

THE INSURANCE ACT, 1984

No. 1 of 1985

Date of Assent: 8th January, 1985

Date of Commencement: By Notice

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

1—Short title and commencement.

2—Interpretation.

PART II—APPOINTMENT, POWERS AND DUTIES OF THE COMMISSIONER OF INSURANCE

3—Appointment and qualification of Commissioner.

4—Staff and expenses.

5—Particular duties of Commissioner.

6—Delegation by Commissioner.

7—Power to call for information and production of books or papers.

8—Examination of reinsurance treaties.

9—Directions and investigations.

10—Particular powers of Commissioner with regard to long term insurance business.

11—Investigations of associated persons.

12—Powers of investigator.

13—Protection for persons complying.

14—Person may be represented by an advocate.

15—Notes of examination of person.

16—Report of investigator.

17—Directions to persons investigated.

18—Secrecy.

PART III—REGISTRATION OF INSURERS

19—Only authorized persons to carry on insurance business.

20—Placing of risks with insurers or reinsurers not registered under Act.

Section

- 21—Closed fund business.
- 22—Prohibition of registration of certain persons.
- 23—Minimum capital or equivalent and holding by Kenya citizens.
- 24—Extension of time.
- 25—Requirement as to capital structure and voting rights.
- 26—Provisions relating to the carrying on of both long term and general insurance business.
- 27—One third of boards to be citizens of Kenya.
- 28—Minimum assets in Kenya.
- 29—Appropriate reinsurance arrangements.
- 30—Application for registration.
- 31—Registration.

PART IV—DEPOSITS

- 32—Deposits.
- 33—Return of deposits if unregistered.
- 34—Deposits to be kept by Bank on behalf of insurer.
- 35—Substitution of deposits.
- 36—Investment of amount deposited.
- 37—Variation of deposits.
- 38—Use of deposit.
- 39—Return of deposit.
- 40—Increase of deposit.

PART V—ASSETS, LIABILITIES, SOLVENCY MARGINS AND INVESTMENTS

- 41—Margin of solvency.
- 42—Admitted assets.
- 43—Admitted liabilities.
- 44—Assessment of assets and liabilities.
- 45—Establishment of statutory fund.
- 46—Application of statutory fund.
- 47—Assets to be in the name of insurer.
- 48—Investment of assets.
- 49—Unsuitable investments.
- 50—Specified investments.
- 51—Restriction on mortgage, etc., of assets.

PART VI—ACCOUNTS, BALANCE SHEETS, AUDIT
AND ACTUARIAL INVESTIGATIONS

Section

- 52—Separate accounts for each class.
- 53—Apportionment between classes.
- 54—Accounts and balance sheets.
- 55—Accounting records.
- 56—Audit and auditor's certificate.
- 57—Actuarial investigation.
- 58—Actuarial valuations.
- 59—Returns.
- 60—Accounts and statements to be signed.
- 61—Submission of accounts and statements.
- 62—Further information.
- 63—Other reports.
- 64—Returns sufficient compliance with Companies Act.
- 65—Rectification of returns.
- 66—Penalty for false statements.
- 67—Penalty for failure to comply with requirements of Part.

PART VII—MANAGEMENT AND EXPENSES

- 68—Approved principal officer to be appointed.
- 69—Directors, managers, employees and their remuneration.
- 70—Limitation of management expenses.
- 71—Restrictions on loans, advances, etc., by insurer.
- 72—Limitation on employment of managing agents.

VIII—RATES, POLICY TERMS AND CLAIMS SETTLEMENT

- 73—Restrictions on rebates, brokerage, etc.
- 74—Premium rates of life insurers.
- 75—Premium rates of general insurers.
- 76—Law applicable to contracts of insurance and place of payment.
- 77—Defaults of insurer, broker or agent not to invalidate policy.

Section

- 78—Avoidance of contracts for unlimited amounts.
- 79—Amounts and values in policies to be expressed in Kenya currency.
- 80—Proposal and policy documents not to be misleading.
- 81—Incorrect statements in proposals.
- 82—Effect of suicide or capital punishment on policy.
- 83—Particulars as to age of proposer for life assurance.
- 84—Notice regarding proof of age.
- 85—Procedure where insurer declines to accept proof of age.
- 86—Misstatement of age.
- 87—Objections to and return of life policy.
- 88—Paid up policies.
- 89—Surrender of policies.
- 90—Non-forfeiture of ordinary life policies in certain cases of non-payment of premiums.
- 91—Non-forfeiture of industrial policies in certain cases of non-payment of premiums.
- 92—Treatment of debts on grant of paid up policies.
- 93—Certain policies exempted from operation of sections 88 to 92.
- 94—Insurable interest essential for all policies.
- 95—Property in child's advancement policy.
- 96—Limitation of amount payable on death of child.
- 97—Production of prescribed certificate of death.
- 98—Savings as to insurable interest.
- 99—Protection of insured's interests.
- 100—Family insurance policies.
- 101—Probate or administration may be dispensed with in certain cases.
- 102—Death of policy holder not being life insured.
- 103—Insurer not bound to see to application of payments.
- 104—Power to pay into court.
- 105—No deductions in respect of other policies.
- 106—Lost policies.

PART IX—ASSIGNMENTS, MORTGAGES AND NOMINATIONS

Section

107—Assignments of policies.

108—Effect of notice of trust.

109—Assignment of policy to insurer issuing it not to merge rights etc., under policy.

110—Policies held by trustees.

111—Nomination by policy holder.

PART X—CLAIMS ON SMALL LIFE POLICIES

112—Claims on small life policies.

PART XI—TRANSFERS AND AMALGAMATIONS

113—Application to amalgamate or transfer.

114—Notice.

115—Conditions for approval in relation to long term insurance business.

116—Further conditions for approval.

117—Approval or refusal.

118—Effect of approval under s. 117.

PART XII—INSOLVENCY AND WINDING UP

119—Insurer defined for this Part.

120—Voluntary liquidation.

121—Winding up by court.

122—Insolvency.

123—Petitions for winding up.

124—Secondary companies.

125—Insurers being subsidiaries of non-insurers.

126—Supplementary provisions as to winding up.

127—Valuation of assets and liabilities.

128—Continuation of business of insurer in liquidation.

PART XIII—THE KENYA REINSURANCE CORPORATION

129—Establishment of Corporation.

130—Corporation to be successor to Kenya Reinsurance Corporation.

Section

- 131—Seal and execution of documents.
- 132—Functions of Corporation.
- 133—Board of directors.
- 134—Tenure of office.
- 135—Remuneration.
- 136—Procedure.
- 137—Staff.
- 138—Secrecy.
- 139—Capital of Corporation.
- 140—Reserves and application of profits.
- 141—Investments.
- 142—Financial year.
- 143—Accounts and audit.
- 144—Application of provisions of Act to Corporation.

PART XIV—MANDATORY REINSURANCE CESSIONS

- 145—Certain business to be ceded to Kenya Reinsurance Corporation.
- 146—Power to decline business.
- 147—Payment.
- 148—Returns and information.
- 149—Offences and penalty.

PART XV—INTERMEDIARIES, RISK MANAGERS, LOSS ASSESSORS, LOSS ADJUSTERS, INSURANCE SURVEYORS AND CLAIMS SETTLING AGENTS

- 150—Only registered brokers, agents, risk managers, loss assessors, loss adjusters, surveyors and claims settling agents to carry on business.
- 151—Application for registration.
- 152—Disqualifications.
- 153—Registration and re-registration.
- 154—Business by agents.
- 155—Returns.
- 156—Advance payment of premiums.

PART XVI—THE INSURANCE ADVISORY BOARD OF KENYA

Section

- 157—Establishment of Board.
- 158—Quorum and voting.
- 159—Procedure of Board.
- 160—Provisions relating to chairman.
- 161—Committees.
- 162—Secretary.
- 163—Functions of Board.

PART XVII—ADVERTISEMENTS AND STATEMENTS

- 164—Misleading advertisements, etc. prohibited.
- 165—Advertisements relating to capital.
- 166—Issue of shares or debentures by companies.
- 167—Publication of returns.

PART XVIII—LEGAL PROCEEDINGS AND APPEALS

- 168—Protection for official acts.
- 169—The Tribunal.
- 170—Powers of Tribunal.
- 171—Enforcement of orders for costs.
- 172—Penalty for disobedience of summons to give evidence, etc.
- 173—Appeals from Commissioner's decisions.
- 174—Cognizance of offences and restrictions on institution of proceedings.
- 175—Criminal liability of directors, etc.
- 176—Criminal proceedings against unincorporated bodies.
- 177—Documents to be received in evidence.
- 178—General penalty.

PART XIX—MINISTER'S POWERS

- 179—Policy holders compensation fund.
- 180—Power to prescribe.
- 181—Power of exemption.

PART XX—GENERAL PROVISIONS RELATING TO REGISTRATIONS AND CERTIFICATES

- 182—Interpretation of part.
- 183—Register of authorized persons to be kept by Commissioner.
- 184—Notification of registered persons.

Section

- 185—Inspection of registers.
- 186—Evidence of matters in register.
- 187—Alteration of registration.
- 188—Expiry and renewal of registration.
- 189—Issue, display and surrender of certificates.
- 190—Name of registered person.
- 191—Prohibition of other business.
- 192—Further information.
- 193—Alterations in particulars furnished.
- 194—False or misleading statements.
- 195—Refusal to register.
- 196—Cancellation of registration.
- 197—Records to be maintained by registered persons.

PART XXI—SUPPLEMENTARY PROVISIONS

- 198—Service of notice on registered persons.
- 199—Service of notice on policy holder.
- 200—Conversion of currency.
- 201—Consent of Commissioner required for insurance remittances.
- 202—Printing of documents.
- 203—Settlement of claims.
- 204—Repeals and amendments.

An Act of Parliament to amend and consolidate the law relating to insurance, and to regulate the business of insurance, and for purposes incidental thereto and connected therewith

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Insurance Act, 1984, and shall come into force on a date to be appointed by the Minister by notice in the Gazette.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—
“actuary” means—

(a) a Fellow of the Institute of Actuaries in England or of the Faculty of Actuaries in Scotland; or

(b) such other person having actuarial knowledge as the Commissioner may, on the application of a member of the insurance industry, approve;

“admitted asset” means any property, security, item or interest of a person permitted or required by or under section 42 to be regarded as an admitted asset;

“admitted liability” means any obligation, whether actual, contingent or prospective, permitted or required by or under section 43 to be regarded as an admitted liability;

“Advisory Board” means the board established by section 157;

“affairs”, in relation to a person or to a person associated with another person, includes—

(a) the promotion, formation, membership, control, trading, dealings, business and property of the person;

(b) the ownership of shares in, debentures of and interests made available by the person;

(c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the person or are or have been able to control or to influence materially the policy of the person; and

(d) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of or interests made available by the person;

“agent” means a person, not being a salaried employee of an insurer who, in consideration of a commission, solicits or procures insurance business for an insurer or broker;

“appointed date” means the date specified in section 1 for the coming into force of this Act;

“asset” includes any property, security, item or interest of a person;

“auditor” means a person who is qualified to be appointed an auditor of a company under section 161 of the Companies Act; Cap. 486.

Cap. 438.

“bank” has the meaning assigned to it in the Banking Act;

“bond investment business” means the business of issuing bonds or endowment certificates by which a company in return for subscriptions payable at periodic intervals contracts to pay the bond holder a sum or series of sums at a future date, not being life assurance business but including sinking fund or capital redemption insurance business;

“broker” means an intermediary concerned with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage, commission, fee, allowance, return, or otherwise for or on behalf of an insurer, policy holder or proposer for insurance or reinsurance; but does not include a person who canvasses and secures reinsurance business from or to an insurer or broker in Kenya so long as that person does not undertake direct insurance business and does not have a place of business, or a resident representative, in Kenya;

“certified” means certified by a principal officer to be true and correct, a true copy or a correct translation (as the case may be) by endorsement on or attached to the document to be certified;

“chairman” means the person for the time being presiding over the board of directors or other governing body of the member of the insurance industry;

“child’s advancement policy” means a policy effected, before a child has attained the age of eighteen years, by a person other than the child, which contains both of the following provisions—

- (a) provision for payment of a sum not exceeding the premiums paid and accumulated with interest to the executors, administrators or assigns of the child on his death before attaining the vesting age;
- (b) provision for payment of a sum to the child or his assigns on his attaining an age not less than the vesting age;

“Commissioner” means the officer appointed under section 3;

“contract of insurance” includes a contract of reinsurance;

“Corporation” means the Kenya Reinsurance Corporation established under section 129;

“court” means the High Court;

“dependent”, in relation to a company, means—

(a) that another company, either alone or with any associate, is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the first-mentioned company; or

(b) that the first-mentioned company is a dependant of a company which is that other company’s dependant;

“director” means a person occupying the position of a director by whatever name he may be called;

“document” includes accounts, deeds, letters, writings, books 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;

“financial institution” has the meaning assigned to it in the Banking Act;

Cap. 488.

“financial year” means the calendar year;

“general insurance business” means insurance business of any class or classes not being long term insurance business;

“gross liability” means liability before deducting any part of it which is reinsured;

“gross premium” means the premium after deduction of discounts, refunds and rebates of premium but before deduction therefrom of any premium paid or payable by an insurer for reinsurance ceded, and includes premiums receivable by the insurer under reinsurance contracts accepted by the insurer;

“industrial life assurance business” means the business of effecting assurances on human life, premiums in respect of which are payable, at intervals not exceeding two months in each case, to collectors sent by the insurer to each owner of a policy, or to his residence or place of work;

“insurance business” means the business of undertaking liability by way of insurance (including reinsurance) in respect

of any loss of life and personal injury and any loss or damage, including liability to pay damage or compensation, contingent upon the happening of a specified event, and includes—

- (a) the effecting and carrying out by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidental to some other business carried out by the person effecting them) in return for the payment of one or more premiums;
- (b) the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on business which is insurance business apart from this paragraph, of capital redemption contracts;
- (c) the effecting and carrying out of contracts to pay annuities on human life;

and any business incidental to insurance business as so defined but does not include—

- (i) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants;
- (ii) business in relation to the benefits provided for its members or their dependants by an association of employees;
- (iii) business in relation to a scheme or arrangement under which superannuation benefits, pensions or payments to employees or their dependants, and not to any other persons, on retirement, disability or death are provided by an employer or his employees or by both, wholly through an organization established solely for that purpose by the employer or his employees or by both;
- (iv) business in relation to a scheme or arrangement for the provision of benefits consisting of—
 - (A) the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service; or

(B) the payment of money, upon the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of that person;

and no other benefits, except benefits incidental to the scheme or arrangement;

(v) business consisting of the effecting and carrying out, by a person carrying on no other insurance business, of contracts of such description as may be prescribed, being contracts under which the benefits provided are exclusively or primarily benefits in kind;

(vi) business declared by the Minister by notice in the Gazette not to be insurance business for the purposes of this Act;

“insurer” means a person, whether registered under this Act or not, who carries on insurance business and includes a reinsurer;

“intermediary” means a person who in the course of any business or profession invites other persons to make offers or proposals or to take other steps with a view to entering into contracts of insurance with an insurer, but does not include a person who merely publishes invitations on behalf of, or to the order of, some other person;

