

# REPUBLIC OF VANUATU

## INSURANCE ACT NO. 54 OF 2005

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# REPUBLIC OF VANUATU

**Assent:** 30/12/2005  
**Commencement:** 05/06/2006

## INSURANCE ACT NO. 54 OF 2005

An Act to provide for the licensing, regulation and supervision of insurance business and for related purposes

Be it enacted by the President and Parliament as follows:

### PART I – PRELIMINARY

#### 1 Definitions

(1) In this Act, unless the contrary intention appears:

**accident and health policy** means an insurance policy:

- (a) that covers a disability event, a health event or a death event; and
- (b) under which benefits may be other than a stated sum of money; and
- (c) under which benefits may be given:
  - (i) if a person has incurred expenses for a health service for the health event; and
  - (ii) direct to the provider of the health service.

**actuary** means a person who is a member of:

- (a) the Institute of Actuaries of Australia, or the equivalent body in New Zealand or the United Kingdom; or
- (b) a similar professional body approved by the Commission.

**associated party**, for an insurer, means:

- (a) for an individual:
  - (i) the person's spouse, child, parent, stepchild or stepparent; and
  - (ii) a spouse of a person mentioned in subparagraph (i); and
  - (iii) a person who has entered into an agreement or arrangement with that person about acquiring, holding or disposing of, or exercising voting rights in respect of, shares in the insurer; and
  - (iv) a body corporate whose board of directors acts in accordance with the first person's directions or instructions; and
  - (v) a trust controlled or administered by the first person; and
- (b) for a body corporate:
  - (i) a subsidiary and a holding company; and
  - (ii) another body corporate whose board of directors acts in accordance with the first body corporate's directions or instructions; and
  - (iii) a trust controlled or administered by the body corporate.

**auditor** means a person who is:

- (a) a member of the Institute of Chartered Accountants in Australia or New Zealand, the Institute of Chartered Accountants in England & Wales or a Certified Public Accountant in the United States of America; or
- (b) a member of a body of accountants established in Vanuatu, or a similar body in another country recognized by the Commission, and has qualifications similar to those mentioned in paragraph (a) and is experienced in auditing insurance companies; or
- (c) authorised by the Commission to be appointed as an auditor because he or she has similar qualifications obtained elsewhere and is experienced in auditing insurance companies.

**captive insurance company** means a company that predominately insures interests in its parent company or in companies that it is affiliated or associated with or is organized with in a group or agency relationship.

**company limited by shares** means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares they hold.

**company limited by guarantee** means a company having the liabilities of its members limited by the memorandum to the amounts the members undertake to contribute to the assets of the company if it is wound up.

**Commission** means the Vanuatu Financial Services Commission.

**death event** means the life of a person ending.

**disability event** means the functional ability of the mind or body of a person becoming impaired.

**disability policy** means an insurance policy that covers a disability event.

**domestic business** means an insurance policy insuring:

- (a) a person resident in Vanuatu at the date of the policy; or
- (b) property of any kind situated in Vanuatu.

**engineering policy** means an insurance policy that covers:

- (a) the possession, use or ownership of machinery or equipment in carrying on a business, other than a motor vehicle required under a law of Vanuatu to have third party liability insurance; or
- (b) the erection of buildings or other structures or the undertaking of other works; or
- (c) the installation of machinery or equipment; or
- (d) machinery breakdown and boiler pressure plants.

**external insurer** means an insurer incorporated outside Vanuatu that provides insurance services in Vanuatu.

**fund** means:

- (a) a pension fund organisation; and
- (b) a permanent fund, established mainly to provide benefits to members in the event of sickness, accident or unemployment, or benefits to surviving spouses, children, dependants or nominees of deceased members.

**fund policy** means an insurance policy that covers the liability of a fund to provide benefits to its members under its rules, other than a policy that relates exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund.

**general insurer** means a person licensed to conduct general insurance business.

**general insurance business** means the business of providing or undertaking to provide policy benefits under general insurance policies or general reinsurance treaties.

**general insurance policy** means:

- (a) a property policy, an engineering policy, a guarantee policy, a liability policy, a workers compensation policy, an employers liability policy, a miscellaneous policy, a motor policy, an accident and health policy, a marine, aviation and transportation policy or a policy that is a combination of any of those policies; and
- (b) a contract that varies a policy mentioned in paragraph (a).

**general reinsurance policy** means a reinsurance policy for a general insurance policy.

**guarantee policy** means an insurance policy that covers the failure of a person to discharge an obligation.

**health event** means an event relating to the health of the mind or body of a person.

**health policy** means an insurance policy:

- (a) that covers a health event; and
- (b) under which benefits may be other than a stated sum of money; and
- (c) under which benefits may be given:
  - (i) if a person has incurred expenses for a health service for the health event; and
  - (ii) direct to the provider of the health service.

**independent insurance salesperson** means a person who solicits proposals for insurance products and earns commissions for each successful sale, but is neither an employee nor an agent of an insurer or an insurance intermediary.

**inspector** means a person appointed by the Commission under section 10 to investigate and report to the Commission on a licensee.

**insurance agent** means a person who, with the authority of an insurer and not being an employee of the insurer, acts on behalf of the insurer in establishing an insurance policy, including receiving a proposal, issuing a policy, collecting premiums and settling claims.

**insurance broker** means a person who acts on behalf of a prospective customer and with the prospective customer's authority arranges insurance business with insurers, including making proposals and paying premiums.

**insurance intermediary** means a person who renders intermediary service as an insurance agent, insurance broker, or an independent insurance salesperson, and includes an insurance consultant, a loss adjuster or an insurance surveyor, if the service:

- (a) requires judgment on the part of the latter person; or
- (b) may lead a customer to a specific transaction in respect of an insurance product.

**insurer** means a general insurer and a life insurer.

**insurance manager** means a person licensed to act as insurance manager of, or provide managerial services for, external insurers and international insurers.

**insurance policy** has the meaning given by section 2.

**insurance product** means:

- (a) an insurance policy; and
- (b) another product similar in nature to an insurance policy declared by the Commission to be an insurance product for the purposes of this Act; and
- (c) an insurance product issued by a external insurance provider and marketed in Vanuatu that in nature and character is essentially similar, or corresponds to, an insurance policy.

**international insurer** means an insurance company that is incorporated in Vanuatu but does not provide domestic insurance products in Vanuatu.

**key individual** means a natural person responsible for managing or overseeing, either alone or with another, the activities of a licensee.

**licensed** means licensed under this Act.

**licensee** means a licensed general insurer, life insurer, insurance manager, insurance agent, insurance broker, independent insurance salesperson or a licensed insurance intermediary.

**life insured** means the person to whose life, or to the functional ability or health of whose mind or body, a life policy relates.

**life insurance business** means the business of providing or undertaking to provide policy benefits under life policies including an annuity for life or a period, a long-term disability policy, a fund policy, a long-term health policy, a sinking fund policy and a combination of any of those policies.

**life policy** means an insurance policy on human life or that pays annuities on human life, and includes:

- (a) a policy under which the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description or by reference to fluctuations in, or in an index of, the value of property of any description; and
- (b) an annuity for life or a period; and
- (c) a contract that varies a policy of that kind.

**linked liabilities** means the policy liabilities of a general or life insurer that:

- (a) are not a guaranteed certain sum; and
- (b) are determined solely by reference to the value of particular assets or categories of assets that are specified in the policy and are actually held by or on behalf of the insurer specifically for the purposes of the policy.

**local insurer** means a company incorporated in Vanuatu and providing insurance services inside or outside Vanuatu.

**Lloyd's** means the association of persons generally known as Lloyd's and incorporated by the Lloyd's Act of 1871 of the United Kingdom.

**managing executive** means the chief executive officer of an insurer or a manager of an insurer who reports directly to the Board of Directors.

**marine, aviation and transportation policy** means an insurance policy that covers a risk relating to:

- (a) the possession, use or ownership of a vessel, aircraft or other craft; or
- (b) the conveyance of persons or goods by air, space, land or water; or
- (c) the storage, treatment or handling of goods so conveyed or to be so conveyed.

**Minister** means the Minister responsible for Finance and Economic Management.

**miscellaneous policy** means an insurance policy that covers a risk relating to an event that is not mentioned elsewhere in this section.

**motor policy** means an insurance policy that covers a risk relating to the possession, use or ownership of a motor vehicle.

**personal lines business** means general insurance business for which the policyholder is a natural person.

**policy benefits** means:

- (a) a sum of money; and
- (b) services or other benefits; and
- (c) an annuity.

**policyholder** means:

- (a) the person entitled to a benefit under an insurance policy; and
- (b) another person, such as the purchaser, who can require the insurer to meet its obligations under the policy.

**premium** means the money to be paid in return for an undertaking to provide policy benefits.

**property policy** means an insurance policy that covers a risk relating to the use, ownership, loss of or damage to property, other than a risk mentioned elsewhere in this section.

**proportional reinsurance** means the reinsurance of a part of a liability under a general policy, where premiums are shared in the same proportion as losses between the re-insurer and the general insurer.

**protected cell company** means a protected cell company within the meaning of the Protected Cell Companies Act.

**reinsurance** means a contract by which an insurer insures any part of the risk insured by the insurer with another insurer.

**reinsurance policy** means a reinsurance policy for a life or general insurance policy.

**significant owner** means a person who, directly or indirectly, alone or with an associate, exercises rights over shares that:

- (a) in total represent at least 10% of the share capital of the company; or
- (b) give the person at least 10% of the total voting rights in the company or the power to appoint or remove directors of the board.

**sinking fund policy** means a policy under which a person is entitled to a sum or sums of money on a fixed or determinable future date as policy benefits.

**survival benefit** means a policy benefit to be provided if the life of a person continues for a period.

- (2) Any books, records or documents required to be kept under this Act may be kept in electronic form.

## **2 Meaning of insurance policy**

- (1) An insurance policy is a contract under which a person, in return for a premium, agrees to give policy benefits if an event contemplated in the contract as a risk occurs.
- (2) For subsection (1):
  - (a) an event contemplated in a policy is described as being covered by the policy; and
  - (b) a policy benefit includes a benefit other than money.
- (3) A reference to an insurance policy includes a reference to a re-insurance policy.

### **3 Marine Insurance Act**

This Act does not affect the operation of the Marine Insurance Act 1906 of the United Kingdom in its application in Vanuatu.

## **PART 2 – THE COMMISSION’S ADMINISTRATION OF THE ACT**

### **4 The objectives of insurance supervision**

- (1) The object of this Act is to promote the maintenance of efficient, fair, safe and stable insurance markets for the benefit and protection of policyholders.
- (2) In administering this Act and the Regulations, the Commission must take into consideration the object of this Act.

### **5 Applications to the Commission**

- (1) An application to the Commission must:
  - (a) be made in writing, using the form approved by the Commission; and
  - (b) be accompanied by:
    - (i) the prescribed fee; and
    - (ii) the information and documents that the Commission requires.
- (2) An approval, determination or decision by, or a notice given by, the Commission, must be made in writing and signed by the Commissioner.

