

No. 23 of 1995.

Insurance Act 1995.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Insurance Act 1995,

Being an Act relating to insurance and to repeal the *Insurance Act* (Chapter 255) and for related purposes,

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely–

- (a) the right to freedom from arbitrary search and entry conferred by Section 45 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**accident insurance business**” means the business of undertaking liability under policies of insurance in respect of the happening of personal accidents, whether fatal or not, disease or sickness, or any class of personal accident, disease or sickness;

“actuary” means a person formally qualified to the satisfaction of the Commissioner and who provides actuarial services under Section 33 or 41;

“agent” means a person providing marketing, administration, management or any other services to any person licensed under this Act, and who is subject to provisions of Section 39;

“books” includes accounts, deeds, writings, documents and any other records of information however compiled, recorded or stored, and whether in written or printed form, on microfilm or in any other form;

“broker” means a person who, for or in expectation of gain, acts as or carries on business as the agent of an insured person or a proponent for insurance in connection with the transaction of general insurance business;

“carry on”, in relation to an insurer other than a Lloyd’s underwriter, means to seek, offer to accept or accept in the country any general insurance business whether by himself or by some other person acting on his behalf or with his authority;

“the Commissioner” means the Commissioner of Insurance appointed under Section 5(1);

“collusive practices” means the conspiring together of two or more persons to manipulate the price of a general insurance product artificially to a level that would not be achieved in a fair and freely operating competitive market;

¹**“continuous disability policy”** has the same meaning as in the Life Insurance Act;

²**“Life Insurance Act”** means the Life Insurance Act 2000.

³**“life insurance business”** has the same meaning as in the Life Insurance Act.

⁴**“existing insurer”** means—

- (a) Mitsui Marine and Fire Insurance Co., Ltd.; and
- (b) American Home Assurance Company Inc.; and
- (c) The New Zealand Insurance Co., Ltd.;

“financial year”, in relation to a corporation, means the period in respect of which a profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;

“general insurance business” means—

¹ Section 2 Amended by No. 62 of 2000, s. 168.

² Section 2 Amended by No. 62 of 2000, s. 168.

³ Section 2 Amended by No. 62 of 2000, s. 168.

⁴ Section 2 Amended by No. 62 of 2000, s. 168.

- (a) the business of undertaking liability by way of insurance (including re-insurance) in respect of any loss or damage, including liability to pay damages or compensation, contingent on the happening of a specified event; and
- (b) any business incidental to general insurance, but does not include—
- (c) life insurance business; and
- (d) accident insurance business undertaken solely in connection with life insurance business; and
- (e) any prescribed insurance business;

“Insurance Complaints Tribunal” means the Tribunal established under Section 48;

“insurer” means a person who carries on general insurance business;

“licensed broker” means a broker licensed under Part III;

“licensed insurer” means an insurer licensed under Part III;

“licensed loss adjuster” means a loss adjuster licensed under Part III;

“Lloyd’s” means the society of that name incorporated by the Imperial Act known as *Lloyd’s Act, 1871*;

“Lloyd’s broker” means a broker who acts, either directly or indirectly, on behalf of and with the authority of a Lloyd’s underwriter in the issue of cover for general insurance risks and for incidental purposes;

“Lloyd’s underwriter” means an underwriting member of Lloyd’s;

“loss adjuster” means a person or corporation who acts for or represents the insurer or the insured *inter alia* for the purpose of investigation or determining liability and/or the amount to be paid in settlement of an insurance claim;

“member of Insurance Complaints Tribunal” means a person appointed under Section 48 to be a member of the Insurance Complaints Tribunal;

“principal officer” means the most senior officer within Papua New Guinea of a licensee, being the person responsible for managing the affairs of the licensee within Papua New Guinea;

“profit and loss account” includes an income and expenditure account, a revenue account and any other account showing the results of the business of a corporation for a period;

“the Register of Licensed Insurers and Licensed Brokers and Licensed Loss Adjusters” means the register kept under Section 70;

⁵“**regulated entity**” has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

⁶“**regulated contract**” has the same meaning as in the *Independent Consumer and Competition Commission Act 2002*;

“**sub agent**” means a person providing marketing, administration, management and any other services to any person defined as an agent and who is subject to the provisions of Section 39;

“**temporary disability insurance business**” means the business of undertaking liability under policies of insurance in respect of the happening of personal accidents, or disablement from sickness to maximum cover periods of 104 weeks;

“**this Act**” includes the Regulations.

3. APPLICATION.

This Act does not apply to or in relation to general insurance business carried on by—

- (a) the State; or
- (b) a prescribed person, body or authority.

4. APPLICATION OF OTHER ACTS.

(1) The requirements of this Act in relation to corporations are in addition to and not in derogation of or substitution for the requirements of—

- (a) the *Companies Act 1997*; or
- (b) the *Banks and Financial Institutions Act 2000*; or
- (c) the *Motor Vehicles (Third Party Insurance) Act 1974*; or
- (d) the *Insurance Corporation Act 1977*; or
- (e) the *Investment Authority Act 1992*,

but in the case of a conflict or inconsistency between the provisions of this Act and the provisions of an Act referred to in Paragraphs (a) to (e) inclusive, the provisions of this Act prevail.

(2) The Head of State, acting on advice, may make Regulations to exempt a licensed insurer established by an Act of the Parliament from any of the provisions of this Act where the provisions of this Act are inconsistent with the provisions of the Act establishing the licensed insurer.

(3)⁷ ⁸The requirements of this Act in relation to corporations are in addition to and not in derogation of or substitution for the requirements of the Life Insurance

⁵ Section 2 Amended by No. 93 of 2006, s. 1.

⁶ Section 2 Amended by No. 93 of 2006, s. 1.

⁷ Section 4 Subsection (3) inserted by No. 62 of 2000, s. 169.

Act in the case of a conflict or inconsistency between the provisions of this Act and the provisions of the Life Insurance Act, the provisions of the Life Insurance Act prevail.

⁸ Section 4 Subsection (3) inserted by No. 62 of 2000, s. 169.

PART II. – ADMINISTRATION.**5. THE INSURANCE COMMISSIONER.**

(1)⁹ ¹⁰For the purposes of this Act, there shall be an Insurance Commissioner whose manner of appointment, suspension or dismissal are as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) Subject to any directions of the Minister, the Commissioner is charged with the administration of this Act.

6. TENURE OF OFFICE AND CONDITIONS OF SERVICE.

(1) Subject to this Act, the Commissioner holds office for such period as is specified in the instrument of his appointment.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the terms and conditions of appointment and service of the Commissioner are as the Minister from time to time fixes.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Commissioner, and a person shall not be appointed or re-appointed as the Commissioner for a period that extends beyond the date on which he will attain the age of 65 years.

7. SALARY AND ALLOWANCES.

Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, the Commissioner shall be paid salary and allowances at such rates, or in accordance with such scales of rates, as are fixed by the Minister after consultation with the Departmental Head of the Department responsible for Personnel Management.

8. LEAVE OF ABSENCE.

The Minister may grant leave of absence to the Commissioner on such terms and conditions as to remuneration or otherwise as the Minister fixes.

9. OUTSIDE EMPLOYMENT.

(1) The Commissioner shall not engage in paid employment outside the duties of his office.

Penalty: A fine not exceeding K5,000.00 or 50% of the value of the emoluments received by the Commissioner from such employment, whichever is the greater amount.

(2) Subject to Subsection (3), a person who is a director or employee of a corporation that carries on insurance business in the country, or of a corporation

⁹ Section 5 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

¹⁰ Section 5 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

related to such a corporation, shall not be appointed as the Commissioner, and the Commissioner shall not become a director or employee of a corporation that carries on insurance business in the country, or of a corporation related to such a corporation.

(3) The Commissioner may be appointed to and hold office as a director of a corporation that carries on insurance business in the country, or of a corporation related to such a corporation, in his official capacity as Commissioner.

(4) The Commissioner shall give written notice to the Minister of all direct and indirect pecuniary interests that he has or acquires in any insurance business carried on in any corporation carrying on any such business.

Penalty: A fine not exceeding K5,000.00 or 50% of the actual value derived by the Commissioner from such interests, whichever is the greater amount.

10. PUBLIC SERVICE RIGHTS OF COMMISSIONER TO CONTINUE.

(1) Where an officer of the Public Service is appointed to be Commissioner, his service as Commissioner shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the grounds of illness; and
- (b) furlough or pay in lieu (including pay to dependents on the death of the officer).

(2) The provisions of the *Public Services (Management) Act 1995* relating to service in another organization apply in relation to the office of Commissioner as if it had been specifically included in that Act.

