INSURANCE ACT

{Date of Assent 3/2/77}
{Date of Commencement see section 1}

ACT NO. 18 OF 1976

ACT

To provide for the regulation and supervision of insurance business in Lesotho
Enacted by the Assembly

PART I

INTRODUCTION

1. This Act may be cited as the INSURANCE ACT 1976 and shall come into operation on a day appointed by the Minister in the Gazette.

2. In this Act, unless the context otherwise requires –
   “actuary” means a person having prescribed actuarial qualifications or a member of a professional actuarial society or institute whom the Commissioner on application approves;
   “approved securities” means securities issued by the Government of Lesotho, guaranteed as to principal and interest by Government, or such other securities as the Commissioner may have approved for the purpose of this Act;
   “auditor” means a person having prescribed qualifications of an accountant or a member of a professional society whom the Commissioner on application approves;
   “Commissioner” means the Commissioner of Insurance appointed under section 55 of the Act or person acting in that capacity;
   “Company” shall have the meaning assigned to it in section 2(1) of the Companies Act 1967;
   “co-operative insurance society” means a society registered under the Co-operative Societies Proclamation 1948 for the purpose of carrying on the business of insurance and by the constitution of which only original members on whose application the society is registered and all policyholders are members;
   “court” in relation to any insurance company means the High Court of Lesotho and, in relation to any offence against this Act, includes a Subordinate Court having jurisdiction in respect of that offence;
   “domestic insurance company” means an insurance company incorporated under the Companies Act 1967 or Co-operative Societies Proclamation 1948 or any law for the time being in force in Lesotho;
“foreign insurance company” means an insurance company incorporated under the laws of any country other than Lesotho;
“general insurance business” means fire, motor, marine, accident, employers liability insurance or any type of insurance but excludes life insurance business;
“industrial life insurance business” means the business of life insurance whereby the insurance company assumes a contingent obligation dependent on human life, in an amount not exceeding such sum as may be prescribed, in return for a premium or the promise of a premium payable at intervals not exceeding one month, and where the insurance company has expressly or tacitly undertaken to send a person to the policyholder at his residence or place of work to collect the premium;
“insurance agent” means a person authorized by an insurance company to solicit risks and collect premiums on its behalf for which he receives or agrees to receive a payment by way of commission or other remuneration from the insurance company;
“insurance broker” means a person who, as an independent contractor and not as the agent of an insurance, is carrying on the business of soliciting or negotiating insurance for a commission or other compensation on behalf of the insured or prospective insured, other than himself;
“insurance business” means the assumption of the obligation of an insurance company in any class of insurance business and includes re-insurance business;
“insurer” means an insurance company which is registered under section 10 of this Act for the purpose thereof, either as domestic insurer or foreign insurer;
“Life insurance business” includes industrial life insurance business and ordinary life insurance business and the business of effecting contracts of insurance upon human lives including any contract whereby the payment of money is assured on death (except policies for death by accident only) or the happening of any contingency dependent on human life or which is subject to payment of premiums for a term dependent on human life and includes:
(a) the granting of disability and double or triple indemnity accident benefits if so provided in the contracts of insurance;
(b) the granting of annuities payable out of any fund applicable solely to the relief and maintenance or persons engaged or who have been engaged in any particular profession, trade or employment or the dependents of such persons;
“life insurance fund” means the fund to which receipts of an insurance company in respect of its life insurance business are carried and from which payments and administrative expenses in respect of that business are made;
“motor insurance business” means the business of effecting contracts of insurance against loss of, or damage to or arising out of or in connection with the use, of, motor vehicle, including third party risks;
“ordinary life insurance business” means the business of life insurance where the insurer assumes no responsibility to collect the premium from the policyholder;
“place of business” means the principal office of an insurance company, open to
the public, in Lesotho;
“policy” means a valid insurance contract whatever the form, in which the rights
and obligations of the parties to the contract are expressed or created;
“policyholder” means the person who for the time being has the legal title to the
policy and includes any person to whom a policy is for the time being assigned;
“principal officer” means in respect of a domestic insurance company the chief
executive officer, whether under the names of managing director, general
manager, manager or under any other name, and means in respect of a foreign
insurance company the principal representative in Lesotho, who is authorized to
accept any notice to be served on the foreign insurance company.

---

### PART II

**REGISTRATION AS AN INSURER**

3. (1) No insurance company or any person acting on behalf of it, shall, three months after the commencement of this Act, commence or continue to carry on any class of insurance business in Lesotho unless such company has been registered as an insurer under this Act and has obtained from the Commissioner a certificate of registration.

(2) In the case of an insurance company which was carrying on any class of insurance business in Lesotho at or before the commencement of this Act, failure to obtain a certificate or registration in accordance with the requirements of this Act shall not operate to invalidate any contract of insurance entered into by it before the commencement of this Act or three months thereafter.