### **6 Powers of the Commission to obtain information and documents**

- (1) The Commission may by notice direct a licensed insurer, insurance intermediary, insurance manager or compliance officer to provide to the Commission information or documents required by the Commission for the purposes of this Act.
- (2) If the Commission has power to require a licensee or compliance officer to give the Commission a document, the Commission may direct any person who appears to possess the document to give the document to the Commission.
- (3) This section applies to a former licensee for a period of 6 years from the date on which the former licensee ceased to be a licensee.
- (4) The Commission may, by notice given to a person who is or is to be a director, partner, manager, employee or compliance officer of a licensee, require the person to give the Commission the information or documents that the Commission may reasonably require to decide whether the person is a fit and proper person to occupy the particular position that he or she occupies or is to occupy.
- (5) A notice under this section must state:

- (a) the information or documents the Commission requires; and
  - (b) the date by which the information or documents must be given to the Commission.
- (6) The Commission may require the information or documents from a shareholder of a licensee that is a company if the Commission considers that it is desirable to do so to protect the interests of the public or the policyholders, potential policyholders or customers of the licensee or the reputation of Vanuatu as a finance centre.

## **7 On site inspections**

- (1) The Commission may conduct on-site inspections at the premises occupied by a licensed insurer, insurance intermediary, insurance manager or compliance officer at any time during normal business hours.
- (2) The Commission must give the licensed insurer, insurance intermediary, insurance manager or compliance officer, reasonable notice of the inspection.
- (3) The entity that is being inspected must cooperate with the Commission by:
- (a) giving the Commission all the information and documents it requires; and
  - (b) giving the Commission, if possible, appropriate workspace and access to office services, such as a telephone, fax machine and copy machine during the inspection.
- (4) An on-site inspection may:
- (a) occur for a period of one or several days; and
  - (b) occur at any or all of the premises where the entity conducts business or keeps records.

## **8 Variations to an advertisement, brochure or similar document**

- (1) If an advertisement, brochure or similar document about the business of an insurer or an insurance policy that is being, or is to be, published by a person is misleading or contrary to the public interest, or contains an incorrect statement of fact, the Commission may by notice direct that person:
- (a) not to publish or cease to publish, the advertisement, brochure or similar document; or
  - (b) to vary the advertisement, brochure or similar document so that it is no longer misleading, contrary to the public interest or incorrect.

- (2) A person must not:
  - (a) publish an advertisement, brochure or similar document in contravention of subsection (1); or
  - (b) publish a variation of an advertisement, document or brochure unless the variation has been approved by the Commission.
- (3) The Commission must, 14 days after receiving a copy of the advertisement, brochure or similar document, make a decision on whether or not to approve a variation referred to in subsection (2).

### **9 Policy classification**

The Commission may determine that an insurance policy is a particular kind of policy as defined in section 1 if:

- (a) the licensed insurer issuing the policy has not classified the policy correctly; or
- (b) the insurer requests the Commissioner to classify the policy.

### **10 Appointment of Inspector**

- (1) The Commission may appoint an inspector for the purposes of section 11 only if it considers it necessary in the interests of:
  - (a) the public or the licensee's clients, policyholders or potential policyholders; or
  - (b) the reputation of Vanuatu as a financial centre.
- (2) The Commission must inform the licensee, in writing, that the inspector has been appointed.
- (3) An inspector is bound by the same confidentiality and code of conduct requirements as the staff of the Commission.
- (4) An inspector must produce evidence of his or her appointment as inspector if requested to do so during an investigation.

### **11 Investigation by Inspectors**

- (1) An inspector has the power to investigate and report on:
  - (a) the nature, conduct or state of a licensee's business or particular aspect of that business; and

- (b) the ownership and control of the licensee, if the licensee is a company.
- (2) An inspector may also investigate the business of a person who is, or has at any relevant time been, an associated party of the licensee under investigation, if it is necessary to do so for the purposes of that investigation.
- (3) An inspector may not investigate the business of a person unless the Commission has informed the person in writing about the proposed investigation.
- (4) A licensee or party being investigated, and a person who is or has been a director, partner, manager, employee, compliance officer or agent of a licensee or party being investigated, or a person who is or has been a shareholder in the licensee or party, must:
  - (a) produce to an inspector, when and where the inspector requires, all documents in the person's custody or power relating to that licensee or party; and
  - (b) appear before the inspector, when and where the inspector requires, and answer the questions put by the inspector about the licensee or party; and
  - (c) provide the inspector with all other assistance required in connection with the investigation that the person is reasonably able to provide.
- (5) The inspector may take copies of or extracts from any documents produced to him or her under paragraph (4)(a).
- (6) A person must not, without reasonable excuse:
  - (a) obstruct an inspector; or
  - (b) fail to comply with a request made by an inspector to the person in accordance with this Act; or
  - (c) fail to provide all reasonable assistance to an inspector in exercising or purporting to exercise a right conferred on the inspector by this section.
- (7) The costs and expenses of an investigation and report are payable by the licensee being investigated and may be recovered by the Commission as a debt due to the Commission.
- (8) This section applies to a former licensee that is a company as it applies to a licensee, but only in connection with the business, ownership or control of the former licensee while he or she was a licensee.

## **12 Exchange of information with other supervisors**

- (1) This section applies despite section 13.
- (2) The Commission may do all or any of the following acts:
  - (a) enter into an agreement or understanding with another domestic or foreign insurance supervisor to share relevant supervisory information or to otherwise work together; and
  - (b) exchange the following information with another domestic or foreign insurance supervisor:
    - (i) relevant supervisory information; and
    - (ii) relevant financial data about a supervised entity; and
    - (iii) objective information on individuals holding positions of responsibility in a supervised entity.
- (3) Before exchanging or sharing information with another insurance supervisor, the Commission must take reasonable steps:
  - (a) to ensure that any information given to another insurance supervisor will be treated as confidential by the receiving supervisor and will be used only for supervisory purposes; and
  - (b) to be satisfied that the insurance supervisor receiving the information will consult with the Commission if it proposes to take action on the evidence of the information received from the Commission.

## **13 Confidentiality**

- (1) Subject to subsection (2), the Commission may:
  - (a) explain its policy objectives to the public; and
  - (b) report on its activities and performance in pursuing its objectives; and
  - (c) provide information to the public on insurers that have problems or have failed in their operations and the actions taken by the Commission to address these problems and failures.
- (2) Any information from which a person or entity can be identified, that is acquired by the Commission in the course of carrying out its functions, must not be publicly disclosed by the Commission or by its members, officers and staff.

- (3) Information referred to in subsection (2) may only be disclosed publicly by the Commission, if either of the circumstances in subsection (4) applies and the disclosure appears to the Commission to be necessary:
- (a) to enable the Commission to carry out any of its functions; or
  - (b) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings; or
  - (c) in connection with the discharge of any international obligation to which Vanuatu is subject.:
- (4) For the purposes of subsection (3), the circumstances are:
- (a) each person and entity that can be identified from that information consents to the public disclosure; or
  - (b) the disclosure is expressly authorized or required by or under an Act relating to the Commission's statutory functions.
- (5) Information referred to in subsection (2) must also be disclosed if required by an order of the Court.
- (6) A person must not without reasonable excuse disclose information, or cause or permit information to be disclosed, in contravention of this section.

## **PART 3 – LICENCES**

### **14 Licence to conduct insurance business**

- (1) A person must not act as an insurer or re-insurer unless the person possesses an insurer licence issued by the Commission under this Act.
- (2) Subsection (1) does not require the re-insurer of a licensed insurer to be licensed if the re-insurer does not carry on other insurance business in or from Vanuatu.
- (3) An insurer must not carry on domestic business unless it is authorised to do so in its licence.
- (4) An insurer:
  - (a) for a mutual company – must be limited by guarantee; and
  - (b) for any other company - must be limited by shares and have its share capital paid in full.
- (5) For an insurer that is a protected cell company:
  - (a) the company must be licensed; and
  - (b) each cell that operates as an insurer must be authorised to do so by the licence; and
  - (c) the company must not add an insurer cell without the approval of the Commission.
- (6) An international insurer must have its head office in Vanuatu or appoint a licensed insurance manager in Vanuatu to represent the international insurer.
- (7) A captive insurer must appoint a licensed insurance manager in Vanuatu to represent the captive insurer.
- (8) A licence remains in force for one year and may be renewed on payment of the prescribed renewal fee.
- (9) Lloyd's is exempted from the licensing requirements in this Act, if the supervisor in its home country provides the Commission with free access, at all times, to all information about Lloyd's business in Vanuatu.

**15 Domestic insurers to maintain assets**

- (1) The Commission must not grant to an insurer, a licence to conduct domestic business, unless the insurer maintains at all times in Vanuatu, assets which are equal to its outstanding claims liabilities, in trust with a bank licensed by the Reserve Bank of Vanuatu.
- (2) The assets must be in the form of:
  - (a) cash; or
  - (b) securities approved by the Commission.
- (3) The Commission may take possession of the assets to pay the insurer's claimholders if it determines that the insurer has ceased to pay its claims.

**16 Licensing of insurance broker, insurance agent and independent insurance salesperson**

- (1) A person must not sell insurance, offer insurance for sale or in other ways provide insurance services unless the person is licensed as:
  - (a) an insurer; or
  - (b) an insurance manager; or
  - (c) an insurance agent; or
  - (d) an insurance broker; or
  - (e) an independent insurance salesperson; or
  - (f) an insurance intermediary.
- (2) A licence under this Act must state the activity covered by the licence.
- (3) The holder of a licence may only carry on the activity covered by the licence.
- (4) An insurance agent, insurance broker or insurance salesperson can be a natural person, a partnership, a company limited by shares or a company limited by guarantee.

**17 Application for licence**

- (1) An application for a licence must be:
  - (a) in the form approved by the Commission; and

- (b) signed by the applicant; and
  - (c) given to the Commission.
- (2) The application must contain:
- (a) a description of the business the applicant intends to conduct; and
  - (b) for a body corporate – information on the background, competency, experience and qualifications of the applicant’s significant owners, board members and senior management, to assist the Commission to determine, whether each of them is a fit and proper person to lead the entity, in terms of personal character, such as honesty and integrity and their competence to understand and be able to fulfill the responsibilities imposed by this Act; and
  - (c) a copy of the applicant’s business plan projected for a minimum of three years, including, for an insurer -the classes of business, source of business, financial projections, proposed capital, projected development of business and reinsurance arrangements; and
  - (d) for an insurer - other than a captive insurer:
    - (i) the applicant’s risk management systems, including internal control systems, information technology systems and the policies and procedures adequate for the nature and scale of the proposed business; and
    - (ii) information on the applicant’s reporting arrangements to its own management; and
    - (iii) if the insurer is a subsidiary of a foreign company, a written statement from the applicant’s home supervisory authority about the applicant’s status; and
  - (e) information on contracts, with affiliates and outsourcing arrangements; and
  - (f) for an insurance agent, the agency agreement with the insurance company.

