

SEYCHELLES COMMERCIAL LEGISLATION

VOLUME III

**INSURANCE ACT, 1994
AS AMENDED IN 1995**

EDITION 1996

MINISTRY OF FINANCE AND COMMUNICATIONS

INSURANCE ACT, 1994

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INSURANCE ACT, 1994

(Act 28 of 1994)

I assent

*F.A. René
President*

23rd December, 1994

An Act to provide for the regulation of insurance business in Seychelles and for other purposes relating thereto or connected therewith.

PART I

PRELIMINARY

Short title **1.** This Act may be cited as the Insurance Act 1994, and shall come into
and commence- operation on such date as the Minister may, by notice published in the ment
Gazette, appoint

Interpretation **2.**(1) In this Act, unless the context otherwise requires-

"accounting period", in relation to any insurer, means the period for which the insurer makes up the accounts of the insurance business carried on by him in Seychelles; but, unless in any particular case the Authority allows those accounts to be made up for a longer or shorter period, every accounting period shall be a period of 12 months beginning from the commencement of that business or from the end of the preceding accounting period; and

"Authority" means the Authority established under section 4;

"captive insurance business" means insurance business where the insured is a holding, subsidiary or related company of the insurer;

"Company" and "director" have the same meaning as in the Companies Act;

"Companies Act" means the Companies Act, 1972 or such other law replacing that Act;

"domestic insurance business" means insurance business other than non-domestic insurance business;

"holding or subsidiary company" has the meaning assigned to it in the Companies Act;

"insurance agent" means a person who with the authority of an insurer acts on his behalf in the initiation of insurance business, the receipt of proposals, the issue of policies or the collection of premiums;

"insurance broker" means a person who arranges insurance business with insurers on behalf of prospective policy owners or as a policy owner's representative;

"insurance business" means the soliciting, effecting or carrying out in or outside Seychelles of contracts of insurance as an insurer and includes captive insurance business and reinsurance business and any reference in this Act to carrying on of insurance business include the receipt of proposals for, or issue of, policies of insurance in or outside Seychelles or the collections or receipt in or outside Seychelles of premiums on such policies by the insurer or through an agent or as agent;

"insurance manager" means a person who provides insurance expertise to an insurer carrying on non-domestic insurance business under this Act;

"insurer" means a person carrying on insurance business but does not include an insurance agent or insurance broker;

"non-domestic insurance business" means insurance business exclusively carried on outside Seychelles for the issue of offshore policies;

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

"qualified actuary" means a Fellow of the Institute of Actuaries in England, a Fellow of the Faculty of Actuaries in Scotland or a Fellow of the Society of Actuaries in America or a person holding an equivalent qualification approved by the Minister;

"registered insurer" means an insurer registered by the Authority under this Act;

"reinsurance" means a contract whereby an insurer insures the risk insured by him, or part of that risk, with another insurer.

"related company" has the meaning given to it in subsection (3);

(2) For the purposes of this Act-

- (a) "statutory balance-sheet" and "statutory valuation" means respectively a balance-sheet lodged with the Authority in order to comply with section 36(1), and a valuation balance-sheet lodged with it on an actuarial investigation made in order to comply with section 37(1);
- (b) any reference to the last statutory balance-sheet or to the last statutory valuation shall be construed as referring to that last prepared or made and not superseded by the arrival of the date as at which another is to be prepared or made; and
- (c) any reference to there being shown in a statutory balance-sheet or on a statutory valuation a surplus of assets over liabilities of an insurance fund shall be construed accordingly by reference to the prescribed form of balance-sheet or valuation balance-sheet and to the rules to be followed under this Act and regulations in preparing it.

(3) Where a company -

- (a) is a holding company of another company;
- (b) is a subsidiary company of another company; or
- (c) is a subsidiary holding company of another company,

the first mentioned company and the other company shall, for the purposes of the definition of captive insurance, be deemed to be related companies of each other.

Classification **3.**(1) For the purposes of this Act, insurance business shall be divided into of
Insurance two classes-
business

- (a) life business, which in addition to all insurance business concerned with life policies shall include, in the case of any insurer, any type of insurance business carried on as accidental only to the insurer's other life business and any other long term insurance business; and
- (b) general business, that is to say, all insurance business which is not life business.

(2) For the purposes of this Act, the reinsurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer.

(3) Notwithstanding anything in subsections (1) and (2), if the Authority is satisfied that any part of an insurer's business which belongs to a particular class or type of insurance business ought in the insurer's case to be treated as belonging to another class or type, the Authority may direct that it shall be so treated for the purposes of this Act.

(4) The operation, otherwise than for profit, of a scheme or arrangement relating to service in particular offices or employments, and having for its objects or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, or against future termination of service through death or disability, or against similar matters, shall not be treated for the purposes of this Act as carrying on the business of insurance.

(5) The definition set out in the Second Schedule shall have effect for the construction of references in this Act to policies of insurance, policy owners and policy moneys.

(6) Notwithstanding anything in subsection (1), the Authority may subdivide insurance business into several sub-classes.

PART II

CONSTITUTION OF AN AUTHORITY

Establishment **4.**(1) The Authority for the purposes of this Act shall be-
of the Authority

- (a) a person designated by the Minister as the Authority; or
- (b) a body corporate constituted under subsection (2).

(2) The Minister may by Order published in the Gazette constitute an Authority which shall be a body corporate consisting of such number of person as may be specified in the Order.

(3) An Order under subsection (2) may provide for the name, registered address, meetings, finance, staff, administration and management of the Authority and any matter necessary for carrying out the functions of the Authority.

(4) Where the Minister designates a person, being an individual, as the Authority under subsection (1)(a), the Minister shall provide the Authority with the necessary staff and office accommodation required for the performance of its functions.

PART III

CONDUCT OF INSURANCE BUSINESS GENERAL RESTRICTION ON INSURERS

No person to
carry on
insurance
unless
by
Authority and
licensed under the
Licences Act,
Act 3 of 1986

5.(1) Subject to this Act, no person shall carry on any class of insurance business in or outside Seychelles unless the person -

- (a) in the case of non-domestic insurance business, is registered registered by the Authority under this Act;
- (b) in the case of domestic insurance business, is registered by the Licences Authority under this Act and holds a licence granted under this Act, 1986

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to carry on insurance business as an insurer in that class.

(2) Notwithstanding subsection (1) an insurer lawfully carrying on insurance business in Seychelles at the commencement of this Act may continue doing so for a period of 12 months from the date of commencement of the Act and not later than 90 days before the expiration of that period any such insurer wishing to continue in carrying on such business shall apply for registration as an insurer under section 9.

(3) A person who continues to carry on business under subsection (2) shall for such period as he carries on such business be deemed, for the purposes of the Act, to be a registered insurer.

Holding out

6. Any person who holds himself out to be a registered insurer in respect

as registered of life business or general business or both when the person is not registered insurer under this Act in respect of that business is guilty of an offence and is liable on conviction to a fine of R90,000 and to imprisonment for a term of 3 years, and if the offence is continued after conviction is liable to a further fine of R6000 for each day of the offence is so continued.

Use of Word **7.**(1) No person other than a registered insurer shall, without the written "insurance" consent of the Authority, use the word "insurance" or any of its derivatives language, or any other word indicating that that person carries on insurance business under this Act in the name, description or title under which it carries on business in or outside Seychelles or make any representation to such effect in any bill head, letter paper, notice, advertisement or in any other manner.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of R15,000 and to imprisonment for a term of one year, and if the offence is continued after conviction is liable to a further fine of R3,000 for each day during which the offence is so continued.

Examination **8.**(1) Whenever the Authority has reason to believe that a person is carrying of persons on insurance business without having been registered under this Act, it may suspected of call for or inspect the books, accounts and records of that person in order to carrying on ascertain whether or not that person has contravened or is contravening any insurance provisions of this Act.

business

(2) Any person who refuses to submit such books, accounts and records to allow the inspection thereof is guilty of an offence and is liable on conviction to a fine of R15,000 and to imprisonment for a term of 12 months, and if the offence is continued after conviction to a further fine of R3,000 for each day during which the offence is so continued.

Registration **9.**(1) A person who desires to carry on insurance business in Seychelles as by Authority insurer shall apply in writing to the Authority for registration under this section and shall furnish such information as the Authority may require.

(2) Upon receiving an application under subsection (1), the Authority shall consider the application and may, subject to subsection (5) and section 10, register the applicant with or without conditions or refuse to register the applicant.

(3) The authority may register an applicant under subsection (1) as an insurer carrying on-

- (a) domestic insurance business; or
- (b) non-domestic insurance business

(4) The Authority shall cause notice of any registration under subsection (2) of an insurer carrying on domestic insurance business to be published in the Gazette.

(5) The Authority may, by notice published in the Gazette, specify the maximum number of persons who may be registered as an insurer under this Act.

Requirements
before
registration

10.(1) The Authority shall not register an applicant under section 9 unless the applicant

(a) Is a company limited by shares or an unlimited company incorporated under the Companies Act or is an overseas company registered under section 310 of that Act or is a body corporate constituted by an Act which enables the body corporate to carry on insurances business; and

(b) In the case of an applicant who desires to carry on domestic insurance business, other than captive insurance business or reinsurance business -

(i) Has a paid up capital of two million rupees in the case of a company or authorised capital of two million rupees in the case of a body corporate or such other sum as may be prescribed;

(ii) Has made arrangements for reinsurance which, in the opinion of the Authority, are suitable and adequate;

(iii) Has the value of its assets exceeding the amount of its liabilities by, not less than such amount as may be prescribed;

(iv) Has invested 30% of the required paid up capital, in the case of a company, or of the authorised capital, in the case of a body corporate, or such other higher percentage as may be prescribed, in government securities or bonds.

(2) For the purpose of subsection (1)(b)(iv) regulations may prescribe different amounts for different classes of insurance business or for different types of insurers.

Conditions of

11.(1) The Authority may at any time add to, vary or revoke any existing Registration conditions of registration imposed on an insurer or impose any new conditions thereto.

(2) Any insurer who fails to comply with any of the conditions of registration imposed by the Authority is guilty of an offence and is liable on conviction

to a fine of R60,000 and if the offence is continued after conviction is liable to a further fine of R3,000 for each day during which the offence is so continued.

Annual fees **12.**(1) Every registered insurer shall pay to the Authority such annual fees as may be prescribed.