(3) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine of one hundred Rand in respect of each day on which the contravention continues.

4. No person other than –
   (a) a company incorporated in Lesotho as a public company either under the Companies Act of 1967 or under the law of any country; or
   (b) a society registered in Lesotho under the Co-operative societies Proclamation of 1948 shall be eligible for registration as an insurer for any class of insurance business in Lesotho.
5. No person shall be registered as an insurer under a name, which so closely resembles the name of an existing insurer as would be likely, in the opinion of the Commissioner, to mislead the public.

6. (1) The classes of insurance business which may be transacted by an insurer are –
   (a) life insurance business; and
   (b) general insurance business

7. (1) No insurance company (which has a share capital) shall be registered as an insurer unless it has a paid-up capital of not less than –
   (a) R50,000 or 10% of the premium income if it wishes to transact life insurance business; or
   (b) R100,000 or 20% of the premium income if it wishes to transact any general insurance business

No insurance company which is limited by guarantee shall be registered as an insurer

8. No person who intends to carry on insurance business in Lesotho shall be registered under this Act unless he has a working capital prescribed by the Commissioner.

9. An application to be registered as an insurer shall be made to the Commissioner in a prescribed form and shall be accompanied by:
   (a) a certified copy of the memorandum and articles of association or, in the case of a foreign insurance company, such similar documents relating to its affairs;
   (b) the names, addresses and occupations of directors of the applicant; and where the applicant is a foreign insurance company the name and address of the principal officer in Lesotho and the name and address of one person resident in Lesotho who is authorized to accept any notice required to be served upon the applicant;
   (c) the address of the place of business of the applicant;
   (d) the names and addresses of persons holding five per cent or a higher percentage of the share capital of the applicant and the number of shares allotted to each such person;
   (e) a statement of the class or classes of insurance business intended to be transacted by the applicant;
   (f) a statement duly certified by an auditor that the relevant capital requirement specified in sections 7 and 8 prescribed by the Commissioner have been complied with by the applicant;
   (g) a certified copy of the premium rates, rating plans, rules and the standard as to name

<table>
<thead>
<tr>
<th>Classes of insurance business</th>
<th>Requirement as to share Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life insurance business</td>
<td></td>
</tr>
<tr>
<td>General insurance business</td>
<td></td>
</tr>
<tr>
<td>Requirement as to working capital</td>
<td></td>
</tr>
</tbody>
</table>

Application for Registration
<table>
<thead>
<tr>
<th>Certificate of registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>(h) if the applicant intends to carry out life insurance business, a statement as to –</td>
</tr>
<tr>
<td>(i)  the basis of calculation of premium rates;</td>
</tr>
<tr>
<td>(ii) the calculation of non-forfeiture values;</td>
</tr>
<tr>
<td>(iii) the method of distributing profits to policyholders and shareholders;</td>
</tr>
<tr>
<td>(i) a statement showing particulars of proposed reinsurance agreements;</td>
</tr>
<tr>
<td>(j) a statement as to the prospective administrative costs and commission;</td>
</tr>
<tr>
<td>(k) a statement showing qualification and experience in insurance business of the executive officers of the applicant at his place of business in Lesotho; and</td>
</tr>
<tr>
<td>(l) other documents or statements as the Commissioner may require.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Renewal of registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. (1) Within thirty days after receipt of the application or, where further information has been required, after receipt of such information, the Commissioner shall either grant the certificate of registration or shall inform the applicant that he has refused to do so.</td>
</tr>
<tr>
<td>(2) If the Commissioner is satisfied that the applicant –</td>
</tr>
<tr>
<td>a) fulfills the requirements specified in Section 9</td>
</tr>
<tr>
<td>b) is likely to carry on insurance business in accordance with sound insurance principles;</td>
</tr>
<tr>
<td>c) has margin of solvency adequate in terms of section 45;</td>
</tr>
<tr>
<td>d) guarantees to grant appropriate non-forfeiture values under life insurance policies;</td>
</tr>
<tr>
<td>e) does not carry on or intend to carry on simultaneously with insurance business any other business which is not insurance business;</td>
</tr>
<tr>
<td>f) has paid the fee prescribed for registration, he shall with the approval of the Minister, register the applicant and issue a certificate of registration.</td>
</tr>
</tbody>
</table>

| 11 (1) Every certificate of registration granted under section 10 shall remain in force for a period of one year from the date of issue and may be renewed upon application to the Commissioner upon payment of a prescribed registration fee. |
| (2) In granting a certificate of registration or in renewing it, the Commissioner may impose conditions to be satisfied by the insurer. |
| (3) In refusing to issue or renew a certificate of registration the Commissioner shall furnish to the applicant a written statement of the reasons for his decision. |
Cancellation Of Registration

(4) The Commissioner shall cause the registration or renewal of registration of an insurance company or, the cancellation of registration of an insurer to be published in the Gazette.