**18 Additional information and consideration of a licence application**

- (1) Before making a decision on an application for a licence, the Commission may require the applicant to give the Commission any additional information necessary to assist the Commission to make a decision on the application and may also require the applicant to verify that information.

- (2) In making a decision on an application, the Commission may take into consideration any other information about the applicant, whether obtained from another insurance supervisory authority or elsewhere.
- (3) Before considering an information referred to in subsection (2), the Commission must:
  - (a) provide the information to the applicant; and
  - (b) allow the applicant to respond to the information within a reasonable time.
- (4) After considering an application, the Commission must, within 90 days of receiving all additional information required under subsection (1):
  - (a) grant the application on the condition that the applicant must take any necessary steps to comply with this Act and pay the prescribed fee; or
  - (b) refuse the application.
- (5) If the Commission refuses an application, the Commission must:
  - (a) inform the applicant in writing of the refusal; and
  - (b) provide the applicant with the reasons as to why the Commission has refused the application; and
  - (c) inform the applicant that he or she may appeal against the decision under section 102.

## **19 Licence**

- (1) After the Commission has granted a licence to an applicant, the Commission must issue to the applicant a licence of the kind applied for within 14 days of being satisfied that the applicant is in a position to comply with this Act..
- (2) A licence must:
  - (a) be in the form approved by the Commission; and
  - (b) state that the applicant is entitled to act as a domestic insurer, captive insurer, international insurer, insurance manager, insurance agent, insurance broker, independent insurance salesperson or other insurance intermediary, as the case requires; and
  - (c) state whether the licensee may or may not conduct domestic insurance business.

(3) The Commission must give the licensee a certified copy of the licence.

**20 Conditions of licence**

(1) A licence is subject to any condition the Commission imposes, having regard to:

- (a) the information available to the Commission about the licensee and any of its key individuals; and
- (b) the products and services that the licensee could provide or intends to provide; and
- (c) the category of the licence; and
- (d) any guidelines issued by the Commission.

(2) A licence is also subject to the conditions set out in this section.

(3) It is a condition of a licence that:

- (a) the licensee obtain the Commission's approval before replacing a key individual, or appointing a new key individual; and :
- (b) the licensee must inform the Commission:
  - (i) of any change in the information on which the licence was granted as soon as the licensee becomes aware of the change; and
  - (ii) if there is a change in the personal circumstances of a key individual that may result in the key individual no longer meeting the fit and proper requirements of this Act.

(4) The conditions the Commission may impose on an insurer include:

- (a) permitting the insurer to enter into only certain life or general policies determined by the Commission; and
- (b) permitting the insurer to enter into certain life or general policies determined by the Commission only if those policies contain, or do not contain, particular terms or conditions determined by the Commission; and
- (c) limiting the amount or value of the policy benefits to be provided by the insurer to an amount or value determined by the Commission; and

- (d) limiting the amount of premium the insurer may receive, during a period determined by the Commission, for all or certain life or general policies determined by the Commission; and
- (e) requiring the insurer to enter into reinsurance policies to reinsure a portion determined by the Commission of the liabilities incurred by it for all or certain life or general policies determined by the Commission during a period determined by the Commission; and
- (f) any other conditions reasonably necessary to ensure that the insurer's insurance business is carried on soundly and the insurer is able to meet its liabilities.

**21 Variation and cancellation of conditions of a licence**

(1) The Commission may at any time after the issue of a licence:

- (a) cancel or vary a condition of a licence, on application by the licensee or on the Commission's initiative; and
- (b) impose new conditions on the licence or vary an existing condition if the insurer appoints a new key individual, or there is a change in the personal circumstances of a key individual so that the key individual no longer satisfies the fit and proper person requirements of this Act.

(2) Before varying the conditions of a licence, the Commission must:

- (a) inform the licensee about the variation; and
- (b) allow the licensee to make comments on the variation within a reasonable time; and
- (c) consider the licensee's comments.

**22 A licensee's obligation**

(1) A licensee must:

- (a) maintain a principal office in Vanuatu where the licensee's books and records are kept; and
- (b) ensure that all business documents, advertisements and other promotional material refer to the fact that the licensee is licensed; and
- (c) ensure that the licence is at all times available to a person asking for proof that the licensee is licensed.

- (2) The Commission must approve a change of insurance manager by a licensee that is a company.

**23 Reporting duties of an insurance manager**

- (1) An insurance manager must give the Commission as soon as practicable, any information he or she may have that indicates that an insurer he or she manages:

- (a) is conducting business in a manner that exposes the insurer to a risk of insolvency; or
- (b) is not complying with this Act or the Regulations; or
- (c) has defaulted on a payment of any of its liabilities; or
- (d) is experiencing difficulties that may prejudice the interests of the policyholders or creditors of the company; or
- (e) is acting in a manner that may be detrimental to the interests of the policyholders or shareholders of the company; or
- (f) is subject to criminal investigations or proceedings in any country; or
- (g) is carrying on business that is not covered by its licence; or
- (h) has ceased to carry on business.

- (2) An insurance manager who ceases to manage an insurer must inform the Commission as soon as practicable.

**24 Restriction on activities of insurer**

- (1) A licensed insurer may conduct either general insurance business, or life insurance business, but may not conduct both general insurance business and both life insurance business.
- (2) A licensed insurer that is a re-insurer may provide either general reinsurance business, or life reinsurance business, but may not operate simultaneously, a general reinsurance business and life reinsurance.
- (3) A licensed insurer may only carry on the insurance business that it is authorized to carry on by its licence, unless in accordance with and subject to the conditions the Commission determines otherwise for:
- (a) a particular insurer; or

(b) insurers generally.

**25 Suspension of a licence**

- (1) The Commission may, subject to sub-section (2), at any time suspend a licence if it is satisfied, on the basis of available facts and information, that the licensee no longer meets the licensing requirements.
- (2) Before suspending a licence, the Commission must give the licensee notice in writing stating:
  - (a) that the Commission intends to suspend the licence; and
  - (b) the grounds for the suspension; and
  - (c) the intended period of the suspension; and
  - (d) any conditions to be attached to the suspension, as set out in subsection (3).
- (3) The conditions that may be attached to a suspension include:
  - (a) a ban on accepting any new business by the licensee from the date of the suspension; and
  - (b) for existing business - the measures the Commission determines necessary to protect the interests of customers of the licensee; and
  - (c) what the licensee needs to do so that the suspension may be lifted.
- (4) The Commission must give the licensee a reasonable opportunity to respond to the notice of suspension.
- (5) The Commission must consider the licensee's response and may decide to suspend or not to suspend the licence.
- (6) The Commission must notify the licensee in writing of its decision.
- (7) The Commission may provisionally suspend a licence without notice to the licensee if:
  - (a) the Commission has reasonable grounds to consider that substantial prejudice to customers or the general public may occur; and
  - (b) the circumstances are urgent.

- (8) As soon as practicable after provisionally suspending a licence, the Commission must, in writing, inform the licensee:
- (a) that the licence has been provisionally suspended; and
  - (b) of the grounds for the provisional suspension; and
  - (c) of the period of the provisional suspension.
- (9) The Commission must give the licensee a reasonable opportunity to respond to the notice of provisional suspension.
- (10) The Commission must consider the licensee's response and may decide to:
- (a) revoke the provisional suspension; or
  - (b) make the provisional suspension final.
- (11) The Commission must notify the licensee in writing of its decision.
- (12) The Commission must publish a notice of the suspension or provisional suspension in a newspaper circulating in Vanuatu and in any other way it considers appropriate.

## **26 Revocation of the suspension of a licence**

- (1) The Commission must revoke the suspension of a licence as soon as practicable after:
- (a) the licensee has complied with the Commission's requirements; or
  - (b) the circumstances that led to the suspension have ceased to exist.
- (2) The Commission must publish a notice that the suspension has been revoked in a newspaper circulating in Vanuatu and in any other way it considers appropriate.

## **27 Cancellation of a licence**

- (1) The Commission may at any time, cancel a licence, if the Commission is satisfied on the basis of facts and information available to the Commission, that the licensee:
- (a) when applying for the licence, did not make a full disclosure of all the relevant information to the Commission; or
  - (b) when applying for the licence, gave false or misleading information; or
  - (c) has made a material misrepresentation to members of the public in connection with its business; or

- (d) has failed to comply with a material condition of the licence; or
  - (e) has contravened or failed to comply with a material provision of this Act.
- (2) Before canceling a licence, the Commission must give the licensee notice in writing stating:
- (a) that the Commission intends to cancel the licence; and
  - (b) the grounds for the cancellation.
- (3) The Commission must give the licensee a reasonable opportunity to respond to the notice of cancellation.
- (4) The Commission must consider the licensee's response and may decide to:
- (a) cancel or not cancel the licence; or
  - (b) suspend the licence.
- (5) The Commission must notify the licensee in writing of its decision.
- (6) The Commission must publish a notice of the cancellation in a newspaper circulating in Vanuatu and in any other way it considers appropriate.

**28 Failure to commence or continue a licensed business**

- (1) The Commission may cancel a licence if the licensee:
- (a) fails to commence its business within 6 months after the licence is granted; or
  - (b) has ceased to carry on its licensed business to an extent that does not justify the continuation of the licence; or
  - (c) requests the Commission in writing to cancel the licence because the licensee intends to cease to carry on its licensed business.
- (2) Before canceling a licence on the grounds set out in paragraph (1)(a) or (1)(b), the Commission must give the licensee notice in writing stating:
- (a) that the Commission intends to cancel the licence; and
  - (b) the grounds for the cancellation; and

- (c) that the licensee:
    - (i) must not conduct any more insurance business; and
    - (ii) must make arrangements satisfactory to the Commission to discharge its insurance-related obligations before the date specified in the notice; and
  - (d) that the Commission will cancel the licence when it is satisfied that the licensee no longer has any insurance-related obligations.
- (3) The Commission must provide the licensee with an opportunity to respond to the notice of cancellation.
  - (4) The Commission must consider the licensee's response and may decide to cancel or not to cancel the licence.
  - (5) The Commission must notify the licensee in writing of its decision.
  - (6) The Commission must cancel a licence if a licensee's insurance business has ceased because of a merger or transfer to another licensee or if the licensee has been liquidated.
  - (7) The Commission must publish notice of the cancellation in a newspaper circulating in Vanuatu and in any other way it considers appropriate.

**29 Prohibition on using certain words or doing certain acts**

- (1) Subject to subsection (2), a person other than a licensee must not use the word "insure" "assure" "underwrite", "indemnity", "guarantee" or "surety", or a derivative of any of those words, in the title or description of his or her business.
- (2) The Commission may permit a specific business to use any of the words referred to in subsection (1).
- (3) When describing its business, a licensee must explicitly state whether it is a general insurer, life insurer, insurance manager, insurance agent, insurance broker, an independent insurance salesperson or an insurance intermediary.
- (4) A licensee must not change its name without the prior approval of the Commission.