11. VACATION OF OFFICE OF COMMISSIONER.

(1) If the Commissioner—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand to the Minister; or
- (c) contravenes Section 9; or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (e) is convicted of an offence punishable under a law by death or imprisonment for one year or longer and, as a result of the conviction, is under sentence of death or imprisonment,

the Minister shall terminate his appointment.

(2) The Minister may terminate the appointment of the Commissioner for inability, inefficiency, incapacity or misbehaviour.

12. OATH OF OFFICE.

(1) Before entering on the duties of his office, the Commissioner shall take an oath or make an affirmation in the prescribed form.

(2) The oath or affirmation shall be taken or made before the Minister or a person appointed by the Minister for the purpose.

13. DELEGATION.

The Commissioner may, by instrument, delegate to any person all or any of his powers and functions (except this power of delegation).

14. ANNUAL REPORT.

The Commissioner shall, within three months after 31 December in each year, present to the Minister, for presentation to the Parliament, a report—

- (a) reviewing the operation of this Act during the year ended on that date; and
- (b) drawing attention to any measures that are, in his opinion, desirable for achieving the purposes of this Act; and
- (c) providing an assessment, including such statistical analysis of performance and trends in the general insurance industry as the Commissioner shall consider appropriate.

15. STAFF.

(1) Subject to Subsection (2), any staff (other than the Commissioner) required for the purposes of this Act shall be officers or employees of the Public Service.

(2) Subsection (1) does not prevent any person from being employed, on contract or otherwise, under any other law to perform functions and duties for the Commissioner.

16. SECRECY.

(1) This section applies to every person who is or has been the Commissioner or a member of the staff assisting the Commissioner.

(2) Subject to this section, a person to whom this section applies, who, directly or indirectly, except in the performance of a duty under or in connection with this Act—

- (a) makes a record of; or
- (b) divulges or communicates to any person,

any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act, is guilty of an offence.

Penalty: A fine not exceeding K2,500.00.

(3) This section does not prevent the communication of information or the production of a document by the Commissioner, or by a member of the staff assisting the Commissioner authorized by him for the purpose, to a person to whom, in the opinion of the Commissioner, it is in the public interest that the information be communicated or the document produced.

PART III. – LICENSING OF INSURERS AND BROKERS AND LOSS ADJUSTERS.

17. UNLICENSED PERSONS CARRYING ON GENERAL INSURANCE BUSINESS OR ACTING AS BROKERS OR LOSS ADJUSTERS.

(1) Subject to Section 25, a person, other than a licensed insurer, who carries on general insurance business is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

(2) Subject to Sections 19(12) and 25, a person, other than a licensed broker or licensed loss adjuster who carries on business as a broker or as a loss adjuster is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

(3) A person who acts as the agent of–

(a) an unlicensed insurer; or

(b) an unlicensed broker; or

(c) an unlicensed loss adjuster,

for the purpose of soliciting business or offering cover in connection with general insurance business is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

18. COMMISSIONER MAY LICENSE INSURERS, BROKERS AND LOSS ADJUSTERS.

(1) The Commissioner may, in accordance with this Part, issue and renew–

(a)¹¹ to a corporation incorporated under the laws of Papua New Guinea or to an existing insurer—a licence to carry on general insurance business; and

(b) to a person—a licence to carry on business as–

(i) an insurance broker; or

(ii) a loss adjuster.

(2) The Commissioner shall not issue or renew a licence under Subsection (1), unless he is satisfied that the licensed corporation or licensed person shall at all times maintain within Papua New Guinea capital at least to a minimum level determined by the Commissioner by notice in the National Gazette.

(3) The Commissioner shall not issue or renew a licence under Subsection (1)(b) unless he is satisfied that the licensed person shall at all times maintain current professional indemnity insurance at least to minimum levels and standards

¹¹ Section 18(1)(a) repealed and replaced by Act No. 42 of 1996, s 2.

or to levels which the Commissioner notifies in writing to a licensed person that he requires in a particular case.

19. LICENSING OF INSURERS AND BROKERS AND LOSS ADJUSTERS.

(1)¹² ¹³A corporation incorporated under the laws of Papua New Guinea or an existing insurer may apply to the Commissioner for a licence to carry on general insurance business.

(2) A person may apply to the Commissioner for a licence to carry on business as a broker or as a loss adjuster.

(3) An application for a licence under Subsection (1) or (2) shall—

- (a) be in writing; and
- (b) contain such information as is prescribed, and such additional information as the Commissioner, either generally or in any particular case, requires.

(4) Where, during the course of consideration of an application under Subsection (1) or (2), any change occurs in the information or additional information supplied under Subsection (3), the applicant shall notify the Commissioner in writing accordingly and where necessary shall supply replacement documents.

(5) The Commissioner may refuse to grant the application, or, subject to Subsection (6), may grant the application and issue a licence in the prescribed form.

(6) A licence issued under Subsection (5) may be subject to such conditions as the Commissioner considers appropriate.

(6A)¹⁴ ¹⁵If any condition in a licence held by a regulated entity conflicts with, or is inconsistent with, any term or condition of the regulatory contract relating to that regulated entity, the provisions of the regulatory contract shall prevail and the licence conditions, to the extent of any inconsistency, shall be of no effect.

(7) A person who is refused a licence under this section may, within 30 days after notice of the refusal is given to it or him, appeal to the Minister, whose decision is final.

(8) The Commissioner shall cause a notice of the issue of a licence under this section (other than a temporary licence under Subsection (12)) to be published in the National Gazette, and the licence takes effect on the date specified in the notice.

(9) The fee (if any) for a licence or temporary licence under this section is as prescribed.

(10) Subject to Subsection (12), unless earlier revoked, a licence under this section remains in force until 31 December next succeeding the date of issue.

¹² Section 19(1) repealed and replaced by the *Insurance (Amendment) Act* 1996 (No. 42 of 1996), s 3.

¹³ Section 19(1) repealed and replaced by the *Insurance (Amendment) Act* 1996 (No. 42 of 1996), s 3.

¹⁴ Section 19 Subsection (6A) inserted by No. 93 of 2006, s. 2.

¹⁵ Section 19 Subsection (6A) inserted by No. 93 of 2006, s. 2.

(11) A licence may be renewed by the Commissioner for periods each not exceeding one year on written application accompanied by the prescribed fee.

(12) The Commissioner may, on receipt of an application in writing, issue a temporary licence to carry on business as a loss adjuster for a period of less than one year and subject to such conditions as the Commissioner determines.

(13) A person, who makes an application under this section that is false or misleading in a material particular, is guilty of an offence.

Penalty: In the case of an application for a licence or the renewal of a licence as an insurer—a fine not exceeding K100,000.00. In the case of an application for a licence or the renewal of a licence as a broker or loss adjuster—a fine not exceeding K50,000.00.

20. DUTY OF LICENCE HOLDER TO GIVE NOTIFICATION OF CHANGES.

Where, while a licence is in force, there is any change in the information or additional information supplied to the Commissioner under Section 19(3), the licence holder shall notify the Commissioner in writing accordingly and where necessary shall supply such further information as the Commissioner requires.

21. LICENSING REQUIREMENTS IN RELATION TO DISABLEMENT INSURANCE.

(1) A licensed insurer may only carry on insurance business relating to continuous disability from accident or sickness if he is licensed to carry on life insurance business.

(2) Where an applicant for a licence under Section 19(1) intends to carry on insurance business solely relating to temporary disablement from accident or sickness, the Commissioner may issue a restricted licence which limits the holder to carry on insurance business relating solely to temporary disablement from accident or sickness.

(3) Where the Commissioner issues a restricted licence under Subsection (2), he may—

- (a) set out in writing any conditions he considers appropriate to the licence; and
- (b) waive or vary all or any of the following:—
 - (i) the amount of licence fee provided for under Section 19(9);
 - (ii) the minimum capital as provided for in Section 18(2);
 - (iii) the amount of deposit to be lodged under Section 27;
 - (iv) any other provision of this Act relating to the issue of a licence.

(4) The Commissioner shall specify—

- (a) in writing to the applicant; and

(b) by notice in the National Gazette,

any waivers or variations of the standard provisions of the Act which have been approved in relation to the issue of the licence.

(5) An applicant who is aggrieved by—

(a) a refusal to grant a restricted licence; or

(b) a condition or special provision imposed on a licence,

may, within 30 days of the refusal or imposition, appeal to the Minister whose decision shall be final.