“investigator” means the Commissioner or an investigator appointed under section 9;

“Kenya business” and “Kenya insurance or reinsurance business” mean insurance business carried on by an insurer in respect of any person, human life, property or interest situated in Kenya, or in respect of which premiums are ordinarily payable in Kenya and include insurance business in respect of any vessel, hovercraft or aircraft registered or ordinarily located in Kenya, but do not include marine cargo insurance policies on which the premiums are ordinarily payable outside Kenya in foreign currency and settlement of claims are also made outside Kenya in foreign currency:

Provided that, if any doubt arises as to whether on a policy of insurance the premiums are ordinarily payable in Kenya or outside Kenya, the Commissioner shall decide the question and his decision shall be final;

“Kenya Government securities” means securities charged on the revenue of the Government or guaranteed fully as regards principal and interest by the Government;

“Kenya Reinsurance Corporation” means the body corporate established under section 129;

“life assurance” and “life assurance business” mean the business of, or in relation to, the issuing of, or the undertaking of liability to pay money on death (not being death by accident or specified sickness only) or on the happening of any contingency dependent on the termination or continuance of human life (either with or without provision for a benefit under a continuous disability insurance contract), and include a contract which is subject to the payment of premiums for term dependent on the termination or continuance of human life and any contract securing the grant of an annuity for a term dependent upon human life;

“long term insurance business” includes insurance business of all or any of the following classes, namely, ordinary life assurance business, industrial life assurance business and bond investment business and includes, in relation to any insurer, business carried on by the insurer as incidental to any such class of business;

“management expenses” means expenses incurred in the administration of an insurer which are not commission payable and, in the case of general insurance business, are not included in claims paid, claims outstanding, expenses for settling claims and expenses for settling claims outstanding;

“managing agent” means a person, firm or company entitled to the management of the whole affairs of an insurer, by virtue of an agreement with the insurer, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes a person, firm or company occupying that position, by whatever name called;

“member of the insurance industry” includes an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster and claims settling agent, whether registered under this Act or not;

“net liability” means the liability assessed by an actuary at a valuation made by him and approved by the Commissioner;

“net premium” means the balance of the gross premium after deduction therefrom of any premium paid or payable by the insurer for reinsurance ceded;

“ordinary life assurance business” means life assurance business, being business of, or in relation to, the issuing of, or the undertaking of liability under, ordinary life policies;

“ordinary life policy” means a policy of life assurance other than a policy of industrial life assurance;

“person” includes a company, corporate body (whether incorporated by or under statute or statutory authority), association, association of underwriters, fund, natural person, partnership and scheme;

“policy”—

(a) in relation to ordinary life assurance business or industrial life assurance business, includes an instrument evidencing a contract to pay an annuity upon human life;

(b) in relation to bond investment business, includes a bond, certificate, receipt or other instrument evidencing the contract with the insurer; and

(c) in relation to other classes of business, includes an instrument under which there is for the time being an existing liability already accrued or under which any liability may accrue;

“policy holder” means the person who for the time being is the legal holder of the policy for securing the contract with the insurer;

“premium” includes the consideration for the granting of an annuity;

“principal officer” means an officer appointed under section 68;

“registration” means registration under this Act and includes a renewal of registration;

“regulations” and “rules” mean regulations and rules made under this Act;

“reinsurer” means a person who carries on reinsurance business and includes a retrocessionaire;

“reinsurance business” means the business of undertaking liability to pay money to insurers or reinsurers in respect of contractual liabilities in respect of insurance business incurred by insurers or reinsurer and includes a retrocession;

“related”, in relation to an insurer, means—

(a) a dependant of that insurer;

(b) a company of which the insurer is a dependant; or

(c) a dependant of a company of which the insurer is a dependant;

“retrocession” means the reinsurance of reinsurance business accepted by a reinsurer;

“retrocessionaire” means a person reinsuring a reinsurer;

“statutory fund” means the fund established under section 45;

“subsidiary” has the meaning assigned to it in section 154 of the Companies Act;

“Tribunal” means the tribunal established under section 169;

“vesting age” means—

(a) the age of eighteen years; or

(b) an age of not less than ten years on or after the attainment of which by the child it is specified in the policy that sums payable in respect of the policy by the insurer who issued it shall be paid to the child or his executors, administrators or assigns.

(2) An insurer shall be deemed to be carrying on business of a particular class so long as any liability in respect of that class of business remains unsatisfied and is not otherwise provided for, and shall be subject to all the provisions of this Act, save as is specifically provided in any other section thereof, in relation to that class of business.

PART II—APPOINTMENT, POWERS AND DUTIES OF THE
COMMISSIONER OF INSURANCE

3. (1) There shall be a Commissioner of Insurance who shall be appointed by the Minister.

Appointment
and
qualification of
Commissioner.

(2) The Commissioner shall, subject to any directions of the Minister, be responsible for the general administration of this Act and the performance of all the duties and functions assigned to him by or under this Act.

(3) A person shall not be qualified to be appointed as the Commissioner, or if already appointed shall become disqualified if—

(a) he or his spouse or dependent child is or becomes a director, officer, employee or shareholder, whether directly or indirectly, of an insurer, broker or insurance agent; or

(b) he is adjudicated 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.

(4) Notwithstanding subsection (3), no act or omission by the Commissioner done or omitted to be done bona fide for the purposes of or in pursuance of this Act shall be invalidated by reason only of any defect in his appointment.

4. (1) There shall be appointed such other staff as may be necessary for the efficient administration of this Act.

Staff and
expenses.

(2) The expenses of and incidental to the administration of this Act shall be paid out of moneys provided by Parliament for that purpose.

5. (1) Subject to this Act, the duties of the Commissioner shall include—

Particular
duties of
Commissioner.

(a) the formulation and enforcement of standards in the conduct of the business of insurance with which a member of the insurance industry must comply;

(b) directing insurers and reinsurers on the standardization of contracts of compulsory insurance;

(c) directing an insurer or a reinsurer, where he is satisfied that the wording of a particular contract of insurance issued by the insurer or reinsurer is obscure or

contains ambiguous terms or terms and conditions which are unfair or oppressive to the policy-holders, to clarify, simplify, amend or delete the wording, terms or conditions, as the case may be, in respect of future contracts;

(d) the approval of tariffs and rates of insurance in respect of any class or classes of insurance;

(e) such other duties as the Minister may assign to him.

(2) The Commissioner shall, as soon as reasonably practicable after each year ending on 31st December, furnish to the Minister a report on the working of this Act during that year together with summaries of returns and documents deposited with him under Part VI during that year; and the Minister shall lay the report before the National Assembly as soon as reasonably practicable thereafter.

Delegation by
Commissioner.

6. (1) The Commissioner may, in relation to any particular function or matter or class of functions or matters, by writing under his hand, delegate any of his powers and functions under this Act (except this power of delegation), so that the delegated powers and functions may be exercised by the delegate with respect to the function or matter or class of functions or matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Commissioner.

Power to call
for information
and production
of books or
papers.

7. (1) The Commissioner may, by notice in writing, require a member of the insurance industry to supply him with information relating to his insurance business, and that person shall comply with the requirement within such period after receipt of the notice as may be specified therein failing which he shall be deemed to have failed to comply with the provisions of this Act.

(2) Information supplied under this section shall be certified by a principal officer of the member of the insurance industry in question and, if the notice so requires, also by an auditor.

(3) The Commissioner may by notice in writing—

(a) require a member of the insurance industry to produce, at such time and place as he may specify, such books or documents as he may specify; or

(b) authorize any person, on producing (if required to do so) evidence of his authority, to require a member of the insurance industry to produce to him forthwith any books or documents which that person may specify.

(4) Where by virtue of subsection (3) the Commissioner or a person authorized by him has power to require the production of books or documents from a member of the insurance industry, the Commissioner or that person shall have the same power to require production of those books or documents from any person who appears to him to be in possession of them.

(5) Where any person from whom production of a document is required claims a lien on the document produced by him, the production shall be without prejudice to the lien.

(6) The power conferred by or by virtue of subsections (3) and (4) to require a member of the insurance industry or other person to produce books or documents shall include power—

(a) if the books or documents are produced—

(i) to take copies of them or extracts of or from them; and

(ii) to require that person, or any other person who is a present or past director of, auditor of, or is or was at any time employed by, the member of the insurance industry in question, to provide an explanation of any of them;

(b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(7) A person who in purported compliance with a requirement imposed under this section furnishes information which he knows to be false in a material particular, or who recklessly furnishes information which is false in a material particular, or who, having been required to produce a book

or document for examination, alters, mutilates, damages, destroys, conceals or removes it without the written consent of the Commissioner, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding twelve months or to both.

Examination of
reinsurance
treaties.

8. (1) The Commissioner may—

(a) call upon an insurer to submit for his examination at his office all reinsurance treaties and other reinsurance contracts entered into by the insurer;

(b) by notice in writing, require an insurer to supply him with copies of any of the documents referred to in paragraph (a) certified by a principal officer of the insurer.

(2) If on the scrutiny of a document referred to in subsection (1) or otherwise the Commissioner considers that any reinsurance treaty, contract or arrangement or any terms or conditions therein are not favourable to the insurer or are not in the interests of the economy or the insurance industry or in the public interest, he may in writing direct the insurer either—

(a) to make, at the time when the renewal of that treaty or contract next becomes due, such modifications in its terms and conditions as he may specify; or

(b) not to renew that treaty, contract or arrangement.

(3) A person who fails to comply with, or contravenes any requirement imposed under, this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding twelve months or to both, and if the offence is a continuing one, to a further fine not exceeding two hundred shillings for every day during which the offence continues.

Directions and
investigations.

9. (1) Where the Commissioner—

(a) has reason to believe that—

(i) an offence under this Act or default in complying with any of the provisions of this Act or any subsidiary legislation made thereunder has been or is likely to be committed by a member of the insurance industry; or

- (ii) the affairs of any member of the insurance industry are being conducted in a manner which is detrimental or prejudicial to the interests of that member, any policy holder, the economy or the insurance industry; or
 - (iii) an insurer may be unable or is likely to become unable to meet his obligations or, in the case of long term insurance business, to fulfil the reasonable expectation of policy holders or potential policy holders; or
- b) receives a requisition signed by not less than ten per cent of policy holders holding policies of life assurance in force respectively for not less than three years with an insurer and which on maturity will be for a total value of not less than one million shillings, that an investigation be held into the affairs of that insurer; or
- (c) receives a requisition signed by not less than one-tenth of the shareholders holding not less than one-tenth of the issued share capital of an insurer, that an investigation be held into his affairs,

the Commissioner may exercise any one or more of the powers set out in subsection (2).

(2) The powers referred to in subsection (1) are that the Commissioner may—

- (a) by notice in writing served on the person concerned, direct him to furnish to the Commissioner within such period after service of the notice, being not less than seven days, as he specifies in the notice, information in writing about such matters in relation to the affairs of the person as he so specifies;
- (b) by notice in writing served on the person concerned direct him not to dispose of or otherwise deal with or remove from Kenya an asset in Kenya specified in the notice during such period after service of the notice, being not more than six months, as he specifies in the notice;
- (c) after giving the member of the insurance industry a reasonable opportunity of being heard, and with the written approval of the Minister, give such directions in writing as he considers necessary, to be effective from a specified date;

(d) after giving the member of the insurance industry a reasonable opportunity of being heard, and with the written approval of the Minister, prohibit that member of the insurance industry from entering into any particular transaction or class of transactions;

(e) after giving the member of the insurance industry a reasonable opportunity of showing cause why, on such grounds as he so specifies, an investigation should not be conducted in respect of that member, with the approval in writing of the Minister, investigate, or, by instrument in writing appoint any person, other than a person in the employ of that member, to investigate the affairs of that member.

(3) With regard to a requisition made under paragraph (b) or (c) of subsection (1) the Commissioner may, before ordering an investigation, require the persons making the requisition to furnish security in such amount as he considers sufficient to meet the costs to be incurred by the member of the insurance industry and by the Commissioner in respect of the investigation.

(4) A person who fails to comply with a direction issued or who contravenes a prohibition imposed under subsection (2) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings; and if the offence is a continuing one, to a further fine not exceeding one hundred shillings for every day during which the offence continues.

(5) The Commissioner or other person appointed by him to investigate the affairs of a member of the insurance industry may, wherever necessary, employ an auditor, actuary or other person to assist him in the investigation.

(6) All expenses of, and incidental to, an investigation under this section shall be defrayed by the member of the insurance industry and if they are not paid by him within a period of one month after the Commissioner makes a demand to him, shall constitute a civil debt recoverable summarily by the Commissioner.

Particular
powers
of Commissioner
with regard to
long term
insurance
business.

10. (1) Where an insurer carrying on long term insurance business has not issued a new policy of that category of insurance for a period of twelve months from the appointed date, or from the date of issue of the last policy, whichever is

later, the Commissioner may direct the insurer to frame proposals for transfer or amalgamation of its business to or with another insurer.

(2) Where an insurer fails to comply with a direction under subsection (1), or if the proposals framed by the insurer are in the opinion of the Commissioner unsatisfactory, the Commissioner may himself frame a scheme for the transfer of the business to another insurer specified by the first mentioned insurer and approved by the Commissioner.

(3) Where an insurer fails to implement a scheme framed by the Commissioner under subsection (2) and the Commissioner considers that the continuance in business of that insurer is likely to lead to insolvency, or is otherwise contrary to the interests of policy holders he may—

(a) order an investigation of that insurer; or

(b) apply to the court for winding up the business of the insurer in terms of section 123 (1) (b).

11. (1) Where an investigator believes on reasonable grounds that it is necessary for the purposes of an investigation under section 9 to investigate the whole or some part of the affairs of another person that is, or has at some relevant time been, associated with the person in respect of which he is appointed, he may, with the consent in writing of the Minister, investigate the whole or that part of the affairs of that other person.

Investigations
of associated
person.

(2) Before commencing the investigation, the investigator shall, if requested, serve on the associated person a copy of the consent in writing of the Minister.

(3) For the purposes of this section, a person is associated with another person if the two persons are related to each other and—

(a) the first-mentioned person is a member of the insurance industry; and

(b) either of those persons is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other person or of its directors.

Powers of
investigator.

12. (1) An investigator may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant, broker, auditor or actuary of the person being investigated to—

- (a) give to the investigator all reasonable assistance in connection with the investigation; or
- (b) appear before the investigator for examination concerning matters relevant to the investigation; or
- (c) produce any books or documents that relate to the affairs of the person being investigated.

(2) Where books or documents are produced to an investigator under this section, the investigator may take possession of them for such period as he thinks necessary for the purposes of the investigation and may make copies of and take extracts from them, but shall permit a person who would be entitled to inspect any of them, if they were not in the possession of the investigator, to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(3) No person shall—

- (a) refuse or fail to comply with a requirement of an investigator that is applicable to him, to the extent to which he is able to comply with it; or
- (b) in purported compliance with such a requirement, furnish information or make a statement that he knows to be false or misleading in a material particular; or
- (c) when appearing before an investigator for examination in pursuance of such a requirement, make a statement that he knows to be false or misleading in a material particular; or
- (d) obstruct or hinder an investigator in the exercise of his powers under this Act.