12.

(1) The Commissioner shall after consultation with the Minister cancel the registration of an insurer, if –

(a) the insurer has ceased to carry on insurance business and his liabilities in respect thereof have been satisfied or are otherwise provided for;

(b) any claim upon the insurer arising in Lesotho under any policy of insurance remains unpaid for one month after final judgement in a regular court of law;

(c) the margin of solvency as defined in section 45 is inadequate;

(d) the insurer refuses to submit to examination under section 44;

(e) after an appropriate inquiry, there is reason to believe that the insurance business is not being conducted in accordance with sound insurance principles;

(f) the insurer makes default in complying with, or acts in contravention of any requirement of this Act or any regulations made thereunder; or

(g) the insurer fails to apply for renewal of registration within three months after its expiry.

(2) The cancellation of the registration shall take effect immediately.

(3) If registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance, entered into by him before such cancellation takes effect shall continue as if the cancellation had not taken place.

(4) If the Commissioner is satisfied that the insurer has complied with the requirements (the non-compliance or contravention of which the insurer’s registration was cancelled) and if the insurer has complied with any further directions which may have been given by the Commissioner,
the Commissioner may renew the registration of the insurer.

## PART III

### CONDUCT OF INSURANCE BUSINESS

13. Every insurer shall keep such records in Lesotho as are necessary to exhibit clearly and correctly the state of affairs and to explain the transactions and financial position of his business in Lesotho.

14. Every foreign insurer shall, in respect of the insurance business transacted by him in Lesotho, keep at his principal office in Lesotho –

   (a) a record of policies issued by him showing his rights and obligations there under;
   (b) a record of premiums received on all policies relating to his transactions in Lesotho;
   (c) a record of claims paid out and those still outstanding;
   (d) a record of other disbursements made in Lesotho; and
   (e) a record of all investments made and documentary evidence of his assets and liabilities in Lesotho.

15. (1) Every insurer shall furnish the Commissioner with full particulars as to any change, within a period of one month such change, in respect of the names and addresses of its directors and principal officers and the situation of the place of business in accordance with paragraphs (b), (c) and (d) of section 9.

(2) Every insurer shall apply to the Commissioner in writing if he intends to make any alteration in the registration particulars,

(3) Any alteration in the registration particulars as mentioned in subsection (2) shall not take effect until and except in so far as it has been approved by the Commissioner.

(4) Where the alteration in the registration particulars consists in the amendment of any document, or in the replacement of any document by a new document, the insurer shall furnish the Commissioner with a certified copy of the new document.

(5) Where in respect of life insurance business the alteration in the registration particulars consists in the introduction of new policy plans, or policy conditions or premium rates or non-forfeiture values, the insurer shall furnish the Commissioner with a copy of the new policy forms and conditions and with a statement as to the calculation of
(6) In this section “registration particulars” means documents, statements, policy plans, premium rates and other information furnished by an insurer to comply with the provisions of section 9 or furnished by the insurer in complying with this section.

16. (1) Where the insurer carries on the business of both classes of insurance he shall keep the money and accounts of all receipts in respect of each class of insurance business separate.

(2) Where the insurer carries on general insurance business he shall maintain an insurance fund in respect of each type of general insurance business transacted by him. The insurance fund shall represent the liabilities in respect of his contracts of insurance and shall consist of the reserve of unexpired risk and the reserve estimated to provide for settlement of outstanding claims.

(3) The reserve for outstanding claims mentioned in sub-section (2) shall provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which the insurer is liable. The method of calculating the reserve of unexpired risks, mentioned in sub-section (2), may be prescribed.

(4) Where the insurer carries on life insurance business all receipts due in respect of such business shall be carried to and shall form a fund to be called the life insurance fund, the assets of which shall be kept free from all encumbrances and distinct and separate from all other assets of the insurer.

17. Every insurer, in respect of all insurance business transacted by him in Lesotho, shall, at the expiration of each calendar year, prepare with reference to that year, in prescribed forms:

(a) a balance sheet;
(b) a profit and loss account;
(c) a revenue and expenditure account for each class of insurance business.