**30 Unlicensed person cannot conduct insurance business**

- (1) A person must not carry on insurance business of any kind unless the person is licensed to carry on insurance business of that kind.
- (2) A person must not use a licence or a copy of a licence for business purposes if:

- (a) the licence has lapsed or has been cancelled; or
- (b) the licence is suspended or provisionally suspended.

## **PART 4 – CAPITAL ADEQUACY**

### **31 Minimum capital**

- (1) An insurer must have a paid up capital of at least the amount set out in subsection (2) or the higher amount prescribed by the Regulations.
- (2) For subsection (1), the amount is:
  - (a) for a captive insurer engaged in general insurance business – VT10 million; and
  - (b) for a captive insurer engaged in life insurance business – VT20 million; and
  - (c) for any other insurer – VT30 million.
- (3) The minimum capital may be in the form of an irrevocable letter of credit from a financial institution approved by the Commission.

### **32 Maintenance of financially sound condition**

- (1) An insurer must at all times maintain its business in a financially sound condition by:
  - (a) having assets; and
  - (b) providing for its liabilities; and
  - (c) generally conducting its business;so that it is able to meet its liabilities at all times.
- (2) An insurer is taken to have failed to comply with subsection (1) if it does not have:
  - (a) assets as required by section 33; or
  - (b) assets as required by section 34.
- (3) An insurer that fails to comply with subsection (1) must:
  - (a) inform the Commission in writing of its failure to comply with subsection (1) within 30 days after the insurer is aware of its failure; and

- (b) give reasons for failing to comply with subsection (1).

### **33 Assets of an insurer**

(1) An insurer must:

- (a) have assets the aggregate value of which, on a day, is not less than the aggregate value, on that day, of its liabilities; and
- (b) subject to section 32, have assets the aggregate value of which, on a day, are liquid and not less than the aggregate value, on that day, of those of its liabilities which are to be met; and
- (c) have an additional amount (called the *margin of solvency*), calculated in accordance with the Regulations.

(2) An insurer must not declare a dividend or pay a dividend to its shareholders:

- (a) if it does not comply with subsection (1); or
- (b) if the declaration or payment of the dividend would result in it failing to comply with subsection (1); or
- (c) unless its actuary has certified that the payment of the dividend will not be contrary to paragraph (a) or (b).

### **34 Categories of assets**

(1) An insurer must have assets, other than assets held by a life insurer in respect of linked liabilities:

- (a) of an aggregate value that, on a day, is not less than the aggregate value, on that day, of those of its liabilities that have to be met, where the value of those assets is calculated by reference to their market value and the value of those liabilities, other than the linked liabilities, are calculated in accordance with the solvency method set out in the Regulation; and
- (b) that are allowable assets within the meaning of the Regulations; and
- (c) that have a market value that, when expressed as a percentage of the aggregate value of its liabilities referred to in subparagraph (a), does not exceed the percentage specified in the Regulations for particular kinds or categories of those assets, unless the Commission otherwise approves either in advance or at any time.

- (2) The Commission may in writing approve a percentage other than the percentage referred to in paragraph 1(c):
  - (a) in a particular case; and
  - (b) for the specified period; and
  - (c) subject to the conditions the Commission determines.
- (3) The kinds of assets that an insurer has, and the spread of those assets among different kinds, must :
  - (a) to the satisfaction of its actuary, be proper and suitable having regard to the nature of its various liabilities and when, where, and how it is required, or expects to be required, to meet those liabilities; and
  - (b) comply with any general requirement specified by the Commission for the appropriate matching of assets and liabilities.
- (4) The Commission may direct an insurer to furnish a report by an actuary nominated by the Commission, on whether the insurer complies with this section.

### **35 Deeming provisions for assets**

- (1) For the purposes of sections 33 and 34, an asset is deemed not to be held by an insurer if the asset is:
  - (a) encumbered contrary to subsection 38(1); or
  - (b) held by another person contrary to paragraph 38(1)(b).
- (2) An asset may be encumbered or held if the person in whose favor it is encumbered, or the person holding the asset, is:
  - (a) another insurer, and the encumbrance or transfer takes place in accordance with a reinsurance policy; or
  - (b) the government of a country other than Vanuatu in which the insurer carries on insurance business or intends to carry on insurance business, or a person acting on behalf of that government, and the insurer:
    - (i) has encumbered those assets in favor of that person or that government; or
    - (ii) has transferred those assets into the name of, that government or that person

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to comply with the Acts of that country relating to insurance.

- (3) If the assets an insurer holds in respect of its life or general insurance business include shares in its holding company:
- (a) the shares are taken to be held by the insurer in a representative capacity and for the sole benefit of the policyholders, whether the holding company is incorporated in Vanuatu or not; and
  - (b) the shares must only be held by the life or general insurer with the prior approval of the Commission and subject to the conditions the Commission determines; and
  - (c) the insurer must not vote at meetings of the holding company or at meetings of any class of members of the holding company.

### **36 Life insurers' liabilities**

A life insurer's liabilities:

- (a) include its contingent liabilities for policy benefits that have not become claimable; and
- (b) must be based on an actuarial valuation.

### **37 General insurer's liabilities**

A general insurer's liabilities include:

- (a) the amount the general insurer estimates will become payable for claims incurred under general insurance policies that is:
  - (i) reported but not paid, reduced by the amount which it estimates will be paid for those claims under approved reinsurance policies; and
  - (ii) incurred but not reported, reduced by the amount which it estimates will be paid for those claims under approved reinsurance policies, being an amount not less than the amount calculated in accordance with the Regulations; and
- (b) provision for unearned premium, not less than the amount calculated in accordance with the Regulations; and
- (c) a contingency reserve; and
- (d) provision for unexpired risk.

**38 Prohibitions concerning assets and certain liabilities**

- (1) Except in the ordinary course of its business or with the Commission's approval, an insurer must not:
- (a) encumber its assets; or
  - (b) allow its assets to be held by another person on its behalf; or
  - (c) directly or indirectly borrow any asset; or
  - (d) by a guarantee or any other form of personal security, whether under a primary or secondary obligation, give security in relation to obligations between other persons, unless its licence permits it to provide policy benefits in terms of a guarantee policy and it does so in terms of a guarantee policy.
- (2) The Commission's approval may be given generally or in a specific case, and may be subject to conditions determined by the Commission.
- (3) An insurer must not invest in derivatives:
- (a) except derivatives designated as an asset in respect of a linked liability, or if the investment is for the purpose of reducing investment risk or for efficient portfolio management; and
  - (b) in such a manner that the insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches its obligations under that instrument and from which it can discharge those obligations.

**39 Failure to maintain financially sound condition**

- (1) If the Commission is satisfied that an insurer is failing, or is likely to fail within a reasonable period, to comply with subsection 33 (1), or the insurer gives the Commission notice under subsection 32 (3), the Commission may in writing direct the insurer to inform the Commission, within a specified period:
- (a) of the nature and causes of the failure; and
  - (b) what the insurer proposes to do to ensure it complies with subsection 33 (1).
- (2) At the end of that period, the Commission must:
- (a) consider the proposals; and

- (b) consult with the insurer's auditor and actuary; and
  - (c) direct the insurer to adopt a course of action that the Commission is satisfied will reasonably ensure that the insurer complies with subsection 33 (1).
- (3) The Commission may, at any time after giving a direction under subsection (2), after further consultation with the auditor and the actuary, direct the insurer to adopt any modification to that course of action that the Commission considers appropriate in the circumstances.
- (4) The Commission may apply to the Court for an order that the insurer be wound up if it is reasonably necessary in the interests of the policyholders:
- (a) rather than giving a direction under subsection (2); or
  - (b) after giving a direction under subsection (2), despite any steps already taken by the Commission.

#### **40 Guarantee requirements for insurance intermediaries**

An insurance intermediary must have professional indemnity insurance and other guarantees specified in writing by the Commission for the protection of policyholders and prospective policyholders.

#### **41 Returns to the Commission**

- (1) Every licensee must lodge with the Commission financial and non-financial returns relating to its business.
- (2) The returns must be:
- (a) in the form; and
  - (b) containing the information; and
  - (c) lodged with the Commission on or before the date,
- required by the Regulations.
- (3) If the Commission is satisfied that a return is incomplete or incorrect, it may, by notice:
- (a) direct the licensee to give the Commission, within the period stated in the notice, the additional information or documents stated in the notice, that the Commission considers necessary to complete or correct the return; or

- (b) reject the return and require the licensee to give the Commission, within the period stated in the notice, a new return that is complete and correct.
- (4) A licensee must promptly tell the Commission about any material changes that affect the evaluation of the licensee's licence or the conditions in the licence.

## **PART 5 – AUDITED STATEMENTS, AUDITORS AND ACTUARIES**

### **42 Financial year**

An insurer must not change its financial year without the prior approval of the Commission.

### **43 Appointment of auditor**

- (1) A licensed insurer or insurance broker must at all times have an auditor appointed by the insurer or insurance broker.
- (2) The appointment of an auditor, other than a reappointment not involving a break in the continuity of the appointment, does not take effect until it has been approved by the Commission.
- (3) An insurer or insurance broker must not appoint as its auditor:
  - (a) one of its directors or shareholders; or
  - (b) a person who is not qualified to practice as an auditor.
- (4) The Commission may by notice in writing, require an auditor that is a firm to inform the Commission of changes in the membership of the firm.
- (5) The Commission may by notice in writing, require a licensee to terminate the appointment of its auditor within the period stated in the notice and appoint another auditor if:
  - (a) the auditor ceases to comply with the requirements considered when the auditor was approved by the Commission; or
  - (b) the auditor fails to comply with any provision of this Part.
- (6) Before giving a licensee notice under subsection (5), the Commission must:
  - (a) inform the licensee and the auditor in writing of the reasons why the Commission proposes to give the notice; and
  - (b) provide the licensee and the auditor reasonable opportunity to be heard; and
  - (c) consider any submissions made by or on behalf of the licensee and the auditor.

**44 Auditor to give information to Commission**

- (1) An auditor must:
- (a) whenever the auditor gives a document indicating the possible qualification of the accounts, to the insurer or insurance broker by whom the auditor was appointed, also give a copy to the Commission; and
  - (b) if the auditor's appointment is terminated for any reason:
    - (i) give the Commission a statement of what the auditor believes to be the reasons for that termination; and
    - (ii) if the auditor would have given the insurer or insurance broker a report with critical remarks, give the report to the Commission; and
  - (c) inform the Commission in writing of any matter relating to the affairs of the insurer or insurance broker of which the auditor became aware in the performance of his or her functions as auditor and which, in the opinion of the auditor, may prejudice the insurer's ability to comply with the capital adequacy requirements in this Act.
- (2) An auditor who in good faith gives a report, other document or information to the Commission as required by this section is taken not to contravene any other law or code of professional conduct to which the auditor is subject.
- (3) The failure, in good faith, by an auditor to give a report, other document or information as required by this section does not give any person a right of action against the auditor which, but for that failure, that person would not have had.
- (4) As well as the usual duties of an auditor, the auditor must:
- (a) examine all financial statements that form part of a return to be lodged with the Commission and satisfy himself or herself that the statement complies with this Act; and
  - (b) express an opinion whether the statement, and any annexure, presents fairly the matters it deals with; and
  - (c) carry out the other duties provided in this Act or as directed by the Commission.