22. RESTRICTIONS ON NAMES OF LICENSED INSURERS AND LICENSED BROKERS.

(1) Except with the written consent of the Minister, no licensed insurer or licensed broker or licensed loss adjuster may use the expression “Central”, “National”, “Papua”, “New Guinea”, “Papua and New Guinea”, “Papua New Guinea”, or “State”, or an expression of a similar meaning (whether in the English language or in any other language), in the name, description or title under which it carries on business in Papua New Guinea.

(2) Except with the written consent of the Minister, the words, “insurance”, “insurer”, “assurance” and “assurer” shall not be used in a business name or title or other form of promoting a business unless it is used by a licensed insurer or licensed broker or licensed loss adjuster.

(3) Where the Minister considers that the use of a name or description by a licensed insurer or a licensed broker or licensed loss adjuster carrying on business in the country is undesirable, he may, by notice in the National Gazette, prohibit the use of that name or description by licensed insurers or licensed brokers or licensed loss adjusters or by any or all.

(4) Subject to Subsection (5), a person who uses an expression, name or description in contravention of Subsections (1) or (2), or of a notice under Subsection (3), is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

(5) It is a defence to a charge of an offence against Subsection (4) if the person proves that he had not had a reasonable opportunity of taking whatever steps are necessary to change his or its name or abandon the use of the expression, name or description.

23. REVOCATION OF LICENCE.

(1) Where the Commissioner is of the opinion that a licensed insurer or licensed broker or licensed loss adjuster—

(a) has ceased to carry on business as an insurer or broker or loss adjuster, as the case may be, in the country, has gone into liquidation, has become bankrupt or applied to take the benefit of any law for the relief

of bankrupt or insolvent debtors, has been wound up or has been dissolved; or

- (b) has failed to comply with this Act; or
- (c)¹⁶ [*Repealed.*]
- (d) for any other reason should not continue to be licensed; or
- (e) has failed to make application for renewal of a licence before 1 January in any year,

the Commissioner may revoke the licence.

(2) Before revoking a licence under Subsection (1), the Commissioner—

- (a) shall give at least 30 days' notice of his intention to do so to the insurer or broker or loss adjuster, as the case may be, stating the grounds on which he intends to revoke the licence; and
- (b) shall give it or him an opportunity to make such written representations as he thinks fit within such period (not being less than 14 days) as is specified in the notice.

(3) An insurer or broker or loss adjuster whose licence is revoked under this section may, within 30 days after notice of the revocation is given to it or him, appeal to the Minister, whose decision is final.

(4) The revocation of a licence under this section takes effect—

- (a) where no appeal is lodged against the revocation—on the date specified by the Commissioner in the notice of revocation; or
- (b) where an appeal is lodged against the revocation and the appeal is dismissed—on the date specified by the Minister in the notice dismissing the appeal.

(5) A notice of revocation of a licence shall be published in the National Gazette.

24. REVOCATION ON REQUEST.

(1) Where a licensed insurer or licensed broker or licensed loss adjuster requests, by written notice to the Commissioner, that the licence issued to him be revoked, the Commissioner may, if he is of the opinion that it is proper to do so, by notice in the National Gazette revoke the licence.

(2) The revocation of a licence under Subsection (1) takes effect on the date specified by the Commissioner in the notice.

¹⁶ Section 23 Subsection (1) amended by No. 93 of 2006, s. 3.

25. EFFECT OF REVOCATION OR FAILURE TO RENEW.

Notwithstanding the revocation or the failure to make application for a renewal of a licence—

- (a) the insurer or broker or loss adjuster concerned may, with the approval of the Minister, carry on general insurance business or business as a broker or business as a loss adjuster, as the case may be, for the purpose of winding-up the business; and
- (b) proceedings may be taken for the enforcement of a right by or against the insurer or broker or loss adjuster.

26. POLICY GUIDELINES.

In the exercise and performance of his powers and functions under this Part, the Commissioner shall operate within any framework of policy laid down from time to time in policy guidelines issued by the Head of State, acting on advice.

PART IV. – DEPOSITS AND GUARANTEES.

27. DEPOSITS AND GUARANTEES BY LICENSED INSURERS AND LICENSED BROKERS.

(1) It is a condition of a licence that a licensed insurer and a licensed broker shall at all times during the currency of the licence maintain with the Department a deposit of money which amounts to minimum levels determined by the Minister.

(2) The Departmental Head may invest any deposit of money made under this section—

- (a) in any securities of, or guaranteed by, the State; or
- (b) on deposit in a bank; or
- (c) in the securities of any money market towards which the Central Bank acts as lender of last resort; or
- (d) in any other manner approved by the Minister.

(3) Any money deposited under Subsection (1) remains the property of the licensed insurer or licensed broker, as the case may be, and the insurer or broker is entitled to receive interest or other earnings on the money as are actually earned by the deposit at such rate as the Departmental Head from time to time advises.

(4) A deposit under Subsection (1) is security for the discharge firstly of the liabilities (including contingent liabilities) of—

- (a) a licensed insurer—in respect of all general insurance policies issued by him including any third-party policies issued under the pre-Independence *Motor Vehicles (Third Party Insurance) Act 1952*, notwithstanding the repeal of that Act; and
- (b) a licensed broker—in respect of all Lloyd's policies issued by him,

and is not applicable in the discharge of any other liabilities of the insurer or broker until those first-mentioned liabilities have been discharged or otherwise provided for to the satisfaction of the Commissioner.

(5) A deposit under Subsection (1) shall not be returned to the licensed insurer or licensed broker after the date when he ceases to be a licensed insurer or licensed broker, as the case may be, unless the Commissioner is satisfied that the liabilities (including contingent liabilities) of—

- (a) a licensed insurer—in respect of all general insurance policies issued by him; and
- (b) a licensed broker—in respect of all Lloyd's policies issued by him,

have been discharged or otherwise provided for to the satisfaction of the Commissioner.

(6) It is a condition of a licence as an insurer being issued to Lloyd's of London that, in addition to the deposit requirement outlined in Subsection (1), Lloyd's of London will lodge with the Commissioner a standing Banker's Guarantee, or other

similar form of security acceptable to the Commissioner, to a minimum level determined by the Minister, so as to provide a surety for the meeting of liabilities in relation to Papua New Guinean risks covered by Lloyds of London.

(7)¹⁷ ¹⁸This section does not apply to the successor company under the *Motor Vehicles (Third Party Insurance) Act 1974* or to any other company nominated under Section 72 of the *Motor Vehicles (Third Party Insurance) Act 1974* to provide compulsory third party motor vehicles insurance coverage.

¹⁷ Section 27 Subsection (7) inserted by No. 93 of 2006, s. 4.

¹⁸ Section 27 Subsection (7) inserted by No. 93 of 2006, s. 4.

PART V. – AUDIT, RETURNS, INSPECTION, ETC.**28. APPOINTMENT AND DUTIES OF AUDITOR.**

(1) A licensed insurer, a licensed broker and a licensed loss adjuster must have and shall appoint annually, or more frequently if required, an auditor who is–

- (a) a registered company auditor under the *Accountants Act 1996*; and
- (b) a person approved by the Commissioner.

(2) Where a licensed insurer or licensed broker or licensed loss adjuster fails to appoint an auditor as required by Subsection (1), the Commissioner may make the appointment and fix the remuneration to be paid to the auditor by the licensed insurer or licensed broker or licensed loss adjuster.

(3) The auditor shall audit and make a report to the Commissioner on the annual balance sheet and profit and loss account and such other returns and statements which the Commissioner shall determine by notice in the National Gazette as requiring an auditor's report and certification.

(4) For the purpose of an audit under this section, the auditor has all the powers of an auditor under the *Companies Act 1997* and the *Accountants Registration Act 1996*.

(5) A licensed insurer or licensed broker or licensed loss adjuster, who fails to comply with the provisions of this section, is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

29. RETURNS TO BE SUBMITTED BY INSURERS AND BROKERS AND LOSS ADJUSTERS.

(1) A licensed insurer or licensed broker or licensed loss adjuster shall submit in the form, time and manner determined by the Commissioner by notice in the National Gazette such reports, returns and other information as the Commissioner specifies in the notice.

(2) Where appropriate, returns outlined in Subsection (1) shall include such form of auditor's certification as the Commissioner determines by notice in the National Gazette as being required with regard to particular returns.

(3) Where the Commissioner considers that reports or returns submitted under this section or Section 28 are inadequate, inaccurate, misleading or otherwise unsatisfactorily presented in relation to standards as determined, the Commissioner may direct in writing the provision of explanations and variations in respect of returns submitted.

(4) Written directions provided under Subsection (3) shall specify the time within which explanations and variations shall be provided, and such time shall not be less than 14 days.