18. Every insurer, in respect of the life insurance business transacted by him in Lesotho, shall at the expiration of each calendar year prepare with reference to that year, in the prescribed form, a statement and exhibit of the life insurance policies.
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>19.</td>
<td>Except as otherwise provided in this Act the provisions of the Companies Act 1967 which relate to preparation and presentation of audit reports shall apply to an insurer registered under this Act.</td>
</tr>
<tr>
<td>20.</td>
<td>(1) Every insurer shall in respect of life insurance business transacted by him in Lesotho at least once in every two years, cause an actuarial valuation of the life insurance business carried on by him and cause a report of such actuarial valuation to be made in the prescribed form.</td>
</tr>
<tr>
<td></td>
<td>(2) Every insurer shall report any major change of the financial conditions (including a change in the assets and liabilities or their values) to the Commissioner within three months after the date of the actuarial report prepared under sub-section (1) has been submitted.</td>
</tr>
<tr>
<td></td>
<td>(3) If the insurer proposes to change his actuary or auditor he shall Furnish the Commissioner and the actuary and auditor or both as the case may be with full written reasons of such change.</td>
</tr>
<tr>
<td></td>
<td>(4) The actuary shall at all times keep himself informed of the financial condition of the insurer.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>(1) The certified audit accounts, the annual statements of life insurance policies referred to in section 18, and the actuarial report referred to in section 20, shall be printed, and four copies thereof shall be furnished as annual statements to the Commissioner within three months from the end of the calendar year to which they refer.</td>
</tr>
<tr>
<td></td>
<td>(2) The annual statement of investment of assets referred to in section 33 shall be furnished in four copies to the Commissioner within three months from the date of statement to which it relates.</td>
</tr>
<tr>
<td></td>
<td>(3) Every foreign insurer shall within six months from the end of its financial year forward to the Commissioner a certificate from the authority administering insurance legislation in his country of incorporation to the effect that the insurer has complied with the requirements of the law of that country during the year for which the accounts and returns are furnished.</td>
</tr>
<tr>
<td></td>
<td>(4) If the Commissioner has reason to believe that under the circumstances it was difficult for the insurer to furnish the annual statements under this section within the periods specified in subsections (1), (2) and (3), he may extend such period up to a maximum period of a further three months.</td>
</tr>
</tbody>
</table>
| Furnishing reports | 22. The copies of statements to be furnished under section 21 shall be signed by –
   1) the chairman of the board of directors;
   2) the principal officer;
   3) the auditor who audited the company; and
   4) the actuary who made the valuation. |
|-------------------|-----------------------------------------------------------------------------------|
| Inspection of documents and supply of copies | 23.(1) Every insurer shall furnish to the Commissioner a certified copy of every report or statement on the affairs of the insurer which is submitted to his shareholders or policyholders.
(5) Every insurer shall submit the report or statement referred to in subsection (1) within fourteen days of its submission to the shareholders or policyholders, as the case may be.
(6) Every domestic insurer shall furnish to the Commissioner a copy of the minutes of every general meeting within thirty days of the holding of the meeting.
(7) Every foreign insurer shall furnish to the Commissioner a copy of every statement, balance sheet, revenue account and valuation report which he is required to submit to the insurance authority of the country in which the insurer is incorporated. |
| Prohibition of loans | 24. (1) A consolidated balance sheet and account as approved by the Commissioner under section 21 shall be open to inspection by the public.
(2) Any policyholder or shareholder may procure from the Commissioner a copy of any such consolidated balance sheet and accounts mentioned in sub-section (1) upon payment of a prescribed fee.
(3) Every insurer shall on application supply to his shareholders or policyholders a printed or certified copy of the account, statements and reports furnished by the insurer to the Commissioner under the provisions of section 21. |
| Prohibition of rebates | 25. No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise (except loans on life insurance policies issued by the insurer within their surrender values) to any director, manager, or officer of the insurer, or to any other company which is not a subsidiary company and in which any such persons as mentioned above hold the position of director, manager, officer or partner. |
| Restriction as to currency | 26. (1) No insurer or any person acting on behalf of such insurer shall allow, either directly or indirectly as an inducement to any person to take out or renew or continue an insurance contract in respect of any kind of risk relating to lives or property in Lesotho, any rebate of the whole or part of the commission payable or any rebate on the premium shown in the policy, except such rebate as may be allowed in accordance with the published prospectus or tables of the |
27. No insurer transacting life insurance business in Lesotho shall issue any life insurance policy to a person resident in Lesotho unless such policy is effected in a currency that is legal tender in Lesotho at the time of the issue of such policy.

28. (1) No person other than an insurer or insurance broker shall use the word “insurance” or “assurance”, or their equivalents in any language, as part of his business name.

(4) No person other than an insurer shall use the word “underwriter”, or its equivalent in any language, as part of his business name.

PART IV

INVESTMENT OF ASSETS

29. Every insurer shall, in respect of the life insurance business transacted by him in Lesotho invest, and at all times keep invested in Lesotho in such manner as may be prescribed, assets equivalent to not less than –

(a) the amount required to meet the liability undertaken by the insurer; and
(b) the amount required to meet the liability on account of matured claims under life insurance policies.

30. Every insurer shall, in respect of the general insurance business transacted by him in Lesotho invest in Lesotho, in such manner as may be prescribed, assets equivalent to not less than the sum of –

(a) forty per cent of the gross direct premium written on own account in Lesotho; and
(b) the amount required to meet the liability on account of outstanding and unsettled claims under general insurance policies, reduced by such amounts as may be recoverable under any reinsurance agreement.

