irregularity or other matter which the auditor has become aware of in his or her capacity as auditor of a registered insurer or reinsurer and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions in terms of this Act.

(9) Any person who hinders or obstructs an auditor in the performance of his or her duties or the exercise of his or her powers in terms of this Act shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**Appointment and powers and duties of valuator**

**24.** (1) Every registered insurer and reinsurer shall, subject to the written approval of the Registrar, appoint, and at all times have, an actuary to be its valuator for the purposes of this Act.

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(2) Whenever the appointment of a valuator is terminated by a registered insurer or reinsurer -

- (a) the registered insurer or reinsurer shall, within 30 days after the said termination, notify the Registrar in writing thereof and furnish the Registrar with a written statement of the reasons for the termination of the appointment; and
- (b) that valuator shall, within the period mentioned in paragraph (a), submit to the Registrar a written statement of what he or she believes to be the reasons for the termination of the appointment, stating any matter relating to the affairs of the registered insurer or reinsurer which in the opinion of that valuator may be of concern to the Registrar.

(3) The valuator of a registered insurer or reinsurer shall at the end of each financial year of the registered insurer or reinsurer -

- (a) examine -
  - (i) the actuarial assumptions upon which domestic policies have been based, including the rates of premium to be charged and the benefits undertaken to be granted by the registered insurer or reinsurer under any such policy, in order to satisfy himself or herself that the terms of such policies are actuarially sound; and
  - (ii) the nature of the assets held by the registered insurer or reinsurer, and the spread of those assets over the different forms in which they are held, in order to satisfy himself or herself that such nature and spread of assets are proper and suitable in the light of the nature and maturity terms of the various liabilities of the registered insurer or reinsurer under the different policies issued by it; and
- (b) in order to satisfy himself or herself that -
  - (i) the particulars contained in the statement of assets of the registered insurer or reinsurer referred to in section 28 reflect correctly the assets of the registered insurer or reinsurer, evaluate and examine those assets; and
  - (ii) the particulars contained in the statement of liabilities of the registered insurer or reinsurer referred to in

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section 33 reflect correctly the liabilities of the registered insurer or reinsurer, evaluate the obligations of the registered insurer or reinsurer to policyholders,

and shall, if he or she is so satisfied, attest such statements to that effect, or, if he or she cannot so satisfy himself or herself, attest such statements subject to such qualifications as he or she may deem necessary and -

- (aa) furnish the registered insurer or reinsurer with a written report on his or her findings, together with any recommendation which he or she may wish to make in relation to the calculation of such rates of premium, benefits, assets or liabilities; and
- (bb) submit to the Registrar a written report on any material irregularity, if any, that he or she believes has taken place or is taking place in the conduct of the affairs of the registered insurer or reinsurer which has caused or is likely to cause financial loss to it or to its policyholders or creditors.

(4) The valuator of a registered insurer or reinsurer shall, at the cost of the registered insurer or reinsurer, undertake such other evaluation or examination of the affairs of the registered insurer or reinsurer as may be requested by the Registrar for the purposes of the performance of his or her functions in terms of this Act.

(5) A valuator shall not incur any liability to any person in consequence of having furnished in good faith information on any irregularity or other matter which the valuator has become aware of in his or her capacity as valuator of a registered insurer or reinsurer and which in his or her opinion may be of concern to the Registrar having regard to the Registrar's supervisory functions in terms of this Act.

(6) Any person who hinders or obstructs a valuator in the performance of his or her duties or the exercise of his or her powers in terms of this Act, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**General conduct of long-term insurance business**

**25.** (1) Every registered insurer and reinsurer shall, in carrying on its long-term insurance business and conducting its affairs relating thereto -

- (a) act in all respects in good faith;

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- (b) employ sound insurance practices and methods consistent with its memorandum of association and articles of association or its regulations, as the case may be; and
- (c) comply with the provisions of this Act.

(2) No registered insurer or reinsurer shall without the prior written approval of the Registrar make additions to or alter the provisions of its memorandum of association or articles of association or its regulations, as the case may be.

(3) Every registered insurer and reinsurer shall comply with such conditions as may be determined by the Registrar regarding the prohibition of or the rectification of anything arising from or caused by the employment of any such practices or methods of carrying on long-term insurance business as may by notice in the *Gazette* be declared by the Minister, after consultation with the advisory committee, to be irregular or undesirable.

**Holding of assets**

26. Every registered insurer and reinsurer shall, subject to the provisions of section 27, hold assets having an aggregate value, determined in accordance with the provisions of section 29, of not less than the total amount of -

- (a) the amount of its net liabilities calculated in accordance with the provisions of section 34; and
- (b) an amount equal to the capital, and additionally or alternatively unimpaired reserves, that the registered insurer or reinsurer is required to have and maintain in terms of section 20.