(5) Where directions as to variations have been given under Subsection (3), any document to which the direction relates shall be deemed not to have been lodged

until it is resubmitted with the variations required by the direction, but the document will be deemed to have been submitted within any prescribed time limit if it is resubmitted in satisfactory form within the time limit specified in the direction.

(6) A licensed insurer shall, upon reasonable request, make available to a current policy holder a copy of the latest annual audited Profit and Loss Statement and Balance Sheet.

(7) A licensed insurer or licensed broker or licensed loss adjuster, who fails to comply with the reporting requirements set out in this section, is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

30. FORM OF DOCUMENTS, POLICIES, BROCHURES, ETC.

(1) The Commissioner may inspect and review a licensed insurer's proposal forms, policies, brochures, advertisements and other promotional materials and other documents in relation to the conduct of general insurance business.

(2) Where any proposal form, policy, brochure, advertisement or other promotional material or other document inspected or reviewed under Subsection (1) contains information considered likely to mislead or not to be in the best interests of existing or potential policy holders or where it fails to comply with any provision of this Act, the Commissioner may issue a written directive to the licensed insurer requiring either cancellation or variation of the relevant material.

(3) A licensed insurer, to whom a directive is issued under Subsection (2), may make written representations to the Commissioner within 14 days of receiving such directive.

(4) The Commissioner shall consider any representations under Subsection (3) and where he decides that the directive shall still be implemented, the affected licensed insurer may appeal to the Minister whose decision shall be final.

(5) A licensed insurer, who uses a form, policy, brochure, advertisement, promotional material or document in contravention of this section, is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

31. INSURANCE OF POLICIES AND RENEWALS, ETC.

(1) A licensed insurer, either itself or through its agent or broker, is responsible for ensuring that a policy document is issued to the insured in respect of each separate contract of insurance within 30 days of inception of the insurance risk by the insurer and the policy issued shall—

- (a) constitute the contract between insurer and insured; and
- (b) define the terms and conditions and provisions of the contract of insurance specifically for each risk insured.

(2) A licensed insurer, either itself or through its agent or broker, is responsible for ensuring that a renewal certificate confirming the renewal of

insurance is issued within 30 days of inception of the renewal and the renewal certificate issued shall confirm the period for which the insurance contract has been renewed, and where any terms or conditions or provisions of contract have been varied, the variation shall be defined as an endorsement to the policy and a copy of that endorsement shall be attached to and form part of the renewal certificate.

(3) Where a policy document or renewal certificate has not been issued to the insured in accordance with Subsections (1) and (2), in the event of a dispute the insurer shall be required to prove that the insured person was aware of and accepted the specific terms and conditions or provisions on which the insurer seeks to rely to avoid or reduce or limit its liability.

32. REGISTER OF POLICIES, ETC.

(1) A licensed insurer shall—

- (a) establish and maintain a register of current policies of both Papua New Guinea and non Papua New Guinea general insurance risk where liabilities exist for the licensed insurer; and
- (b) shall enter in the register particulars of each policy to which Paragraph (a) applies.

(2) Where a licensed insurer ceases to have any liability in respect of a policy entered in the register, he may remove the particulars of the policy from the register.

(3) A licensed insurer shall retain documentation and policies relating to expired policies for a minimum period of eight years, notwithstanding that such policies have been removed from the register of current policies.

(4) The Commissioner may determine details of the format to be used and the information to be recorded in the register of current policies.

(5) A licensed insurer, who fails to comply with any of the provisions of this section, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

33. INVESTIGATION AND REPORT BY ACTUARY.

(1) Where the Commissioner is of the opinion that—

- (a) the financial interests of a policy holder, shareholder or creditor of a licensed insurer might be in jeopardy; and
- (b) an investigation and report by an independent actuary are appropriate,

he may direct the licensed insurer—

- (c) to have undertaken an investigation and report by an independent actuary approved by the Commissioner; and
- (d) to instruct the independent actuary to furnish a copy of his report under Paragraph (c) direct to the Commissioner.

(2) Where a licensed insurer fails to comply with a direction under Subsection (1), the Commissioner may appoint an independent actuary to undertake the investigation and report and may fix the remuneration to be paid to him by the licensed insurer.

(3) A licensed insurer shall cooperate fully with an independent actuary undertaking an investigation and report under this section and shall make available to him for inspection and copy (if necessary) all books, records, registers, financial statements and other documents.

(4) A licensed insurer, who fails to comply with Subsection (3), is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

34. POWERS OF INSPECTION AND INVESTIGATION.

(1) The Commissioner or a person authorized by him for the purpose may at any time during the ordinary hours of business do all or any of the following:—

- (a) enter any land or place where any person—
 - (i) is acting as; or
 - (ii) is carrying on or is reasonably suspected by him to be acting as or carrying on, business as,
 - an insurer or insurance broker or loss adjuster;
- (b) make such examination and inquiries as are necessary to ascertain the manner in which any business referred to in Paragraph (a) is being carried on and, in particular, whether the provisions of this Act have been or are being complied with in respect of that business;
- (c) examine any person engaged or apparently engaged, whether as principal or employee, in the business, and require him—
 - (i) to answer any question put to him; and
 - (ii) to furnish such information as may be required; and
 - (iii) to sign a declaration as to the truth of any answer given by him;
- (d) inspect and examine any accounts, books or records relating to, or reasonably suspected by the Commissioner or a person authorized by him to relate to, any business referred to in Paragraph (a), and for that purpose require—
 - (i) the holder of a licence; and
 - (ii) any person carrying on or reasonably suspected of carrying on any business to which this Act relates; and
 - (iii) any person who has possession, custody or control of any such accounts, books or records,

to produce the accounts, books and records to him, and make copies of or take extracts from any of them.

- (2) A person who—
- (a) assaults, resists or obstructs the Commissioner or a person authorized by the Commissioner in the exercise of his powers or the discharge of his duties under this section; or
 - (b) fails or refuses to answer any question put to him by the Commissioner or a person authorized by him, or gives a false or misleading answer to any such question; or
 - (c) fails or refuses to comply with a request of the Commissioner or a person authorized by him; or
 - (d) when required to furnish information under this Act by the Commissioner or a person authorized by him—
 - (i) fails or refuses to give the information; or
 - (ii) gives false or misleading information; or
 - (e) fails or refuses, without reasonable excuse (proof of which is on him)—
 - (i) to produce any books, account or record that he is required to produce under this Act by the Commissioner or a person authorized by him; or
 - (ii) to allow the Commissioner or a person authorized by him to make copies of or take extracts from any such books, account or record; or
 - (f) directly or indirectly prevents any person from appearing before or being questioned by the Commissioner or a person authorized by him; or
 - (g) uses any threatening, abusive or insulting language to the Commissioner or a person authorized by him whilst he is carrying out an authorized inspection under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

35. POWERS OF DIRECTION.

(1) Following the conduct of an investigation under Section 33 or 34 and the issue of a written summary and conclusions, the Commissioner may, subject to Subsections (2) and (3), issue directives to a licensed insurer, licensed broker or licensed loss adjuster as he determines necessary to overcome any breaches of this Act or to protect the interests of any policy holder, shareholder or creditor.

(2) The powers of the Commissioner under Subsection (1) to direct shall include, but shall not be confined to, the following matters:—

- (a) the dismissal and/or recruitment of directors, management personnel and other related persons;
- (b) the undertaking of sound management principles;
- (c) the disposition or recovery of assets;
- (d) the issue of directives on investment management, subject to overall investment guidelines issued by the Minister under Section 26;
- (e) the recovery of sums considered illegally paid;
- (f) the prevention of the renewal or the issuing of further policies for all or particular classes of business;
- (g) the making of specific reinsurance arrangements;
- (h) the issue of any other directive considered necessary following the conduct of an investigation.

(3) The powers to issue directives under Subsection (1) shall be subject to the following requirements:—

- (a) notice of intention to issue a directive shall—
 - (i) be issued in writing to the affected licensed insurer, licensed broker or licensed loss adjuster; and
 - (ii) set out the conclusions of the investigation; and
 - (iii) outline the intended directives; and
 - (iv) require the affected licensed insurer, licensed broker or licensed loss adjuster to respond within 14 days;
- (b) where the affected licensed insurer, licensed broker or licensed loss adjuster responds in writing within 14 days the Commissioner shall consider the representations made, and where, after considering such representations the Commissioner decides to proceed with a directive the affected licensed insurer, licensed broker or licensed loss adjuster may then appeal to the Minister whose decision shall be final;
- (c) after issue of a directive, further written representations may be made from time to time by an affected licensed insurer, licensed broker or licensed loss adjuster where the circumstances relating to the direction have changed or are no longer relevant and the Commissioner may on receipt of such written representations modify or cancel any direction;
- (d) where representations made under Paragraph (c) for modification or cancellation of a directive are rejected by the Commissioner, the affected licensed insurer, licensed broker or licensed loss adjuster may make further appeal to the Minister whose decision shall be final;
- (e) notwithstanding that representations have been made by an affected licensed insurer, licensed broker or licensed loss adjuster any directive issued in accordance with Paragraph (a) shall continue to apply until

such time as the Commissioner or Minister confirms in writing that the directive has been modified or cancelled.