31. Every insurer shall maintain a record containing particulars of the assets held invested from time to time in accordance with sections 29 and 30.

32. The assets invested in accordance with sections 29 and 30 shall be kept only in the corporate name of the insurer.

33. Every insurer shall submit to the Commissioner, every year along with his returns under section 21, a statement in the prescribed form as at the thirty-first
### PART V

**PROTECTION OF LIFE POLICIES**

35. (1) A minor who has attained the age of 18 years may, without the consent of his guardian, effect a life policy upon his own life and pay premium due under the policy with money which he has earned or with any other money at his disposal.

(2) A minor who has effected a life policy upon his own life may not without the consent of his guardian cede, pledge or surrender the policy while he is a minor.

(3) If any money becomes payable under such a policy to the person who effected it, while he is a minor, the insurer who is liable under the policy shall pay that money to the minor himself, and the minor may deal with it as he thinks fit, without the consent of his guardian.

36. (1) A life policy effected by a person upon his own life, which he has insured for a period of 3 years or longer shall not, during his lifetime be liable to be attached in execution of a judgment or order of a court of law, at the instance of his creditor, and shall not form part of his insolvent estate, except in so far as the total values of all such policies exceeds R5,000.

Provided that if such a policy has been pledged the provisions of this sub-section shall apply only to so much of the value of that policy as exceeds the amount of the liability whose payment the pledge secures.

(2) For the purposes of sub-section (1) a policy which an insurer issued in exchange for or in consideration of the surrender of another policy under which the surrendered insurer was previously liable, shall be deemed to have been effected on the date on which the surrendered policy was issued, if the insurer received no payment in addition to the value of the surrendered policy, as a consideration for the new policy.

(3) During a period of 5 years as from the date upon which any money became
due under a life policy to which the provisions of sub-section (1) or (2) apply, to the owner of that policy those provisions shall apply mutatis mutandis to that money or to the claims thereof or to any other asset into which the insured converted that money or any part thereof, if it is clearly proved that he insured has not expended that money (except for the purpose of conveying it into another asset) or that the said asset is still in existence and that the insured has not disposed of it;

Provided that this sub-section shall not apply –
(a) to any money paid under such a life policy on surrender of the policy, or to any other assets into which the insured converted any such money; and
(b) to any money paid to the insured under such a life policy, or to any asset into which money, in so far as that money or the value of that asset, together with all other moneys paid to the insured under such life policies, and the value of all other existing assets of the insured into which he converted any such money, and the value of all life policies mentioned in sub-section (1) or (2) of which the insured is the owner, exceeds R5,000.

37. A life policy, money or other asset protected under section 38 shall, to the extent of such protection, not be available on the death of the owner of the policy, money or other asset for the payment of his creditors or against the claim of –

(a) his surviving spouse, who was married to him in community of property to the extent of one half of the protected portion of the policy, money or other assets; or
(b) his surviving spouse, or his parent, child, step child under his will; or
(c) his surviving spouse or his parent or child by right of succession ab intestato.

38. (1) Subject to sub-section (2), if a woman has effected a life policy upon her own life and has thereafter married, her rights and liabilities under that policy and any money which has been paid or has accrued to her, during her marriage, in respect of that policy and any other asset into which she converted any such money, shall be excluded from the community of property or of profit and loss between her and her husband, and from the control of her husband over her property, which may have resulted from her marriage or postnuptial contract with her husband and she may deal with that policy or any such money or other asset as if she were unmarried, even though any premium paid under the policy was paid out of moneys which belonged to her and her husband jointly or to her husband only.

(2) If the husband paid any such premium and his liabilities (or the liabilities of both spouses, if they are married in community of property) continuously exceed the value of his assets (or the assets of both spouses, if they were married in
<table>
<thead>
<tr>
<th>Topic</th>
<th>Text</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband may cede life policy to his wife or insure in her favour</td>
<td>community of property) as from the time of that payment until his or the joint estate was sequestrated as insolvent, the wife shall be liable to pay into the insolvent estate the amount of every such premium in so far as its payment created or increased such an excess of liabilities over assets.</td>
<td></td>
</tr>
<tr>
<td>(3) A woman who is married in community of property or of profit and loss with her husband, or who is married without such community but whose property is under the control of her husband, may without her husband’s consent effect a life policy upon her own life or upon the life of her husband and the provisions of sub-section (1) and (2) shall apply mutatis mundadis in connection with the policy in question, or any money paid or accruing thereunder or any other asset into which any such money was converted: Provided that the husband of such woman shall not be obliged (unless he has undertaken to do so) to pay any premium due under such policy, either out of his own money, or out of money belonging to him and his wife jointly, or out of money under his control which belongs to his wife.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4) If a woman mentioned in sub-section (1) or (2) or (3), has effected a life policy in terms of any of those sub-sections, and while married, earns or makes any money without utilizing for the purpose any assets belonging to her husband jointly, or to her husband only, she may, without her husband’s consent, use that money for the purpose of paying any premium due under such policy.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39. A married man may cede to his wife any life policy which he may have effected in his own favour (whether before or during his marriage) upon his or her own life, or may effect a life policy in her favour of any child of him and her, whether born or to be born (or in favour of her and such child) upon his or her life, and thereupon the provisions of sub-section (1) and (2) of section 38 shall apply in connection with the policy in question, or any money paid or accruing thereunder or any other asset into which any money was converted subject to any conditions on which the said man may have ceded or effected the policy.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PART VI</td>
<td><strong>SUPERVISION</strong></td>
<td></td>
</tr>
<tr>
<td>40. (1) The Commissioner may by notice in writing require any insurer to supply him with any document or information in relation to any matter connected with the insurance business carried on by the insurer, and the insurer shall comply with such requirement within such period, after receipt of the notice, as may be prescribed therein.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Any information supplied under this section shall be certified by the</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
principal officer or, in the case of a foreign insurer, by the principal officer and, if the notice so requires, also by an auditor or actuary, or both.