(4) A person who acts in contravention of subsection (3) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

(5) A person being examined by an investigator shall not be excused from answering a question put to him by an investigator on the ground that the answer might tend to incriminate him but, where the person informs the investigator before answering the questions that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings in relation to an offence under subsection (4).

13. A person who complies with a requirement of an investigator under this Act shall not incur any liability to any other person by reason only of that compliance.

Protection
for persons
complying.

14. An advocate acting for a person being examined by an investigator—

Person may be
represented by
an advocate.

(a) may attend the examination; and

(b) may—

(i) address the investigator; and

(ii) examine the person,

in relation to matters in respect of which the investigator has questioned the person.

15. (1) An investigator may cause notes of an examination of a person to be recorded and read to or by that person and may require that person to sign the notes and, subject to section 12 (5), notes signed by that person may be used in evidence in proceedings under this Act against that person.

Notes of
examination
of person.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing to the investigator.

(3) Where notes are recorded under this section, the notes shall be furnished to the Commissioner with the report of the investigation to which they relate.

16. (1) An investigator may make one or more reports in writing to the Commissioner during the investigation of the whole or a part of the affairs of a person and shall, if so directed in writing by the Commissioner, make such reports as are specified in the direction.

Report of
investigator.

(2) A report made on the completion of the investigation shall include—

- (a) a statement of the opinion of the investigator in relation to the grounds for investigation and the facts on which that opinion is based and recommendations thereon;
- (b) the recommendations of the investigator with respect to—
 - (i) the question whether the person investigated should continue to be permitted to carry on business;
 - (ii) any directions that should be given under section 17 to the person investigated;
 - (iii) the question whether the affairs of the investigated person should be reorganized; and
 - (iv) such other matters, affecting the person investigated or otherwise in the public interest in relation to the business carried on by the person investigated, as he thinks fit.

(3) An investigator shall not include in a report a recommendation relating to the institution of criminal proceedings or a statement to the effect that, in his opinion, a specified person has committed a criminal offence.

(4) The Commissioner shall give a copy of a report made to him under this section to the person investigated.

(5) The Minister may, if he considers it is in the public interest to do so and after taking into consideration any advice he has received from the Attorney General, cause the whole or some part of the report to be published.

Directions to
person
investigated.

17. (1) The Commissioner may, by notice in writing, require a person investigated to comply by such date or within such period as may be specified therein, with such directions as he considers necessary in connection with any matter arising out of a report made under section 16.

(2) Without prejudice to the generality of subsection (1), the Commissioner may, where the person investigated is an insurer, with the approval of the Minister, issue any one or more of the following directions—

- (a) that the insurer shall not issue new policies or undertake liability under new contracts of insurance;

- (b) that the insurer shall not renew existing policies;
- (c) that the insurer shall not issue policies in respect of a class of insurance business specified in the direction or undertake liability under contracts of insurance included in a class of contracts of insurance so specified;
- (d) that the insurer shall not renew existing policies in respect of a class of insurance business specified in the direction.

(3) Without prejudice to the generality of subsection (1), the Commissioner may, where the person investigated is an insurer, issue any one or more of the following directions—

- (a) that the insurer shall not dispose of or otherwise deal with an asset of the insurer or an asset of the insurer included in a class of assets specified in the direction;
- (b) that the insurer shall dispose of an asset of the insurer included in a class of assets specified in the direction, in such manner and within such period after the giving of the direction, not being less than twenty-one days, as the Commissioner so specifies;
- (c) that the insurer shall, within such period after the giving of the direction, not being less than twenty-one days, as the Commissioner specifies in the direction, make in his accounts such provision or further provision as the Commissioner so specifies in respect of unearned premiums or claims or in respect of both unearned premiums and claims;
- (d) that the insurer shall, within such period after the giving of the direction, not being less than twenty-one days, as the Commissioner specifies in the direction, adjust one or more of his reserves and make appropriate investment in connection with such reserve or reserves, as the case may be;
- (e) that the insurer shall make such arrangements with respect to reinsurance or retrocession as he so specifies;
- (f) that the insurer shall increase, so far as he is able to do so, his paid up capital whether by calling up such uncalled capital as is available to be called up or otherwise;

(g) that the insurer shall not, except with the consent of the Commissioner—

(i) enter into an arrangement or agreement for the sale or disposal of his business by amalgamation or otherwise or for the carrying on of his business in partnership with another body corporate; or

(ii) effect a reconstruction of the insurer;

(h) that the insurer shall, within such period after the giving of the directions, not being less than six months, as the Commissioner specifies in the direction, effect a reconstruction of the insurer.

(4) Where a body corporate in respect of whom a direction has been given under subsection (1), (2) or (3) is commenced to be wound up, the direction shall cease to have effect unless the court directs otherwise.

(5) If, as a result of a report by an investigator, the Commissioner considers that it is necessary in the interests of policy holders that the person investigated be wound up, or if the person investigated fails to comply with any direction issued under this section, the Commissioner may, after giving the person investigated a reasonable opportunity of making representations, apply to the court for an order for the winding up of the person investigated, in which case the provisions of the Companies Act relating to the winding up of a company (as varied by Part XII of this Act) shall apply.

Cap. 486.

(6) Where, after reading a report made under section 16, the Commissioner considers that a requisition under paragraphs (b) or (c) of subsection (1) of section 9 has been made without reasonable cause, he may order that the whole or any part of the amount furnished as security under subsection (3) of that section shall be forfeited and paid to the person investigated and the Commissioner in order to defray the respective costs incurred by them.

Secrecy.

18. (1) This section applies to every person who is or has been the Commissioner of Insurance or a member of the staff assisting the Commissioner or an investigator or any other person appointed by or assisting the Commissioner.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of or divulge or communicate 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 purposes of this Act.

(3) Nothing in this section shall prevent the communication of information or the production of a document, by the Commissioner or by a member of the staff or other person assisting the Commissioner or by an investigator authorized by the Commissioner in that behalf, to a person to whom, in the opinion of the Minister, it is in the public interest that the information be communicated or the document produced.

(4) The Commissioner or a member of the staff or other person assisting the Commissioner and authorized by him in that behalf may furnish to the Director of Statistics or the Advisory Board information obtained from a member of the insurance industry or policy holder.

(5) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding twelve months or to both.

PART III—REGISTRATION OF INSURERS

19. (1) Except as otherwise provided in or under this Act, only a person registered under this Act shall, on or after the appointed date, carry on insurance business—

Only authorized persons to carry on insurance business.

- (a) in Kenya, whether in respect of Kenya insurance or reinsurance business or otherwise; or
- (b) outside Kenya in respect of Kenya business, except Kenya business which is solely reinsurance business:

Provided that, notwithstanding this subsection, an insurer carrying on insurance business immediately before the appointed date may continue to carry on insurance business without being registered under this Act—

- (i) for a period of three months beginning with that date; and

(ii) if before the expiration of that period he applies for registration under this Act, until he is registered or registration is refused or his application is withdrawn.

(2) A person resident in Kenya or an association of persons or body corporate established in Kenya who or which carries on insurance business in any part of the world other than Kenya shall for the purposes of this Act be deemed to be an insurer carrying on that business within Kenya.

(3) A person who carries on insurance business in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and, if the offence is a continuing one, to a further fine of one thousand shillings for every day during which the offence continues.

(4) Where a person guilty of an offence under subsection (3) is a natural person, that person shall be liable, in addition to, or in the alternative to, a fine, to imprisonment for a term not exceeding two years.

(5) Where a person guilty of an offence under subsection (3) is a body corporate, then notwithstanding the imposition of any penalty, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the court for the winding up of that body corporate.

Placing of risks with insurers and reinsurers not registered under this Act.

20. (1) No insurer, broker, agent or other person shall directly or indirectly place any Kenya business other than reinsurance business with an insurer not registered under this Act without the prior approval, whether individually or generally, in writing of the Commissioner.

(2) No insurer, broker, agent or other person shall directly or indirectly place any reinsurance of Kenya business with an insurer not registered under this Act except under the following conditions—

(a) in the case of treaty reinsurance, with the approval of the Commissioner to the treaty, and subject to such restrictions as he may specify;

(b) in the case of facultative reinsurance, subject to the prior approval in writing of the Commissioner to the placing of each particular risk with insurers or reinsurers not registered under this Act.

(3) Paragraph (a) of subsection (2) shall be deemed to have been complied with in respect of any reinsurance treaty or contract in force on the appointed date until the date of the next renewal of registration or the date of the renewal of the treaty or contract, whichever is earlier, if the treaty or contract is certified by the Kenya Reinsurance Corporation as having been approved by that corporation.

(4) A person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment not exceeding one year or to both.

(5) A policy or contract of insurance or reinsurance effected or renewed in contravention of subsection (1) of section 19, or subsection (1) of this section, shall not be invalid, void or unenforceable solely on the grounds of that contravention.

21. (1) Nothing in section 19 shall prohibit, without registration under this Part, the continuance, subject to sections 10 and 123 (1) (b), of insurance business in Kenya by an insurer, in so far as it is necessary to maintain, without renewal, any policy or contract of insurance, issued before the appointed date (in this section called "closed fund business"); but so long as any liability upon such a policy or contract of insurance remains unpaid or undischarged, all the provisions of this Act shall apply to that insurer, unless the Minister, in writing, specifically grants exemption therefrom or from any provision thereof.

Closed fund
business.

(2) Where an insurer was on the appointed date carrying on only closed fund business and does not intend to apply for registration under this Part, he shall, within three months after the appointed date, notify the Commissioner in writing that he does not so intend.

(3) The Commissioner may, by notice in writing served on the insurer, require him to furnish within such period, not being less than three months, as he specifies, the particulars of the insurer's business in Kenya requested in the notice.

(4) A person who fails to comply with the provisions of subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings and, if the offence is a continuing one, to a further fine of five hundred shillings for every day during which the offence continues.

Prohibition of registration of certain persons.
Cap. 486.

22. Subject to section 23, no person shall be registered as an insurer under this Act unless that person is a body corporate incorporated under the Companies Act and at least one third of the controlling interest, whether in terms of shares, paid up share capital or voting rights, as the case may be, are held by citizens of Kenya.

Minimum capital or equivalent and holding by Kenya citizens.

23. (1) Subject to section 24, no person shall be registered as an insurer, or if registered shall have his registration renewed, unless he has a paid up capital of not less than five million shillings, or, in the case of a body not having share capital, unless he has assets approved by the Commissioner for the purpose of not less than five million shillings, of which not less than the amounts specified in subsection (2) are owned by Kenya citizens.

(2) The amounts referred to in subsection (1) are—

(a) where the amount of paid up capital or assets approved by the Commissioner is five million shillings, fifty-one per cent thereof;

(b) where the amount of paid up capital or assets approved by the Commissioner exceeds five million shillings but is less than ten million shillings, an amount of two million five hundred and fifty thousand shillings, plus fifteen and two thirds per cent of the excess of the paid up capital or assets over five million shillings; and

(c) where the amount of paid up capital or assets approved by the Commissioner is ten million shillings or more, one third of the paid up capital or assets.

(3) If an insurer, at the time of application for renewal of his registration, does not comply with the requirements of subsection (2), having complied or having been deemed to have complied with those requirements on the last preceding occasion when registration or renewal of registration as the case may be was made, and the Commissioner is satisfied that the failure to comply with the requirements was caused by matters beyond the control of the insurer, the Commissioner shall declare the insurer to be deemed to have complied with the requirements of subsection (2) for the purposes of renewal of the registration of the insurer on the date of the application

and shall renew the registration subject to such terms and conditions as he may impose regarding the steps to be taken for removing the contravention of subsection (2) and the duration thereof.

24. (1) A person carrying on insurance business on the appointed date who does not meet the requirements of sections 22 and 23 (regarding outstanding interests and paid up capital) may be registered, or his registration may be renewed, as the case may be, without complying with the requirements of those sections subject to the following conditions—

Extension of time.

(a) he shall comply with the requirements of sections 22 and 23 before the expiry of three years from the appointed date:

Provided that the Minister may, if satisfied that in spite of his best efforts he has not been able to comply with the necessary requirements, grant extension of the period by a period or periods not exceeding one year at a time, but the total length of those extended periods shall not exceed two years;

(b) he shall not, in respect of the period up to the period stated above including all the extended periods, where he has paid up share capital, declare a dividend exceeding ten per cent per annum on the paid up value of the shares.

(2) On the expiry of the period mentioned in subsection (1), including the total of any extended periods, if the person has failed to comply with the requirements of sections 22 and 23 which may be applicable to him, his registration shall stand cancelled with immediate effect and the provisions of subsections (3), (4) and (5) of section 196 shall apply as if the registration has been cancelled under paragraph (a) of subsection (2) of that section and the cancellation has taken effect as on the expiry of that period, including the total of any extended periods.

25. (1) No insurer being a company limited by shares shall be registered to carry on insurance business unless he satisfies all the following conditions—

Requirements as to capital structure and voting rights.

(a) that the capital of the company consists only of ordinary shares each of which has a single face value;

(b) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this subsection shall not apply to an insurer who has, before the commencement of this Act, issued shares other than ordinary shares each of which has a single face value, or shares the paid-up amount whereof is not the same for all of them, for a period of three years from that commencement.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association of an insurer referred to in subsection (1), but subject to the other provisions of this section, the voting rights of every shareholder of the insurer shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.

(3) No insurer shall after the commencement of this Act be newly registered for carrying on any class of insurance business if he has issued shares other than ordinary shares of the nature specified in subsection (1).

(4) Subject to the other provisions contained in this Act, but notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association of an insurer referred to in subsection (1), no insurer shall, except with the prior written approval of the Commissioner, register the transfer of any shares where the transfer has the effect of reducing the proportion of share holding of citizens of Kenya in the insurer required by section 22 or 23.

26. (1) A person registered as an insurer under this Act shall be entitled to carry on only the class or classes of insurance business for which he has been registered.

(2) In the case of an insurer registered to carry on both long term insurance business and general insurance business, the assets of the statutory funds established under section 45 in respect of long term insurance business shall be as absolutely the security of the policy holders of the long term insurance business as though the statutory funds belonged to an insurer carrying on no other business than long term insurance business and shall not be liable for any contracts of the insurer

Provisions relating to carrying on of both long term and general insurance business.

for which the statutory funds would not have been liable had the business of the insurer been only long term insurance business and, notwithstanding the Companies Act, shall not be applied directly or indirectly, either during the winding up or otherwise, for any purpose other than those of the long term insurance business of the insurer.

27. A person being a body corporate incorporated in Kenya and not having shares shall not be registered or shall not have his registration renewed, as the case may be, and if registered shall have his registration cancelled, if at least one third of the members of his board of directors or managing board are not citizens of Kenya.

One third of boards to be citizens of Kenya.

28. No person shall be registered under section 31 except a person having admitted assets in Kenya of not less than three million shillings.

Minimum assets in Kenya.

29. (1) Subject to subsection (3) of this section, no person shall be registered under section 31 except a person who has arrangements, being arrangements approved by the Commissioner for reinsurance of liabilities in respect of which persons, property or interests are, or are to be, insured by the insurer in the course of carrying on insurance business.

Appropriate reinsurance arrangements.

(2) The Commissioner shall not approve arrangements for reinsurance made or proposed to be made unless the amount of premium and commission to be paid or the manner in which the amount of premium and commission are to be ascertained are specified in the contract of reinsurance.