**Value of assets to be held in Namibia**

27. (1) Every registered insurer and reinsurer shall, in respect of the assets required to be held by it in terms of section 26, hold assets in Namibia having an aggregate value, determined in accordance with the provisions of section 29, of not less than the total amount of -

- (a) a prescribed percentage of the net liabilities in respect of its domestic policies; and
- (b) the amount contemplated in paragraph (b) of section 26.

(2) The assets required in terms of subsection (1) shall, subject to the prescribed limits of investment in particular kinds or categories of

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assets, be assets of one or more of the kinds specified in Schedule 1.

**Statement of assets**

**28.** (1) Every registered insurer and reinsurer shall annually, within six months after the end of its financial year, submit to the Registrar a statement of the assets held by it as at the end of that financial year, duly certified by its auditor and duly attested by its valuator, together with a written report by that auditor and by that valuator.

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

**Valuation of assets**

**29.** (1) Subject to the provisions of section 30(2) and of subsections (2) and (3) of this section, the determination of the value of the assets of a registered insurer or reinsurer shall, for the purposes of sections 26 and 27 and of a statement of assets referred to in section 28, be made by the registered insurer or reinsurer on such basis as its valuator considers the most reasonable and appropriate in any particular case, but, in the case of movable or immovable assets, such value shall not exceed the price that would be paid upon a sale of such assets at arm's length between a willing buyer and a willing seller as estimated by the registered insurer or reinsurer.

(2) In determining the value of assets in terms of subsection (1), the assets shall not include -

- (a) any amount representing any payments made in advance in respect of expenses of administration, organization or business extension;
- (b) the purchase price of any business (except the value of any property belonging thereto) or any goodwill;
- (c) any debt (other than a debt which is a kind of asset specified in Schedule 1) owing to a registered insurer or reinsurer;
- (d) any amount representing an outstanding premium (irrespective of whether or not it has been debited to an insurance agent or insurance broker) or a deferred instalment of a premium.

(3) If in the opinion of the Registrar a value determined in respect of an asset by a registered insurer or reinsurer is not a fair estimate, the value thereof shall be the amount as determined by the Registrar.

**LONG-TERM INSURANCE ACT, 1998****Assets not to be pledged or encumbered**

**30.** (1) Except with the prior written approval of the Registrar and to the extent authorized by him or her, no asset of a registered insurer or reinsurer shall -

- (a) be held on its behalf by any person; or
- (b) be pledged, hypothecated or otherwise encumbered.

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

**Liabilities to be recorded separately**

**31.** Every registered insurer and reinsurer shall identify the liabilities under domestic policies in respect of its long-term insurance business in Namibia and those relating to any long-term insurance business carried on by it elsewhere, and such liabilities shall be stated separately in the accounts or other records of the registered insurer or reinsurer and in its statement of liabilities referred to in section 33.

**Certain liabilities not to be incurred without approval**

**32.** No registered insurer or reinsurer shall -

- (a) borrow money; or
- (b) guarantee to discharge, or bind itself as surety for the discharge of, the debts or other obligations of any person,

without the prior written approval of the Registrar.

**Statement of liabilities**

**33.** (1) Every registered insurer and reinsurer shall annually, within six months after the end of its financial year, submit to the Registrar a statement of its liabilities as at the end of that financial year, duly certified by its auditor and duly attested by its valuator, together with a written report by that auditor and by that valuator.

(2) Notwithstanding the provisions of subsection (1), a registered insurer or reinsurer shall, if at any time so requested in writing by the Registrar, submit to the Registrar a statement of its liabilities as at any other day specified by the Registrar.

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(3) The statements referred to in subsections (1) and (2) shall be prepared by the registered insurer or reinsurer concerned in such form as may be determined by the Registrar.

**Calculation of liabilities**

**34.** (1) Subject to the provisions of subsection (2), the liabilities of a registered insurer or reinsurer shall, for the purposes of a statement of liabilities referred to in section 33, be calculated by the registered insurer or reinsurer and shall include -

- (a) the amount of its net liabilities under unmatured domestic policies calculated in accordance with the provisions of section 35; and
- (b) an amount, estimated by the registered insurer or reinsurer, in respect of -
  - (i) claims under policies which had been intimated to it or an agent of it, but had not been paid by it before the expiry of its financial year; and
  - (ii) income tax or any other tax which has not been finally assessed.

(2) If the amount estimated by a registered insurer or reinsurer in respect of the liabilities referred to in paragraph (b)(ii) is in the opinion of the Registrar not a fair estimate, the amount of such liabilities shall be as determined by the Registrar.