#### **45 Accounting and auditing requirements**

- (1) A licensee must:
  - (a) maintain full and proper accounting records for its licensed business on a continual basis; and
  - (b) bring the accounting records up to date quarterly; and
  - (c) prepare annual, financial statements for each financial year reflecting, with suitable particulars, the financial position of the business as at the last day of the financial year, and the results of the operations and cash flow information for the financial year.
- (2) A licensee that is an insurer or insurance broker must cause its financial statements to be audited and reported on by its appointed auditor, to produce:
  - (a) an audited balance sheet, including any necessary notes or attached documents; and
  - (b) an audited income statement, including any necessary notes or attached documents; and
  - (c) an audited statement of the source and application of funds.
- (3) The financial statements must:
  - (a) be prepared in conformity with International Accounting Standards; and
  - (b) fairly represent the state of affairs of the licensee's business; and
  - (c) refer to any material matter which has affected or is likely to affect the licensee's financial affairs.
- (4) The insurer and insurance broker must lodge the audited financial statements with the Commission not later than six months after the end of the licensee's financial year or such longer period as may be permitted by the Commission.
- (5) The insurer and insurance broker must maintain records in accordance with paragraphs (1)(a) and (1)(b) of money and assets the licensee holds on behalf of customers and, at the same time as lodging its financial statements, lodge a report by its auditor, stating:
  - (a) the amount of money and assets held at the end of the financial year on behalf of customers; and

- (b) whether the money and assets were, throughout the financial year, kept separate from the money and assets of the licensee's business and, if the money and assets were not kept separate, the extent to which they were not kept separate; and
- (c) any other information required by the Commission.

**46 Appointment of actuary by insurer**

- (1) An insurer who carries on life insurance business must at all times have an actuary to provide an actuarial report and valuation of the insurer's liabilities at least every two years, unless specifically exempted by the Commission.
- (2) An actuary must:
  - (a) be a member of the Institute of Actuaries of Australia, or of the equivalent institution in New Zealand, the United Kingdom or another similar institution or professional body approved by the Commission; and
  - (b) have appropriate practical experience relating to insurance business.
- (3) An insurer must not appoint as its actuary:
  - (a) any of its directors or shareholders; or
  - (b) any of its employees.
- (4) The appointment of an actuary does not take effect until it has been approved by the Commission.
- (5) An actuary must:
  - (a) if the actuary's appointment is terminated for any reason:
    - (i) give the Commission a statement of what the actuary believes to be the reasons for that termination; and
    - (ii) if the actuary would have given the insurer a report with critical remarks, give the report to the Commission; and
  - (b) inform the insurer's management of any matter relating to the affairs of the insurer of which the actuary became aware in the performance of his or her functions as actuary and which, in the actuary's opinion, may prejudice the insurer's ability to comply with the financial requirements in this Act; and

- (c) if the insurer does not take appropriate steps to rectify the matter, report it to the Commission in writing.
- (6) An actuary who in good faith gives a report, other document or information to the Commission as required by this section is taken not to contravene any other law or code of professional conduct to which the auditor is subject.
- (7) The failure, in good faith, by an actuary to give a report, other document or information as required by this section does not give any person a right of action against the actuary which, but for that failure, that person would not have had.
- (8) In addition to the duties of an actuary, the actuary must:
  - (a) examine all financial statements that form part of a return to be lodged with the Commission and satisfy himself or herself that the statement complies with this Act; and
  - (b) express an opinion whether the statement, and any annexure, presents fairly the matters it deals with; and
  - (c) carry out any other duties provided in this Act or as directed by the Commission.
- (9) An actuary has the right:
  - (a) to access at all times to the accounting records and other books and documents of the insurer; and
  - (b) to require from the directors or officers of the insurer the information and explanations the actuary considers necessary to carry out his or her duties; and
  - (c) to attend the insurer's general meetings; and
  - (d) to receive the same notices and other information about general meetings that members of the insurer are entitled to receive; and
  - (e) to be heard at a general meeting on the business of the meeting which concerns him or her as actuary.

#### **47 Appointment of auditor or actuary by Commission**

- (1) If an insurer fails to appoint an auditor, the Commission may appoint an auditor for the insurer.
- (2) If an insurer who carries on life insurance business fails to appoint an actuary, the Commission may appoint an actuary for the insurer.

- (3) The Commission may, at any time, engage an actuary to report on the financial soundness of an insurer or on any other matter the Commission directs.
- (4) An auditor or actuary appointed or engaged under this section is taken to have been appointed or engaged by the insurer in accordance with this Act.

**48 Life policy to be actuarially sound**

- (1) An insurer who carries on life insurance business must not enter into a particular kind of insurance policy unless its actuary has given a written statement that he or she is satisfied that the premiums, benefits and other values of the policy are actuarially sound.
- (2) For subsection (1), the premiums, benefits and other values of a policy are actuarially sound if the total premiums to be paid for the policy are sufficient to pay the full actuarial cost of the policy.
- (3) An insurer that carries on life insurance business must not make a distinction between the premiums, benefits or other values of different insurance policies unless its actuary has given a written statement that he or she is satisfied that the distinction is actuarially justified.
- (4) An insurer must not award a bonus or similar benefit to a policyholder, except under a linked liability policy, unless its actuary has given a written statement that he or she is satisfied that it is actuarially sound and that a surplus is available for that purpose.
- (5) The actuary must give reasons for making a statement mentioned in this section.

**49 Audit, actuarial and risk management committee**

- (1) The Commission may require an insurer to appoint an audit, actuarial and risk management committee if the appointment is appropriate, having regard to the scope and volume of the insurer's business.
- (2) The audit, actuarial and risk management committee must consist of at least 3 members of whom at least 2 are members of the insurer's board.
- (3) The majority of the members, and the chairperson, of the committee must be persons who are not employees of the insurer.
- (4) The functions of an audit, actuarial and risk management committee are:
  - (a) to assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing, risk management and actuarial valuation processes applied by the insurer in the day-to-day management of its business; and

- (b) to facilitate and promote communication and liaison concerning the matters referred to in sub-clause (a) or related matters, between the board of directors and the managing executive, the auditor, actuary and internal audit staff of the insurer; and
  - (c) to recommend the introduction of measures that the committee believes may enhance the credibility and objectivity of financial statements and reports about the insurer's business; and
  - (d) to advise on matters referred to the committee by the board of directors; and
  - (e) to perform any other functions the Commission directs.
- (5) An insurer must give the Commission all reports prepared by the audit, actuarial and risk management committee if requested to do so by the Commission .

## **PART 6 – SHARE CAPITAL AND SHAREHOLDING**

### **50 Shares and debentures**

An insurer must not, without the prior approval of the Commission or otherwise than in accordance with the conditions that the Commission determines:

- (a) issue or convert any shares which confer preferential rights to distributions of capital or income; or
- (b) convert any of its shares of a particular class into another class; or
- (c) convert any of its shares into debentures; or
- (d) issue any debentures; or
- (e) reduce its stated capital; or
- (f) issue bearer shares.

### **51 Registration of shares in name of nominee**

(1) An insurer must not, without the Commission's prior approval, knowingly:

- (a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended beneficial shareholder; or
- (b) register a transfer of any of its shares to a person other than the intended beneficial shareholder.

(2) Subsection (1) does not apply to the allotment, issue or registration of shares:

- (a) to or in the name of an executor, administrator, trustee, guardian or liquidator; or
- (b) for a period of not more than 6 months, to or in the name of a company controlled by an insurer or an insurer's employee, if it is necessary to do this to facilitate delivery to the purchaser or to protect the rights of the beneficiary of those shares; or
- (c) to or in the name of a person acting as a depository institution, if the person concerned is able, on request, to disclose the name of the beneficial shareholder on whose behalf the shares are held.

**52 Limitation on control and shareholdings or other interest in life or general insurers**

- (1) A person must not, without the Commission's approval, acquire or hold shares or any other interest in an insurer which results in that person becoming a significant owner of the insurer.
- (2) A person who is or in the process of becoming a significant owner must apply for approval by the Commission for the acquisition, or transfer of ownership.
- (3) An insurer must inform the Commission of an acquisition or transfer of ownership that results in a person becoming a significant owner.

**53 Providing information on shareholders**

- (1) An insurer must, whenever required to do so by the Commission:
  - (a) give the Commission a return, setting out details of its shareholders and of any person who directly or indirectly has the power to require those shareholders to exercise their rights as shareholders in the insurer in accordance with that person's directions or instructions; and
  - (b) give the Commission information on any person who, in the Commission's opinion, may directly or indirectly influence the insurer's decisions.
- (2) A person in whose name shares in an insurer are registered, or who proposes to have shares in an insurer allotted or issued, or to be registered as shareholder, and anyone acting for the person, must, upon the written request of the insurer, give it the information it needs to comply with subsection (1).

**54 Effect of registration of shares contrary to Act**

- (1) If a share in an insurer is allotted or issued to a person or registered in the person's name, contrary to this Act, the person must not:
  - (a) either personally or by proxy cast a vote attached to the share; or
  - (b) receive a dividend payable on the share.
- (2) The validity of a resolution passed by a life or general insurer is not affected by a vote being cast contrary to paragraph (1)(a).
- (3) A dividend referred to in paragraph (1)(b) is void.

## **PART 7 - DIRECTORS AND OFFICERS**

### **55 Duties of directors and officers**

- (1) A licensee that is a company must have at least two directors.
- (2) The directors must:
  - (a) manage, or supervise the management of, the business and affairs of the company; and
  - (b) establish procedures to resolve conflicts of interest, including techniques to identify potential conflict situations and to restrict use of confidential information; and
  - (c) establish procedures to provide disclosure of information to customers of the company for dealing with complaints.
- (3) A director or officer of a licensee, in exercising the powers of a director or officer and discharging the duties of a director or officer, must:
  - (a) act honestly and in good faith for the best interest of the company; and
  - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.
- (4) A director, officer or employee of a licensee must comply with this Act and the Regulations made under this Act.

### **56 Avoiding conflict of interest**

- (1) A director or officer of a company who:
  - (a) is a party to a contract or proposed contract with the company; or
  - (b) is a director or officer of an entity that is a party to a contract or proposed contract with the company, or
  - (c) has a material interest in a person who is a party to a contract or proposed contract with the company;

must disclose in writing to the company, or request to have entered in the minutes of the meetings of directors, the nature and extent of that interest.