(2) The Minister may prescribe different annual fees for different classes of insurance business or for different types of registered insurers.

Cancellation **13.**(1) The Authority may, by order, at the request of a registered insurer or of registration on any of the grounds set out in subsection (2), cancel the registration of an insurer either wholly or in respect of a class of business, as the case may be.

(2) The grounds referred to in subsection (1) are-

- (a) That the business has not commenced business within 12 months after being registered.
- (b) That the insurer has ceased to carry on insurance business in respect of any class of business;
- (c) That it appears to the Authority that the insurer has failed to satisfy an obligation to which he is subject by virtue of this Act;
- (d) That there exists a ground on which the Authority would be prohibited by section 10 from registering the insurer;
- (e) That the insurer proposes to make, or has made any composition or arrangement with his creditors or has gone into liquidation or has been wound up or otherwise dissolved;
- (f) That the insurer is carrying on his business in a manner likely to be detrimental to the interests of his policy owners;
- (g) That the insurer is unable to meet his obligations;
- (h) In the case of an insurer carrying on domestic insurance business other than captive insurance business or reinsurance business, the insurer has failed to effect satisfactory reinsurance arrangements;
- (i) That the insurer has contravened any provisions of this Act or any regulations made thereunder or any condition imposed or any direction given by the Authority under this Act;

- (j) That any of the officer of the insurer holding a managerial or executive position has been convicted of any offence under this Act;
- (k) That the insurer has furnished false, misleading or inaccurate information, or has concealed or failed to disclosed material facts in his application for registration;
- (l) That it is in the public interest to cancel the registration.

(3) The Authority shall before cancelling the registration of an insurer under this section, otherwise than at the request of the insurer, cause to be given to the insurer notice in writing of its intention to do so and calling upon the insurer to show cause to the Authority on or before a date specified in the notice, why the registration should not be cancelled, which shall be a date not less than 14 days from the date of despatch of the notice.

(4) Where the insurer fails to show cause on or before the date specified in the notice given under subsection (3) or fails to satisfy the Authority why the registration should not be cancelled, the Authority shall cancel the registration and shall forthwith inform the insurer of the cancellation.

(5) Any insurer aggrieved by a decision of the Authority under subsection (4) may appeal to the Supreme Court within a period of 14 days after the Authority has informed the insurer of the decision.

(6) An order of cancellation made by the Authority shall not take effect until the expiration of a period of 14 days after the Authority has informed the insurer of the cancellation or where an appeal has been lodged under subsection (5), during the pendency of the appeal.

(7) Notwithstanding the fact that the registration of an insurer has been cancelled under this section, so long as the insurer remains under any liability in respect of insurance policies belonging to the class of insurance business to which the registration relates, the insurer shall take such action as it considers necessary or as may be required by the Authority to ensure that reasonable provision has been or will be made for that liability and that adequate arrangements exist or will exist for payment of premiums and claims on those policies.

(8) Where the Authority has served a notice of cancellation under subsection (3), the Authority may give a direction to the registered insurer prohibiting the insurer from carrying on any insurance business under this Act, otherwise than by collection or receipt of premiums on insurance policies issued by the insurer, and the insurer shall comply with that direction.

(9) A Registered insurer who contravenes a direction under subsection (8), is guilty of an offence and is liable on conviction to a fine of R50,000.

Effects of cancellation of registration **14.**(1) Where an order of cancellation becomes effective under section 13-

- (a) notice of the cancellation shall be published by the Authority in the Gazette; and
- (b) The insurer shall, as from the date of cancellation, cease to carry under this Act insurance business of the class in respect of which its registration has been cancelled under this Act, otherwise than by the collection or receipt of premiums on insurance policies belonging to that class effected before the date of cancellation of registration and section 5 shall not apply to the insurer in respect of the collection or receipt of those premiums.

(2) Subsection (1)(b) shall not prejudice the enforcement by any policy owner or by any person of any right or claim against the insurer or by the insurer of any right or claim against any policy owner or that person.

Register **15.**(1) Every registered insurer shall establish and keep a register of policies Seychelles policies where it carries on business relating to Seychelles policies and a register of offshore policies where it carries on business relating to offshore policies.

(2) Subject to this section, there shall be entered in the register of Seychelles policies all Seychelles policies of the insurer and in the register of offshore policies all offshore policies of the insurer and no policy entered in any register shall be removed from it so long as the insurer is under any liability in respect of that policy.

(3) Subject to this section, there may be entered in the register of Seychelles policies such other policies as the insurer with the consent (express or implied) of the policy owners may determine, and this Act shall apply in relation to any policy so entered as if it were a Seychelles policy.

(4) Subject to subsection (5), a registered insurer carrying on life business outside Seychelles (and not doing so only by the collection or receipt of premiums) may, at the request of the policy owner of a policy belonging to the insurer's life business-

- (a) refrain from entering the policy in the register of Seychelles policies, notwithstanding that it is a Seychelles policy; or
- (b) remove the policy from the register of Seychelles policies,

and this Act shall thereafter apply in relation to the policy as if it were not a Seychelles policy.

(5) Regulations may provide that subsection (3) or (4) shall apply only in such cases as may be prescribed or shall have effect subject to any prescribed exceptions or restrictions.

(6) A registered insurer shall, at the request of any person whom the registered insurer is satisfied has an interest in any policy of the insurer, inform him whether or not the policy is entered in any register of policies established by the insurer under this Act.

(7) Where a registered insurer has established under this Act any register of policies, the register shall cease to exist as a statutory register under this Act of policies belonging to either class of insurance business, if the insurer ceases to be registered under this Act in respect of that class of business; and any references in this Act to policies registered under this Act shall be construed accordingly.

(8) Subject to subsection (7), any register of policies established by a registered insurer shall, notwithstanding that the insurer at any time ceases to carry on under this Act either class of insurance business, continue to be maintained by the insurer for policies belonging to that class so long as the insurer is under any liability in respect of those policies registered or required to be registered at that time; but no policies belonging to either class of business shall be entered in the register under subsection (3) when the insurer is not carrying on that class of business under this Act or is doing so only by the collection or receipt of premiums.

(9) A register of policies established and kept by an insurer before the commencement of this Act shall be deemed to be a register of Seychelles policies under subsection (1).

Establishing **16.**(1) Every register insurer shall establish and maintain a separate insurance of insurance fund- funds and allocation of surplus

- (a) for each class of insurance business carried on by the insurer that relates to Seychelles policies; and
- (b) for each class of insurance business carried on by the insurer that relates to offshore policies.

(2) The Authority may require any registered insurer to establish and maintain, in addition to the insurance funds under subsection (1), such other insurance fund as the Authority may determine for different types of policies of each class of business.

(3) There shall be paid into an insurance fund all receipts of the insurer properly attributable to the business to which the fund relates (including the income of the fund), and the assets comprised in the fund shall be applicable only to meet such part of the insurer's liabilities and expenses as is properly so attributable but shall not be applied to meet any levies payable by the insurer under section 45.

(4) In the case of an insurance fund established in respect of life business, no part of the fund shall be allocated by way of bonus to participating policies except with the approval of a qualified actuary and out of a surplus of assets over liabilities as shown on the last statutory valuation of the fund, and on the making of any such allocation that surplus shall be treated for purposes of this section as reduced by the amount allocated.

(5) If on the last statutory valuation in the case of an insurance fund established in respect of life business there was shown a surplus of assets over liabilities of the fund, there may, subject to the approval of a qualified actuary and to any provision to the contrary in any instrument or contract binding the insurer, be withdrawn from the fund an amount not exceeding the surplus and on the making of any such withdrawal that surplus shall be treated for the purposes of this section as reduced by the amount withdrawn.

Provided that no part of the surplus attributable to participating policies other than reinsurance policies shall be withdrawn in excess of one quarter of the amount allocated thereout by way of bonus to participating policies.

(6) If in the last statutory balance-sheet in the case of any insurance fund established in respect of general business there was shown a surplus of assets over liabilities of the fund, there may, subject to any provision to the contrary in any instrument or contract binding the insurer, be withdrawn from the fund an amount not exceeding the excess of the surplus over any fund margin of solvency prescribed for that fund under section 17, and on the making of any such withdrawal that surplus shall for the purposes of this section be treated as reduced by the amount withdrawn.

(7) In respect of any policy belonging to the insurer's life business which is under section 15(4) removed from the insurer's register of Seychelles policies there may be withdrawn from an insurance fund to which the policy relates an amount not exceeding the prescribed amount.

(8) Any amount withdrawn from an insurance fund under subsection (5), (6) or (7) and, in a winding up, any part of an insurance fund remaining after meeting the liabilities and expenses to which the fund is applicable may be dealt with as if it had not formed part of the fund except that in the case of winding up where any other insurance fund of the insurer under this Act is in deficit the surplus remaining after the winding up shall first be applied to make good the deficit in that fund.

(9) Any insurance fund established by an insurer for any class of business shall, notwithstanding that the insurer at any time ceases to carry on that class of business under this Act, continue to be maintained by the insurer so long as the insurer is required by this Act to maintain a register of policies for policies belonging to that class.

(10) Any insurer carrying on insurance business in Seychelles on or before the commencement of this Act who is required under subsection (1) to establish an insurance fund for offshore policies shall do so at the time of establishment, and by reference to the policies registered or required to be registered at its establishment, and by reference to the assets and liabilities of the insurer as at the time; and

- (a) There shall be allocated to the fund assets of a value of not less (after allowing for any charges to which the fund is not applicable) than the aggregate of the amounts specified in subsection (11); and
- (b) All such matters as would subsequently have affected the fund if established at that time shall be brought into account accordingly.

(11) The amounts referred to in subsection (10)(a) are as follows-

- (a) The amount, determined in the prescribed manner, of the liability of the insurer in respect of the policies referred to in subsection (10);
- (b) The amount of any other liabilities of the insurer in so far as the assets allocated to the fund will be applicable or be treated as having been applicable to meet those liabilities; and
- (c) The amount of the fund margin of solvency, if any, required to be maintained for the fund under section 17.

(12) The assets of any insurance fund established by an insurer under this Act shall be kept separate from all other assets of the insurer.

Margins of solvency **17.**(1) Every registered insurer shall maintain-

- (a) A fund margin of solvency in respect of each of the insurance funds established by the insurer under this Act; and
- (b) Margin of solvency,

of such amounts as may be prescribed or determined in accordance with regulations made under this Act for the purposes of this section.