(3) The Commissioner shall not approve arrangements for reinsurance where, in the opinion of the Commissioner, the retention limits are too low or too high.

(4) The Commissioner may, in determining whether to approve arrangements for reinsurance made, or proposed to be made, by an insurer, have regard to all matters that he considers relevant and in particular to—

- (a) the class or classes of insurance business carried on or proposed to be carried on by the insurer;
- (b) the amount of premiums received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by him;

- (c) the amount of premiums expected by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;
- (d) the size of contingency loading which can be built into the premium rates of the insurer;
- (e) the amount of reinsurance commissions received by or due to the insurer during his last preceding financial year in respect of each class of insurance business carried on by the insurer;
- (f) the amount of reinsurance commissions expected to be received by the insurer during the next financial year in respect of each class of insurance business to be carried on by the insurer;
- (g) the price of reinsurance;
- (h) the nature and value of the assets of the insurer;
- (i) the capital reserves of the insurer and cost of servicing capital, investment policy and investment income;
- (j) probability, number and size of losses expected and risk characteristics of the insurer's portfolio;
- (k) inter-dependence of exposure units; and
- (l) the person or persons by whom the reinsurance is or is proposed to be undertaken.

(5) The Minister, having regard to such matters as he considers relevant, may, by notice in writing, exempt an insurer, subject to such terms and conditions and for such period as he specifies in the notice, from the requirements of subsection (1).

Application
for registration.

30. An application for registration as an insurer shall be in the prescribed form and shall be accompanied by—

- (a) a copy of the memorandum of association or other instrument or document by which the applicant is constituted;
- (b) a copy of the articles of association or other rules of the applicant;
- (c) a certified copy of the published prospectus, if any;
- (d) a copy of each of the proposal and policy forms, endorsements and any form of written matter describing the terms or conditions of or the benefits to

or likely to be derived from policies or intended to be used by the applicant;

- (e) statements of the premium rates, advantages and terms and conditions to be offered in connection with insurance policies and details of the bases and formulae from which those rates have been calculated together with a certificate in connection with long term insurance business by an actuary that such rates, advantages, terms and conditions are sound and workable;
- (f) a detailed statement of assets and liabilities in Kenya at the date of application;
- (g) a description of all reserves made by the insurer with detailed descriptions of the method, basis and formula for calculating each of the reserves;
- (h) a certificate from the Central Bank of Kenya specifying the amounts and details of deposits under section 32 made by the applicant;
- (i) certified copies of reinsurance contracts;
- (j) the prescribed fee;
- (k) such proposals as to the manner in which it proposes to carry on business and such financial forecasts and other documents and information, if any, as may be prescribed.

31. Where the Commissioner is satisfied that—

Registration.

- (a) the applicant has the share capital and assets, as the case may be, required by sections 22 and 23;
- (b) the deposit required by section 32 has been made;
- (c) the applicant has adequate reinsurance arrangements or has been granted an exemption under section 29;
- (d) the applicant has adequate reserves and the methods of calculating the reserves are satisfactory;
- (e) the applicant has adequate assets in Kenya;
- (f) the volume of business which is likely to be available to, and the earning prospects of, the applicant are adequate;

(g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;

(h) the applicant has an adequate number of technically qualified and otherwise competent staff, including a fit and proper principal officer, and suitable premises and facilities in Kenya to satisfactorily serve the public in respect of the class or classes of business specified in the application,

he may, subject to such terms and conditions as he considers necessary, register the applicant in respect of such class or classes of insurance as he shall direct :

Provided that the Commissioner shall not register an applicant if he is directed in writing by the Minister that the applicant should not be registered in the public interest.

PART IV—DEPOSITS

Deposits.

32. (1) Subject to subsection (2), an insurer applying for registration under this Act shall deposit and keep deposited with the Central Bank of Kenya (in this Part called the Bank), in Kenya Government securities estimated at the market value of the securities on the day of deposit—

(a) where the application is in respect of long term insurance business, a sum of one million shillings;

(b) where the application is in respect of general insurance business, a sum of five hundred thousand shillings;

(c) where the application is in respect of both long term and general insurance business a sum of one million shillings in respect of long term insurance business and a sum of five hundred thousand shillings in respect of general insurance business.

(2) Where an applicant under subsection (1) was carrying on insurance business immediately prior to the appointed date he may deposit with the Bank in Kenya Government securities a sum of one hundred and fifty thousand shillings in respect of long term business and a sum of fifty thousand

shillings in respect of general business; and if the applicant is registered he shall deposit annually thereafter further Kenya Government securities of the same amounts in respect of each of the two classes of business aforesaid, until the deposit reaches the value specified in subsection (1) for the class or classes of business for which the applicant is registered.

(3) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in securities (estimated at the market value of the securities on the day of deposit) as will make up the amount so used and, unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is used for discharge of liabilities, the insurer shall be deemed to have failed to comply with the requirements of subsection (1).

33. (1) A deposit made under section 32 shall be returned by the Bank if the application for registration as an insurer is not approved by the Commissioner.

Return of deposits if unregistered.

(2) Subject to section 40 (2), no deposit made in respect of a class of insurance business shall be refunded so long as the insurer carries on that business.

34. Where the Commissioner approves an application for registration under section 31, a deposit made under section 32 shall be held by the Bank on behalf of the insurer and any interest due and collected by the Bank on a deposit shall be paid to the insurer.

Deposits to be kept by Bank on behalf of insurer.

35. An insurer may at any time replace any securities deposited by him under this Part by other securities so long as the value of the other securities estimated at the market rates prevailing at the time of replacement is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

Substitution of deposits.

36. The Bank shall, on the written application of an insurer, invest in Kenya Government securities the whole or any part of the amount received on the redemption of a deposited security.

Investment of amount deposited.

37. (1) An insurer may require the Bank to sell any deposited security and to invest the net proceeds of the sale in such Kenya Government security as the insurer may direct

Variation of deposits.

and the new security shall be deemed to form part of the deposit under section 32.

(2) If the amount realized by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit in securities estimated at the market value of the securities on the day on which they are deposited, within a period of two months from the date on which the securities matured or were sold, and unless he does so the insurer shall be deemed to have failed to comply with the requirements of section 32 as to deposits.

Use of
deposit.

38. (1) A deposit made by an insurer shall be deemed to be part of the assets of the insurer, but shall not—

- (a) be capable of being transferred, assigned, or encumbered with a mortgage or other charge, by the insurer;
- (b) be available for the discharge of a liability of the insurer other than liability in respect of a policy of insurance issued in Kenya by the insurer;
- (c) be liable to attachment in execution of a judgment except a judgment obtained by a policy holder of the insurer in respect of a debt due upon a policy of insurance issued in Kenya and which debt the policy holder has been unable to recover in any other way.

(2) Where a deposit is made in respect of long term insurance business, it shall not be available for the discharge of a liability of the insurer other than a liability arising out of a policy of long term insurance issued by the insurer.

Return of
deposit.

39. Where the Commissioner is satisfied that an insurer has ceased to carry on in Kenya any class of insurance business in respect of which he has been registered and that all his liabilities in Kenya in respect of that business have been satisfied or otherwise provided for, the Bank shall on the application by that insurer and on the approval of the Commissioner return to the insurer such part of the deposit as is not required in respect of any other class of insurance business carried on by the insurer.

40. (1) Where upon examination of a return, reinsurance document or other document of or furnished by an insurer, it appears to the Commissioner that a deposit made under section 32, or the value of the assets of the insurer in Kenya, is disproportionately low in relation to the amount of insurance business carried on by that insurer in Kenya, or that it is in the opinion of the Commissioner desirable for the protection of policy holders, the Commissioner may, after giving the insurer a reasonable opportunity of making representations, require the insurer to make an additional deposit of such sum as he shall specify not exceeding in the case of general insurance business twenty per cent, and in the case of long term insurance business ten per cent, of the premiums paid or payable in respect of policies of insurance issued in the financial year of the insurer immediately preceding the year in which the additional deposit is required to be made.

Increase of
deposit.

Provided that the total deposits including the additional deposit shall not exceed three million shillings in the case of general insurance business and three million shillings in the case of long term insurance business.

(2) An additional deposit made in accordance with subsection (1), or any part thereof, which is in the opinion of the Commissioner no longer required shall be refunded to the insurer either on the application of the insurer or on the initiative of the Commissioner.

(3) Subject to subsection (2), an additional deposit required to be made under subsection (1) shall be deemed to be a deposit made under section 32 and the provisions of this Part applicable to deposits shall apply to that additional deposit.

PART V—ASSETS, LIABILITIES, SOLVENCY MARGINS AND INVESTMENTS

41. (1) An insurer carrying on in Kenya long term insurance business but not general insurance business shall keep at all times admitted assets of not less than the aggregate value of his admitted liabilities and one million shillings.

Margin of
solvency.

(2) An insurer carrying on in Kenya general insurance business but not long term insurance business shall keep at all times admitted assets of not less than the aggregate value of his admitted liabilities and three million shillings, or ten per cent of his net premium income during his last preceding financial year, whichever is the greater.

(3) An insurer carrying on both long term and general insurance business shall at all times maintain separate margins of solvency in accordance with subsections (1) and (2):

Provided that assets other than those representing the fund or funds maintained by the insurer in respect of his long term insurance business, if they are not included among the assets covering the liabilities and the margin of solvency relating to the insurer's general insurance business, may be included among the assets taken into account in covering the liabilities and the margin of solvency for the insurer's long term insurance business.

(4) For the purposes of this section, in the case of long term insurance business the amount of the liabilities of that business at any time shall be---

(a) an amount equal to the total amount at that time standing to the credit of the statutory fund or funds maintained by the insurer in respect of his long term insurance business; or

(b) the amount of those liabilities at that time as determined by an investigation performed in accordance with section 57 and approved by the Commissioner,

whichever is the greater.

(5) An insurer failing to comply with the requirements of subsection (1), (2) or (3), as the case may be, shall be deemed to be unable to pay his debts within the meaning of section 219 of the Companies Act.

Cap. 486.

(6) The Minister, having regard to such matters as he considers relevant, including the date of incorporation of an insurer, may by notice in writing allow time for an insurer, subject to such terms and conditions as may be specified in the notice, to comply with the requirements of subsection (1), (2) or (3).

(7) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 46 or otherwise.

(8) Where the assets of an insurer include an investment in the form of cash with, loan to, debenture of, share in, or other form of investment in, an organization and where in respect of long term insurance business or general insurance business the total value of all such investments in that organi-

zation together with the value of such investments in all other organizations related to it exceeds five per cent of the total value of all the admitted assets of the insurer in the particular class of insurance referred to, any excess of the total value of all the investments over five per cent shall, for the purpose of ascertaining the value of the admitted assets of the insurer relating to the particular class of insurance business for the purpose of ascertaining compliance with the requirements of subsection (1), (2) or (3), as the case may be, be ignored:

Provided that this subsection shall not apply to—

- (i) buildings and other real property owned by the insurer jointly with any organization;
 - (ii) investments referred to in section 50 (3);
 - (iii) cash held by banks on behalf of the insurer in current or savings accounts, or, subject to section 50 (4) (g), fixed deposits.
- (9) For the purposes of this section—
- (a) the amount of liabilities shall be determined in accordance with regulations; and
 - (b) subject to subsection (8), the assets that may be taken into account and their value shall be determined in accordance with regulations, which may prescribe the extent, if any, to which any particular asset may be taken into account, the depreciation that should be provided for each category of asset and any other relevant factor.

42. (1) For the purposes of this Act, a reference to admitted assets includes a reference to any property, security, item or interest of a person approved by the Commissioner but does not include a reference to—

Admitted
assets.

- (a) an unsecured or, in the opinion of the Commissioner, inadequately secured loan;
- (b) an asset that is mortgaged or charged for the benefit of a person other than the insurer to the extent that it is so mortgaged or charged;
- (c) a loan to, debenture of, or share in any insurer who is related to such a person;

- (d) an unpaid premium that became due to the insurer more than three months previously except in so far as that premium is secured under automatic non-forfeiture conditions against the surrender value of a life assurance policy;
- (e) a guarantee given to the insurer other than a guarantee given by a reinsurer in the course of reinsurance transactions;
- (f) an intangible asset;
- (g) unsecured loans to intermediaries;
- (h) prepaid preliminary and organizational expenses;
- (i) assets held outside Kenya other than amounts owed by foreign reinsurers;
- (j) such other assets as may be prescribed.

(2) Where an insurer requests the Commissioner to approve as an admitted asset the whole or part of an asset excluded in subsection (1), the Commissioner may by notice in writing given to the insurer approve the asset, or such part thereof as he determines, accordingly.

Admitted liabilities.

43. (1) For the purposes of this Act, a reference to admitted liabilities of an insurer means liabilities shown as current, contingent and prospective liabilities in the accounts of an insurer and includes, in the case of long term insurance business, the liabilities in respect of the policies of long term insurance business.

(2) For the purposes of this Act, a reference to admitted liabilities does not include a reference to—

- (a) a liability in respect of share capital or a reserve in lieu of capital approved by the Commissioner;
- (b) a liability in respect of such matters as the Commissioner may by notice in writing direct;
- (c) a liability prescribed.

(3) An insurer shall make adequate provision in his accounts for liabilities in respect of unexpired risks and outstanding and incurred claims, including provision for claims incurred but not reported, computed in accordance with a method approved by the Commissioner.

44. (1) The Commissioner may, by notice in writing served on an insurer, require the insurer to furnish him with such information with respect to any liability of the insurer or value of an asset of the insurer as he specifies in the notice.

Assessment of assets and liabilities.

(2) Where the Commissioner is not satisfied that the value of a liability or asset of the insurer as determined by the insurer has been correctly determined, he may, after giving the insurer an opportunity of making representations, by notice in writing served on the insurer, require the insurer to produce a valuation of the liability or asset worked out by an independent valuer approved by the Commissioner.

45. (1) An insurer carrying on long term insurance business in Kenya on the appointed date shall, as at the date of commencement of his financial year next after the appointed date, and every insurer commencing long term insurance business in Kenya after the appointed date shall, as at the date of commencement of that business, establish and maintain a statutory fund under an appropriate name in respect of the long term insurance business carried on by him.

Establishment of statutory fund.

(2) An insurer may establish and maintain a separate statutory fund, under an appropriate name, in respect of any class or classes of his long term insurance business:

Provided that where an insurer establishes a separate statutory fund in respect of a part of the long term insurance business of the insurer, the insurer shall forthwith notify the Commissioner in writing of the establishment of the fund, the date on which the establishment of the fund took or takes effect, the part of the long term insurance business of the insurer in respect of which the fund was established and the name of the fund.

(3) Where an insurer carries on long term insurance business of more than one class, the Commissioner may in writing direct the insurer—

- (a) to establish, maintain and appropriately name one or more separate statutory funds in respect of any class or classes of long term insurance business carried on by him;
- (b) to maintain an account in respect of each of those classes of long term insurance business and to carry and enter the receipts of each of those classes of business in the account maintained by him.

(4) All amounts received by an insurer in respect of any class of long term insurance business, after the establishment by the insurer of a statutory fund under this section, shall be carried to that fund.