- (2) The disclosure must be made- in the case of a director:
- (a) at the first meeting of directors at which the director is present when the proposed contract is first considered; or
  - (b) if the director did not then have an interest in a proposed contract - at the first meeting after the director acquires an interest; or
  - (c) if the director acquires an interest in a contract after it is entered into- at the first meeting after the director acquires an interest; or
  - (d) if a person who has an interest in a contract later becomes a director- at the first meeting after that person becomes a director.
- (3) The disclosure must be made-in the case of an officer who is not a director:
- (a) immediately after the officer becomes aware that a proposed contract is to be considered or a contract has been considered at a meeting of directors; or
  - (b) if the officer acquires an interest in a contract after it is entered into, as soon as practicable after the officer acquires an interest; or
  - (c) if a person who has an interest in a contract later becomes an officer, immediately after the person becomes an officer.
- (4) If a contract is one that, in the ordinary course of business of the company, would not require approval by the directors or shareholders, a director or officer mentioned in subsection (1) must, immediately after he or she becomes aware of the contract:
- (a) inform the company in writing on the nature and extent of his or her interest; or
  - (b) request the nature and extent of his or her interest to be entered in the minutes of the meeting of directors.

**57 Director not to vote in conflict of interest situations**

- (1) A director who has an interest in a contract as mentioned in section 56 must not be present at a meeting of directors while the contract is being considered, or vote on a resolution to approve the contract, unless the contract is:
- (a) an arrangement by way of security for money lent to, or obligations undertaken by, the director for the benefit of the company or a subsidiary of the company; or

(b) a contract relating primarily to the director's remuneration as a director, officer, employee or agent of the company or a subsidiary of the company or an entity controlled by the company or in which the company has a substantial investment; or

(c) a contract with an associated party of the company.

(2) A director who knowingly contravenes subsection (1) ceases to hold office as a director and is not eligible, for election or appointment as a director of a licensee, for a period of 5 years after the date on which the contravention occurred.

**58 Situations where conflict of interests not affecting approval of contract**

(1) A contract between an insurer and a director or officer of the insurer, between an insurer and another entity of which a director or officer of the insurer is a director or officer, or between an insurer and a person in which the director or officer has a material interest, is not void only:

(a) as a result of that relationship, or

(b) because a director with an interest in the contract is present at or is counted to determine the presence of a quorum at the meeting of directors or the committee of directors that approved the contract.

(2) Subsection (1) applies only if:

(a) the director or officer has disclosed the interest; and

(b) the contract was approved by the directors or the shareholders; and

(c) the contract was reasonable and fair to the insurer at the time it was approved.

**59 Insurer to notify Commission on appointments and terminations**

(1) An insurer must give the Commission the information the Commission requires on every director or managing executive appointed by it within 30 days after the appointment.

(2) If the appointment of a director or managing executive has been terminated, an insurer must inform the Commission within 30 days after the termination and provide the Commission with reasons for the termination.

## **PART 8 – COMPLIANCE AND MAINTENANCE OF RECORDS**

### **60 Compliance officers and compliance arrangements**

- (1) A licensed insurer or insurance manager must nominate a compliance officer to monitor compliance with this Act and to take responsibility for liaison with the Commission.
- (2) The compliance officer must have suitable qualifications and experience as determined by the Commission.
- (3) Subsections 43(5) and (6) apply to a compliance officer as they apply to an auditor.
- (4) A compliance officer must be approved by the Commission.
- (5) A licensee must establish and maintain procedures to be followed by the compliance officer to ensure compliance with this Act.
- (6) A compliance officer or in his or her absence the licensee must give the Commission the reports required by this Act.

### **61 Guidelines**

- (1) The Commission may issue written guidelines setting out the procedures to be followed to comply with this Act.
- (2) A licensee who complies with the guidelines is taken to have complied with this Act.
- (3) The Commission must make copies of the guidelines available to members of the public.

### **62 Maintenance of records**

- (1) A licensee must, except to the extent exempted by the Commission, maintain records of:
  - (a) the identity of policyholders, after the policy has come to an end; and
  - (b) details of policies held; and
  - (c) cancellations of policies by policyholders; and
  - (d) complaints received, with an indication whether or not the complaint has been resolved; and
  - (e) the continued compliance with the requirements of section 4; and
  - (f) cases of non-compliance with this Act, and the reasons for the non-compliance.
- (2) The records must be kept for at least 6 years.

## **PART 9 – THE INSURANCE POLICY**

### **63 Summary, inspection and copy of policy**

- (1) An insurer who carries on domestic business must give a person who enters into or varies an insurance policy with the insurer, a written summary of the policy.
- (2) The summary must include:
  - (a) the premiums payable and the policy benefits to be provided under the policy; and
  - (b) the events in respect of which the policy benefits are to be provided and the circumstances, if any, in which those benefits are not to be provided.
- (3) The summary must be provided within 60 days after the policy is entered into or varied.
- (4) The summary is prima facie proof of the policy and is taken to contain all the matters that are material to the assessment of the risks under the policy, in the absence of evidence to the contrary, however, the summary is not part of the policy.
- (5) The insurer must give the policyholder a copy of the policy if the policyholder requests a copy of the policy.
- (6) This section does not apply to a fund policy or a reinsurance policy.

### **64 Governing law**

All insurance policies for risks situated in Vanuatu are governed by the laws of Vanuatu.

### **65 Limitation on provisions of certain policies**

An insurer must comply with this Act when it:

- (a) undertakes to provide policy benefits, or is providing policy benefits, under an insurance policy; or
- (b) provides consideration on the surrender of an insurance policy; or
- (c) lends money on the security of an insurance policy.

**66 Certain provisions of agreements relating to life or general policies to be void**

A provision of an agreement is void if under the provision:

- (a) an insurer is exempted from liability under this Act for the actions, omissions or representations of a person acting on its behalf in relation to a life or general policy; or
- (b) the obligation of an insurer under an insurance policy depends on another person discharging an obligation under a reinsurance policy; or
- (c) a person who has entered into an insurance policy, or the life insured under an insurance policy, waives a right to which the person is entitled under this Act.

**67 Misrepresentation**

(1) Despite any provision in an insurance policy:

- (a) the policy is not invalidated; and
- (b) the insurer's obligation under the policy is not excluded or limited; and
- (c) the policyholder's obligations are not increased;

by a representation made to the insurer that is not correct, whether or not the representation was warranted to be correct, unless that representation is likely to have materially affected the assessment of the risk under the policy when it was issued or varied.

- (2) However, if the age of a life insured has been incorrectly stated to the insurer, the policy benefits are to be those that would have been provided under the policy for the premium payable if the age had been correctly stated.
- (3) The Commission may direct the insurer to apply a different method of adjustment to the policy benefits under the policy if the application of subsection (2) would be inequitable because of the nature of the insurance policy.
- (4) This section applies to an insurance policy that was entered into, before or after the commencement of this Act.

**68 Validity of an insurance policy**

- (1) An insurance policy entered into before or after the commencement of this Act, is not void only as a result of a contravention or non-compliance with a provision of this Act or any other Act.
- (2) If a person has entered into an insurance policy with an insurer who under this Act was prohibited from entering or not authorised to enter into the policy, the person or the Commission may cancel the policy by written notice to the insurer.
- (3) If the policy has been cancelled under subsection (2), the person is in the same position as if the policy had been cancelled because of a breach of contract by the insurer.
- (4) An insurance policy entered into before the commencement of this Act is not void only for the reason that:
  - (a) this Act prohibits policies of that kind; or
  - (b) the policy contains terms prohibited by this Act.
- (5) For the purposes of the validity of an insurance policy, payment of a premium under the policy to a licensed insurance agent or insurance broker is taken to be payment to the insurer under the policy.

**69 Protection of policy benefits under certain life policies**

- (1) Policy benefits provided or to be provided to a person under a life, disability or health policy in which the person or the person's spouse is the life insured and that has been in force for at least 3 years, or the assets acquired exclusively with those policy benefits:
  - (a) during the person's lifetime are not liable to be attached or subjected to a judgment of a court or to form part of the person's insolvent estate; and
  - (b) on the person's death are not available to pay the person's debts, if the person is survived by a spouse, child, stepchild or parent.
- (2) Subsection (1) does not apply to a debt secured by the policy.
- (3) Subsection (1) applies:
  - (a) to assets acquired solely with the policy benefits, for 5 years after the policy benefits were provided; and
  - (b) only to policy benefits and assets so acquired up to an amount specified by the Commission.

- (4) Policy benefits are only protected under this section if they devolve upon the spouse, child, stepchild or parent of the person referred to in subsection (1) after that person's death.

**70 Partial realisation of protected policies**

- (1) A judgment creditor, or the trustee of the insolvent estate of a policyholder, who is entitled to part of the realisable value of an insurance policy and who has the policy must deliver it to the insurer who is liable under the policy, to enable the insurer to pay the creditor or trustee.
- (2) If another person has the policy, that person if requested by the judgment creditor or trustee, give the policy to the insurer who is liable under the policy so the insurer can pay the creditor or trustee.
- (3) After being in possession of the insurance policy, the insurer must:
  - (a) pay the judgment creditor or trustee a sum equal to that part of the realizable value of the policy to which the judgment creditor or trustee is entitled; and
  - (b) deal with the rest of the realisable value of the policy in accordance with section 75.

## **PART 10 – PREMIUM AND PAYMENT OF PREMIUM**

### **71 Receipt for premium paid in cash and validity of policy**

- (1) The person to whom a premium is paid must give the person who paid the premium a receipt for the payment.
- (2) The receipt must state the name, address and contact number of the person who received the payment, the provisional policy number and the name of the insurer on whose behalf the premium is received.
- (3) For the purposes of the validity of an insurance policy, the payment of a premium under the policy to a person authorised to act on behalf of the insurer is taken to be payment to the insurer under the policy.

### **72 Collection of premiums by intermediaries**

- (1) An insurance intermediary must not receive, hold, or deal with premiums payable under an insurance policy entered into or to be entered into with an insurer unless authorised to do so by the insurer.
- (2) The premium must be paid by the insurance intermediary to the insurer:
  - (a) within 30 days of receiving the premium; or
  - (b) within another period agreed with the insurer.

### **73 Policy suspended until payment of first premium**

An insurer's obligations under an insurance policy, other than a fund policy or a reinsurance policy, are suspended until:

- (a) if there is only one premium – that premium has been paid; or
- (b) if there are two or more premiums – the first premium has been paid; or
- (c) arrangements to the insurer's satisfaction have been made to pay the premium by debit order, credit card or other instrument.

### **74 Failure to pay premiums**

- (1) If a premium under an insurance policy, other than a fund policy or a reinsurance policy, has not been paid on its due date:
  - (a) the insurer must inform the policyholder in writing of the non-payment; and

- (b) the policy remains in force for the period provided under subsection (2) or (3);  
and
  - (c) if the overdue premium is not paid by the end of the period provided in subsection (2) or (3), the policy is to be dealt with under section 75.
- (2) The period for which a policy remains in force is:
- (a) if there are to be two or more premium payments at intervals of one month or less - 15 days after the due date; and
  - (b) if there are to be two or more premium payments at intervals of longer than one month – one month after the due date.
- (3) A period referred to in subsection (2) may be extended with the consent of the insurer and the policy holder.
- (4) An insurer must make rules providing for the methods, for valuing an insurance policy and dealing with the policy for the purposes of this section and section 75.