(2) Regulations may prescribe-

- (a) Different margins of solvency under subsection (1) for different classes of insurance business and for different types of insurers; and

- (b) In respect of any type of insurers, any exception from the requirements of subsection (1).

(3) Without prejudice to the generality of section 61, regulations made under this Act may-

- (a) Provide for the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by this section to be determined in accordance with valuation regulations;
- (b) Provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent; and
- (c) Make different provision in relation to different cases or circumstances.

(4) For the purposes of this section-

- (a) The fund margin of solvency in respect of any insurance fund is the excess of the value of the assets over the liabilities of that fund; and
- (b) The margin of solvency of a registered insurer is the excess of the value of its assets over the amount of its liabilities,

that value and amount being determined in accordance with any applicable valuation regulations.

Form, **18.** Regulations made under this Act may make provisions for securing that, investment in such circumstances and to such extent as may be prescribed, the assets of and situation any insurance fund of a registered insurer are invested in such manner and of assets maintained in such places as may be prescribed and the nature of the assets is appropriate in relation to the currency in which the liabilities of the insurer are or may be required to be met.

Requirements **19.(1)** Where a registered insurer has established an insurance fund under as to this Act, the insurer shall secure that any documents evidencing the insurer's documents title to assets of the fund, so long as the documents are held by or on behalf evidencing of the insurer, shall be kept in Seychelles or, if not so kept, shall be kept in title to assets the custody of a person approved by the Authority, and at a place and terms of insurance so approved.
funds

(2) As insurer who has established an insurance fund under this Act shall from time to time notify the Authority in writing-

- (a) the person having the custody of any such documents on behalf of the insurer, and the fact of any person ceasing to do so; and
- (b) the reason why any such documents are not held by or on behalf of the insurer, and the identity of the documents in question.

(3) Any such document which is for the time being held by or on behalf of the insurer shall, on the Authority giving not less than 14 days' notice in writing to the insurer or to the person having the custody of the document, be produced for inspection to the Authority or a person nominated by it the person to whom the notice is given.

(4) A person who fails to comply with this section is guilty of an offence and is liable on conviction to a fine of R15,000 and if the offence is continued after conviction to a fine of R3,000 for each day during which the offence so continued.

Maintenance 20.(1) Where the Authority is satisfied that there exists a ground on which of assets in the Authority would be empowered by section 13 to cancel the registration Seychelles of an insurer, the Authority may require that assets of the insurer of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities shall be maintained in Seychelles.

(2) The Authority may direct that for the purposes of any requirement under this section assets of a specified class or description shall or shall not be treated as assets maintained in Seychelles.

(3) The Authority may direct that for the purposes of any requirement under this section the domestic liabilities of a registered insurer, or such liabilities of any class or description, shall be taken to be the net liabilities after deducting any part of them which is reinsured.

(4) A requirement imposed under this section may be framed so as to come into effect immediately after the day on which it is imposed or so as to come into effect after the expiration of a specified period or such longer period as the Authority may allow.

(5) In this section, any reference to a domestic liability is a reference to a liability of the insurance business carried on by the registered insurer in Seychelles.

(6) Subject to subsection (7), in computing the amount of any liabilities for the purposes of this section all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(7) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any valuation regulations made under this Act.

Custody of **21.**(1) The Authority may, in the case of a registered insurer on which a assets requirement has been imposed under section 20 impose an additional requirement that the whole or a specified proportion of the assets to which the requirement under that section applies shall be held by a person approved by the Authority for the purposes of the requirement under this section as trustee for the insurer.

(2) Section 20(4) shall apply to a requirement under this section

(3) Assets of a registered insurer held by a person as trustee for the insurer shall be taken to be held by him in compliance with a requirement imposed under this section, if, and only if, they are assets in whose case the insurer has given him written notice that they are to be held by him in compliance with such a requirement or they are assets into which assets in whose case the insurer has given him such written notice have, by any transaction or series of transactions, been transposed by him on the instructions of the insurer.

(4) No assets held by a person as trustee for a registered insurer in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Authority.

(5) If a mortgage or charge is created by a registered insurer at a time when there is in force a requirement imposed on the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee of the insurer in compliance with the requirement, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

Payment in **22.** In the case of a life policy issued as a Seychelles policy after the Seychelles commencement of this Act, to a policy owner who is a citizen of Seychelles, currency of any policy moneys or moneys payable on the surrender of the policy shall, policy moneys notwithstanding anything in the policy or in any agreement relating thereto, under life be paid in the currency of Seychelles.
policies

Regulations **23.**(1) A registered insurer shall not issue a life policy of any description to premiums being a Seychelles policy or an offshore policy, if the premium chargeable under life under the policy is not in accordance with rates fixed with the approval of policies a qualified actuary or, where no rates have been so fixed for policies of that description issued by the insurer, is not premium approved for the policy by a qualified actuary.

(2) An actuary shall not for the purposes of this section approve a premium for a policy or a rate of premium for any description of policy, unless he is satisfied that it is suitable and in accordance with sound insurance principles.

(3) An actuary in giving his approval in respect of any description of life policy shall have regard to the maximum rate of commission proposed to be paid or allowed to any person in respect of that description of policy, and shall certify the maximum rate.

(4) Where in the case of any registered insurer a rate of premium is approved by a qualified actuary for any description of life policy, the insurer shall not, except with the approval of the Authority, pay or allow in respect of any policy of that description a commission at a rate greater than the maximum rate of commission certified by the actuary.

(5) The Authority may by notice in writing require any registered insurer to obtain and furnish it within a time specified in the notice with a report by a qualified actuary as to the suitability of the rates of premium for the time being chargeable by the insurer for any description of life policy, and if the actuary considers that the rates are not suitable or not in accordance with sound insurance principles, a report as to the rates of premium which the actuary approves for that description of policy; and for the purposes of subsection (1) regard shall be had to any such report to the exclusion of any previous approval or report.

(6) An insurer who issues a policy or allows a commission in contravention of this section, is guilty of an offence and is liable on conviction to a fine of R15,000.

Control of 24.(1) The Authority may by notice in writing require a registered insurer form of to submit to it the forms of proposals and policy for the time being in use by proposal, the insurer in or outside Seychelles, and any brochure which is for the time policies and being in use by the insurer for describing the terms or conditions of, or the brochure benefits to be or likely to be derived from, policies; and where the whole or part of any such form or brochure is not in English there shall be submitted with it a translation in English.

(2) A requirement under this section, unless it is otherwise provided therein, shall apply to all such forms and brochures coming into use after the making of the requirement and before the Authority notifies the insurer that the requirement is withdrawn.

(3) If it appears to the Authority, after affording the insurer an opportunity to make representations orally or in writing that any such form or brochure contravenes any provision of this Act, or is in any respect likely to mislead, it may by notice in writing direct the insurer to discontinue the use of the form or brochure in or outside Seychelles either forthwith or from a date specified in the notice.

(4) No registered insurer shall use in the course of carrying on insurance business under this Act a form of proposal which does not have prominently displayed therein a warning that if a proposer does not fully and faithfully give the facts as he knows them or ought to know them, he may receive nothing from the policy.

(5) Any insurer who uses a copy of a form or brochure in contravention of subsection (3) or (4), is guilty of an offence and is liable on conviction to a fine of R15,000.

(6) In this section, "brochure" included any leaflet, circular or similar advertising matter, whether printed or not.

Requirements **25.**(1) In any case where, under the Companies Act it is unlawful to issue, as to circulate or distribute a prospectus relating to a company without a copy of prospectuses it being first delivered under that Act, it shall also be unlawful, in the case and statement of a company registered or intended to be registered as an insurer under this of Capital Act, to do so without the prospectus having been sanctioned by the Authority and any person knowingly responsible for the issue, circulation or distribution of a prospectus in contravention of this subsection is guilty of an offence and is liable on conviction to a fine not exceeding R30,000.

(2) In subsection (1) "prospectus" includes any notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a company, not being, an offer made or invitation issued to the public in respect of shares or debentures where the offer or invitation is exempt under the Companies Act.

(3) Where a notice, advertisement or other official publication of a company registered or intended to be registered as an insurer under this Act, contains a statement of the company's authorised share capital, and does not state therewith how much of that capital has been subscribed and how much is paid up, the company is guilty of offence and is liable on conviction to a fine of R15,000.

Control of

26.(1) This section and sections 27 and 28 shall apply to and in relation to takeovers of all natural persons whether resident in Seychelles or not and whether citizens insurersbeing of Seychelles or not, and to all bodies corporate or unincorporate, whether companies incorporated or carrying on business in Seychelles or not.

(2) No person shall, after the commencement of this Act, enter into an agreement to acquire shares of a registered insurer, being a company, by virtue of which he would, if the agreement is carried out, obtain effective control of that insurer without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

(3) For the purposes of this section-

- (a) a person shall be regarded as entering into an agreement by virtue of which he would obtain effective control of a registered insurer if the person alone or acting together with any associate or associates would be in a position to control not less than 20% of the voting power of the insurer or would hold interests in not less than 20% of the issued shares of the insurer;
- (b) a reference to an agreement by which a person would obtain effective control of a registered insurer, being a company, includes a reference to an agreement by which the person would acquire any interest in shares in the insurer where, upon the acquisition of those interests and of any other interests in other shares of the insurer that he has offered to acquire, he would have effective control of the insurer;
- (c) a reference to a person offering to acquire interest in shares includes-
 - (i) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of interests in shares to offer to dispose of interests in shares; and
 - (ii) a reference to a person taking part in or proposing to take part in negotiations with a view to the acquisition of shares
- (d) a person holds an interest in a share if he has any legal or equitable interest in that share and without limiting the generality of the foregoing if he-
 - (i) has entered into a contract to purchase the share;
 - (ii) has a right, otherwise than by reason of having an interest under a trust, to have the share transferred to himself or to his order, whether the right is exercisable presently or in future and whether on the fulfilment of a condition or not;
 - (iii) has the right to acquire the share, or an interest in the share, under an option whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (iv) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a company or of a class of its members) to

exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder;

and it is immaterial that the interest cannot be related to a particular share, but-

(v) a person shall not be deemed not to have an interest in shares by reason only that he has the interest in the share jointly with another person; and

(vi) there shall be disregarded-

A. an interest in a share if the interest is that of a person who holds the share as bare trustee;

B. an interest in a share of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

C. an interest of a person in a share, being an interest held by him by reason of his holding a prescribed office; and

D. a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed under the Companies Act;

except that an interest in a share shall not be disregarded by reason only of-

E. its remoteness;

F. the manner in which it arose; or

G. the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

(e) a reference to the voting power in a registered insurer is a reference to the total number of votes that might be cast in the general meeting of the insurer; and

(f) the following person are associates of a person-

-
- (i) the person's spouse or parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
 - (ii) any partner of the person;
 - (iii) any corporation of which the person is an officer;
 - (iv) where the person is a corporation, any officer of the corporation;
 - (v) employee or employer of the person;
 - (vi) any officer of any corporation of which the person is an officer;
 - (vii) any employee of a natural person of whom the person is any employee;
 - (viii) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a corporation, of the directors of the person;
 - (ix) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
 - (x) any corporation in which the person is in a position to control not less than 20% of the voting power in the voting power in the corporation; and
 - (xi) where the person is a corporation, a person who is in position to control not less than 20% of the voting power in the corporation.