(5) Where, at any time—

(a) an insurer is maintaining more than one statutory fund in respect of his long term insurance business; and

(b) a particular policy ceases to be included in the part of the long term insurance business of the insurer in respect of which one of the statutory funds is maintained (in this subsection referred to as “the first fund”) and commences to be included in the part of the long term insurance business of the insurer in respect of which another of the statutory funds is maintained (in this subsection referred to as “the second fund”),

the insurer shall forthwith transfer from the first fund to the second fund assets equal to the liability on the policy at that time as ascertained by an actuary and approved by the Commissioner.

(6) The income arising from the investment of the assets of a statutory fund shall be carried to and form part of that fund.

(7) The assets of each statutory fund shall be kept distinct and separate from all other assets of the insurer.

(8) An insurer carrying on long term insurance business shall maintain such books of account and other records as are necessary for identifying—

(a) the assets representing each statutory fund maintained by the insurer under this section;

(b) the liabilities attributable to that class or, as the case may be, each of those classes of long term insurance business.

46. (1) Subject to this Act, no part of the assets of a statutory fund shall, so long as the insurer carries on the class or classes of long term insurance business in respect of which the fund was established—

(a) be available to meet any liabilities or expenses of the insurer other than—

(i) liabilities or expenses referable to that class of long term insurance business; and

(ii) liabilities charged on those assets or any of them immediately prior to the appointed date,

or be otherwise directly or indirectly applied for any purpose other than the purpose of that class of long term insurance business;

(b) be—

(i) paid, applied or allocated as dividends or otherwise as profits to shareholders; or

(ii) transferred to another statutory fund.

(2) A mortgage or charge (including a charge imposed by a court on the application of a judgment creditor) shall be void to the extent to which it contravenes subsection (1).

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a penalty not exceeding twenty thousand shillings and, if he is a natural person, additionally or in the alternative to imprisonment for a term not exceeding two years.

(4) Every director and principal officer of an insurer shall be under the same liability, in the event of a contravention of subsection (1), as if he had been a trustee under a trust for the execution of those provisions in respect of that fund, and as if the appropriate policy holders had been beneficiaries of such a trust, unless the director or principal officer proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the contravention.

(5) Notwithstanding subsection (1), an insurer may, for the purpose of declaring or paying a dividend to shareholders or a bonus to policy holders, utilize the surplus disclosed in the valuation balance sheet of a statutory fund set out in the actuary's abstract relating to an investigation made in pursuance of section 57 and accepted by the Commissioner, subject to the condition that the amount allocated or paid to the shareholders out of a statutory fund shall not exceed ten per cent of the surplus disclosed therein after making the necessary adjustments to the surplus.

(6) The adjustments referred to in subsection (5) are—

(a) the actual amount of income tax deducted at source during the period following the date on which the last preceding investigation was made and preceding the date on which the investigation in question is made may be added to the surplus after deducting an estimated amount of income tax on the surplus, the addition and deduction being shown in the abstract prepared by the actuary;

(b) the surplus may be increased by contributions out of a reserve fund subject to the condition and only to the extent that the reserve fund has been made up solely of transfers from similar surpluses disclosed by investigations in respect of which the returns have been accepted by the Commissioner.

(7) Notwithstanding anything to the contrary contained in this section, an insurer carrying on long term insurance business may declare an interim bonus or bonuses to policy holders whose policies mature for payment by reason of death or otherwise during the inter-investigation period on the recommendation of the investigating actuary made at the last preceding investigation.

Assets to be
in the name
of insurer.

47. (1) Unless the Minister directs otherwise, none of the assets in Kenya of an insurer shall, except in the case of assets required by law or by a requirement imposed by the Minister under subsection (3) to be vested in trustees, be kept otherwise than in the name of the insurer.

(2) Nothing contained in subsection (1) shall be deemed to prohibit the endorsement in favour of a bank of any security or other document solely for the purpose of collection or realization of any interest, bonus or dividend.

(3) The Minister may direct that the whole or a specified portion of the assets of an insurer shall be held by a person approved by him as trustee of the insurer.

(4) Assets of an insurer held by a person as trustee for an insurer shall be held by him in compliance with a direction given under this section if, and only if, they are assets in whose case the insurer has given him written notice that they are to be held by him in compliance with such a requirement.

or they are assets into which the first-mentioned assets have been transposed by him on the instructions of the insurer.

(5) No assets held by a person as trustee for an insurer in compliance with a direction given under this section shall, so long as the direction is in force, be released except with the consent of the Minister.

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

48. Subject to sections 41 and 50 and subject to any provisions in the instruments constituting the insurer or in the articles of association or other rules of the insurer which impose restrictions upon the manner in which the assets of the insurer may be invested, the assets of an insurer shall, with sufficient regard to considerations of security, liquidity and income, be invested in Kenya in such manner as the insurer thinks fit:

Investment of assets.

Provided that the assets of a statutory fund shall not, without the written approval of the Commissioner, be invested directly or indirectly in any share or interest in any other insurer.

49. If at any time the Commissioner considers an investment constituting an insurer's assets to be unsuitable or undesirable, he may after giving notice to the insurer stating the grounds on which he proposes to exercise his power under this section and giving the insurer an opportunity of being heard, direct the insurer to realize the investment, and the insurer shall comply with the direction within such time as may be specified in that behalf by the Commissioner.

Unsuitable investments.

50. (1) Subject to subsection (5), the admitted assets of an insurer carrying on long term insurance business shall be invested and kept invested in the following manner—

Specimen investments.

- (a) twenty-five per cent of the total admitted assets, in one or more of the securities set out in subsection (3);
- (b) a further proportion, amounting to not less than sixty-five per cent, in one or more of the investments set out in subsection (4);
- (c) the balance, subject to section 48 and the other provisions of this section, in such investments in Kenya as the insurer thinks fit.

(2) Subject to subsection (5), the admitted assets of an insurer carrying on general insurance business required by section 41 (2) to be maintained by the insurer shall be invested and kept invested in the following manner—

- (a) twenty per cent in one or more of the securities set out in subsection (3);
- (b) a further proportion, amounting to not less than thirty per cent, in one or more of the investments set out in subsection (4);
- (c) the balance, subject to section 48 and the other provisions of this section, in such investments in Kenya as the insurer thinks fit.

(3) The securities referred to in subsections (1) (a) and (2) (a) are securities of—

- (a) the Government;
- (b) prescribed statutory bodies;
- (c) local authorities;
- (d) any other prescribed organization.

(4) The investments referred to in subsections (1) (b) and (2) (b) are as follows—

- (a) the securities set out in subsection (3);
- (b) mortgages on unencumbered immovable property in Kenya;
- (c) debentures secured by a mortgage on unencumbered immovable property in Kenya;
- (d) debentures, preference shares or ordinary shares of public companies whose shares are quoted on the stock exchange in Kenya;
- (e) instruments of title to immovable property in Kenya;
- (f) loans on life assurance policies constituting a liability on Kenya business within their surrender values;

(g) deposits in banks or financial institutions licensed under the Banking Act :

Cap. 488.

Provided that—

- (i) where the insurer carries on long term insurance business, the deposits in any one bank or financial institution shall not exceed five per cent of the total value of the assets of the insurer relating to that business;
- (ii) where the insurer carries on general insurance business, the deposits in any one bank or financial institution shall not exceed ten per cent of the total value of the assets of the insurer relating to that business;

(h) any other prescribed securities.

(5) In respect of an investment falling under paragraph (c) of subsection (1) or paragraph (c) of subsection (2) which does not also come under paragraph (a) or (b) of subsection (1) or paragraph (a) or (b) of subsection (2), the investment shall be made after the appointed date, or, if already existing on the appointed date, shall be continued after one year from the appointed date, only with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors, and all such investments, including investments in which any director is interested, shall be reported without delay to the Commissioner with full details of the investments and the extent of the director's interest therein.

(6) An insurer shall not directly or indirectly invest or keep invested any part of his assets in a private company, other than a bank or financial institution licensed under the Banking Act, whether in the form of shares or debentures or other securities of the company or in the form of deposit with the company or in any other manner :

Provided that where an insurer has investments referred to in this subsection on the appointed date, he may continue holding those investments after a period of two years from that date with the approval in writing of the Minister; and that approval shall be for a period of not more than five years, but may be renewed by the Minister on its expiry for a further period or further periods of five years.

(7) For the purposes of compliance with the provisions of this section, cash in accounts with banks shall be excluded.

(8) Where an insurer has carried on insurance business in Kenya immediately prior to the appointed date, the provisions of subsections (1) and (2) shall in respect of that insurer come into operation as at the date of the commencement of the financial year next after the appointed date or, upon the application in writing of any insurer, such other date as the Minister may, subject to such terms and conditions as he considers necessary, in writing notify.

(9) An insurer shall not invest any part of his assets in the shares or debentures of any one company or group of related companies more than—

(a) in the case of long term insurance business five per cent of the assets relating to that business, and in the case of general insurance business ten per cent of the assets relating to that business; or

(b) fifteen per cent of the subscribed share capital and debentures of such a company or group of companies,

whichever is less; but he may subscribe to the new shares of a company, where those shares are issued to the existing shareholders of the company to the extent that the proportion of new shares subscribed by him does not exceed the proportion which the paid up amount on the shares held by him immediately before the subscription bears to the paid up capital of the company at the time of the subscription.

Provided that where an insurer has investments referred to in this subsection in excess of the limits mentioned therein on the appointed date, he may continue holding those investments after a period of two years from the appointed date with the approval in writing of the Minister; and that approval shall be for a period of not more than five years, but may be renewed by the Minister on its expiry for a further period or further periods of not more than five years each.

(10) Where a company or group of related companies referred to in subsection (9) is a bank or financial institution or group of banks or financial institutions, the percentage under paragraph (b) of that subsection shall be five per cent:

Provided that where an insurer has investments referred to in the subsection on the appointed date, he may continue

holding those investments notwithstanding that they represent more than five per cent of the subscribed share capital and debentures of the company or group of companies after a period of two years from the appointed date with the approval in writing of the Minister; and that approval shall be for a period of not more than five years, but may be renewed by the Minister on its expiry for a further period or further periods of five years.

(11) Nothing in subsection (9) shall apply to an investment made by an insurer in the shares of another insurer if that other insurer is a company within the meaning of section 2 of the Companies Act and carries on insurance or reinsurance business in Kenya.

(12) Where an investment is in partly paid-up shares the uncalled liability on those shares shall be added to the amount invested for the purpose of computing the percentage referred to in paragraph (a) of subsection (9).

(13) For the purposes of subsections (1) and (2), the amount of any deposit made under section 32 shall be deemed to be assets invested or kept invested in the securities set out in subsection (3).

51. (1) An insurer may, to secure temporary loans or bank overdrafts, mortgage or charge assets not exceeding ten per cent of the total value of the admitted assets of the insurer.

Restriction on mortgages, etc. of assets.

(2) Subject to subsection (1), an insurer shall not mortgage or charge any of his assets.

PART VI—ACCOUNTS, BALANCE SHEETS, AUDIT AND ACTUARIAL INVESTIGATIONS

52. Where an insurer carries on more than one class of long term insurance business or more than one class of general insurance business, he shall keep separate accounts of receipts and payments in respect of each prescribed class of insurance business carried on by him.

Separate accounts for each class.

53. Where a single amount received or paid, whether in respect of premiums, investment income, claims, commissions, reinsurance costs, administration costs, taxes or otherwise, is received or paid in respect of more than one class of business prescribed under section 52, and the amount is not otherwise allocatable between the different classes, the insurer shall, for the purposes of this part, apportion the amount in an equitable manner between the classes of insurance business in

Apportionment between classes.

respect of which it is received or paid.

54. (1) Subject to subsection (3), every insurer—

- (a) where the insurer is incorporated in Kenya in respect of all insurance business wherever carried on by the insurer; and
- (b) where the insurer is incorporated outside Kenya, in respect of insurance business carried on by him in Kenya,

shall, after the end of each financial year, prepare for the year, in accordance with the prescribed forms a revenue account for the year, a balance sheet as at the end of the year and a profit and loss account for the year or, in the case of a company not trading for profit, an income and expenditure account of the year.

(2) Every reserve shall be calculated in accordance with the method approved for the purpose by the Commissioner.

(3) All amounts which are required to be shown in any account or balance sheet shall be shown in Kenya currency to the nearest shilling.

(4) Notwithstanding the definition of "financial year" in section 2, the first financial year after the appointed date of an insurer shall mean the period ending on 31st December next after the appointed date.

55. (1) An insurer shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the insurer with respect to his insurance business;
- (b) so keep his accounting records as to enable the accounts, reports and statements required under this Part to be prepared;
- (c) so keep his accounting records as to enable those accounts and statements to be conveniently and properly audited in accordance with this Act.

(2) An insurer shall retain his accounting records kept in accordance with subsection (1) for at least seven years after the completion of the transactions to which they relate.

(3) If any accounting records that an insurer is, under subsection (1), required to keep, are in a place outside Kenya, the insurer shall transfer to and keep in Kenya such state-

Accounts
and balance
sheets.

Accounting
records.

ments and records as will enable the accounts and statements required to be submitted to the Commissioner under this Part to be prepared.

56. (1) The accounts of every insurer shall be audited annually by an auditor.

Audit and
auditor's
certificate.

(2) The auditor shall in a certificate relating to accounts and statements in respect of a financial year of an insurer, state whether—

- (a) the accounts and statements to which it relates appear to him to be in accordance with the Act and give particulars of any matters that do not appear to him to be so in accordance;
- (b) the accounting records of the insurer in respect of that year appear to him to have been properly kept and to record and explain correctly the transactions and financial position of the insurer and give particulars of accounting records that appear to him not to have been so kept and of transactions that appear to him not to have been so recorded;
- (c) in respect of that year, he has obtained the information and explanations that he requested and give particulars of information and explanations he requested but did not obtain;
- (d) he is satisfied that the accounts and statements referred to in paragraph (a) agree with the accounting records of the insurer and appear to him truly to represent the transactions and financial position of the insurer in respect of the financial year to which they relate and, if any of them appear to him to fail so to represent the transactions and financial position, give particulars of the failure;
- (e) amounts required by section 53 to be apportioned have been equitably apportioned and if they have not been so apportioned give particulars of the failure;
- (f) all management expenses wherever incurred in respect of the insurer's business, whether directly or indirectly, have been fully debited in the revenue account or profit and loss account as expenses and, if they have not been so debited, give particulars of the amounts not so debited;
- (g) every reserve has been calculated in accordance with

the method approved for the reserve by the Commissioner and, if they have not been so calculated, give particulars of the reserves not so calculated.

Actuarial
investigation.

57. (1) An insurer who carries on long term insurance business—

(a) shall once in every three years, or such shorter intervals as may be set out in his articles of association or deed of settlement or as may be decided by him, cause an investigation to be made into his financial condition in respect of that business by an actuary; and

(b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's report of the investigation to be made in such form and containing such matters as may be prescribed.

Provided that in the case of an insurer who was carrying on long term insurance business in Kenya immediately prior to the appointed date, the last date as at which the first investigation after the appointed date should be made shall be a date not later than three years from the appointed date or the date of expiration of five years from the date as at which the last investigation was made by an actuary before the appointed date, whichever is earlier.