**75 Consequences if premium remains unpaid**

- (1) If the remaining value of a life policy, after meeting any claim of the insurer that is secured solely by the policy, is greater than half of the total premium payments due in the 12 months after the due date of the unpaid premium, the insurer must:
- (a) inform the policyholder in writing of the remaining value, and that the policy will remain in force until:
    - (i) the policy no longer has any remaining value; when it will lapse; or
    - (ii) the premium is paid; or
    - (iii) the policy is amended, so that it becomes a fully paid up policy; or
    - (iv) if the policyholder so requests, the policy is surrendered, and the remaining value is paid to the policyholder; and
  - (b) deal with the policy accordingly.
- (2) In any other case, the insurance policy lapses at the end of the period mentioned in subsection 74 (2).

## **PART 11 – INSURANCE AGENTS, INSURANCE BROKERS AND INDEPENDENT INSURANCE SALESPERSONS**

### **76 Insurance agents**

- (1) An insurance agent must not:
  - (a) provide intermediary services for a person who is not a licensed insurer; or
  - (b) act for an insurer, unless the insurance agent can provide confirmation, certified by the insurer, to customers:
    - (i) that a contract to act for the insurer exists; and
    - (ii) that the insurer accepts responsibility for those activities of the insurance agent that are covered by the contract.
- (2) An insurer must:
  - (a) at all times be satisfied that an insurance agent that acts for the insurer, and key individuals of the insurance agent, are competent to act for the insurer; and
  - (b) take all reasonable steps in the circumstances to ensure that the insurance agent complies with this Act and other relevant laws of Vanuatu on conducting business, and any applicable code of conduct.
- (3) The insurer must keep an up to date list of insurance agents that act for the insurer, and key individuals of the insurance agents.
- (4) The list must:
  - (a) contain each insurance agent's and key individual's name and business address; and
  - (b) state the scope of the agent's authority.
- (5) The Commission may require information from the insurer to enable the Commission to maintain an up to date register of the insurance intermediaries and key individuals.

**77 Disqualification of an insurance agent**

- (1) If an insurer becomes aware that an insurance agent of the insurer is no longer competent to act for the insurer, the insurer must as soon as practicable:
  - (a) withdraw the authority given to the agent; and
  - (b) ensure that the agent no longer acts for the insurer; and
  - (c) remove the agent's name, and the names of its key individuals, from the insurer's list of agents kept under section 76; and
  - (d) inform the Commission in writing that the agent's authority has been withdrawn.
- (2) The insurer must ensure that the interests of the agent's customers are protected and that any uncompleted business of the agent is properly concluded.

**78 Insurance brokers**

- (1) An insurance broker must not provide intermediary services for customers for domestic insurance with an unlicensed insurer without the approval of the Commission.
- (2) The Commission may grant an approval under this section if:
  - (a) the insurance for the particular risk is not available from a licensed insurer in Vanuatu; or
  - (b) the insurance is available but the terms and conditions are unreasonable.
- (3) An insurer must to the best of its ability ensure that an insurance broker acts within the authority given by the customer to the insurance broker.

**79 Independent insurance salespersons**

- (1) An independent insurance salesperson must not:
  - (a) promote or market an insurance product for any person who is not licensed as an insurer; or
  - (b) promote or market an insurance product from an insurer, unless the independent insurance salesperson can provide confirmation, certified by the insurer, to customers that the independent insurance salesperson has the right to promote or market the insurer's insurance product.
- (2) An insurer must:

- (a) at all times be satisfied that an independent insurance salesperson that promotes or markets its products:
    - (i) is competent to present its insurance products; and
    - (ii) complies with accepted principles for sales promotion; and
    - (iii) will not use intimidation methods or high pressure sales techniques; and
  - (b) take all reasonable steps in the circumstances to ensure that the independent insurance salesperson complies with this Act and other laws of Vanuatu on conducting business, and any applicable code of conduct.
- (3) The insurer must keep an up to date list of the independent insurance salespersons who promote or market its insurance products.
  - (4) The list must:
    - (a) contain each independent insurance salesperson's name and business address; and
    - (b) state the insurance products the salesperson is to promote or market.
  - (5) The Commission may require information from the insurer to enable the Commission to maintain and update the register of the insurance intermediaries.

**80 The Agreement between the insurer and the insurance intermediary**

- (1) An insurer, or a person acting for an insurer, must not offer or give consideration to an insurance intermediary for providing services as intermediary, other than in accordance with this Act.
- (2) An insurer must not authorize an insurance intermediary to enter into an insurance policy, other than a reinsurance policy, on its behalf, unless the policy is covered by an agreement between the insurer and the insurance intermediary that:
  - (a) sets out, the kinds of insurance policies that the intermediary may enter into, the premiums or the basis for the calculation of premiums to be charged, the wordings of those policies and the maximum value of the policy benefits that may be provided under each kind of policy;
  - (b) sets out the scope of the intermediary's powers to settle or pay claims under the policies and the circumstances where it may do so; and
  - (c) if the intermediary is entitled to be paid other than by way of commission - sets out the basis on which the intermediary is to be paid; and

- (d) requires the intermediary to disclose to the prospective policyholder, before entering into a policy on the insurer's behalf, the insurer's name and the fact that the intermediary is acting under the agreement.
- (3) An insurer is liable under an insurance policy entered into or issued, or purporting to have been entered into or issued, on its behalf by an intermediary who acted outside the authority given to him or her by the insurer if the person purchasing the policy has reasonable grounds to believe that the intermediary acted within the authority given to it by the insurer.

**81 Withdrawal of an independent insurance salesperson's authority to act for the insurer**

If an insurer becomes aware that an independent insurance salesperson used by the insurer fails to comply with paragraph 79 (2)(a), the insurer must as soon as practicable:

- (a) withdraw the authority given to the salesperson; and
- (b) ensure that the salesperson no longer acts for the insurer; and
- (c) remove the salesperson's name from the insurer's list of salespersons kept under section 79; and
- (d) inform the Commission in writing that the salesperson's authority has been withdrawn.

**82 Personal liability of intermediaries**

An insurance agent, insurance broker or other intermediary is personally liable to the insured person, as if he or she was the insurer, on all policies unlawfully issued by or through the agent, broker or other intermediary directly or indirectly with an insurer that is not licensed to carry on domestic insurance business under this Act.

## **PART 12 - BUSINESS PRACTICE**

### **83 Insurer's and insurance intermediary's duty of care**

- (1) An insurer and an insurance intermediary must when providing insurance services ensure that a customer or potential customer is given sufficient information and assistance to be able to make informed decisions, so that the customer's reasonable financial needs regarding insurance products will be appropriately and suitably addressed.
- (2) Without limiting subsection (1), an insurer and an insurance intermediary must:
  - (a) act honestly and fairly, and with due skill, care and diligence, in the interests of customers and the integrity of the insurance industry; and
  - (b) have and use effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities; and
  - (c) seek from customers appropriate and available information about their financial situations, financial product experience and objectives in connection with the insurance service required; and
  - (d) act with circumspection and treat customers fairly in a situation of conflicting interests; and
  - (e) inform the customer, and set out in the contract, the total fees, costs or other expenses that will be charged by the insurer or the insurance intermediary for its services; and
  - (f) comply with the law of Vanuatu that applies to the conduct of business.
- (3) In addition to subsection (2), an insurance intermediary must :
  - (a) give customers all relevant material information, including the insurer's actual or potential interests, in relation to dealings with customers; and
  - (b) maintain adequate and appropriate record-keeping; and
  - (c) not be involved in fraudulent and misleading advertising, canvassing or marketing or other forms of fraudulent activities; and
  - (d) maintain proper safe-keeping, separation and protection of funds and transaction documentation of customers.

## **PART 13 – TRANSFERS, MERGERS AND ACQUISITIONS**

### **84 Approval of Commission required for transfers, mergers, and acquisitions**

- (1) No transaction to which an insurer is a party and which constitutes an agreement or a scheme by which all or any part of the business of the insurer is transferred to another person, has legal effect without the approval of the Commission.
- (2) For the purposes of subsection (1), an arrangement entered into between two or more insurers, by which a liability of an insurer towards policyholders is to be substituted for a liability of another insurer towards those policyholders, whether or not:
  - (a) the insurer's liability is expressed in or created by existing policies or by new policies; or
  - (b) the terms of the new policies are the same as the terms of the original policies;

is a scheme for the transfer of an insurance business.

### **85 Application to Commission**

- (1) The insurers involved in a transaction mentioned in section 84 must apply to the Commission for approval of the transaction.
- (2) The insurers must, at least within 14 days before making the application, cause a notice to be published in the Gazette and in a newspaper circulating in Vanuatu setting out:
  - (a) the names of the insurers involved; and
  - (b) the proposed date of the transfer; and
  - (c) any other information the Commissioner requires.
- (3) The application must:
  - (a) set out the names and contact details of the insurers; and
  - (b) for an insurer that carries on life insurance business - have with it the opinion of the first insurer's actuary on the fairness of the transaction to the existing policyholders; and
  - (c) contain the other information about the transaction the Commission requires; and
  - (d) be accompanied by a copy of the notice.

- (4) A person whose interests may be affected by the transaction may within 30 days after the publication of the notice make written representations to the Commission about the transaction.
- (5) The Commission may:
  - (a) appoint a person, at the insurers' expense, to inquire into and report to the Commission on the desirability or otherwise of the transaction; and
  - (b) by notice, direct a party to the transaction to give the Commission or the person the information and documents about the transaction that the person may require.

**86 Conditions of approval**

- (1) The Commission may approve a transaction with conditions imposed on the transaction.
- (2) The Commission must not approve a transaction unless:
  - (a) the provisions of this Part have been complied with; and
  - (b) the transaction is consistent with this Act; and
  - (c) it is not contrary to the interests of the policyholders of the insurer; and
  - (d) the parties have paid the cost of the inquiry mentioned in paragraph 85(5)(a).

**87 Approved transaction**

- (1) A transaction approved by the Commission is binding on all persons and has effect as ordered by the Commission.
- (2) An insurer that is a party to the transaction must:
  - (a) pass a special resolution confirming the transaction as approved by the Commission; and
  - (b) give the Commission a copy of the resolution and the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by another director of the insurer to be a true and correct copy, within 60 days after the resolution is passed.

## **PART 14 – ANTI MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM**

### **88 Functions of the Commission in relation to Anti Money Laundering and Combating the Financing of Terrorism**

- (1) The Commission must supervise insurers, insurance managers, and insurance intermediaries to ensure that they comply with the *Financial Transaction Reporting Act No. 33 of 2000*, and in particular that they:
  - (a) identify, verify and record customers and transactions; and
  - (b) report suspicious transactions and cash transactions to the Financial Intelligence Unit; and
  - (c) have a compliance program; and
  - (d) train their employees to comply with the *Financial Transaction Reporting Act No. 33 of 2000*.
- (2) The Commission must also notify the Financial Intelligence Unit if it becomes aware of possible incidents of money laundering or financing of terrorism.