41 All books, records, registers and documents of every insurer, in respect of the insurance business transacted by him in Lesotho, shall at all reasonable times be open to inspection by the Commissioner or any other person appointed by him.

42. (1) If it appears to the Commissioner that any document furnished under section 21 is inaccurate, or not prepared in accordance with the provisions of this Act, or defective in any respect, the Commissioner may –

(a) require from the insurer such further information as he may consider necessary to correct or supplement such statement;
(b) call upon the insurer to submit for his examination at the place of business of the insurer or at the Commissioner’s office, as he may direct, any books of accounts, register or document;
(c) decline to accept any such statement unless the inaccuracy has been corrected or the deficiency has been supplied, and if he declines to accept any such statement, the insurer shall be deemed to have failed to comply with the provisions of section 21.

(2) It shall be the duty of the insurer to comply promptly with the demand made under paragraphs (a) and (b) of sub-section (1).

43. The Commissioner may prescribe the basis and method of calculating the liabilities in respect of life insurance policies and, in the event that he so prescribes no insurer shall cause the liability in respect of any life insurance policy to be less than the liability computed on the basis and method so prescribed.

44. (1) If the Commissioner has reason to believe that the interests of the policyholders of an insurer are in jeopardy or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Act, he may investigate the affairs of the insurer and, if necessary, employ an auditor or actuary or any other person as he deems fit.

(2) The directors and executive officers of the insurer shall aid the Commissioner in conducting the examination as far as it is in their power to do so. The refusal of any insurer to submit to examination shall be ground for cancellation of registration of such insurer in accordance with section 12.

(3) The Commissioner may examine any director, manager, officer, employee or agent of the insurer on oath on any matter pertaining to the affairs of the insurer.
When an examination is made under this section the Commissioner shall
make to the Minister a true report of it which shall comprise only facts
appearing upon the books, records or other documents of such insurer and
such conclusions and recommendations as may reasonably be warranted
from such facts.

The Commissioner shall notify the insurer examined of the contents of the
report mentioned in sub-section (4) and shall afford such insurer a reasonable
opportunity to obtain further details and to demand a hearing with reference
to facts, conclusions or recommendations therein contained.

The Commissioner may require the insurer to comply within a specified
time, with any directions he may issue to remedy defects disclosed by such
examination.

The Commissioner may recommend in the report to the Minister, the
removal of any director, manager, officer or employee of the insurer who, in the
opinion of the Commissioner, should be removed, or he may recommend the
appointment of any person who is qualified to advise the insurer in rectifying
matters.

The Minister, after considering the recommendations made under sub-
section (7) and giving an opportunity to the insurer to make representations
in writing, may issue such order as he deems fit.

If, as a result of any examination made under this section, the Commissioner
is of the opinion that it is necessary in the interest of the policyholders and
the public that the business of the insurer should be wound up, or if the
insurer fails to comply with any directions issued under sub-section (6), the
Commissioner with the consent of the Minister may apply to the court to
have the business of the insurer wound up.

When an examination is made in pursuance of this section, all expenses
of and incidental to such an examination shall be defrayed by the insurer.

For the purpose of this Act “margin of solvency” shall mean in relation to

(a) life insurance business: the value of the assets of the insurer in respect of all
life insurance business transacted by him which exceeds the value of
liabilities thereunder by an amount of R30,000;

(b) general insurance business:
the value of the assets of the insurer in respect of all classes of general
insurance transacted by him which exceeds the value of liabilities thereunder
by an amount of R50,000 or one tenth of the premium income in respect of
general insurance business during the last preceding calendar year whichever
is the greater amount.

(2) For the purpose if sub-section (1) of this section “assets” does not include
goodwill, furniture, fixtures or vehicles; and “liabilities” includes contingent
and prospective liabilities, but not liabilities in respect of share capital and
“premium” means gross premium for own account.