(2) An investigation to which subsection (1) relates shall include—

(a) a valuation of the liabilities of the insurer attributable to his long term insurance business; and

(b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(3) Whenever an investigation to which subsection (1) relates is made, the insurer shall prepare a statement, in such form and containing such matters as may be prescribed, of its long term insurance business as on the date on which the investigation is made.

(4) When an investigation to which subsection (1) relates is made as at a date other than the expiry of a financial year of the insurer, the accounts for the period since the expiry of the last year of account and the balance sheet on the date as at which the investigation is made shall be prepared and audited in the manner provided under sections 54 and 56.

(5) Subject to section 58, for the purposes of an investigation to which this section relates, the value of any assets and the amount of any liabilities shall be determined in accordance with regulations.

58. (1) The provisions of this section apply in relation to valuations made, in respect of an insurer carrying on long term insurance business, in pursuance of section 57.

Actuarial
valuations.

(2) The basis of valuation adopted shall be such as to place a proper value upon the liabilities having regard to the mortality experience among the persons whose lives have been insured by the insurer, to the average rate of interest from investments and the expenses of management (including commission), and shall be such as to ensure that no policy is treated as an asset.

(3) The value placed upon the aggregate liabilities of a statutory fund in respect of policies by reason of the adoption of any basis of valuation shall not be less than it would have been if it had been calculated on the minimum basis prescribed.

(4) The actuary who makes the valuation shall certify whether in his opinion the value placed upon the aggregate liabilities relating to a statutory fund in respect of policies by the valuation is not less than the value which would have been placed upon those aggregate liabilities if it had been calculated on the minimum basis prescribed.

(5) In making a determination in terms of section 57 (2) (b), the actuary shall—

- (a) take necessary steps to ensure that any sum representing expenses of organization or extension, or the purchase of business or goodwill or other intangible assets, are equitably allocated between the different statutory funds and are appropriately deducted from

the surplus disclosed in each fund or appropriately added to the deficiency disclosed in each fund, as the case may be;

- (b) satisfy himself that the value of the assets adopted by him are, on the basis of the auditor's certificates appended to the balance sheet, fully of the value so adopted; and
- (c) certify in regard to the matters specified in paragraphs (a) and (b) in the prescribed form.

(6) If the Commissioner considers that an investigation under section 57 does not properly indicate the state of affairs of the insurer due to a faulty basis having been adopted in the valuation, the Commissioner may, after giving the insurer a reasonable opportunity of making representations, cause a further investigation in accordance with section 57 and this section as at a date which he may specify to be made at the expense of the insurer by an actuary appointed by the Commissioner or, if the Commissioner so agrees, by an actuary appointed by the insurer and approved by the Commissioner.

(7) The insurer shall make available to the actuary all documents and information required by him for the purpose of the further investigation or valuation under subsection (6) within such period, not being less than three months, as the Commissioner may specify.

(8) An actuary making an investigation or valuation under subsection (6) shall prepare and attach to his report an abstract and a statement of the long term business of the insurer as for an investigation under section 57.

Returns.

59. An insurer shall prepare as at the end of each financial year, in respect of that year, statements in the prescribed form relating to the business carried on during the year and the business in force at the end of the year and shall furnish those statements, signed in the prescribed manner, to the Commissioner within such time as may be prescribed.

Accounts and statements to be signed.

60. (1) The balance sheet, profit and loss account and revenue account required to be prepared under this Part shall be signed by two directors and the principal officer of the insurer or, if there is only one director, by that director and by the principal officer.

(2) A report or abstract of an actuary made under this Part shall be signed by the actuary who made the investigation or valuation.

(3) A statement or return other than a balance sheet, profit and loss account, revenue account or actuarial report or abstract shall be signed by the principal officer.

61. (1) Every account, balance sheet, certificate, abstract, return or statement required to be prepared or prepared under sections 54, 56, 57, 58 and 59 shall be printed, and four copies thereof authenticated and certified in the prescribed manner shall be deposited with the Commissioner within six months after the end of the period to which they relate.

Submission
of accounts
and
statements.

(2) The Commissioner may on the application of an insurer extend or further extend the time specified in subsection (1) for a period not exceeding three months.

62. (1) An insurer shall, if so required by the Commissioner by notice in writing served on him, furnish, within such period after service of the notice, not being less than fifteen days, as the Commissioner specifies in the notice, information with respect to such matters relating to an account, balance sheet, certificate, abstract, return or statement deposited by him under this section as he so specifies.

Further
information.

(2) Where a person fails to comply with the requirements of subsection (1), the Commissioner may decline to accept the document in respect of which the further information was sought, whereupon the document shall be deemed not to have been deposited in terms of this Act.

63. (1) An insurer shall deposit with the Commissioner a certified copy of every report on the affairs of the concern which is submitted to the members or policy holders of the insurer immediately after its submission to the members or policy holders, as the case may be.

Other reports.

(2) An insurer, being a body corporate incorporated in Kenya, shall deposit with the Commissioner a certified copy of the minutes of the proceedings of every general meeting, as entered in the minute book of the body corporate, within thirty days from the holding of the meeting to which those minutes relate.

Returns
sufficient
compliance
with
Companies Act.

64. Where an insurer in any year deposits his accounts and balance sheet in accordance with the provisions of section 61 then, if the company at the same time sends a copy of the accounts and balance sheet to the registrar of companies under the Companies Act—

(a) section 128 (1) of that Act (which requires certain documents to be included in the annual return made by a company) shall not apply to that company; and

(b) the copy of the accounts and balance sheets so sent shall be dealt with in all respects as if it had been sent in compliance with that subsection.

Rectification
of returns.

65. (1) The Commissioner may, if it appears to him that any account, balance sheet, abstract, certificate, statement, return, report or other document deposited with him under the provisions of this Act is inaccurate or defective in any respect, require the inaccuracy or defect to be rectified within such time as he may specify in writing.

(2) Where a person fails to comply with a direction given under subsection (1), the Commissioner may decline to accept the document required to be rectified, whereupon the document shall be deemed to have not been deposited in terms of this Act.

Penalty
for false
statements.

66. If any account, balance sheet, abstract, return, certificate, statement or other document required to be deposited or deposited under any provision of this Act is false in any material particular to the knowledge of any person who signs it, that person shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Penalty for
failure to
comply with
requirements of
Part.

67. (1) An insurer who fails to comply with any requirement under this Part shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings; and if the offence is a continuing one, to a further fine of one thousand shillings for every day during which the offence continues.

(2) Where a person guilty of an offence under this Part is a natural person, that person shall be liable, in addition to, or in the alternative to, a fine, to imprisonment for a term not exceeding two years.

(3) Where a person guilty of an offence under this Part is a body corporate, then notwithstanding the imposition of any penalty, the commission of that offence shall constitute grounds whereby the Commissioner may apply to the court for the winding up of that body corporate.

PART VII—MANAGEMENT AND EXPENSES

68. (1) For the purposes of this section "registered person" means a person registered under this Act as an insurer, reinsurer, broker, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

Approved
principal
officer to
be appointed.

(2) Every registered person shall, at all times while he is so registered, have a principal officer.

(3) The principal officer appointed under subsection (2) shall be ordinarily resident in Kenya and shall be responsible for the general control, direction and supervision of the Kenya insurance business of the registered person and shall represent the registered person for the purposes of this Act.

(4) Everything done by the principal officer or a person acting as the principal officer of the registered person in his representative capacity shall, for the purposes of this Act, be deemed to have been done by the registered person, but this subsection shall not affect any liability of the principal officer or person acting as the principal officer under this Act.

(5) Where the principal officer is, or is about to be, absent from Kenya for a period exceeding three months or for any reason unable to perform his duties as principal officer, the registered person shall, if he does not revoke the appointment and appoint another person under subsection (2), appoint another person (not being a body corporate) resident in Kenya to act as the principal officer of the person registered for the purposes of this Act during the absence or inability.

(6) An appointment under this section shall be deemed not to have been duly made or revoked until the registered person has given notice in writing of the appointment or revocation to the Commissioner specifying the name and, in the case of an appointment, the place of residence of the person appointed.

(7) Every notice to the Commissioner regarding the appointment of a principal officer shall contain the following particulars—

- (a) full name;
- (b) date and place of birth;
- (c) citizenship;
- (d) academic and professional qualifications;
- (e) work experience giving dates and nature of previous employment;
- (f) whether he has ever been convicted of an offence involving fraud or dishonesty and if so details of the offence, place and date;
- (g) whether he has ever been adjudicated bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit and, if so, details.

(8) If it appears to the Commissioner that the person appointed as principal officer is not a fit and proper person to be a principal officer, the Commissioner may, after giving the person concerned an opportunity of being heard, object to the appointment.

(9) Where the Commissioner objects to the appointment of a principal officer he shall record the reasons for his decision and furnish a copy thereof to the registered person, who shall forthwith revoke the appointment.

Directors,
managers,
employees and
their
remuneration.

69. (1) Subject to subsection (2), no insurer shall be directed or managed by, and no insurer shall employ in any capacity, a person whose remuneration or any part thereof takes the form of commission or bonus or of a share in the valuation surplus in respect of long term insurance business.

(2) The prohibition contained in subsection (1) shall not apply to the employment of agents or brokers, or to the employment of persons who share in the profits of general insurance business by way of bonus payments or otherwise.

(3) A managing director or employee of an insurer shall not be a managing director or employee of another insurer or of a bank or financial institution.

(4) After the expiry of two years from the appointed date no agent, and where the agent is a company or firm, no managing or other director of an agent, and no broker, or managing or other director of a broker shall—

(a) be appointed or continue as a director of an insurer registered under this Act;

(b) directly or indirectly acquire or hold any shares or controlling interest in an insurer registered under this Act.

(5) After the expiry of two years from the appointed date, no insurer and no director or employee of an insurer shall directly or indirectly hold shares in or have any other financial or controlling interest in the affairs of an agent or broker.

(6) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, and if the offence is a continuing one, to a further fine of one hundred shillings for every day during which the offence continues.

70. (1) No insurer shall spend in any financial year as expenses of management an amount in excess of the prescribed limits, and in prescribing those limits regard shall be had to the size and age of the insurer and the provision generally made for management expenses in the premium rates of insurers.

Limitation of
management
expenses.

(2) The Commissioner may, in any year, after consultation with the Advisory Board, fix for the succeeding year the extent to which the limits prescribed in regulations may be relaxed, and an insurer shall not be deemed to have contravened the provisions of subsection (1) if his expenses of management referred to in that subsection are within those relaxed limits.

71. (1) No insurer shall, in Kenya—

(a) grant any loan, advance, financial guarantee or other credit facility against the security of his own shares;
or

Restrictions
on loans,
advances, etc.
by insurer.

- (b) grant to or permit to be outstanding without adequate security any loan, advance, financial guarantee or other credit facility not being a loan against and within the surrender value on a policy of life assurance issued by that insurer, to any shareholder, director, officer or employee or member of his family, or to any company of which the shareholder, director, officer or employee or member of his family is a shareholder, director, officer or employee:

Provided that an insurer may grant to an officer or employee, on compassionate grounds, an unsecured loan or advance not exceeding twenty thousand shillings subject to the condition that no further loan or advance shall, at any time, be granted if any previous loan or advance has not been fully repaid.

(2) The provisions of section 191 of the Companies Act shall not apply to a loan granted to a director of an insurer if the loan is one granted on the security of a policy of life assurance on which the insurer bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy.

(3) Any loan, advance, credit facility, financial guarantee or other liability granted or permitted to be outstanding in contravention of the provisions of this section and existing on the appointed date shall be notified by the insurer to the Commissioner within thirty days of that date and shall, notwithstanding any contract to the contrary, be repaid or discharged within one year from that date.

(4) Where an event occurs giving rise to circumstances the existence of which at the time of the grant of a subsisting loan, advance, credit facility, financial guarantee or other liability would have made that grant a contravention of this section, the loan, advance, credit facility, financial guarantee or other liability shall, notwithstanding anything in the contract to the contrary, be repaid or discharged within three months from the occurrence of that event.

(5) In case of default in complying with the provisions of subsection (3) or subsection (4), a director, officer, or employee who may be concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, be employed by or act for, the insurer granting the loan, advance, credit facility, financial guarantee or other liability on the expiry of the period of one year or three months, as the case may be.

(6) The Commissioner may extend the period of one year referred to in subsection (3) by periods of not more than six months at a time and, where any such extension has been granted, the reference to the period of one year in subsection (5) shall be construed as a reference to the extended period.

72. (1) No insurer shall on or after the appointed date appoint a managing agent for the conduct of his business.

Limitation
on employment
of managing
agents.

(2) Where an insurer engaged in the business of insurance before the appointed date has employed a managing agent for the conduct of his business then, notwithstanding anything to the contrary contained in the Companies Act, and notwithstanding anything to the contrary contained in the articles of the insurer, or in any agreement entered into by the insurer, the managing agent shall cease to hold office on the expiry of his contract of employment or of two years from the appointed date, whichever is earlier, and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent under this subsection.

PART VIII—RATES, POLICY TERMS AND CLAIMS SETTLEMENT

73. (1) No person shall offer, either directly or indirectly, as an inducement to any person to take out or renew or continue a contract of insurance, any rebate of the whole or part of any brokerage, commission or premium except such rebate as may be allowed in accordance with a published prospectus or manual or schedule of rates of an insurer.

Restrictions
on rebates,
brokerage, etc.

(2) No insurer shall, in respect of Kenya business, pay to a broker or agent as brokerage, commission, fee or other remuneration, any sum in excess of the amounts prescribed for or in respect of each prescribed class of business placed by that broker or agent with that insurer.

(3) No broker shall, in respect of Kenya business pay to an agent any commission, fee or other remuneration in excess of what would have been payable had the agent been paid by an insurer instead of by the broker.

(4) Nothing in this section shall prohibit a person obtaining the benefit of the commission payable by an insurer to a broker or agent under the relevant prospectus or agent's manual or broker's agreement where he takes out life assurance on his own life or on the lives of his dependants directly with the insurer without the services of an intermediary.

(5) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Premium rates
of life
insurers.

74. (1) An insurer carrying on long term insurance business shall not issue, after the expiry of three months from the appointed date, any policy of insurance unless the rate of premium chargeable under the policy is a rate which has been approved by an actuary as suitable for the class of policies to which that policy belongs and that rate and the actuarial bases therefor together with the actuary's certificate have been filed with the Commissioner at least thirty days before giving effect to the rate.

(2) The Commissioner may require the insurer to obtain, and to furnish him, within such time as he may specify, with a report by an actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the insurer and, if the actuary considers that the rate is not suitable, a report as to the rate of premium which the actuary approves as suitable in respect of that class of policy.

(3) Where a requirement is made under subsection (2) in respect of the rate of premium chargeable under any class of policy the insurer shall not issue, after the expiry of the period specified by the Commissioner, any policy of that class until the insurer has in accordance with the requirement obtained the approval of the actuary to the rate of premium, and notified the Commissioner that that approval has been obtained.

(4) An actuary in approving a rate of premium in respect of a class of policy under this section shall have regard to

the maximum rate of commission or rebate proposed to be paid or allowed to any person in respect of that class of policy.