(4) Any person who contravenes subsection (2) is guilty of an offence and is liable on conviction to a fine of R150,000 and to imprisonment for a term of 3 years.

Arrangements **27.(1)** No person shall, after the commencement of this Act, enter into any affecting arrangement in relation to any registered insurer, being a company, by virtue control of of which he would, if the arrangement is carried out, obtain control of the an insurer, insurer without first notifying the Authority of his intention to enter

being a into the arrangement and obtaining the approval of the Authority to his company entering into the arrangement.

(2) For the purposes of this section-

- (a) a person shall be regarded as entering into an arrangement by virtue of which he would obtain control of a registered insurer if he alone or acting together with an associate or associates would be in a position to determine the policy of the insurer;
- (b) the reference to entering into any arrangement is a reference to any formal or informal scheme, arrangement or understanding, whether expressly or by implication and without limiting the generality of the foregoing includes a reference, entering into a transaction or agreement, and references to an arrangement shall be construed accordingly; and
- (c) the reference to associates of a person has the same reference, as under section 26.

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of R150,000 and to imprisonment for a term of 3 years.

(4) A person who monopolises, or attempts to monopolise or combines or conspires with any other person to monopolise any part of the insurance market is guilty of an offence and is liable on conviction to a fine of R50,000 and to imprisonment for a term of one year.

Control of 28.(1) No person shall, after the commencement of this Act enter into substantial any agreement to acquire shares by virtue of which he would, if the shareholdings agreement is carried out, acquire a substantial shareholding in a registered of insurers insurer, being a company, without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

(2) For the purposes of this section-

- (a) a reference to an agreement by which a person would acquire a substantial shareholding in a registered insurer includes a reference to an agreement by virtue of which the person would acquire any interests in shares in the insurer where, upon the acquisition by him of those interests or of those interests and of any interests in other shares in the insurer, being interests that he has offered to acquire, he would acquire a substantial shareholding in the insurer.

- (b) a reference to a person offering to acquire interests in shares and to a person having an interest in shares shall be construed in the same way as under section 26; and
- (c) a substantial shareholding means-
- (i) an interest or interests in one or more voting shares in a company and the nominal amount of which share, or the aggregate of the nominal amounts of which shares, is not less than 5% of the aggregate of the nominal amount of all the voting shares in the company; or
 - (ii) in the case of a company the share capital of which is divided into 2 or more classes of shares, an interest or interests in one or more voting shares included in one of those classes and the nominal amount of which share, or the aggregate of the nominal amount of which shares, is not less than 5% of the nominal amount of all the voting shares including in that class.

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of R30,000 and to imprisonment for a term of one year.

Power of the Authority to

require an insurer, being a company, to obtain (a) information as to beneficial interests in shares of

29.(1) The Authority may by notice in writing direct a registered insurer, being a company, to obtain from any shareholder of the insurer and to

transmit to the Authority information-

(a) as to whether that shareholder holds any voting shares in the insurer as beneficial owner or as trustee; and

(b) if he holds them as trustee, to indicate as far as he can the person for whom he holds them (either shares of the insurer the insurer by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interests,

and the insurer shall comply with the direction within such time as is specified in the notice.

(2) For the purposes of this section, "voting shares" means an issued share of a company, not being -

(a) a share to which, in no circumstances, there is attached a right to vote;

- (b) a share to which there is attached a right to vote only, in one or more of the following circumstances-
- (i) during a period in which a dividend (or part of a dividend) in respect of share is in arrears;
 - (ii) upon a proposal to reduce the share capital of the company;
 - (iii) upon a proposal that affects rights attached to the share;
 - (iv) upon a proposal to wind up the company;
 - (v) upon a proposal for the disposal of the whole of the property, business and undertakings of the company;
 - (vi) during the winding up of the company.

Approval of
directors and
principal
insurers

30.(1) No registered insurer, being a company, -

- (a) shall appoint a person as principal officer of the insurer in officers of Seychelles; or
- (b) shall appoint a person as director of the insurer,

unless the insurer satisfies the Authority that that person is a fit and proper person to be so appointed and has obtained the approval of the Authority.

(2) Any person aggrieved by any decision of the Authority under subsection (1) may appeal to the Supreme Court within 14 days of the receipt of the decision of the Authority.

(3) In this section -

"director" has the same meaning as in the Companies Act;

"principal officer", in relation to a registered insurer, means any person by whatever name called employed by the insurer to be directly responsible for the conduct of any class of insurance business of the insurer in Seychelles.

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

32.(1) No person shall without the approval of the Authority carry on

agents and insurance business in Seychelles as insurance agent for an insurer
brokers

not entitled under this Act to carry on the business in question, and a person contravening this subsection is guilty of an offence and is liable on conviction to a fine of R60,000 increased by a sum of R3,000 for every day on which he is proved to have done so, and to imprisonment for a term of 2 years.

(2) Subject to subsection (3) and (4), no insurance broker shall, in the course of his business as such arrange any insurance business with an insurer (whether directly or through an insurance agent), except with a registered insurer acting in the course of his business as such, nor shall any person in Seychelles solicit insurance for an insurer not entitled under this Act to carry on that business and an insurance broker or person who contravenes this subsection is guilty of an offence and is liable on conviction to a fine of R30,000 and to imprisonment for a term of one year.

(3) The reference in subsection (2) to insurance business shall not apply to reinsurance or business relating to risks outside Seychelles or such other risks as may be prescribed.

(4) Where in any particular case the Authority is satisfied that, by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to effect an insurance for that case with a registered insurer acting in the course of his business as such, the Authority may permit any insurance broker to negotiate the insurance with such insurer as the broker sees fit and also, if in the opinion of the Authority the case requires it, to effect the insurance and receive the premium in Seychelles on behalf of the insurer.

(5) The Authority may inspect books and records kept by any insurance agent and insurance broker and may for this purpose enter any premises at all reasonable times.

(6) Sections 24 and 31 shall apply in relation to insurance agents and to insurance brokers as they apply in relation to registered insurers.

Authority may **33.**(1) The Authority may by order prohibit any person from carrying prohibit
on business as insurance agent or insurance broker in Seychelles or from
insurance agents taking part directly or indirectly in the management of any insurance agent
and brokers or broker in Seychelles where the person has been convicted of an offence
from carrying involving fraud, dishonesty, or moral turpitude.
on business

(2) Any person aggrieved by any order of the Authority under subsection (1) may appeal to the Supreme Court within 14 days of the receipt of the order.

(3) Any person who fails to comply with an order of the Authority made under subsection (1) is guilty of an offence and is liable on conviction to be fine of R30,000 and to imprisonment for a term of one year and if the offence is continued

after conviction to a further fine of R3,000 for each day during which the offence is so continued.

Approval by Authority of insurance agents and
34.(1) No person shall, without the approval of the Authority, carry on business as an insurance agent for any registered insurer, or in the course of a business as an insurance broker arrange insurances with any registered insurer or in respect of any risk for which the broker has been permitted brokers under section 32(4) to arrange with any insurer; and for each calendary year in which a person acts as insurance agent or broker, he shall before the end of June in the following year lodge with the Authority a statement in the prescribed form, signed by him or on his behalf and giving the prescribed information as to his receipts and payments in connection with business done under that approval.

(2) Notwithstanding subsections (1) and (3), an insurance agent or insurance broker carrying on business as such agent or broker in Seychelles on the commencement of this Act may continue to carry on insurance business for a period of 6 months after such commencement.

(3) Where a person carries on insurance business without approval of the Authority under subsection (1) as an insurance agent or insurance broker or fails to lodge a statement as required by subsection (1), he is guilty of an offence and is liable on conviction to a fine of R30,000 and if the offence is continued after conviction to a further fine of R3,000 for each day during which the offence is socontinued.

(4) The Authority shall not be required to consider an application for approval under subsection (1) unless it is satisfied-

(a) that the person applying for approval to carry on business as insurance agent for any insurer has a surplus of assets over liabilities of not less than R300,000 or such greater amount as may be prescribed; and

(b) that the person applying for approval to carry on business as insurance broker in arranging insurances with any insurer has furnished a certified of solvency signed by the applicant's auditor and has a professional indemnity insurance policy of a value of not less than R1,500,000 or such greater amount as may be prescribed.

(5) In approving an application under subsection (1) the Authority may impose such conditions as it thinks fit and may at any time add to, vary or revoke such conditions.

(6) The Authority may cancel the approval of an insurance agent or broker issued under subsection (1) if it is satisfied that -

-
- (a) the agent or broker has not commenced business within 12 months after being approved;
 - (b) the agent or broker has ceased to carry on the business for which it is approved;
 - (c) there exists a ground on which the Authority would not be required to consider an application for approval by the agent or broker under subsection (4);
 - (d) the agent or broker proposes to make, or has made, any composition or arrangement with his creditors or has gone into liquidation or has been wound up or otherwise dissolved;
 - (e) the agent or broker is carrying on his business in a manner likely to be detrimental to the interests of policy owners or the public;
 - (f) the agent or broker is unable to meet his obligations;
 - (g) the agent or broker has contravened any provision of this Act or any regulations made thereunder or any condition prescribed by the Authority;
 - (h) any of the officers of the agent or broker holding a managerial or executive position has been convicted of any offence under this Act; or
 - (i) the agent or broker has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts in his application for approval.

(7) Every insurance agent or broker approved under subsection (1) shall pay to the Authority such annual fees as may be prescribed.