(3) A licensed insurer, licensed broker or licensed loss adjuster, who fails or neglects to comply with a directive under this section, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

PART VI. – ALL RISKS SITUATED IN PAPUA NEW GUINEA TO BE INSURED WITH LICENSED INSURERS.

36. ALL RISKS SITUATED IN PAPUA NEW GUINEA TO BE INSURED WITH LICENSED INSURERS.

(1) All risks situated in Papua New Guinea and for which insurance, including re-insurance, is required shall be insured with a licensed insurer unless exemption is granted under Section 37.

(2) A person who—

(a) insures; or

(b) as agent, broker, or insurer arranges insurance of,

a risk situated in Papua New Guinea with a person other than a licensed insurer, except in accordance with an exemption under Section 37, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or an amount equivalent to the gross annual premium in respect of that risk effected outside Papua New Guinea, whichever is the greater.

37. EXEMPTION.

(1) Subject to Subsection (5), where the Commissioner is satisfied that the existing facilities and available capacity of licensed insurers are fully utilized he may, on application in accordance with Subsection (4), grant to a person an exemption from the provisions of Section 36.

(2) An application for an exemption under Subsection (1) shall—

(a) be made in writing to the Commissioner no later than 14 days prior to the date on and from which the insurance is required; and

(b) contain information in support of the application, including—

(i) information as to whether licensed insurers have available the facilities and capacities to insure the risk in question; and

(ii) information as to cost differentials between onshore licensed insurers and offshore insurers, where an application is being made in relation to the cost differential provisions of Subsection (6); and

(iii) particulars of the proposed arrangements to insure the risk outside Papua New Guinea; and

(iv) evidence to the satisfaction of the Commissioner that—

(A) adequate arrangements have or will be made for the payment of income tax by non resident insurers and non resident reinsurers as required by Sections 203 to 209 of the *Income Tax Act 1959*; and

- (B) adequate arrangements have or will be made to secure approvals required under the *Central Banking (Foreign Exchange and Gold) Regulation 1973* (and related Notices to Authorized Dealers) of the Central Bank; and
 - (C) adequate arrangements have or will be made to have the insured person confirm in writing an awareness that the offshore cover being arranged provides for no protection under the regulation and supervision provisions of this Act.
- (3) The Commissioner shall consider an application under Subsection (2) and—
- (a) subject to Subsection (4), may grant an exemption or refuse to grant an exemption; and
 - (b) shall advise the applicant in writing of his decision under Paragraph (a) not later than seven days prior to the date on and from which insurance is required.
- (4) An exemption granted under this section may be subject to such conditions as the Commissioner considers appropriate.
- (5) An application made in accordance with Subsection (2) which relates to Treaty Reinsurance may be submitted to, and be considered and determined by the Commissioner, as if the Treaty Reinsurance Agreement constituted a single risk, without requirement to have approved individual contracts within the Treaty Reinsurance Agreement.
- (6) Subject to Subsection (8), the Commissioner shall not refuse an application for exemption under this section in respect of the insurance or re-insurance of a risk where—
- (a) a licensed insurer has the facility and capacity to insure or re-insure the risk; and
 - (b) the costs to the insured person of insuring or re-insuring the risk with a licensed insurer are greater by 17.5% than the costs to the insured person of insuring or re-insuring the risk with an off-shore insurer.
- (7) In comparing costs for the purposes of Subsection (6)(b), the Commissioner shall consider all relevant cost factors including premiums, commissions and other fees and charges.
- (8) The Commissioner may refuse an application for exemption to which Subsection (6) applies, where he is of the opinion that the circumstances are exceptional or in the National interest.
- (9) No funds in respect of any premium for insurance or reinsurance to which this Part relates may be remitted outside Papua New Guinea unless and until written advice of an exemption has been received by an applicant for exemption.

38. INSPECTION.

(1) Where the Commissioner is of the opinion that a person may have contravened the provisions of this Part, he, or a person authorized by him in writing, may—

- (a) require that person to produce any premium receipts, cover notes, insurance policies or other documents or records relating to insurance placed by that person or on that person's behalf; and
- (b) inspect any such premium receipts, cover notes, insurance policies or other documents or records produced; and
- (c) take copies of any such premiums receipts, cover notes, insurance policies or other documents or records.

(2) A person who—

- (a) hinders or obstructs the Commissioner, or a person authorized by the Commissioner, in the exercise or performance of his powers and functions under Subsection (1); or
- (b) without lawful excuse (proof of which is on him)—
 - (i) refuses or wilfully neglects to produce; or
 - (ii) refuses to allow the Commissioner, or a person authorized by him to make copies of,

any premium receipts, cover note, insurance policy or other documents or records,

is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

PART VII. – RESPONSIBILITY FOR AGENTS.**39. RESPONSIBILITY OF LICENSED INSURERS, LICENSED BROKERS AND LICENSED LOSS ADJUSTERS FOR THEIR AGENTS.**

(1) A licensed insurer, licensed broker or licensed loss adjuster is responsible for the financial affairs of his or its agents (and any sub agents) with regard to transactions entered into by an agent on behalf of the licensed insurer, licensed broker or licensed loss adjuster.

(2) In all cases agents shall be agents of the licensed insurer, licensed broker or licensed loss adjuster and not agents of the insured, and the licensed insurer, licensed broker or licensed loss adjuster shall be directly responsible for negligence, default or professional misconduct of an agent, including failure to pay over money paid to an agent by an insured person.

(3) No licensed insurer, licensed broker or licensed loss adjuster shall utilise the services of an agent without first having entered into a formal agreement with such agent using an agreement form which, on written request by the Commissioner, shall be subject to his inspection and approval.

(4) In the case of multi-agents, separate formal agreements shall be concluded and executed by the agent and each relevant licensed insurer, licensed broker or licensed loss adjuster, and in all cases, including cases where an agent represents more than one licensed insurer, licensed broker or licensed loss adjuster, receipts and other documentation shall clearly specify the name of the licensed insurer, licensed broker or licensed loss adjuster ultimately responsible for the transaction.

(5) Moneys by way of premiums for insurance cover which are paid by a person to a broker or agent of a licensed insurer shall be deemed to have been paid to the licensed insurer at the time and in the amount that the moneys were paid to that broker or agent.

(6) A licensed insurer shall not deny liability under any contract of insurance on the basis that moneys paid to a broker or agent have not been paid to the licensed insurer, and a licensed insurer shall not seek payment from an insured person where such payment has been made to a broker or agent.

(7) Notwithstanding this section, a licensed insurer and broker or agent may agree upon the credit terms which will apply as between the broker or agent and the insurer for remitting of premium moneys to the licensed insurer.

(8) Any agent or licensed insurer, licensed broker or licensed loss adjuster, who fails or neglects to comply with the provisions of this Part relating to responsibility for agents, is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

PART VIII. – TRANSFER OF INSURANCE BUSINESS.**40. TRANSFER OF INSURANCE BUSINESS.**

(1) The whole or part of the business of a licensed insurer may be transferred to another licensed insurer or to other licensed insurers in accordance with this Part only–

- (a) under a transfer scheme approved by the Commissioner; or
- (b) where required by any other law, on application to and approval by the National Court.

(2) A transfer scheme under Subsection (1)(a) may make provision for–

- (a) the transfer of ancillary non-general insurance business; and
- (b) matters incidental to the transfer, including property rights and liabilities.

41. APPLICATION FOR APPROVAL OF A TRANSFER SCHEME.

(1) Licensed insurers may make application to the Commissioner for approval of a transfer scheme for the transfer of the whole or part of the business of a licensed insurer to another licensed insurer or to other licensed insurers.

(2) An application under Subsection (1)–

- (a) shall be made by both the proposed transferor and the proposed transferee or transferees; and
- (b) shall be in a form approved by the Commissioner; and
- (c) shall be accompanied with full details of the transfer scheme and a copy of any relevant report.

(3) The Commissioner may, where he considers it necessary for the purpose of assessing an application–

- (a) require additional information to be supplied by the applicants; and
- (b) require a report from an independent auditor and/or an independent actuary.