(5) Where a rate of premium is approved by an actuary in respect of a class of policy, the insurer shall not, except with the approval of the Commissioner, pay or allow in respect of any policy of that class a commission or rebate at a greater rate than—

- (a) the maximum rate of commission or rebate to which the actuary had regard when approving the rate of premium; or
- (b) the maximum rate of commission or rebate payable by the insurer immediately prior to the appointed date in respect of policies of that class (if any) issued at the rate of premium so approved,

whichever is less.

(6) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings, and if the offence is a continuing one, to a further fine of two thousand shillings for every day during which the offence continues.

75. (1) An insurer carrying on general insurance business shall file with the Commissioner, before commencing to carry on that business or before the expiry of three months from the appointed date, whichever is later, a schedule or manual of rates of premium proposed to be used by the insurer for each class of business.

Premium
rates of
general
insurers.

(2) Where a schedule or manual of rates of premium filed under subsection (1) is proposed to be altered or revised, the insurer shall file with the Commissioner the details of and the reasons for, the alterations or the revised schedule or manual at least sixty days before giving effect to the alterations or revision.

(3) If an insurer carrying on general insurance business issues any insurance cover outside the scope of the schedule or manual of rates of premium filed with the Commissioner or considers it necessary, while using the rate contained in the schedule or manual as the basing point, to deviate therefrom to take account of the proponent's or policyholder's

past and anticipated loss experience, the physical characteristics of the subject matter of the insurance, the nature of the exposure and other relevant factors, the insurer shall file with the Commissioner, within a period of thirty days full details of the rate charged.

(4) The Commissioner may, at any time, require an insurer to furnish him with statistical data and other information on the basis of which any rate or schedule or manual of rates filed with the Commissioner has been computed.

(5) The Commissioner may, at any time, require an insurer to modify or revise, within such time as he may specify, the schedule or manual of rates filed with the Commissioner or the practice of deviating therefrom or the practice of rating risks outside the scope of the schedule or manual and the insurer shall carry out the required modification or revision within the stipulated time and get them approved by the Commissioner.

(6) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings, and if the offence is a continuing one to a further fine of two thousand shillings for every day during which the offence continues.

Law applicable to contracts of insurance and place of payments.

76. (1) The holder of a policy of insurance issued by an insurer in respect of insurance business carried on by him in Kenya on or after the appointed date shall have the right, notwithstanding any agreement to the contrary contained in the policy of insurance or in any agreement relating thereto, to receive payment of any sum secured thereby in Kenya and to sue for any relief in respect of the policy in Kenya; and if action on the policy is instituted in Kenya, any question of law in connection with the policy or proceedings shall be heard and determined according to the law in force in Kenya.

(2) Nothing in this section shall apply to a policy of marine insurance.

Defaults of insurer, broker or agent not to invalidate policy.

77. Subject to this Act, failure on the part of an insurer, broker or agent to comply with any provision of this Act shall not invalidate any policy issued by an insurer.

78. A contract of insurance entered into after the appointed date shall be void if—

Avoidance of contracts for unlimited amounts.

- (a) it is a contract under which the insurer undertakes a liability the amount or maximum amount of which is uncertain at the time when the contract is entered into; and
- (b) it is not a contract of insurance or a contract of a class or description exempted by regulations or by the Commissioner in writing from the operation of this section.

79. (1) The sum insured, the premium and every other sum of money mentioned in a policy of insurance issued or renewed on or after the appointed date shall be stated in the currency of Kenya unless the parties to the policy have, at or subsequent to the time of issue of the policy, expressly otherwise agreed to, and where the policy was issued or renewed on or after the appointed date, the Commissioner has in writing approved, the statement of any sum in some other currency.

Amounts and values in policies to be expressed in Kenya currency.

(2) If the insurer and policy holder have agreed, and, in the case of a policy issued on or after the appointed date, the Commissioner has approved, that the sum insured, the premium or other sum of money mentioned in a policy of insurance shall be expressed in a currency other than the currency of Kenya, the fact that the parties have agreed and the fact that the approval of the Commissioner has been obtained and the currency adopted shall be stated in or endorsed on the policy in distinct terms and in printed or typed letters no smaller than and as legible as the letters of the other provisions of the policy.

(3) The continued payment in respect of a policy relating to long term insurance business shall not constitute a renewal for the purposes of subsection (1).

80. (1) A form of proposal for insurance or a policy or an endorsement or any form of written matter used by an insurer describing the terms or conditions of, or the benefits to be or likely to be derived from, a policy of insurance shall not contain anything inaccurate or incomplete or likely to mislead a proponent or policy holder.

Proposal and policy documents not to be misleading.

(2) If the Commissioner is of opinion that an insurer has contravened the provisions of subsection (1) he may, after giving the insurer an opportunity of making representations, notify the insurer in writing that he objects to the form.

(3) An insurer shall not accept a proposal or issue any policy or written matter if the proposal, policy or written matter is in a form to which the Commissioner has objected under this section to the extent that the objection has not been varied or set aside as a result of an appeal under section 173.

(4) An insurer who contravenes the provisions of subsection (3) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Incorrect
statements in
proposals.

81. (1) Notwithstanding anything contained in or incorporated in a contract of life assurance issued before, on or after the appointed date, a policy of life assurance shall not be avoided by reason only of an incorrect statement made in a proposal or other document on the faith of which the policy was issued or reinstated by the insurer, unless the statement was material to the risk of the insurer and—

- (a) was made in the knowledge that it was untrue or with no reasonable belief that it was true; or
- (b) was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.

(2) Where an agent or servant of an insurer writes or fills in, or has before the appointed date written or filled in, any particulars in a proposal for a policy of insurance with the insurer, then, notwithstanding any law and any agreement to the contrary between the proposer and the insurer, a policy issued in pursuance of the proposal shall not be avoided by reason only of an incorrect or untrue statement contained in the particulars so written or filled in, unless the incorrect or untrue statement was in fact made by the proposer to the agent or servant for the purposes of the proposal; and the burden of proving that the statement was so made shall lie upon the insurer.

Effect of
suicide or
capital
punishment
on policy.

82. A policy of life assurance shall not be avoided merely on the ground that the person whose life is assured died by his own hand or act, sane or insane, or suffered capital punish-

ment, if, upon the true construction of the policy, the insurer has thereby agreed to pay the sum assured in the events that have happened.

83. A form of proposal shall be framed so as to require a person making a proposal for a policy of life assurance to specify the place and date of birth of the person whose life is proposed to be assured, and the person making the proposal shall supply those particulars to the best of his knowledge and belief.

Particulars
as to age of
proposer for
life assurance.

84. Where an insurer issues a policy of life assurance which provides that proof of age of the life insured is a condition precedent to the payment of the sum assured, the insurer shall, unless the age of the life assured has already been admitted by it, issue with the policy a printed notice stating that proof of age of the life assured may be required prior to the payment of the sum assured.

Notice regarding
proof of age.

85. (1) If an insurer declines to accept the proof of age tendered in respect of a policy of life assurance, whether issued before, on, or after the appointed date, the policy holder may apply to the Commissioner for an order directing the insurer to accept the proof tendered.

Procedure
where insurer
declines to
accept proof
of age.

(2) On any such application, the Commissioner may, after giving the insurer a reasonable opportunity of being heard, make such order in relation to the application as he thinks just.

(3) An order under this section shall be binding on the insurer and shall be complied with on his part.

86. (1) A policy of life assurance shall not be avoided by reason only of a misstatement of the age of the life assured.

Misstatement
of age.

(2) Where the true age as shown by the proofs is greater than that on which the policy was based, the insurer may vary the sum assured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum assured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would become payable if the policy has been based on the true age.

(3) Where the true age, as shown by the proofs, is less than that on which the policy was based, the insurer shall either—

(a) vary the sum assured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or

(b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay to the policy owner the amount of over-payments of premiums less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(4) Notwithstanding subsections (2) and (3), where the correct age is found to be beyond the limits within which the insurer, according to his published prospectus, issues the type of policies in question, the policy shall be void *ab initio* and the insurer shall refund to the insured all the premiums received on the policy after deducting the commission payments and expenses incurred by him on the policy; but nothing in this subsection shall apply to annuities and other policies where the insured has already received any payment under the policy.

Objection to
and return of
life policy.

87. (1) If within twenty eight days after the delivery of an industrial life assurance policy or an ordinary life assurance policy, where the sum assured is ten thousand shillings or less, by an insurer to the policy holder, or, at the place of abode of the policy holder, to some other person who is an inmate of that place apparently not less than eighteen years of age and by whom any premium in respect of the policy is paid on behalf of the policy holder, the policy holder returns the policy to the insurer with an objection in writing to any term or condition of the policy or a statement that he does not require the policy, the insurer shall forthwith refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.

(2) For the purposes of this section, where a policy is sent by post by an insurer to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time at which it would reach him in the ordinary course of post.

(3) For the purposes of this section, a policy shall be deemed to have been returned with an objection or statement, as the case may be, if the policy and objection or statement are posted for transmission to the insurer by registered post.

88. (1) A policy holder who desires to discontinue further premium payments on a policy of life assurance on which not less than three years' premiums have been paid in cash shall, on application to the insurer, be entitled to receive, in lieu of that policy, a paid-up policy for an amount not less than that determined in accordance with rules.

Paid up policies.

(2) The paid up policy shall be payable upon the happening of the contingency upon the happening of which the amount assured under the original policy would have been payable.

89. (1) The owner of a policy of life assurance which has been in force for at least three years shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the surrender value of the policy less the amount of any debt owing to the insurer under, or secured by, the policy.

Surrender of policies.

(2) In the application of subsection (1) to a paid-up policy which has been issued in lieu of another policy, the period of three years shall be calculated from the date of issue of the original policy.

(3) For the purposes of this section the surrender value of a policy shall be the amount calculated in accordance with rules.

(4) The Commissioner may, on application by an insurer, if, in his opinion, the payment in cash of surrender values as required by this section would be prejudicial to the financial stability of the insurer or to the interests of the policy holders of that insurer, suspend or vary for such period and subject to such conditions as the Commissioner thinks fit, the obligation of the insurer to pay those surrender values.

Non-forfeiture
of ordinary
life policies
in certain cases
of non-payment
of premiums.

90. (1) An ordinary life policy shall not be forfeited by reason only of the non-payment of any premium (in this section referred to as "the overdue premium") if—

- (a) not less than three years' premiums have been paid in cash on the policy; and
- (b) the surrender value of the policy (calculated as at the day immediately preceding that on which the overdue premium falls due) exceeds the sum of the amount of the debts owing to the insurer under, or secured by, the policy, and the amount of the overdue premium.

(2) The insurer may, until payment of the overdue premium, charge compound interest on it, on terms not less favourable to the policy holder than such terms (if any) as are prescribed.

(3) The overdue premium and any interest charged on it under this section and unpaid shall, for the purposes of this Act, be deemed to be a debt owing to the insurer under the policy.

(4) Without affecting the generality of subsection (1), an ordinary life policy on which not less than three years' premiums have been paid in cash shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due, the insurer liable under the policy serves a notice on the policy holder stating—

- (a) the amount due or payable to the insurer at the date of the notice in respect of the policy; and
- (b) that the policy will be forfeited at the expiration of twenty eight days after service of the notice if a sufficient sum is not paid to the insurer in the meantime.

Non-forfeiture
of industrial
policies in
certain cases of
non-payment
of premiums.

91. (1) An industrial life assurance policy on which less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than four weeks after it became due.

(2) An industrial life assurance policy on which not less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the

premium has remained unpaid for not less than eight weeks after it became due.

(3) An industrial life assurance policy on which not less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than twelve weeks after it became due.

(4) In the event of an industrial life assurance policy on which not less than three years' premiums have been paid being forfeited by reason of non-payment of any premium, the insurer shall, without requiring any application from the policy holder, grant a paid-up policy for an amount not less than that calculated in accordance with rules.

(5) The paid-up policy shall be payable upon the happening of the contingency upon which the amount insured under the original policy would have been payable.

92. Where in pursuance of any provision in this Part a policy holder is entitled to receive, or an insurer is required to grant, a paid-up policy and there is any debt owing to the insurer under or secured by the policy, the insurer may elect—

Treatment of debts on grant of paid up policies.

- (a) to treat the debt so owing as a debt secured by the paid-up policy and thereupon the paid-up policy shall be a security for the debt so owing; or
- (b) in the ascertainment of the amount of the paid-up policy, to reduce the amount by taking into account, upon a basis approved by the Commissioner, the debt so owing to the insurer, and thereupon the debt shall cease to be owing to the insurer.

93. (1) The provisions of sections 88 to 92 (inclusive) shall not apply to—

Certain policies exempted from operation of sections 88 to 92.

- (a) an instrument securing the grant of an annuity for a term dependent upon human life, not being a deferred annuity during the period of deferment; or
- (b) a policy which provides insurance against contingencies none of which may happen, not being a policy which provides for the payment of a sum of money if the life insured by the policy survives a specified period.

(2) Subject to subsection (1), the Minister may, on the recommendation of the Commissioner, by notice in the Gazette, declare that the provisions of sections 88 to 92 shall apply in respect of any policy or class of policies with such modifications as are declared in the notice, and those provisions shall apply in respect of that policy or class of policies accordingly.

Insurable
interest
essential for
all policies.

94. (1) Subject to this Act, no policy of insurance shall be issued on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no insurable interest.

(2) An insurable interest shall be deemed to be had by—

(a) a parent of a child under eighteen years of age, or a person *in loco parentis* of such a child, in the life of the child to the extent of funeral expenses which may be incurred by him on the death of the child;

(b) a husband, in the life of his wife;

(c) a wife, in the life of her husband;

(d) any person, in the life of another upon whom he is wholly or in part dependent for support or education;

(e) a corporation or other person, in the life of an officer or employee thereof; and

(f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

(3) A child's advancement policy effected either before, on, or after the appointed date shall not be void by reason only that the person effecting the policy had not at the time the policy was effected an insurable interest in the life of the child.

Property in
child's
advancement
policy.

95. (1) The provisions of this section shall apply to every child's advancement policy, whether effected before, on, or after the appointed date.

(2) Where a child whose life is insured under a child's advancement policy has, whether before, on, or after the appointed date, attained the vesting age, the policy shall be deemed to have been, or, as the case may be, shall become, as

on and after the date on which the child attained the vesting age, the absolute property of the child both at law and in equity, subject—

- (a) to any debt owing to the insurer under, or secured by, the policy;
- (b) to any dealing done, prior to the attainment by the child of the vesting age, by the owner of the policy; and
- (c) to any dealing done, after the attainment by the child of the vesting age and prior to the appointed date, by the owner of the policy.

(3) On the death or bankruptcy, during the child's life time and before he attains the vesting age, of the person effecting the policy, the executors, administrators, official receiver or trustee in bankruptcy of the person effecting the policy as the case may be (in this subsection referred to as "the representative") shall, subject to any dealings other than testamentary by the person effecting the policy before his death or bankruptcy, hold the policy in trust for the child until he attains the vesting age, or dies before attaining the vesting age, and the representative may assign, mortgage, charge, surrender, vary or otherwise deal with the policy and apply the proceeds as he thinks fit for the maintenance or benefit of the child and the upkeep of the policy, and the insurer issuing the policy shall be under no obligation to see to the application of the proceeds.

(4) Nothing in this section shall invalidate a payment made before the appointed date in respect of a child's advancement policy if the payment, but for this Act, would have been valid.