(3) If the insurer does not meet the required margin of solvency stipulated in
section 7, then section 41 shall apply to such insurer.

PART VII

AMALGAMATION, TRANSFER OF BUSINESS, WINDING UP

46. (1) No insurer transacting general insurance business shall amalgamate with
or transfer any such business to any other insurer, unless the amalgamation or
transfer is sanctioned by the Commissioner.

(2) No insurer transacting life insurance business shall amalgamate such
business with or transfer such business to any other insurer unless the
amalgamation or transfer is sanctioned by the Commissioner.

(3) When an application is made to the Commissioner to sanction any
amalgamation referred to in sub-section (1) or (2) a statement of the nature of
the amalgamation or transfer, as the case may be, the reason therefore, a draft of
the agreement under which the amalgamation or transfer shall be effective,
balance sheets, revenue accounts and actuarial reports of each of the two insurers
proposing to amalgamate shall be kept open for inspection by the policyholders
at the offices of the insurers concerned.

(4) When an application referred to in sub-section (3) is made, the
Commissioner may sanction the agreement, if he is satisfied that such agreement
will not adversely affect the interests of the policyholders.

47. The Commissioner may apply to the court for the winding up of any
insurance company on any of the following grounds, namely –

(a) that the insurance company having failed to comply with any requirement
under this Act has continued such failure for a period of six months after
notice of such failure was conveyed to the insurer by the Commissioner;
(b) that the registration of the insurance company having been cancelled, a
period of more than three months has elapsed since the cancellation;
(c) that it appears from the statement furnished under the provisions of this Act
or from the results of any investigation made thereunder that the insurance
company is insolvent; or
(d) that the continuance of the operations of the insurance company in Lesotho
is prejudicial to the public interest.
48. Notwithstanding anything contained in the Companies Act 1967 an insurance company shall not be wound up voluntarily except for the purpose of effecting amalgamation or transfer.

49. Provisions of Part IV of the Companies Act 1967 relating to the winding up of companies shall also apply in the case of winding up of insurance companies.

**PART VIII**

**INSURANCE INTERMEDIARIES**

50. (1) No person shall act in Lesotho as an insurance agent save under a valid licence granted under this section.

(2) The Commissioner may issue to any individual making an application in the form prescribed and not suffering from any of the disqualifications specified in sub-section (6) and after payment of the prescribed fee, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business.

(3) The Commissioner, before issuing a licence under sub-section (2), may demand that the applicant possess certain professional qualifications relating to the principles and practices of insurance.

(4) A licence issued under this section shall entitle the holder to act as an insurance agent for the insurer named in the licence.

(5) A licence issued under this section shall remain in force for a period of one year from the date of issue, and shall, if the applicant does not suffer from any of the disqualifications specified in sub-section (6), be renewed every year upon an application being made in the prescribed form.

(6) No person shall be an insurance agent if he –

   (a) is a minor;
   (b) is of unsound mind;
   (c) has been found guilty of a criminal offence involving dishonesty;
   (d) in the course of any judicial proceedings relating to any policy of insurance or the winding up of an insurance company, or in the course of an investigation of the affairs of an insurer, has been found guilty of, or has knowingly participated in or connived at any fraud, against an insurer or an insured; or
   (e) has been collecting insurance premiums under any policy when he was not authorised to do so or procures by fraudulent representations payments of any premium on an insurance policy.

(7) The Commissioner may cancel a licence issued to any insurance agent if
Conducting business by insurance brokers

during the currency of such licence such agent becomes or is found to be disqualified under sub-section (6).

(8) The Commissioner may prescribe any other reasonable conditions on the licence of any agent of insurance.

51. An insurer who employs insurance agents shall maintain a register showing the name and address of every insurance agent appointed by him and the date on which the appointment began and the date, if any, on which it ceases.

52. Any person who is not a holder of a licence issued under section 50 who acts as an insurance agent shall be punishable with a fine which may extend to fifty rand, an insurer who appoints as an insurance agent any person who is not licensed under this Act shall be guilty of an offence and liable on conviction to a fine of five hundred rand.

53. (1) No person shall act in Lesotho as an insurance broker unless he is registered as such in accordance with the provisions of this section.

(2) An application for registration as an insurance broker may be made to the Commissioner in the form prescribed by any person having the prescribed qualifications.

(3) The Commissioner may, after payment of a prescribed fee to him grant the applicant a licence or, refuse to grant any such licence if he is satisfied that such applicant is disqualified under section 50 (6).

(4) The registration of an insurance broker under this section shall remain in force for the period of one year from the date of issue and shall, on application, be renewable.

(5) The Commissioner may cancel the registration of any insurance broker on any ground on which he could have refused to grant the application for registration.