(4) Where the Commissioner requires a report under Subsection (3)(b)–

- (a) he shall appoint the independent auditor and/or independent actuary for the purpose; and
- (b) the applicants shall co-operate with the independent auditor or independent actuary to enable him to compile his report;
- (c) the applicants shall be responsible for the costs of the independent auditor and/or independent actuary; and
- (d) the independent auditor and/or independent actuary shall furnish his report to the Commissioner who shall provide a copy to the applicants.

42. PUBLICATION, ETC., OF APPLICATION.

The applicants of an application under Section 41(1) shall—

- (a) no sooner than 30 days after the date of making the application, cause details of the application and of the proposed transfer scheme to be published—
 - (i) in the National Gazette; and
 - (ii) in at least two newspapers approved by the Commissioner; and
- (b) for a minimum of 30 days after the date of publication under Paragraph (a), keep a copy of the proposed transfer scheme available at each of their offices for inspection by policy holders affected by the proposed transfer scheme; and
- (c) at least 30 days before a decision on the application is made by the Commissioner, except where the Commissioner or the National Court directs otherwise, furnish to each policy holder affected by the proposed transfer scheme copies of the proposed transfer scheme and of any reports (or summaries of such reports approved by the Commissioner).

43. REPRESENTATIONS MAY BE MADE IN RESPECT OF APPLICATION.

A person, who shows to the satisfaction of the Commissioner that he has a cause or interest in the matter, may make representations in respect of any matter relevant to an application under Section 41(1) and the Commissioner shall consider such representations when considering the application.

44. COMMISSIONER MAY GIVE APPROVAL, ETC.

(1) The Commissioner shall consider an application under Section 41(1) and any representations made under Section 43 and may—

- (a) approve the transfer scheme; or
- (b) refuse to approve the transfer scheme.

(2) An approval under Subsection (1)(a) may be subject to such variation or conditions as the Commissioner considers necessary.

45. DUTIES OF APPLICANT AFTER APPROVAL OF TRANSFER SCHEME.

Within 30 days of the approval of a transfer scheme the transferee or transferees shall lodge with the Commissioner—

- (a) a statement of assets and liabilities of each licensed insurer who is a party to the scheme immediately before the transfer and a statement of assets and liabilities to be transferred; and
- (b) a copy of the transfer scheme and any order of the National Court; and

- (c) copies of any audit, actuarial or other reports; and
- (d) a statutory declaration by the Chairman or Principal Officer of the transferred licensed insurer certifying every payment to be made under the transfer and that no other payments are to be made, including transfer of property or rights.

46. DUTIES OF LICENSED INSURER WHERE APPLICATION TO THE NATIONAL COURT IN RELATION TO THE TRANSFER IS REQUIRED.

Where, under any other law, a licensed insurer proposing to transfer any insurance business is required to make application to the National Court, he shall not so make application unless he has lodged with the Commissioner at least 30 days prior to making application a copy of the application proposed and of the proposed scheme of transfer and any reports relative thereto.

PART IX. – COMPLAINTS PROCEDURES AND DISPUTE RESOLUTION.**47. INTERNAL PROCEDURES.**

(1) A licensed insurer, licensed broker and licensed loss adjuster shall develop written policies and procedures, to be approved by the Commissioner, whereby complaints and disputes will initially be addressed between the insured or other affected third parties and the licensed insurer, licensed broker or licensed loss adjuster.

(2) At the time of policy issue and renewal, the licensed insurer or licensed broker shall make available to a policy holder, the following:–

- (a) clear directions as to whom and where policy holders or affected third party complaints and disputes should be lodged;
- (b) procedures whereby complaints and disputes shall be formally reviewed and responded to by a licensed insurer within a maximum of 30 days; and
- (c) details of the Insurance Complaints Tribunal to which complaints can be referred following exhaustion of procedures under Paragraph (b) and where policy holders or affected third parties remain dissatisfied.

48. INSURANCE COMPLAINTS TRIBUNAL.

(1) An Insurance Complaints Tribunal is established and shall be composed of the following members:–

- (a) the Commissioner or his nominee who shall be the Chairman of the Tribunal;
- (b) two members to represent the interests of the general insurance industry to be appointed by the Minister from persons nominated by persons licensed under this Act; and
- (c) two members to represent the interests of consumers, to be appointed by the Minister from nominations submitted after public advertisements calling for nominations.

(2) Where the Minister considers it inappropriate to appoint two members from the persons nominated under Subsection (1)(b), he may require persons licensed under this Act to make further nominations for his consideration.

(3) The members under Subsection (1)(b) and (c) shall be appointed by the Minister by notice in the National Gazette.

(4) For each member of the Tribunal appointed under Subsection (1)(b) and (c) an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(5) In the event of the inability of a member of the Tribunal to act, the alternate member has and may exercise all his powers, functions, duties and responsibilities.

(6) A member appointed under Subsection (1)(b) and (c) and an alternate member appointed under Subsection (4) shall be appointed for a period not exceeding three years, and are eligible for reappointment.

(7) A member of the Tribunal—

- (a) appointed under Subsection (1)(a) or (b)—is not entitled to remuneration in respect of his service on the Tribunal; and
- (b) appointed under Subsection (1)(c)—shall be entitled to such remuneration as is allowed under the *Boards (Fees and Allowances) Act 1955*.

49. RESIGNATION.

A member of the Tribunal may resign his office by written notice to the Minister.

50. VACATION OF OFFICE.

(1) If a member of the Tribunal—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office under Section 49; or
- (c) is absent from three consecutive meetings of the Tribunal; or
- (d) fails to comply with Section 52; or
- (e) becomes bankrupt, or applies to take the benefit of any law for relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,

the Minister shall terminate his appointment.

(2) The Minister may at any time by written notice advise a member that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister who shall consider the reply, and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

51. CONDUCT OF TRIBUNAL.

(1) The Tribunal shall meet at such times and places as the Chairman thinks necessary for the efficient conduct of its affairs, but in any event not less frequently than once in every quarter of the year.

(2) Within 14 days after the receipt of a written request by not less than two members of the Tribunal, the Chairman shall call a meeting of the Tribunal.

(3) At a meeting of the Tribunal a quorum shall be three, which shall be comprised of—

- (a) the Commissioner or his nominee; and
- (b) one member appointed under Section 48(1)(b) or his alternate; and
- (c) one member appointed under Section 48(1)(c) or his alternate.

(4) At a meeting of the Tribunal—

- (a) the Chairman shall preside; and
- (b) all matters shall be decided by a majority of the votes of the members present; and
- (c) the Chairman has a deliberative, and in the event of an equality of votes on a question, where he so chooses, also a casting vote; and
- (d) the Tribunal may seek additional advice from such persons as it considers necessary to assist in the deliberation of any complaint.

(5) The Tribunal shall cause a record of its proceedings to be kept.

(6) Subject to this Act, the procedures of the Tribunal are as determined by the Tribunal.

52. DECLARATION OF INTEREST.

(1) A member of the Tribunal, who is directly or indirectly interested in a matter before the Tribunal for consideration, shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Tribunal.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Tribunal and after the disclosure the member shall not take part in any deliberation or decision of the Tribunal with respect to the matter and shall be disregarded for the purpose of constituting a quorum for any such deliberation or decision.

53. FUNCTIONS OF THE TRIBUNAL.

(1) The functions of the Tribunal are to consider disputes and complaints referred to it by policy holders of general insurance policies and affected third parties.

(2) The Tribunal shall not be limited to the types of disputes it considers but the Commissioner, following consultation with the Tribunal, may publish in the

National Gazette guidelines as to the operating procedures of the Tribunal including an outline of classes of complaints that it shall, and shall not, consider.

(3) The Tribunal shall not consider any complaints until it is satisfied that all internal procedures for complaint and dispute resolution provided for in Section 47 have been fully exhausted.

(4) The Tribunal is empowered to adjudicate and direct a licensed insurer, licensed broker or licensed loss adjuster in the resolution of any particular complaint or dispute providing the direction does not involve claims or other payments exceeding an amount fixed by the Commissioner by notice in the National Gazette but by agreement between the parties and with the approval of the Tribunal a dispute involving an amount in excess of the fixed amount may be determined by the Tribunal.

54. POWERS OF THE TRIBUNAL.

(1) For the purpose of performing its functions under this Act the Tribunal, or a person authorized by the Tribunal may—

- (a) require any person to produce or make available to the Tribunal or a person authorized by the Tribunal any books, document, record or information in the possession of or under the control of the person relating to a disputed matter under consideration by the Tribunal; and
- (b) take copies of or extracts from any books, document or record.