(8) Regulations may prescribe different annual fees for insurance agents and brokers approved under subsection (1).

Insurance **34A.**(1) No person shall, without the approval of the Authority, carry on manager or business as an insurance manager or a principal insurance representative.

principal
insurance

representative (2) An application for approval under subsection (1) shall be made to the Authority in writing.

(3) The Authority may require a person making an application under subsection

(2) to furnish to the Authority such information as the Authority as the Authority may request.

(4) The Authority shall not grant its approval to a person to carry on business as an insurance manager unless that person-

- (a) is a person of good standing as approved by the Authority; or
- (b) is, or has in the employment of the person a person who is, qualified by examination as a fellow or associate of the Chartered Insurance Institute of London or a member of either the Society of Chartered Property and Casualty Underwriters or the American Society of Chartered Life Underwriters both of the United States of America and who is either a current member of good standing of the applicable professional body or of some other professional insurance association recognised by the Authority for the purpose of this Act.

(5) Subject to subsection (4), the Authority may grant its approval under subsection (1) unconditionally or subject to such conditions as it may see fit to impose or may refuse its approval.

(6) Every insurance manager carrying on business as an insurance manager under this Act shall furnish to the Authority within 3 months after the end of each calendar year the following documents-

- (a) a list of all registered insurers for whom the insurance manager has provided services;
- (b) a report by an auditor that the statutory books and records of the insurer for whom the services have been provided have been kept properly and accurately in accordance with the applicable law;
- (c) a certificate by the insurance manager that the insurer for whom the services have been provided has to the knowledge and belief of the insurance manager complied with the requirements of this Act and the terms and conditions of registration of the insurer under this Act;
- (d) a certificate by the insurance manager that to the knowledge and belief of the insurance manager the insurer for whom the services have been provided continue to be of good reputation and probity.

(7) A person who contravenes subsection (1) or as an insurance manager fails to comply with subsection (6) is guilty of an offence and liable on conviction to a fine of R30,000 and if the offence is continued after conviction to a further fine of R3,000 for each day during which the offence is so continued.

Saving for validity of policies **35.** Nothing in this Part shall operate to invalidate any policy.

PART IV

RETURNS, INSPECTIONS AND INVESTIGATIONS,

WINDING UP AND TRANSFERS OF BUSINESS

Annual **36.**(1) A registered insurer shall prepare such statements of account and other account and statements and in such form and manner as may be prescribed and lodge audit them with the Authority.

(2) A registered insurer shall cause to be kept such books and records as will sufficiently explain the transactions and financial position of the insurer and enables the insurer to comply with the requirements of this section and section 37, and shall cause those books and records to be kept in such manner as to enable them to be conveniently and properly audited.

(3) A registered insurer shall have its accounts audited for each accounting period for which statements of account are prepared in accordance with regulations prescribed under subsection (1).

(4) No person shall act as auditor for any registered insurer unless-

- (a) he has a place of business in Seychelles;
- (b) he is approved under the Companies Act as a company auditor for the purposes of that Act;
- (c) he has the approval of the Authority; and
- (d) he holds a licence to provide services as an auditor under the Licences Act, 1986.

Act 3 of 1986

(5) An auditor shall not be approved by the Authority as an auditor for registered insurers unless he is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(6) The Authority may impose all or any of the following duties on an auditor-

- (a) a duty to submit such additional information in relation to his audit as the Authority considers necessary;

-
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the insurer;
 - (c) a duty to carry out any other examination or establish any procedure in any particular case; and
 - (d) a duty to submit a report on any of the matters referred to in paragraphs (b) and (c), and the insurer shall remunerate the auditor in respect of the discharge by him of all or any of these duties.

(7) An auditor's report made under subsection (6) shall be lodged with the Authority together with the statements of accounts lodged by the insurer under subsection (1).

(8) If an auditor, in the course of the performance of his duties as an auditor of an insurer, is satisfied that-

- (a) there has been a serious breach or contravention of the provisions of this Act or that a criminal offence involving fraud or dishonesty has been committed;
- (b) any transaction or dispute has taken place which will have a material effect on the solvency of any insurance fund established by the insurer under this Act;
- (c) serious irregularities have occurred, including irregularities that jeopardise the interests of policy owners; or
- (d) the insurer is unable to meet its obligations,

he shall immediately report the matter to the Authority.

(9) The documents to be lodged with the Authority under this section for any accounting period of an insurer shall be accompanied by copies of any report submitted to the members of the insurer with respect to that period and (if it is not among the documents so lodged) by any statement of accounts so submitted with respect to that period; but references in this Act to documents lodged with the Authority shall not be taken to include documents required by this subsection to accompany documents so lodged.

(10) Where any report or statement referred to in subsection (9) is in a language other than English, the copy required by that subsection shall be in English and shall be certified to be a true translation of the original by the translator.

Actuarial investigation **37.(1)** Subject to this section, an insurer registered under this Act in respect of life business shall once in a period of 12 months have an investigation

and reports made by a qualified actuary into the financial condition of the life business and shall lodge with the Authority such abstract of the actuary's report and certificate relating thereto and such statements as to that business as are prescribed under section 36(1).

(2) An investigation under subsection (1) shall be made as at the end of each accounting period.

(3) Where an insurer registered under this Act in respect of life business-

- (a) has an actuarial investigation made into the life business for which it maintains an insurance fund under this Act (whether with or without any other life business carried on by it); and
- (b) the investigation is not made to comply with subsection(1) but the results of the investigation are made public,

the insurer shall, as to the lodging of documents with the Authority, comply with the requirements of subsection (1) as in the case of an investigation made under that subsection.

38.(1) If it appears to the Authority that any document lodged in accordance with section 36 or 37 is in any particular unsatisfactory, incomplete, inaccurate or misleading or that it does not comply with the requirements of sections 36 this Act, the Authority may by notice in writing require such explanations as or 37 to be such rectified it considers necessary to be made by or on behalf of the insurer within time (not being less than 14 days) as is specified in the notice.

(2) The Authority may, after considering the explanations referred to in subsection (1), or if such explanations have not been given by or on behalf of the insurer within the time specified in that subsection, reject the document or give such directions as it thinks necessary for its variation within such time (not being less than one month) as is specified in the directions.

(3) Directions given under subsection (2) with respect to any document may require such consequential variations of any other document lodged by the insurer under section 36 or 37 as may be specified in the directions.

(4) Where directions are given under subsection (2), any document to which they relates shall be deemed not to have been lodged until it is re-submitted with the variations required by the directions, but the insurer shall be deemed to have submitted the document within the time limited by regulations prescribed under section 36(1) if it is re-submitted with the required variations within the time limited by the directions.

Additional 39.(1) Any member or policy owner of an insurer shall have a right, on provisions applying to the insurer, to be sent by the insurer at an address supplied by as to returns him copies of documents lodged by the insurer to comply with section 36 or under sections 37, and to have the copies despatched not later than 14 days after the insurer 36 or 37 receives the application:

Provided that the right shall not extend to any document excepted from this provision by regulations prescribed under section 36(1), or to a document of any other description except the last lodged of that description.

(2) Any person shall have the right, on payment of the prescribed fee, at any time during working hours of the office of the Authority, to inspect at that office any document lodged by an insurer to comply with section 36 or 37 and any document required by sections 36(9) to accompany the document so lodged and make a copy of the whole or any part of it:

Provided that the right shall not extend to any document excepted from this provisions by regulations prescribed under section 36(1), or to documents of any other description lodged more than 10 years previously.

(3) In any proceedings a certificate signed by any person appointed by the Authority under section 49 that a document is one lodged by an insurer to comply with section 36 or 37, or one that accompanied documents so lodged, shall be admissible as evidence of the facts certified.

(4) Where a registered insurer fails to comply with section 36 or 37, the insurer is guilty of an offence and is liable on conviction to a fine of R30,000 and if the offence is continued after conviction to a further fine of R3,000 for each day during which the offence is so continued.

Inspection and investigation of affairs 40.(1) The Authority may from time to time inspect the books, accounts and transactions of a registered insurer and institute an investigation into the whole or any part of the insurance business carried on under this Act by the of insurer insurer.

(2) The costs and expenses of any investigation under subsection (1) shall be paid by the insurer.

(3) In making an inspection or investigation under this section, the Authority may, by notice in writing, require

- (a) the insurer, or any person having the custody thereof on behalf of the insurer;
- (b) any person who is or has any time been or acted as a director, actuary, auditor, officer, servant or agent of the insurer; or

- (c) any past or present member or policy owner of the insurer,

to produce for its inspection, and allow it to copy the whole or any part of any books, accounts, records or other documents of the insurer, whether kept in Seychelles or elsewhere (including documents evidencing the insurer's title to any assets):

Provided that a requirement under this subsection shall extend only to documents relating to business carried on by the insurer under this Act or evidencing the insurer's title to assets held for the purposes of any such business.

(4) In making an investigation under this section, the Authority may require any such individual as is specified in subsection (3) to attend before it and be examined on oath with respect to the insurer's business, and for the purposes of this subsection may administer oaths.

(5) Any person who refuses or fails when required to do so under subsection (3) or (4) to produce any document in his custody or to attend for or submit to examination by the Authority or any person appointed by it, or to answer any question put to him on such examination is guilty of an offence and is liable on conviction to a fine of R30,000 and if the offence is continued after conviction to a further fine of R3,000 for each day during which the offence is so continued.

Powers of 41. (1) Where the Authority is satisfied that the affairs of any registered insurer are being conducted in a manner likely to be detrimental to the public interest or the interests of the policy owners or prejudicial to the interests of direction the insurer, the Authority may issue such directions to the insurer as it considers necessary and in particular may require the insurer-

- (a) to take such action or recruit such management personnel as may be necessary to enable it to conduct its business in accordance with sound insurance principles;
- (b) to take action to suspend or remove any of its directors or any person whom the Authority considers unfit to be associated with it;
- (c) to take action as to the disposition or recovery of its assets;
- (d) to take any available steps for the recovery by the insurer of sums appearing to the Authority to have been illegally or improperly paid;
- (e) to stop renewing or issuing further policies of the class of business to which the direction relates;

- (f) to make such arrangements with respect of the class to reinsurance as the Authority so specifies; or
- (g) to take action to make good any default under section 15, 16, 17, 18 or 19.