**Calculation of unmatured domestic policy liabilities**

**35.** (1) In calculating the liabilities of a registered insurer or reinsurer under unmatured domestic policies in a particular class of long-term insurance business, the registered insurer or reinsurer shall adopt any reasonable valuation basis which its valuator considers, according to generally accepted actuarial standards and principles, actuarially sound and which places a proper and adequate value on such liabilities having regard to -

- (a) the expected income from premiums payable to and investments made by the registered insurer or reinsurer;
- (b) the expected expenses and benefits payable by the registered insurer or reinsurer in respect of the carrying on of its insurance business; and

- (c) the expected rates of mortality and morbidity among the various persons whose lives are insured under policies issued by the registered insurer or reinsurer.
- (2) In the calculation of liabilities in terms of subsection (1) -
  - (a) no policy shall be treated as an asset;
  - (b) the capitalized value of any bonuses standing to the credit of the owner of an unexpired domestic policy on the date of calculation, and the capitalized value of any reduction of premiums which has been granted as a bonus or which has been obtained by the surrender of a bonus or by the giving of any valuable consideration or in any other way, shall be included in the liability of the registered insurer or reinsurer under such policy.

**PART V**  
**AMALGAMATION, TRANSFER, JUDICIAL MANAGEMENT**  
**AND WINDING-UP OF LONG-TERM INSURANCE BUSINESS**  
**OF REGISTERED INSURERS AND REINSURERS**

**Amalgamation of registered insurers and reinsurers and transfer of long-term insurance business**

- 36.** (1) No registered insurer or reinsurer shall -
- (a) amalgamate with -
    - (i) in the case of a registered insurer, one or more other registered insurers;
    - (ii) in the case of a registered reinsurer, one or more other registered reinsurers;
  - (b) transfer its long-term insurance business or any class of such business to -
    - (i) in the case of a registered insurer, another registered insurer;
    - (ii) in the case of a registered reinsurer, another registered reinsurer,

unless such amalgamation or transfer, as the case may be, is sanctioned by an order of the High Court.

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(2) An application to the High Court for an order sanctioning an amalgamation or transfer, as the case may be, referred to in subsection (1) shall, subject to the provisions of subsection (3), be made by the registered insurers or reinsurers concerned.

(3) Before an application referred to in subsection (2) is made -

(a) notice of such application shall be published by the registered insurers or reinsurers concerned in the *Gazette*;

(b) a statement setting out the nature of the proposed amalgamation or transfer, as the case may be, together with-

(i) an abstract containing the terms and conditions of the scheme for the proposed amalgamation or transfer, as the case may be; and

(ii) where applicable, copies of the actuarial reports upon which such scheme is founded, including, if so required by the Registrar, a report by a valuator, approved by the Registrar,

shall, not later than the date of publication of the notice referred to in paragraph (a), be submitted by the registered insurers or reinsurers concerned to the Registrar and, if so directed by the Registrar, be published in one or more newspapers, as the Registrar may direct; and

(c) the scheme for the proposed amalgamation or transfer, as the case may be, together with the actuarial reports, shall be open for inspection, free of charge, by policyholders, shareholders and creditors of the registered insurers or reinsurers concerned at the principal offices of such insurers or reinsurers for a period of not less than 21 days from the date of publication of the notice referred to in paragraph (a).

(4) A notice referred to in subsection (3)(a) shall -

(a) set out the nature of the proposed amalgamation or transfer, as the case may be;

(b) state that the registered insurers or reinsurers concerned intend to apply to the High Court for an order referred to in subsection (1);

(c) state the date and hour when, and the place where, the application will be made; and

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- (d) state the place or places where, and specify the period during which, the documents mentioned in subsection (3)(c) will be open for inspection, which period shall not be less than 21 days.

(5) The Registrar, or any person representing the Registrar, and any policyholder, shareholder, creditor or other person affected or likely to be affected by a scheme for amalgamation or transfer, as the case may be, is entitled to be heard at the hearing of an application referred to in subsection (2) and he or she may make an application to the Court in connection with any matter relating to such scheme.

(6) Upon hearing an application referred to in subsection (2), the Court may -

- (a) make an order sanctioning the transaction, either as proposed or with such modifications as the Court may direct; or
- (b) refuse to make such order.

(7) A transaction sanctioned by the High Court under subsection (6)(a) shall be binding on all persons and shall -

- (a) have effect notwithstanding anything to the contrary contained in the memorandum of association or articles of association or the regulations or any other rules of any party to the transaction, as the case may be; and
- (b) come into effect in such a manner that the long-term insurance business concerned and the liabilities relating thereto are amalgamated or transferred, as the case may be, upon the same date as that on which, having regard to the completion of all of the procedures referred to in subsection (9), all of the assets of the long-term insurance business concerned become the property of the registered insurer or reinsurer with whom the long-term insurance business concerned has been amalgamated or to whom the long-term insurance business concerned has been transferred, as the case may be.

(8) Where an amalgamation or transfer transaction is sanctioned by the High Court, the amalgamated registered insurer or reinsurer or the registered insurer or reinsurer to whom the long-term insurance business or any class of such business has been transferred, as the case may be, shall, within 90 days from the date of the order of the Court sanctioning such transaction, submit to the Registrar -