(2) A person who—

- (a) when required to do so under Subsection (1), refuses or fails, without reasonable excuse (proof of which is on him), to produce or make available any books, document, record or information; or
- (b) hinders or obstructs the Tribunal or a person authorized by the Tribunal in the exercise of its or his powers or the performance of its or his functions under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

55. RIGHT OF REPRESENTATION, ETC.

A person affected by a dispute, including a licensed insurer, licensed broker or licensed loss adjuster and a complainant shall have rights of representation before a meeting of the Tribunal, though proceedings will be informal and parties to the dispute may represent themselves.

56. RIGHT OF APPEAL.

A party to a dispute (other than a licensed insurer, licensed broker or licensed loss adjuster) and an affected third party, aggrieved by a decision of the Tribunal, may appeal to the National Court.

57. FAILURE, ETC., TO IMPLEMENT DIRECTION AN OFFENCE.

A person, who fails or neglects to implement a direction of the Tribunal, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

PART X. – TRADE PRACTICES PROVISION.

58. TRADE PRACTICES PROVISION.

(1) It shall be an offence for any person licensed under this Act or by any other person to undertake practices of collusive pricing, collusive tendering or other practices inhibiting fair and open competition in relation to any general insurance or related business conducted under this Act.

(2) The practices of co-insurance and reinsurance where undertaken according to normal insurance principles involving fair and open competition shall not be regarded as practices of collusive pricing or collusive tendering for purposes of this Part.

(3) A person who fails to comply with the provision of this Part is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

**PART XI. – PROVISIONS RELATING TO THE WINDING-UP OF A
LICENSED INSURER.**

59. APPLICATION AND INTERPRETATION.

(1) The provisions of this Part apply also to a corporation which–

- (a) was at one time a licensed insurer (or a licensed insurer under the Acts repealed by Section 76); and
- (b) has ceased to be so licensed; and
- (c) remains under liability in respect of a Papua New Guinea insurance policy.

(2) For the purposes of this Part, unless the contrary intention appears or the context otherwise requires, “**licensed insurer**” includes a corporation referred to in Subsection (1).

(3) The provisions of this Part do not affect a contract entered into by a licensed insurer after it commences to be wound up.

60. COMMISSIONER MAY PETITION FOR WINDING-UP IN CERTAIN CIRCUMSTANCES.

Where any auditor’s report or financial statements or an investigation under this Act in relation to a licensed insurer indicate that any of the grounds for winding up a company as specified in Section 291(3) of the *Companies Act 1997* exist in relation to that licensed insurer, the Commissioner may act as a petitioner in proceedings to have the licensed insurer wound-up.

61. WINDING-UP.

Where proceedings to wind-up a licensed insurer have been commenced, the Commissioner is entitled to be conjoined as a petitioner in and become a party to the winding up proceedings, and the liquidator of the licensed insurer shall–

- (a) keep the Commissioner fully informed; and
- (b) provide the Commissioner with such information as the Commissioner reasonably requests,

in relation to the winding-up proceedings.

62. LICENSED INSURER NOT TO CARRY ON BUSINESS AFTER COMMENCEMENT OF WINDING-UP PROCEEDINGS.

(1) Where winding-up proceedings have been commenced in respect of a licensed insurer, the licensed insurer shall not carry on any insurance business.

(2) Subject to Subsection (3), a licensed insurer, who carries on insurance business in contravention of Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

(3) A licensed insurer is not guilty of an offence against Subsection (2) by reason only that it is carrying on business with the consent of the liquidator for the purpose of discharging liabilities assumed by it before the date of commencement of the winding-up.

63. WINDING-UP MAY COMMENCE IN CERTAIN CIRCUMSTANCES.

Where the Commissioner—

- (a) directs a licensed insurer not to issue any new policies or renewals of policies; or
- (b) revokes the licence of a licensed insurer,

the licensed insurer may, where it is incorporated under *Companies Act 1997*, be wound-up by the National Court—

- (c) as if it had suspended business for one year; or
- (d) where the winding-up is to take place under Division X.5, as if it had ceased carrying on business.

64. VOLUNTARY WINDING-UP.

In the case of a members' voluntary winding-up of a licensed insurer, the Commissioner may—

- (a) review arrangements for the winding-up; and
- (b) issue directives with regard to such arrangements, other than arrangements approved by the National Court.

PART XIA.¹⁹ – THE INSURANCE COMMISSIONER’S FUND.**64A. THE INSURANCE COMMISSIONER’S FUND.**

²⁰There is hereby established the Insurance Commissioner’s Fund, into which shall be paid such moneys as are specified by this Act.

64B. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

²¹Except where this Act provides to the contrary, the provisions of the *Public Finances (Management) Act 1995* relating to Trust Accounts within the meaning of that Act apply to and in relation to the Insurance Commissioner’s Fund.

64C. CONTRIBUTIONS TO THE INSURANCE COMMISSIONER’S FUND.

²²(1) Each licensed insurer shall contribute annually to the Insurance Commissioner’s Fund a sum amounting to a percentage (not exceeding 1%) to be fixed by the Commissioner on the total amount of the premium income (whether received by or owing to the licensed insurer) of the licensed insurer in respect of the year ended 31 December immediately preceding.

(2) Each licensed broker shall contribute annually to the Insurance Commissioner’s Fund a sum amounting to a percentage (not exceeding 1%) to be fixed by the Commissioner on the total amount of the commission (whether received by or owing to the licensed broker) the licensed broker on all insurance business placed both domestically and offshore, in respect of the year ending 31 December immediately preceding.

(3) The percentage—

- (a) referred to in Subsection (1) shall be uniform for all licensed insurers; and
- (b) referred to in Subsection (2) shall be uniform for all licensed brokers.

(4) The amount of any annual contribution—

- (a) to be paid during 1998, shall be paid in instalments on or before 1 July and 1 October; and
- (b) in subsequent years shall be paid in quarterly instalments on or before 1 January, 1 April, 1 July and 1 October in each year, or on such other days as the Commissioner determines; and
- (c) is recoverable as a debt due to the State in any court of competent jurisdiction.

¹⁹ Part XIA inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

²⁰ Section 64A inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

²¹ Section 64B inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

²² Section 64C inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

(5) A licensed insurer or licensed broker who fails to pay an instalment of the annual contribution within 30 days after the date it became payable by him, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

64D. EXPENDITURE FROM THE INSURANCE COMMISSIONER'S FUND.

²³There shall be paid out of the Insurance Commissioner's Fund—

- (a) all moneys payable on account of the employment of the Commissioner and the staff required for the purposes of this Act; and
- (b) all moneys payable on account of the functioning and administration of the Office of the Commissioner; and
- (c) all other money required by the Commissioner for carrying out this Act.

64E. ESTIMATES OF EXPENDITURE.

²⁴(1) The Commissioner shall, prior to 1 January in each year, prepare estimates of expenditure for that year and submit them to the Minister.

(2) Expenditure shall not be incurred in relation to any estimates of expenditure unless and until those estimates have been approved by the Minister.

(3) Where, in any year, the amount actually contributed to the Insurance Commissioner's Fund under Section 64C—

- (a) is less than the expenditure actually incurred in that year, the deficit shall be added to the estimated expenditure for the next succeeding year, and the rate of contribution increased proportionately; or
- (b) exceeds the expenditure actually incurred in that year, the excess shall be retained in the Insurance Commissioner's Fund to meet contingencies.

64F. INSUFFICIENCY OF FUND.

²⁵(1) Where—

- (a) the amount standing to the credit of the Insurance Commissioner's Fund is, at any time, insufficient to make any payment which is required by this Act to be paid; and
- (b) the Minister responsible for financial matters certifies as to the insufficiency, the payment shall be made from the Consolidated Revenue Fund which to the necessary extent is appropriated accordingly.

²³ Section 64D inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

²⁴ Section 64E inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

²⁵ Section 64F inserted by the *Insurance (Amendment) Act 1998* (Act No. 13 of 1998).

- (1)–
- (2) Any amount paid out of the Consolidated Revenue Fund under Subsection
- (a) is a charge on the Insurance Commissioner’s Fund; and
 - (b) shall, as soon as the Minister responsible for financial matters certifies that sufficient funds are standing to the credit of the Insurance Commissioner’s Fund, be repaid from the Insurance Commissioner’s Fund to the Consolidated Revenue Fund.