(2) The Authority may, upon representation being made to it, or on its own motion, modify or cancel any direction issued under subsection (1) and, in so doing, may impose such conditions as it thinks fit.

(3) Any insurer who fails to comply with any direction made under subsection (1) is guilty of an offence and is liable on conviction to a fine of R60,000 and to imprisonment for a term of 6 months, and if the offence is continued after conviction to a further fine of R3,000 for each day during which the offence is so continued.

General

42.(1) The persons who may petition under the Companies Act for the provisions winding up of the affairs of a registered insurer, being a company, or for the continuance of the winding up of the affairs of such an insurer subject to the winding up supervision of the court, shall include the Authority.

(2) The Authority may, in accordance with the provisions of the Companies Act, present a petition for the winding up of a registered insurer, being a company, if the insurer has contravened or failed to comply with any provision of this Act.

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

(4) For the purposes of any proceedings under the Companies Act for the winding up of the affairs of such an insurer by the court, the contingent and prospective liabilities of the insurer in respect of policies shall, in determining whether it is unable to pay its debts, be estimated in accordance with such rules as may be prescribed; and evidence that the insurer was insolvent at the close of the last accounting period for which statements of account have been lodged with the Authority under section 36 shall be evidence that the insurer continues to be unable to pay its debts.

(5) Notwithstanding the Companies Act, in the winding up of the affairs of an insurer registered under this Act, the valuation of liabilities in respect of policies shall, whether the insurer is insolvent or not, be estimated in accordance with any prescribed rules and, as regards matters not fixed by the rules, on a basis approved by the court;

Provided that in members' voluntary winding up the basis to be adopted as regards matters not fixed by the rules may be approved by the Authority instead of by the court.

(6) References in this section to an insurer registered under this Act shall be extended also to an insurer who has ceased to be so registered but remains under liability in respect of Seychelles policies or offshore policies.

Special 43.(1) Where the Authority gives a registered insurer, being a company, a provision direction under section 41 (1) (e) by reason of the insolvency of the fund for insurers maintained by the insurer under this Act for either class of insurance directed

business, the affairs of the insurer may be wound up by the court under the to cease Companies Act as if it had suspended its business for a whole year.

insurance
business

(2) Where the Authority gives a registered insurer, being a company, a direction under section 41(1) (e) but, on a petition for the affairs of the insurer to be wound up by the court, the court is satisfied that the insurer will be able to pay its debts in full within 12 months or such longer period as the court thinks reasonable, the court may (if it thinks fit) order the affairs of the insurer to be wound up only as regards the insurance fund maintained for the class of business to which the direction relates.

(3) An order made under subsection (2) for a limited winding up shall be of the same effect as an order for the affairs of the insurer to be wound up generally, except in so far as this section otherwise provides.

(4) Where an order under subsection (2) is made, the powers of the liquidator shall be exercisable only for the purpose of applying the assets of the relevant insurance fund in discharging the liabilities to which they are applicable, together with the costs, charges and expenses incurred in the winding up: but the insurer shall from time to time, as the court may direct, make such additions to those assets as are required to secure that they are sufficient for the purpose or shall, if the court so directs, discharge any of those liabilities out of those assets.

(5) In the winding up of the affairs of an insurer under such an order, the Companies Act shall have effect subject to the following modifications:

- (a) the provisions of that Act relating to liabilities of past or present members of a company as contributories shall not apply;
- (b) where, at any time after the presentation of a winding petition and whether before or after a winding up order has been made, an action or proceeding against the insurer is pending, the insurer or a creditor or contributory of the insurer may apply to the court to stay or restrain further action or proceedings in the action or proceeding and the court may stay or restrain the action or proceeding on such terms as it thinks fit;

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- (c) notwithstanding that a winding up order has been made or a provisional liquidator appointed in respect of the insurer, an action or proceeding may be proceeded with against the insurer without leave of the court;
 - (d) a disposition of the property of the insurer and any transfer of shares or alteration in the status of the members of the insurer after the commencement of the winding up of the insurer by the court shall be valid;
 - (e) an attachment, sequestration, distress or execution put in force against the assets of the insurer after the commencement of the winding up of the insurer by the court shall be valid;
 - (f) an insurer shall not be required to have the words "in liquidation" after its name on any invoice, order for goods or business issued by or on its behalf;
 - (g) any transfer, mortgage, charge, delivery of goods, payment, execution or other act relating to property made by or against the insurer shall not be void or voidable in the event of the insurer being wound up notwithstanding that had it been made or done by or against an individual, would in the bankruptcy of the individual under the law of bankruptcy be void or voidable.
 - (h) the provision of that Act that a floating charge on the undertaking or property of an insurer created within six months of the commencement of the winding up shall be valid unless it is proved that the insurer immediately after the creation of the charge was solvent shall not apply;
 - (i) the provision of that Act that shall allows the liquidator of a company to disclaim onerous property shall not apply;
 - (j) the provision of that Act relating to the duties of a bailiff, after a notice is served on the bailiff that a provisional liquidator has been appointed or a winding up order made or a resolution for voluntary winding up has been passed, as to the goods of a company taken in execution shall not apply.

(6) Where an order under subsection (2) is made, the court may at any time, on the application of the liquidator or of any person who might petition for the affairs of the insurer to be wound up, substitute an order for the affairs of the insurer to be wound up generally, and give such directions as the court thinks fit as to matters in progress under the previous order; and, subject to any such directions, the winding

up shall for all purposes connected with the substituted order be deemed to have commenced at the time of the application for that order.

Priority of 44. Where a registered insurer becomes insolvent or is unable to meet its claim of obligations, the assets of the insurer shall be available to meet the liabilities of the insurer to all policy owners of Seychelles policies and offshore policies and these liabilities shall have priority over all unsecured liabilities of the insurer other than in the case of a company preferential payments or debts specified under the Companies Act.

Policy Owners Fund 45.(1) The Authority shall establish and maintain in accordance with this Protection section and regulations made under this Act, a Policy Owners' Protection Fund (referred to in this section and in section 66 as the "Fund") for the purposes of-

- (a) indemnifying and compensating in whole or in part or otherwise assisting or protecting policy owners and others who have been or may be prejudiced in consequence of the inability of registered insurers to meet their liabilities under life policies and compulsory insurance policies issued by them;
- (b) subject to subsection (13), to compensate persons in respect of damage arising out of the use of a motor vehicle on a road, whether or not such use is required to be covered by a policy of insurance in respect of third party risks under the Motor Vehicles Insurance (Third Party Risks) Act.
- (c) subject to subsection (14), compensating persons in respect of damage caused by a natural disaster.

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(2) Subject to such exceptions or restrictions as may be prescribed, the Authority shall-

- (a) secure that a sum equal to-
 - (i) the full amount of any liability of a registered insurer in liquidation or in financial difficulties in respect of a sum payable to any person entitled to the benefit under the terms of any compulsory insurance policy, being a liability arising in respect of a liability of the policy owner which is a liability subject to compulsory insurance; and
 - (ii) 90% of the amount of any liability of a registered insurer in liquidation or in financial difficulties towards a policy owner under the terms of any life policy which was a Seychelles policy or an offshore policy and not being a contract of reinsurance,

is paid to the person or policy owner as soon as reasonably practicable after the beginning of the liquidation; and

- (b) make arrangements so far as reasonably practicable for securing continuity of insurance for every policy owner of a registered insurer in liquidation or in financial difficulties who is a policy owner in respect of a life policy which was a Seychelles policy or an offshore policy and not being a contract of reinsurance, and for this purpose the Authority may take measures to secure or facilitate the transfer of the life business of the insurer, or part of that business, to another registered insurer or to secure the issue by another registered insurer to the policy owners of life policies in substitution of their existing policies.
- (c) secure that a sum equal to such amount of compensation payable to a person eligible under subsection (1)(b) or subsection (1) (c) as determined by the Authority is paid to the person as soon as reasonably practicable after the determination.

(3) For the purposes of financing the expenditure of the Fund the regulations may from time to time impose a levy on registered insurers carrying on-

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

(4) The Proceeds of general business levies and life business levies shall be paid into the Fund.

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

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

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

(8) In subsections (6) and (7), the gross premium income of a registered insurer for any year in respect of any class of insurance business carried on under this Act other than reinsurance business means the gross amounts after deducting any return of premiums recorded in the accounts of the insurer during that year as paid or due to the insurer by way of premiums under that class.

(9) Subject to subsection (10) the proceeds of general business levies may be applied only on expenditure incurred by the Authority under subsection (2) (a)(i) and (2)(c), and the proceeds of life business levies may be applied only on expenditure incurred by the Authority under subsection (2)(a)(ii) and (2)(b).

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

(11) Without prejudice to the generality of section 63, regulations made under this Act may provide-

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

(12) For the purposes of this section-

- (a) "compulsory insurance policy" means any policy or security which satisfies the requirements of the Motor Vehicles Insurance (Third Party Risks) Act;
- (b) references to a registered insurer in liquidation are references to an insurer in whose case-
 - (i) a resolution has been passed after the commencement of this Act in accordance with the provisions of the Companies Act for the voluntary winding up of the insurer, otherwise than merely for the purpose of reconstruction of the insurer or of amalgamation with another insurer;

-
- (ii) without any such resolution having been passed beforehand, an order has been made after that date for the winding up of the insurer by the Court under the Companies Act on a petition presented after that date; or
 - (c) references, in relation to a registered insurer in liquidation, to the beginning of the liquidation, are references to the passing of any such resolution or the making of any such order referred to in paragraph (a), as the case may be; and
 - (d) a registered insurer, not being an insurer in liquidation, is an insurer in financial difficulties if-
 - (i) in the case of a company-
 - A. a provisional liquidator has been appointed in respect of the insurer under the Companies Act;
 - B. it has been proved, in any proceedings on a petition for the winding up of the insurer under the Companies Act, to be unable to pay its debts; or
 - C. an application has been made to the Court under the Companies Act for the sanction of a compromise or arrangement proposed between the insurer and its creditors or any class of them (whether or not any of its members are also parties thereto) and the terms of the compromise or arrangement provide for reducing the liabilities or the benefits provided for under the insurer's life policies;
 - (e) "natural disaster" includes drought, excessive rainfall, storm or any other event occurring without the intervention of mankind.
 - (ii) in the case of a corporate body, the corporate body is in the opinion of the Authority unable to pay its debts.