### **89 Suspicious Transaction Reporting**

An insurer and an insurance intermediary must:

- (a) if they suspect a transaction may be involved in money laundering or financing terrorism, report the transaction to the Financial Intelligence Unit; and
- (b) report all cash transactions that exceed VT one million to the Financial Intelligence Unit; and
- (c) send a copy of the report to the Commission no later than three days after making the report.

### **90 Suspension or cancellation of licence for breach of the Financial Transaction Reporting Act No. 33 of 2000**

Failure by an insurer or an insurance intermediary to comply with the requirements of the *Financial Transaction Reporting Act No. 33 of 2000* is a ground for suspension of the licence under section 25, or cancellation of the licence under section 27.

## **PART 15 - ENFORCEMENT**

### **91 Civil remedies**

If the Commission is satisfied on the basis of available information that a person has contravened or failed to comply with a provision of this Act, or is likely to contravene or fail to comply with a provision of this Act, the Commission may in writing:

- (a) direct the person to stop committing the act or omission or refrain from doing so in future; and
- (b) require the person to take the remedial steps the Commission considers necessary to rectify the consequences of the act or omission, including consequences that prejudiced or can prejudice a policyholder.

### **92 Removal of appointees who are not fit and proper**

(1) The Commission may in writing require a licensee to terminate the appointment of a board member, senior manager, officer, auditor or actuary of the licensee if:

- (a) the person concerned is not fit and proper to hold the office concerned; or
  - (b) the person potentially could be in a material conflict of interest situation by simultaneously holding two positions.
- (2) A licensee must notify the Commission as soon as possible after the licensee becomes aware of circumstances that may be relevant to the fitness and propriety of a board member, senior manager, officer, auditor, actuary or key individual.
- (3) Before the Commission takes action under subsection (1), the Commission must give notice to the licensee and, unless it is impracticable to do so, to the person concerned:
- (a) giving details of the action that the Commission proposes to take, and the reasons; and
  - (b) stating that the licensee may make a submission to the Commission giving reasons as to why the person should not be removed.
- (4) The person named in the notice must cease to perform the functions of the office until the matter is finalised.
- (5) The Commission must consider the licensee's submission and make a decision either to require or not to require the person's removal from the office.

- (6) The Commission must give the licensee and, where practicable, the person, written notice of its decision.
- (7) The licensee and the person concerned may appeal to the court against the Commission's decision.
- (8) The person whose appointment has been terminated under this section can be barred by the Commission from acting in responsible capacities for a licensee in the future.

**93 Undesirable practices**

- (1) The Commission may declare a particular business practice to be undesirable and issue a cease and desist order prohibiting all or some licensees from conducting the practice.
- (2) The Commission must consider the following principles in deciding whether to make a cease and desist order:
  - (a) that the practice, directly or indirectly, has or is likely to have the effect of:
    - (i) harming the relations between an insurer, insurance intermediary, policyholder or the general public; or
    - (ii) unreasonably prejudicing a policyholder; or
    - (iii) deceiving a policyholder; or
    - (iv) unfairly affecting a policyholder, contrary to public interest; or
  - (b) that if the practice is allowed to continue, one or more objects of this Act will, or is likely to, be defeated.
- (3) A licensee must not, on and after the date of the cease and desist order, carry on the business practice named in the order.
- (4) The Commission may direct a licensee who, on or after the date of the cease and desist order, carries on the business practice concerned in contravention of the order, to rectify or reinstate to the satisfaction of the Commission any loss or damage caused by or arising out of the carrying on of the business practice concerned.
- (5) A licensee who is directed to rectify or reinstate anything must do so within 60 days after the direction is issued.
- (6) A further breach of a cease and desist order by a licensee is grounds for the suspension or cancellation of the licence.

**94 The Commission's powers to intervene**

- (1) The Commission may take any of the following actions if it considers it necessary to do so in the interests of policyholders or of the public generally:
  - (a) issue formal directions to a licensee to do particular things or to stop doing particular things; and
  - (b) prohibit an insurer from issuing new policies; and
  - (c) require an insurer, that it considers to be failing, to transfer its obligations under its policies to another insurer that accepts this transfer; and
  - (d) require capital levels to be increased, restrict or suspend dividends or other payments to shareholders, restrict asset transfers and restrict an insurer's purchase of its own shares; and
  - (e) restrict the ownership or activities of a licensee's subsidiary if the Commission is of the opinion that the activities jeopardise the financial position of the licensee.
- (2) Failure to comply with a formal direction or requirement of the Commission is a ground for suspending or canceling the licensee's licence.

## **PART 16 – OFFENCES AND PENALTIES**

### **95 Offences by persons other than a licensee or compliance officer**

A person other than a licensee or a compliance officer who:

- (a) contravenes or fails to comply with a notice, directive or request referred to in sections 6, 11, or 13; or
- (b) contravenes or fails to comply with sections 14, 16, 30, or 52; or
- (c) contravenes or fails to comply with a provision of the Regulations; or
- (d) gives false information in relation to an application referred to in section 18 or an application for the approval of the Commission;

is guilty of an offence punishable on conviction:

- (i) for an individual, by fine of not exceeding VT 1,000,000 or imprisonment for a term not exceeding 3 years, or both; or
- (ii) for a body corporate, by a fine not exceeding VT 5,000,000.

### **96 Offences by licensees and compliance officers**

A licensee or compliance officer who:

- (a) contravenes or fails to comply with a notice, directive or requirement referred to in sections 6, 11 or 13; or
- (b) contravenes or fails to comply with sections 39, 40, 41, 44, 51, 55, 59, 60(6), 61, 76, 78, 79 or 83; or
- (c) contravenes or fails to comply with a provision of the Regulations;

is guilty of an offence punishable on conviction:

- (i) for an individual, by a fine not exceeding VT 1,000,000 or imprisonment for a term not exceeding 3 years, or both; or
- (ii) for a body corporate, by a fine not exceeding VT 50,000,000.

**97 Penalty for failure to lodge returns, etc**

- (1) A person who fails to give the Commission a return, information or document required by this Act or the Regulations by the due date is liable to a penalty not exceeding VT1,000 for every day during which the failure continues.
- (2) A licensee who fails to pay the licence fee by the due date is liable to a penalty of 10 percent of the license fee for everyday during which the failure continues.
- (3) An unpaid fee payable to the Commission under section 105 and penalty which is payable under this section, is a debt due to the Commission and can be recovered by the Commission in Court.
- (4) This section applies regardless of any criminal proceedings instituted against the person under this Act.

## **PART 17 – INSOLVENCY AND WINDING UP**

### **98 Voluntary winding-up and closure**

Voluntary winding up or closure of business by a licensee does not have legal effect unless:

- (a) the licensee has informed the Commission in writing that the business is to close and has set out the arrangements that have been made to meet all liabilities under transactions entered into with policyholders before the winding-up or closure; and
- (b) the Commission has informed the licensee, in writing, that the proposed arrangements are satisfactory to the Commission.

### **99 Winding-up by Court**

The Commission may apply for the winding-up of an insurer if it is satisfied that it is in the interests of the insurer's policyholders to do so.

## **PART 18 – TRANSITIONAL AND GENERAL PROVISIONS**

### **100 Existing insurers**

- (1) This Act applies to a person who was authorized under the *Insurance Act [CAP 82]* to carry on life or general insurance or intermediary insurance business immediately before the commencement of this Act.
- (2) The person must, within 6 months after the commencement of this Act, either:
  - (a) apply to the Commission for a licence under this Act; or
  - (b) cease to carry on the insurance business.
- (3) The person is deemed to be licensed under this Act as a life or general insurer or as an insurance intermediary from the commencement of this Act:
  - (a) if the person applies for a licence under this Act – until the licence application is decided by the Commission; or
  - (b) if the person does not apply for a licence – until the end of 6 months after the commencement of this Act.
- (4) The Commission must make a decision on the licence application within 18 months after the commencement of this Act.
- (5) If the Commission refuses to issue a licence:
  - (a) the Commission must as soon as practicable inform the person in writing of its decision; and
  - (b) the person ceases to hold a licence 28 days after the date the person is notified of the decision; and
  - (c) if the person is an insurer, the insurer must during the next 12 months ensure an orderly run-off of policies.

### **101 First financial year**

The first financial year of an insurer must not end earlier than six months or later than 18 months after the insurer's licence is issued, unless approved by the Commission.

### **102 Existing insurers to separate life and general insurance business**

- (1) An insurer registered under the *Insurance Act [CAP 82]* who was authorised to carry on both life insurance and general insurance business must, within 6 months after the

commencement of this Act, make arrangements satisfactory to the Commission that have the result that:

- (a) the life insurer ceases to carry on general insurance business; and
  - (b) the general insurer ceases to carry on life insurance business.
- (2) The insurer must during the next 12 months:
- (a) ensure an orderly run-off of policies in the business it no longer carries on; or
  - (b) if approved by the Commission - transfer the policies to another licensed insurer.

**103 Appeals against decisions of the Commission.**

- (1) A person aggrieved by a decision of the Commission may appeal to the Supreme Court.
- (2) An appeal must be made within a period of 28 days after the date of the notice of the Commission's decision.
- (3) The Supreme Court may:
- (a) set aside the decision of the Commission and if the Supreme Court considers it appropriate to do so, refer the matter back to the Commission with any directions the Supreme Court thinks appropriate; or
  - (b) confirm the decision, in whole or in part.

**104 Regulations**

- (1) The Minister may make Regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may:
- (a) limit the amount and the extent to which an insurer may invest in particular kinds of assets, specify how the limit is to be determined and define the kinds of assets to which the limit applies;
  - (b) prohibit an insurer from giving consideration , or limiting the amount of consideration, to a person acting as insurance intermediary;

- (c) prohibit a person other than an insurer from giving any consideration to an insurance intermediary, or prescribe the circumstances in which the person may give consideration;
- (d) set out the periods within which an insurer must issue policies or amended policies;
- (e) set out the matters an insurer must report to the Commission and when the report must be made;
- (f) set out the solvency method to calculate the values of assets, liabilities and capital adequacy requirement;
- (g) set out the minimum requirements and frequency of the actuary's report to the Commission;
- (h) provide that expressions with a particular meaning must not appear in a policy , and that the expressions are void if they do appear;
- (i) set out the information to be given to a prospective policyholder or policyholder and how the information is to be given, and the consequences if that is not done;
- (j) set out when and how a policyholder may cancel a policy and the legal consequences if he or she does that;
- (k) provide that different arrangements may apply to different kinds of policies;
- (l) make other provisions aiming to ensure that policies are entered into, given effect to and enforced in accordance with sound insurance principles and practice and in the interests of the parties and the public generally;
- (m) provide for penalties, not exceeding a fine of VT 50,000, for failing to comply with the Regulations; and
- (n) prescribe forms to be used under this Act.

#### **105 Fees**

- (1) The Minister may determine the fees payable by a licensee who is seeking a decision or the performance of any other act by the Commission under this Act.
- (2) The fees are payable in the manner and at the time determined by the Minister.

#### **106 Repeal**

The Insurance Act [CAP 82] is repealed.

**107 Commencement**

This Act commences on the date on which it is published in the Gazette.