PART XII. – MISCELLANEOUS.**65. NOTICE AS TO INSURANCE BUSINESS OUTSIDE PAPUA NEW GUINEA.**

Where a licensed insurer, licensed broker or licensed loss adjuster, carries on any business of insurance in a place outside Papua New Guinea and–

- (a) its right to carry on that business ceases; or
- (b) under a law of that place relating to the carrying on of a business of general insurance, broking or loss adjusting, the right of the corporation or of the person to carry on a business of general insurance, broking or loss adjusting in that place has ceased, is limited or is affected,

the licensed insurer, licensed broker or licensed loss adjuster, shall immediately, by written notice to the Commissioner, inform the Commissioner accordingly.

Penalty: A fine not exceeding K25,000.00.

66. ARRANGEMENT OF COVER WITH OVERSEAS INSURER.

(1) Where any person either directly or as a broker on behalf of a person resident in the country, arranges general insurance cover with an overseas general insurer which is not a licensed insurer in Papua New Guinea, he shall–

- (a) where the cover is being arranged on behalf of another person, inform that person, in writing, that the cover is not protected by this Act; and
- (b) ensure, before sending any contributions or commissions abroad, that, in relation to all non-resident insurers and all non-resident reinsurers–
 - (i) all necessary withholding and deemed taxes have been paid; and
 - (ii) a tax clearance where required has been received from the Commissioner General of Internal Revenue; and
 - (iii) approval to remit has been received from the Central Bank or an authorized dealer as that term is defined in the *Central Banking (Foreign Exchange and Gold) Regulation 1973*.

(2) A person who fails to comply with the provisions of Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

67. ARBITRATION CLAUSES.

(1) Notwithstanding the *Arbitration Act 1951*, a provision of an agreement relating to general insurance whenever entered into or made–

- (a) requiring differences or disputes arising out of or in relation to the agreement to be submitted to arbitration; or

- (b) providing that no action, suit or other proceedings may be commenced, proceeded with or maintained against the insurer in respect of any claim under, or difference or dispute arising out of in relation to, the agreement, unless—
 - (i) the issue, claim difference or dispute has first been submitted to arbitration; or
 - (ii) an award in arbitration proceedings has been first obtained; or
- (c) providing that arbitration or an award in arbitration proceedings is a condition precedent to any right of action, suit or other proceedings on or in relation to the agreement; or
- (d) imposing, by reference to arbitration or to an award in arbitration proceedings any limitation on the right of any person to bring or maintain an action, suit or other proceedings on or in relation to the agreement,

does not, subject to Subsection (2), bind the insured.

(2) This section does not apply to an agreement to submit a difference or dispute to arbitration made or entered into after a difference or dispute has arisen out of or in relation to an agreement relating to general insurance.

68. ADDRESS FOR SERVICE.

(1) A person licensed under this Act shall, at all times while it is so licensed, have an address in the country for service for the purposes of this Act.

Penalty: A fine not exceeding K10,000.00.

(2) The address referred to in Subsection (1) does not become the address for service until written notice of the address has been given to the Commissioner, and an address so notified continues to be the address of the corporation until another address has been so notified.

69. SERVICE OF DOCUMENTS AND NOTICES.

(1) In this section, “**registered office**” means the office of the corporation that is the registered office in accordance with the law of Papua New Guinea by or under which the corporation is incorporated.

(2) A document or notice required or permitted to be served on, or given to, a person for the purposes of this Act, may be served or given—

- (a) by leaving it at, or sending it by registered post to the address for service notified under Section 68(2); or
- (b) in the case of a person other than a corporation—
 - (i) by serving it personally on the person; or
 - (ii) by sending it by registered post to the person at his usual or last known place of abode or business; or

- (c) in the case of a corporation incorporated in the country—by leaving it at or sending it by registered post to the registered office of the corporation.

70. REGISTER OF LICENSED INSURERS AND LICENSED BROKERS AND LICENSED LOSS ADJUSTERS.

(1) For the purposes of this Act, the Commissioner shall cause to be kept registers to be known as the Registers of Licensed Insurers and Licensed Brokers and Licensed Loss Adjusters.

(2) Subject to this Act, the Registers of Licensed Insurers and Licensed Brokers and Licensed Loss Adjusters shall be kept in a form and manner approved by the Commissioner.

71. INSPECTION OF REGISTER AND ACCOUNTS.

A person may, on written application and on payment of the prescribed fee (if any)—

- (a) inspect the Registers of Licensed Insurers, Licensed Brokers and Licensed Loss Adjusters; and
- (b) inspect and make a copy of, or take extracts from, any annual report, profit and loss account or balance sheet lodged with the Commissioner under Section 29.

72. EVIDENCE AND JUDICIAL NOTICE.

(1) A certificate under the hand of the Commissioner certifying as to any matter relating to the contents of the Registers of Licensed Insurers, Licensed Brokers and Licensed Loss Adjusters shall be received in all courts as evidence of the matter so certified.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the official signature of any person who is or has been the Commissioner and of the fact that that person is or was the Commissioner.

73. DEFAULTING OFFICERS.

(1) In this section—

“**officer**”, in relation to a corporation, includes—

- (a) all persons who are officers of the corporation for the purposes of the *Companies Act 1997*; and
- (b) a member of the board of management or other controlling authority of the corporation;

“officer of the corporation who is in default” includes an officer of the corporation who knowingly and wilfully authorizes or permits the commission of an offence by the corporation.

(2) Where an offence against this Act is committed by a corporation, every officer of the corporation who is in default is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

(3) A person who—

- (a) has been convicted of an offence relating to general insurance, life insurance or superannuation business; or
- (b) has been convicted of an offence involving dishonest conduct; or
- (c) is insolvent or bankrupt; or
- (d) is otherwise assessed by the Commissioner not to be a fit and proper person,

cannot hold a position of Director or Principal officer in any licensed insurer, licensed broker or licensed loss adjuster.

(4) A person who fails to comply with the provisions of Subsection (3) is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

74. TIME FOR BRINGING PROCEEDINGS.

Notwithstanding any other Act, proceedings for the summary prosecution of an offence against this Act may be brought at any time—

- (a) within two years after the offence was committed; or
- (b) within one year after the commission of the offence comes to the knowledge of the Commissioner,

whichever is the later.

75. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing—

- (a) the forms to be used under or in connection with this Act; and
- (b) the fees to be paid in relation to anything done or to be done under this Act; and
- (c) penalties of fines not exceeding K25,000.00 for offences against the regulations.

PART XIII. – REPEAL.

76. REPEAL.

The following Acts are repealed:–

Insurance Act (Chapter 255)

Insurance (Amendment) Act 1989 (No. 29 of 1989)

Insurance (Amendment) Act 1991 (No. 19 of 1991).

PART XIV. – SAVINGS AND TRANSITIONAL.**77. INTERPRETATION.**

In this Part–

“**commencement date**” means the date of coming into operation of this Act;

“**repealed Acts**” means the Acts repealed by Section 76.

78. SAVINGS OF EXISTING LICENCES.

(1) A licence granted under the repealed Acts are valid and in force immediately before the commencement date, shall continue on and after the commencement date to have full force and effect for the term for which it was granted or until it sooner expires or is revoked according to law as if the repealed Acts had not been repealed.

(2) A licence of a licensed insurer to which Subsection (1) applies shall not be eligible for renewal after 31 December 1996 where the licensed insurer is not a corporation incorporated under the laws of Papua New Guinea.

79. POLICY GUIDELINES.

Policy guidelines, made under the repealed Acts and in force immediately before the commencement date, continue in force on and from the commencement date until repealed or otherwise replaced by policy guidelines issued under Section 26.

80. DIRECTIONS, PROHIBITIONS, EXEMPTIONS, ETC.

Any direction given, prohibition made or exemption granted by the Commissioner under the repealed Acts and in force immediately before the commencement date, shall continue in force thereafter until it expires according to its terms or otherwise according to law.

81. DEPOSITS.

A deposit made by a licensed insurer or licensed broker under the repealed Acts and not, at the commencement date, returned to, or used in the discharge of the liabilities of, the licensed insurer or licensed broker is transferred and becomes the deposit by the respective licensed insurer or licensed broker under Section 27.

82. DEPOSITS.

(1) The person who, immediately before the commencement date, held the office of Commissioner under the repealed Acts, shall, on and from the commencement date, hold the office of Commissioner on the same terms and conditions until such time as a Commissioner is appointed and terms and conditions fixed under this Act.

(2) A person who, immediately before the commencement date, held an office in the staff of the Commissioner, shall, on and from that commencement date, hold the equivalent office in the staff of the Commissioner under this Act.

83. APPLICATION OF ACTS, ETC.

Where—

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the repealed Acts or to that Commissioner under the repealed Acts, that reference shall, unless the context otherwise requires, be read and construed as a reference to this Act or to the Commissioner, as the case may be.

Office of Legislative Counsel, PNG