(13) No compensation shall be paid under subsection (1)(b) in relation to a motor vehicle the use of which is covered by a policy of insurance in respect of third party risks under the Motor Vehicle Insurance (Third Party Risks) Act, where the owner or driver of the motor vehicle at the time of such use-

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

(14) No compensation shall be paid out of the fund under subsection (1)(c) in respect of damage caused by a natural disaster where the liability to pay the damage is covered by a policy of insurance.

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

Schemes for transfer of business **46.**(1) The whole or part of the insurance business of a registered insurer may be transferred to another insurer registered in respect of the class or classes of business to be transferred, if the transfer is effected by a scheme under this section, but shall not be transferred except such a scheme.

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

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

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

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

- (a) for any property, rights or liabilities of the transferor (including assets comprised in an insurance fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee; and
- (b) for the registration by the transferee of policies transferred, for the amounts to be included in respect of those policies in the transferee's insurance fund and for other matters arising under this Act out of the transfer.

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

Confirmation
of Schemes

47.(1) Before an application is made to the Court for confirmation of a scheme under section 46-

- (a) a copy of the scheme shall be lodged with the Authority together with copies of the actuarial and other reports, if any, upon which the scheme is founded;
- (b) not earlier than one month after the copy is so lodged, notice of the intention to make the application (containing such particulars as are prescribed) shall be published in the Gazette and in not less than two newspapers approved by the Authority; and
- (c) for a period of 15 days after the publication of the notice a copy of the scheme shall be kept at each office of every insurer concerned in or from which the insurer carries on insurance business under this Act, and shall be open to inspection by all members and policy owners of such an insurer who are affected by the scheme.

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

(3) Copies of the scheme and any such report as is mentioned in subsection (1) (a) or (2), or summaries approved by the Authority of the scheme and any such report, shall, except in so far as the Court upon application made in that behalf otherwise directs, be transmitted by the insurers concerned, at least 15 days before application is made for confirmation of the scheme to every policy owner affected by the scheme.

(4) An application to the court with respect to any matter connected with the scheme may, at any time before confirmation by the court, be made by the Authority

or by any person who in the opinion of the court is likely to be affected by the scheme.

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

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

Documents **48.**(1) Where by a scheme under section 46 insurance business of an insurer be filed where is transferred to another, the transferee shall, within one month after the scheme scheme takes effect, lodge with the Authority, confirmed

- (a) statement of the assets and liabilities of each insurer concerned as at the time immediately before the transfer; signed on behalf of the insurer and, in the case of the transferor, indicating whether the transfer is of the whole of the transferor's business and, if not, the extend to which transferor's assets and liabilities relate to the business transferred;
- (b) a copy of the scheme as confirmed by the court, and a certified copy of the order of the court confirming the scheme;
- (c) copies of any actuarial or other reports upon which the scheme was founded (being reports made since a copy of the scheme was lodged under section 47(1);
and
- (d) a statutory declaration made by the chairman of directors of the transferee, or by its principal officer in Seychelles, fully setting forth every payment made or to be made to any person on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set forth has been, or is to be made on account thereof by or with the knowledge of any insurer concerned.

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

(3) On the confirmation of a scheme under section 46 each of the insurers concerned, if they are companies, shall file a copy of the scheme with the Registrar of Companies.

PART V**MISCELLANEOUS AND GENERAL**

- Appointment** **49.** The Authority may with approval of the Minister authorise or appoint of assistants any person to assist it in the exercise of its functions and duties under this Act, either generally or in any particular case.
- Exemption** **50.**(1) The Minister may, subject to such condition as he thinks fit, exempt any person or class of persons from any or all of the provisions of this Act.
- (2) An exemption granted under this section may be withdrawn by the Minister at any time.
- Annual** **51.**(1) Not later than the end of April in any calendar year the Authority reports shall prepare and submit to the Minister a report on the working of this Act during the preceding calendar year.
- (2) The Authority shall include in its report under this section for any year copies or summaries of documents lodged with it in that year under sections 36 and 37, other than documents excepted from section 39 (1) and (2), and may include copies or summaries of documents accompanying those lodged; and it may also include in the report such notes on any such documents or summaries as it thinks fit, and copies of any correspondence between it and an insurer about any such documents lodged by or received from the insurer.
- Statistics** **52.**(1) Regulations may provide for the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to insurance as may be prescribed, and may provide for the collection and use of such information for any purpose, whether or not connected with insurance.
- (2) Such regulations may make provision for requiring registered insurers, insurance brokers and insurance agents to furnish to the Authority, in the prescribed form, such information as may be prescribed.
- (3) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of this section except in a form which does not disclose the affairs or any particular person.
- Service of** **53.** For the purposes of this Act, a letter containing a notice or other notices document to be served by the Authority under this Act shall be deemed to be addressed to the proper place if it is addressed to the place of which the addressee last indicated to the Authority as his address or to the addressee's latest address known to the Authority.

General provisions
as to offenses

- 54.**(1) Any person who-
- (a) signs any document lodged with the Authority under section 34(1), 36, 37 or 48 (1) (a); or
 - (b) furnished the Authority with any information under or for the purposes of any other provision of this Act,

shall use due care to secure that the document or information is not false in any material particular; and in he does not use due care in this behalf and the document or information is false is a material particular, he is guilty of an offence and is liable on conviction to a fine of R60,000 and to imprisonment for a term of 2 years.

(2) Any person who is guilty of any breach of a duty imposed on him by this Act is, in a case where no other punishment is provided for by this Act is, or by the regulations, liable on conviction to a fine of R15,000 and if the offence is continued after conviction to a further fine of R3,000 for each day during with the offence is so continued.

(3) Where an offence under this Act or any regulations made thereunder is committed by any company or body corporate, any person who at the time of the commission of the offence is a director, manager, secretary or other similar officer of that company or body, or is purporting to act in that capacity, is guilty of the offence unless he proves that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(4) Where an offence under this Act is committed by a company or body corporate, being an offence consisting in the breach of a duty imposed only on companies and bodies corporate, any individual guilty of the offence (whether by virtue of subsection (3) or otherwise) is liable on conviction to imprisonment for a term not exceeding one year in addition to or in substitution for any fine.

(5) For the purpose of any proceedings for an offence under subsection (1) (a), a document purporting to be signed by any person shall be presumed to have been signed by him, unless the contrary is proved.

Jurisdiction and appeals **55.**(1) Any proceedings for an offence under this Act may be instituted in of courts the Supreme Court or, subject to the limitations set out in the Criminal Procedure Code, in a Magistrates' Court.

(2) On an appeal to the Supreme Court under this Act, the Supreme Court may affirm, vary or reverse any decision appealed against or make such other order as it may deem fit.

(3) The Authority shall give effect to any decision or order made on an appeal under this Act.

(4) The Chief Justice may make rules governing the procedure in appeals under this Act to the Supreme Court and till such rules are made the rules governing civil appeals from the Magistrates' Court to the Supreme Court shall apply.

Insurance **56.**(1) A life policy insuring the life of anyone other than the person interest effecting the insurance or a person connected with him as mentioned in required subsection (2) shall be void unless the person effecting the insurance has an for life insurance insurable interest in that life at the time the insurance is effected; and the policy moneys paid under such a policy shall not exceed the amount of that insurable interest at that time.

(2) For the purpose of subsection (1), persons connected with a person effecting the insurance, are the wife or husband, of the person effecting the insurance, the child, being under the age of majority at the time the insurance is effected, of that person and anyone who is at that time wholly or partly dependent on that person.

(3) In this section, "insuring the life of a person" means insuring the payment of money (or the equivalent) on that person's death or on the happening of any contingency dependent on the termination or continuance of that person's life, and includes granting an annuity to commence on that death or at a time to be determined by reference thereto or to any such contingency.

(4) In so far as in the case of any life policy the policy moneys do not consist wholly of a cash payment due on the death in question, the limit under this section on the amount to be paid shall be applied by reference to the value of the right to the policy moneys immediately after the death or the happening before the death of any event on which they become payable.

(5) This section shall not affect policies issued before the commencement of this Act.

Capacity of **57.**(1) Notwithstanding any law to the contrary, a person over the age of 10 infant to years shall not by reason only of being under the age of majority lack the insure capacity to enter into a contract of insurance; but a person under the age of 18 years shall not have the capacity to enter into such a contract except with the consent in writing of his parent or guardian.

(2) This section shall be deemed always to have had effect.

Life policy **58.**(1) Any policy moneys payable under a life policy or moneys payable on moneys to the surrender of a life policy shall be paid without any deduction for sums be paid not due under the policy or under an agreement charging them on the policy, without unless the deduction is made with the consent of the present entitled to those

deduction moneys; and any provision contained in a life policy or in any agreement relating thereto shall be void, in so far as it entitles the insurer to make any such deduction without that consent.

(2) Subsection (1) shall apply to all Seychelles policies, but shall not apply to any other policy issued before the commencement of this Act.

(3) In any proceedings for the recovery of policy moneys due under the life policy or of moneys payable on the surrender of a life policy, no set-off or counterclaim shall be allowed except for sums due under the policy or under an agreement charging them on the policy.

Life policies **59.**(1) Where a life policy has been in force, in the case of a home service (surrenders: policy, for 6 years or more, or, in the case of an ordinary policy, for 3 years non-payment or more, the policy owner may by notice in writing to the insurer surrender or premiums: the policy and shall thereupon become entitled to receive the surrender value paid-up thereof, determined in accordance with such rules as may be prescribed (but policies subject to any deduction for sums due under the policy or under an agreement charging them on the policy).

(2) Where a life policy has been in force for 3 years or more, the policy shall not lapse or be forfeited by reason of the non-payment of premiums, but shall have effect subject to such modifications as to the period for which it is to be in force or the benefits receivable thereunder or both as may be determined in accordance with any system adopted by the insurer and applicable to the policy; and

(a) in the case of a policy as a Seychelles policy or as an offshore policy issued after the commencement of this Act, the system shall require the approval of the Authority, and shall be that adopted and applicable at the time the policy is issued, and the policy shall contain a statement in a form approved by the Authority of the effect of this subsection in relation to the policy; and

(b) in any other case, unless the system is determined by the policy, the system shall be that which at the time when this section becomes applicable to the policy would apply to a like policy then issued as a Seychelles policy.

(3) Where a life policy has been in force for 3 years or more, the policy owner may by notice in writing to the insurer elect to exchange the policy for a paid-up policy, which shall be a non-participating policy for an amount determined in accordance with such rules as may be prescribed, but with no other modification not required by this Act or some other written law.