54. (1) Every insurance broker shall keep records of insurance transactions handled by him consisting of business placed or arranged in Lesotho and outside Lesotho; and shall furnish to the Commissioner within six months after the end of each calendar year a balance sheet, revenue account and a report on the insurance transactions made by him during that year.

(2) The Commissioner may at any time by written notice demand from an insurance broker information or the production of any document which relates to any matter connected with insurance business handled by such broker.

(3) No insurance broker in the course of his business shall negotiate any contract
of insurance with a person who is not insurer, nor may any person in Lesotho solicit insurance business for any insurance company or association of underwriters not entitled to carry on that business in Lesotho.

(4) The reference in sub-section (3) above to a contract of insurance and to insurance business shall not apply to re-insurance.

(5) If in any particular case an insurance broker satisfies the Commissioner that by reason of the exceptional nature of the risk or other exceptional circumstances it is not reasonably practicable to effect an insurance contract with an insurer, the Commissioner may permit the insurance contract with such insurance or re-insurance company or association of underwriters as the insurance broker sees fit.

PART IX

ADMINISTRATION AND ENFORCEMENT

55. (1) Notwithstanding the provisions of any law relating to the public service, the Minister may appoint a person to be styled Commissioner of Insurance, whose office shall be an office in the public service.

(2) The Commissioner shall be responsible for the general administration and enforcement of this Act and for that purpose shall exercise the functions of that office conferred on him by this Act.

(3) The Minister shall appoint such other public officers as may be necessary to assist the Commissioner in the performance of his duties and functions under this Act.

(4) In the exercise of his functions the Commissioner shall act in accordance with any general direction of the Minister.

(5) If the Commissioner is not a qualified actuary, he shall from time to time seek advice on the technical administration and enforcement of this Act, particularly in respect of actuarial matters.

(6) The Commissioner shall assist the Minister in the formulation of policy for any matter relating to the sound development and growth of insurance business in Lesotho.

56. (1) The Commissioner shall, submit to the Minister, not later than the end of each calendar year, a report on the working of this Act during the preceding calendar year and a general review of the insurance business for that year.

(2) The Commissioner shall include in such report statistics on insurance for that
Appeals

Service of process upon insurance companies

Companies to be subject to act while liabilities remain unsatisfied

Exemption from certain provisions of the Companies Act Amendment of motor vehicles insurance order 1972 Regulations

year showing the number and kind of insurers, their assets, liabilities, premiums written, insurance in force, and the number and kind of insurance intermediaries, and any other information which the Commissioner deems necessary to include in the report.

PART X

MISCELLANEOUS PROVISIONS

57. Any person who willfully makes a false statement, knowing the same to be false, in any statement, report, certificate, balance sheet or any other document in connection with this Act shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three thousand rand or to both.

58. Any insurer or person who makes a default in complying with or acts in contravention of any requirement of the Act or any Regulations made thereunder shall be guilty of an offence and shall, except where a different penalty is provided for, be liable to a fine of one thousand rand or, in case of a continuing default or contravention, to a penalty not exceeding twenty rand for every day during which the default or contravention continues, and every director, manager, secretary, or other officer or agent of the insurance company who knowingly is a part to the default or contravention, shall be liable to a like penalty.

59. Any decision taken by the Commissioner under this Act, including any refusal or cancellation of registration as an insurer, shall be subject to appeal to the Minister. The appeal shall be noted and prosecuted in the manner and within the time which may be prescribed.

60. Any notice issued under the provisions of this Act and any process in legal proceedings may be served on an insurance company by leaving the same at the principal office of the company in Lesotho.

61. Every insurance company shall be subject to the provisions of this Act in relation to any class of insurance business as long as its liabilities in Lesotho in respect of any insurance business remain unsatisfied or are not otherwise provided for.

62. Where an insurer is a company incorporated under the Companies Act, it shall not be necessary for such company to file its balance sheet and accounts with the Register of Companies as required by sub-section (3) of section 96 of that Act.

63. For the purposes of the Motor Vehicle Insurance Order, 1972 an “insurer” shall be construed as an insurance company registered as an insurer under this
64. The Minister may make regulations generally for the better carrying out of the objects of this Act and, in particular, for –

(a) any purpose for which regulations are required to be made under the provisions of this Act;
(b) making deposits with a bank in Lesotho by an applicant for registration as an insurer;
(c) the manner of investing the assets of an insurer in approved securities and otherwise and the method of valuating these assets;
(d) the protection of owners of or beneficiaries under insurance policies in the event of liquidation or bankruptcy of an insurance company;
(e) the collection of statistical information relevant to insurance;
(f) prescribing the fees to be paid in connection with the administration of this Act;
(g) the limitation of expenses of management in insurance business;
(h) the limitation of expenditure on commission;
(i) prescribed minimum qualifications for insurance intermediaries and executive insurance officers;
(j) prescribing anything which under this Act may be prescribed.

65. The Insurance Proclamation No. 65 of 1956 is hereby repealed.