(4) A policy issued in place of an earlier policy shall for the purposes of this section (including this subsection) be treated as having been in force since earlier policy began to be in force; but shall not affect the operation in relation to a policy of subsection (2) (a) or (b).

(5) Subsections (1) to (3) shall not apply-

- (a) to a policy securing the grant of an annuity for a term dependent upon human life; or
- (b) to a policy under which no policy moneys are necessarily payable, not being a policy which provides for the payment of policy moneys on a death after a specified period.

(6) As respects policies of any prescribed description subsections (1) to (3) shall have effect subject to such modifications as may be prescribed.

(7) The rights conferred by this section shall be in addition to, and not in derogation of, any other rights available to the policy owner under the terms of the policy or otherwise; but this section shall not be taken to confer on a policy owner any rights except against the insurer as such.

(8) This section shall apply to policies whenever issued; and, subject to subsection (5), shall extend to any Seychelles policy and offshore policy.

60.(1) In any case where the policy owner of any life policy or personal life policy accident policy of an insurer dies, and the policy moneys are payable and personal thereunder on his death, the insurer may make payment to any proper accidental claimant a prescribed amount of the policy moneys of all such policies issued claims without by the insurer on the deceased's life without the production of any probate probate, etc.. or letters of administration; and the insurer shall be discharged from all liability in respect of the amount paid.

(2) In this section "policy owner" includes a part owner of a policy, and "proper claimant" means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased; and in deducing any relationship for the purposes of this subsection an illegitimate person shall be treated as the legitimate child of his actual parent.

61.(1) A policy of insurance effected by any person on his own life and for benefit expressed upon the face of it, or by a subsequent declaration or arrangement, of wife, to be for the benefit of his wife, and of his children, legitimate or children or acknowledged, and of his grandchildren or of anyone or more them, grandchildren in such shares or amounts as he shall deem fit, anything to the contrary in any

other law notwithstanding, shall be good and valid without it being necessary to insert the names of the wife, children or the grandchildren in such policy, declaration or assignment.

(2) In case all the parties in favour of whom a policy, declaration or assignment referred to in subsection (1) shall have been made shall predecease the assured, such policy shall revert to the assured.

(3) The amount of any policy referred to in subsection (1) shall not form a part of the estate of the assured but shall belong to the parties in favour of whom the policy, declaration or assignment shall have been made.

Distribution 62. When building, chattels, goods, crops or any other property shall have of amount been insured against fire or any other casualty, the sum which, in case of the of policy casualty happening shall be recoverable under the policy of insurance from the in certain insurer, shall accrue to the holders of such privilege or mortgage claim as cases may encumber the property so insured, according to the rank of such claims, if that sum is not applied to the repair of the damage done.

Confidentiality on 62A. The Authority or any person authorised or appointed under section 49 shall not disclose any information relating to any application for registration the part of or approval under this Act, or to the affairs of a registered insurer or a policy the Authority owner which the Authority or the person has acquired in the performance of or its staff duties or exercise of functions under this Act-

- (a) except in the performance of the duties or exercise of the functions under this Act; or
- (b) except on an order of the Supreme Court made for the purpose of any inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application made by the Attorney-General on proof to the Court that the information is bona fide so required.

Compounding of offence 62B.(1) Where a person agrees in writing to a contravention of this Act which is an offence punishable on conviction with a fine or a fine and imprisonment, the Authority may, in consultation with the Minister, compound the offence by accepting a sum of money not exceeding 60 percentum of the maximum fine specified for the offence.

(2) Any money accepted under subsection (1) shall be paid into the Policy Owners Protection Fund established under section 45.

(3) Where an offence is compounded under subsection (1) no proceedings shall be instituted in relation to that offence against the person referred to in subsection (1).

Regulations **63.** The Minister may make regulations for-

- (a) carrying into effect the provision of this Act;
- (b) prescribing anything which under this Act is to be prescribed;
- (c) amending the Schedules;
- (d) in respect of non-domestic insurance business; and
- (e) matters incidental to, or conducive of, its purposes.

Repeals **64.** The Acts or section or Part of any Act specified in the First Schedule are hereby repealed.

Non-application of certain laws **65.**(1) Subject to subsection (2) the laws specified in the Third Schedule shall not apply to a registered insurer carrying on non-domestic insurance business under this Act.

(2) Subsection (1) shall, in relation to a registered insurer carrying on non-domestic insurance business under this Act, continue in force for a period of 20 years from the date of registration of the insurer under this Act.

(3) Notwithstanding subsection (1), an insurer carrying on non-domestic insurance business under this Act may, within a period of 3 months, or such extended period as may be allowed by the Commissioner of Taxes, from the commencement of a year of assessment elect, in the form provided by the Commissioner of Taxes, for the levy of business tax under the Business Tax

Cap. 20 Act on the taxable income of the non-domestic insurance business of the insurer for that year of assessment at a rate to be agreed upon between the insurer and the Commissioner of Taxes.

Transitional **66.** On the repeal of the Insurance Compensation (Fund) Act by section 64-

- (a) the Board of Trustees appointed under that Act shall stand dissolved;
- (b) the assets and liabilities, of the Insurance (Compensation) Fund established under that the Act, other than the liabilities in respect of claims referred to in paragraph (d), shall, with effect from the date or repeal of that Act, stand transferred to and be vested in, the Fund

under this Act and the Authority shall have all necessary power to deal with such assets and liabilities;

- (c) all claims made to the Board under that Act for compensation of damage arising out of the use of a motor car and pending on the date of repeal of that Act shall stand transferred to the Authority and be dealt with as if they were applications made under this Act for payment out of the Fund.
- (d) all claims made under that Act for compensation of damage caused by natural disasters and pending on the date of the repeal of that Act shall stand transferred to the Authority and be dealt with as if they were applications made under this Act for payment out of the Fund.

FIRST SCHEDULE

REPEALED WRITTEN LAWS

	Extend of Repeal
Insurance Policies Act (Cap. 249)	The whole
Insurance Act, 1976	The whole
State Assurance Corporation of Seychelles Act, 1980	Section 5 and Part V
Insurance (Restriction of Business) Act, 1982	The whole
Insurance Compensation (Fund) Act (Cap. 98)	The whole

SECOND SCHEDULE

DEFINITION OF INSURANCE TERMS

1.(1) "Policy" includes any contract of insurance whether or not embodied in or evidenced by an instrument in the form of a policy, and references to issuing a policy shall be construed accordingly

(2) References to a policy of an insurer include any policy in respect of which the insurer is under any liability, whether the policies were issued by the insurer or the liability was transferred to the insurer from another.

2.(1) Subject to this paragraph and section 15(3) and (4) of the Act, "Seychelles policy", in relation to any insurer, means a policy issued in the course of the insurer's business in Seychelles and falling within one of the following descriptions:

- (a) a life policy or personal accident policy in the case of which, at the date of issue of the policy and (if the policy was issued before then) at the date of the establishment of the insurer's register of Seychelles policies, the policy owner's address is or was an address in Seychelles;
- (b) in relation to direct general insurance (other than personal accident policies) and facultative general reinsurance, a policy in the case of which the risk arises in Seychelles or where the insured is a person resident in Seychelles or is a permanent establishment in Seychelles; and
- (c) in relation to treaty general reinsurance, a policy in the case of which more than 25% of the total risk in terms of gross premiums arises in Seychelles.

(2) "Offshore policy", in relation to any insurer, means any policy, other than a Seychelles policy, issued in the course of the insurer's business under this Act.

(3) For the purposes of this paragraph-

- (a) any policy belonging to the insurer's life business shall be deemed to be a life policy; and not to be a policy of any other description;
- (b) "policy owners address" means the address for the time being known to the insurer as the address (or normal address) for communicating with the policy owner about the policy;
- (c) "resident in Seychelles" and "permanent establishment" have the same meaning as in the Business Tax Act 1987; and
- (d) where any risk is in transit in Seychelles it shall be deemed to be a risk outside Seychelles,

but sub-paragraph (1) (a) shall apply to a policy of reinsurance as if the references to the date of issue of the policy and to the policy owner's address referred to those of the policy under which the liability reinsured ultimately arises.

3. "Policy owner" means, where a policy has been assigned, the assignee for the time being and, where they are entitled as against the insurer to the benefit of the policy, the personal representatives of a deceased policy owner.

4. "Policy moneys" includes any benefit, pecuniary or not, which is secured by a policy, and "pay" and other expressions, where used in relation to policy moneys, shall be construed accordingly.

5. "Life policy" means any policy by which payment of policy moneys is insured on death (otherwise than by way of insurance against personal accident, disease or sickness only) or on the happening of any contingency dependent on the termination or continuance of human life, and includes a policy which is subject to payment of premiums for a term dependent on the termination or continuance of human life and a policy securing the grant of an annuity for such a term.

6.(1) "Home-service policy" means a life policy in respect of which premiums are contracted to be paid at intervals of less than two months and are, or have been, ordinarily collected in the course of door-to-door collections made by person employed for the purpose, but shall not include in relation to any insurer any description of policy which the Authority directs is not to be treated as a home-service policy.

(2) "Ordinary policy" means a life policy which is not a home service policy.

(3) A paid-up policy granted in place of a home-service policy is to be treated as a home-service policy, unless the grant is made in pursuance of an agreement of option providing for it to be treated as an ordinary policy.

7. "Participating policy" means a life policy conferring any right to share in the profits or surplus arising from the business of the insurer or any part of it, and "non-participating policy" means a life policy not conferring any such right.

8. "Marine, aviation or transit insurance policy" means a policy of insurance-

- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
- (b) upon goods, merchandise or property of any description whatever on authority vessels or aircraft;
- (c) upon the freight of, or any other interest in or relating to, vessels or aircraft;
- (d) against damage arising out of or in connection with the use of vessels, or aircraft, including third-party risks;
- (e) against risks incidental to the construction repair or docking of vessels, including third party risk; or
- (f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another) including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.

9. "Personal accident policy" means a policy of insurance upon the happening of personal accidents, whether fatal or not, disease or sickness, or any class of personal accidents, disease or sickness.

THIRD SCHEDULE

Business Tax Act	(Cap 20)
Exchange Control Act	(Cap 76)
Stamp Duty Act	(Cap 226)
Trades Tax Act	(Cap 240)