96. (1) An insurer shall not, by a policy effected on the life of a child, contract to pay on the death of the child under ten years of age a sum of money (apart from repayment of premiums) which, added to any amount payable (apart from repayment of premiums) on the death of the child under ten years of age by any other insurer, exceeds one thousand shillings.

Limitation of amount payable on death of child.

(2) In a policy to which subsection (1) refers there shall be clearly set out that the total sum recoverable as insurance

moneys or other benefits from any one or more insurers (apart from repayment of premiums) shall not exceed one thousand shillings.

Production of prescribed certificate of death.

97. An insurer shall not pay any sum (apart from repayment of premiums) on the death of a child under ten years of age except upon production of a certificate of death issued in accordance with the provision of the Births and Deaths Registration Act.

Cap. 149.

Savings as to insurable interest.

98. Sections 96 and 97 shall not apply to a policy on the life of a child when the person effecting the insurance has an insurable interest, apart from the mere interest under section 94 (2) (a), in the life of the child.

Protection of insured's interests.

99. (1) Subject to any written law relating to bankruptcy, the property and interest of a person in a policy effected (whether before, on, or after the appointed date) upon his own life shall not be liable to be applied or made available in payment of his debts by a judgment, order or process of any court.

(2) In the event of a person whose life is insured dying after the appointed date, the moneys payable upon his death under or in respect of a policy effected upon his life shall not, subject to any written law relating to bankruptcy, be liable to be applied or made available in payment of his debts by a judgment, order or process of any court, or by retainer by an executor or administrator, or in any other manner, except by virtue of a contract or charge made by the person whose life is insured or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

Family insurance policies.

100. (1) Subject to any written law relating to bankruptcy, a policy effected (whether before, on, or after the appointed date) by a man upon his own life, and expressed to be for the benefit of his wife, or of his children, or of his

wife and children, or any of them, or by a woman upon her own life and expressed to be for the benefit of her husband or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects named in the policy, and the moneys payable under that policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the person whose life is insured, or be subject to his or her debts.

(2) The person whose life is assured may, by the policy, or by a memorandum under his or her hand, appoint trustees of the moneys payable under the policy, and from time to time appoint new trustees of the moneys and may make provision for the appointment of new trustees of the moneys, and for the investment of the moneys payable under the policy.

(3) Subject to subsection (4), if at any time there is no trustee, the policy shall vest in the person whose life is assured, and his personal representatives, in trust for the purposes referred to in, and subject to, subsection (1).

(4) If at any time there is no trustee and the policy is not vested in any person in pursuance of subsection (3) and it is expedient to appoint trustees or new trustees, trustees or new trustees may be appointed by the court.

(5) The receipt of a trustee, or if there is no trustee or in default of notice to the insurer of the existence of a trustee, the receipt of the person whose life is insured or of his personal representative, or, if the policy has been assigned in pursuance of the power to borrow money conferred by subsection (6), the receipt of the owner for the time being of the policy, shall be a discharge to the insurer for the sum payable under the policy, or for the value of the policy, in whole or in part.

(6) A trustee, or if there is no trustee or in default of notice to the insurer of the existence of a trustee, the person whose life is insured or his personal representative, may vary the terms of the policy in any manner permitted by the insurer, surrender the policy in whole or in part or borrow money upon the policy, and any money obtained by any such variation, surrender or borrowing shall be subject to the same trusts as those upon which the policy was or is held.

(7) Except as expressly provided by this section, nothing in this section shall affect the operation of the law in force in Kenya relating to trustees.

(8) In this section, "children" in relation to a person, includes—

- (a) a person adopted by the first-mentioned person under the law of Kenya relating to the adoption of children; or
- (b) a person adopted by the first-mentioned person under the law of any country relating to the adoption of children if the validity of the adoption would be recognized under the law of Kenya; or
- (c) a step-child of that person.

101. (1) Where—

- (a) there is only one policy under which moneys are payable by a particular insurer to the personal representative of a deceased person and those moneys do not, excluding bonus additions, exceed five thousand shillings; or
- (b) there are two or more policies under which moneys are so payable and the aggregate of those moneys does not, excluding bonus additions, exceed five thousand shillings,

the insurer may, without requiring the production of any probate or letters of administration, pay the moneys, together with the bonuses (if any) which have been added to the policy or policies, to a person—

- (i) who is the husband, wife, father, mother, child, brother, sister, nephew or niece of the deceased person; or
- (ii) who satisfies the insurer that he is entitled to the property of the deceased person under his will or under the law relating to the disposition of the property of the deceased person or that he is entitled to obtain probate of the will of the deceased person or to take out letters of administration of his estate.

Probate or administration may be dispensed with in certain cases.

(2) The insurer making any such payment shall be thereby discharged from all further liability in respect of the moneys payable under the policy or policies.

102. (1) Subject to this section, where the owner of a policy of life assurance, not being the person whose life is assured by the policy, predeceases the person whose life is so assured, and a person satisfies the insurer that issued the policy that he is entitled—

Death of owner of policy not being life insured.

(a) under the will or on the intestacy of the deceased owner to the benefit of the policy; or

(b) to obtain probate of the will, or to take out letters of administration of the estate of the deceased owner,

the insurer may, without requiring the production of probate or letters of administration, endorse on the policy a declaration that that person has so satisfied the insurer and is the owner of the policy, and thereupon that person shall become, subject to subsection (2), the owner of the policy.

(2) Subsection (1) shall not confer on a person declared to be the owner of a policy any beneficial interest in the policy which he would not otherwise have had.

(3) This section shall apply in relation to a policy referred to in subsection (1) whether the deceased owner died before, on, or after the appointed date.

(4) This section shall not apply in relation to—

(a) a policy the surrender value of which, at the date of the death of the deceased owner, exceeds or exceeded two thousand five hundred shillings; or

(b) a policy which is one of two or more policies owned by the deceased owner and issued by the same insurer if the aggregate of the surrender values of those policies at the date of the death of the deceased owner exceeds or exceeded two thousand five hundred shillings.

(5) For the purposes of subsection (4), the surrender value of a policy is the amount (including any amount in respect of bonus additions) that would be paid by the insurer issuing the policy upon its surrender.

Insurer not bound to see to application of payments.

103. An insurer shall not in any circumstances be bound or concerned to see to the application of any moneys paid by the insurer in respect of any policy.

Power to pay into court.

104. (1) An insurer may, subject to any rules of court in that behalf, pay into court any moneys payable by the insurer in respect of a policy for which, in the opinion of the insurer, no sufficient discharge can otherwise be obtained.

(2) The receipt of a registrar of the court for the moneys shall be a good and valid discharge to the insurer for moneys so paid in, and the moneys shall, subject to the rules of the court, be dealt with according to the order of the court.

No deductions in respect of other policies.

105. Where a claim arising under a policy is paid, no deductions shall, except with the consent in writing of the claimant, be made on account of premiums or debts due to the insurer under any other policy.

Lost policies.

106. (1) Where an insured person claims that the policy (in this section referred to as "the original policy") is lost or has been destroyed, the insurer liable under the original policy may, subject to this section, upon application by that person and upon such evidence as to the loss or destruction of the original policy as the insurer deems sufficient, issue to the applicant a special policy in substitution for the original policy.

(2) A special policy shall—

(a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;

(b) contain copies of every endorsement on the original policy registered by the insurer; and

(c) state the reason for the issue of the special policy.

(3) Before issuing a special policy the insurer shall, if the amount insured, exclusive of bonus additions in the case of a policy of long term insurance, exceeds twenty five thousand shillings, give at least one month's notice of his intention so to do in the Gazette and in at least one newspaper published and circulating in Kenya.

(4) The expenses of advertisement and all other costs of the issue of a special policy shall be paid by the applicant at the time of application.

(5) The fact of the issue of a special policy and the reason for its issue shall be recorded by the insurer in the register of policies.

(6) A special policy shall be valid and available for all purposes for which the original policy in substitution for which it has been issued would have been valid and available and, after the issue of the special policy, the original policy in substitution for which it has been issued shall be void.

(7) If the insurer fails to issue a special policy within six months of an application in writing from the insured person, the Commissioner may, upon application and upon such evidence as to the loss or destruction of the original policy as the Commissioner deems sufficient, order the insurer, upon such terms and within such time as the Commissioner thinks fit, to issue a special policy.

PART IX—ASSIGNMENTS, MORTGAGES AND NOMINATIONS

107. (1) Subject to section 110, an assignment of a policy of life assurance made after the appointed date—

Assignments
of policies.

(a) shall be by memorandum of transfer and shall be—

(i) endorsed upon the policy, or upon an annexure to the policy that is referred to in, or in an endorsement on, the policy; and

(ii) signed by the transferor in the presence of a witness; and

(b) shall not be recognized by or binding on the insurer until registered in accordance with this section by the insurer liable under the policy.

(2) Every assignment shall be registered in a register to be provided by the insurer for that purpose, and the date of registration shall be inserted in the memorandum of transfer, which shall also be signed by the principal officer of the insurer or a person thereto authorized by him in writing.

(3) The transferee under a duly registered assignment shall have all the powers and be subject to all the liabilities of the transferor under the policy, and may sue in his own name on the policy:

Provided that nothing in this section shall be construed to admit the transferee to membership of an insurer or to deprive the transferor of his membership in respect of a policy, except as provided in the instruments constituting the insurer or in his articles of association or other rules.

(4) The receipt of the transferee shall be a discharge to the insurer for all moneys paid by the insurer under the policy.

(5) Every memorandum of transfer shall, as between the insurer and any person claiming any moneys under the policy, be conclusive evidence for all purposes that the transferee was at the time of registration the absolute owner of the policy free from all trusts, rights, equities and interests (except liens or charges which the insurer has upon the policy), and legally entitled to receive and give a discharge for those moneys.

(6) Any discharge or surrender of or security over the policy given to the insurer by the transferee shall be valid and effectual, notwithstanding the existence of any trust, right, equity or interest of any other person.

(7) The insurer taking the discharge, surrender or security shall not be required or concerned to inquire or ascertain the circumstances in which or the consideration for which the transferee or any previous transferee became a transferee, or, except as provided by section 108, be affected by express, implied or constructive notice of any trust, right, equity or interest.

(8) This section shall not—

- (a) impose on a minor any liability to which he would not, but for this section, be subject;
- (b) confer on a minor any power or capacity which, but for this section, he would not have; or
- (c) validate a receipt or discharge or a surrender of, or security over, a policy given by a minor, if, but for this section, that receipt, discharge, surrender or security would not be valid.

Effect of
notice of trust.

108. (1) Notwithstanding anything contained in section 107, an insurer shall not be entitled to any protection under that section or to rely upon any of the provisions of that

section if the insurer has not acted in good faith or has received express notice in writing of any trust, right, equity or interest of any person.

(2) In case of the receipt of any such notice the insurer may pay into the court any moneys payable under the policy, and the receipt of a registrar of the court for the moneys shall be a good and valid discharge to the insurer for the moneys so paid in.

(3) The moneys shall be paid out to such person as the court orders.

109. The rights and liabilities arising under a policy shall not be deemed, either at law or in equity, to be merged or extinguished by reason only of an assignment of the policy, whether at law or in equity, to the insurer that issued the policy.

Assignment of policy to insurer issuing it not to merge rights, etc., under policy.

110. Where an insurer is satisfied that—

Policies held by trustees.

(a) a policy has been issued or transferred to, or the ownership of a policy is otherwise vested in, persons as trustees; and

(b) those persons are no longer the trustees for the purposes of the trust,

the insurer may, at the request in writing of the persons claiming to be the trustees for the time being for the purposes of the trust and on the evidence of a statutory declaration by one of those persons verifying the claim, record the names of those persons as the owners of the policy, and thereupon those persons shall become the owners of the policy.

111. (1) The holder of a policy of life assurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Nomination by policy holder.

Provided that, where the nominee is a minor, the policy holder may appoint, in the manner prescribed, any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any nomination under subsection (1), in order to be effectual, shall either be incorporated in the text of the policy itself or be made by endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy, and the nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in the books of the insurer.

(3) The insurer shall furnish to the policy holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge the prescribed fee not exceeding ten shillings, for registering a nomination, or its cancellation or change.

(4) A transfer or assignment of a policy made in accordance with this Act shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of assignment, in consideration of a loan granted by the insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan, shall not cancel a nomination but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the life-time of the person whose life is insured, or where the nominee dies, or if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee survives, or if there are more nominees than one, one or more nominees survive the person whose life is insured, the amount secured by the policy shall be payable to the survivor or survivors, as the case may be.

(7) The provisions of this section shall not apply to a policy to which section 100 (1) applies.

PART X—CLAIMS ON SMALL LIFE POLICIES

112. (1) In the event of a dispute relating to the settlement of a claim on a policy of life assurance assuring a sum not exceeding ten thousand shillings (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of life assurance business transacted in Kenya, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Commissioner for decision, and the Commissioner may, after giving an opportunity to the parties to be heard and after making such further enquiries as he may think fit, decide the matter.

Claims on
small life
policies.

(2) The decision of the Commissioner under this section shall be final and shall not be called in question in any court, and may be executed by the court which would have been competent to decide the dispute if it had not been referred to the Commissioner as if it were a decree passed by that court.

(3) There shall be charged and collected in respect of an adjudication under this section such fees whether by way of percentage or otherwise as may be prescribed.

PART XI—TRANSFERS AND AMALGAMATIONS

113. (1) Subject to this Act, where—

(a) two or more insurers, at least one of whom is registered under this Act, intend to amalgamate; or

(b) an insurer intends to transfer insurance business of any class to another insurer and at least one of those insurers is registered under this Act,

both the insurers jointly in the former case, and the transferor in the latter case, shall apply to the Commissioner for his approval of the amalgamation or transfer, as the case may be.

(2) An application to amalgamate or transfer insurance business shall be accompanied by—

(a) the draft of the document under which the proposed amalgamation or transfer is to take effect;

Application to
amalgamate
or transfer.

- (b) audited accounts and balance sheets of both insurers as on the date of the proposed amalgamation or transfer;
- (c) any other report or document on which the proposed amalgamation or transfer is founded.

(3) Where the proposed amalgamation or transfer is in respect of long term insurance business, an application under this section shall, in addition to the documents mentioned in subsection (2), be accompanied by a report on the terms of the scheme and likely effects of the scheme on policy holders of the insurers concerned as a result of the proposed scheme of amalgamation or transfer, prepared by an actuary who has not been professionally connected with any of the insurers at any time during the five years immediately preceding the application.

Notice

114. (1) The Commissioner shall not determine an application under this Part unless—

- (a) notice of the intention to apply for amalgamation or transfer, approved by the Commissioner for the purpose, has been published in the Gazette and in at least two newspapers published and circulating in Kenya;
- (b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy holder and every other person who claims an interest in a policy included in the amalgamation or transfer and has given written notice of his claim to one of the insurers involved in the amalgamation or to the transferor, as the case may be; and
- (c) copies of a statement setting out particulars of the amalgamation or transfer, including in the case of long term insurance business the report of the actuary, and approved by the Commissioner, have been available for inspection at one or more places in Kenya for a period of not less than thirty days beginning with the date of the first publication of the notice in accordance with paragraph (a).

(2) The notice referred to in subsection (1) shall invite any person (including an employee, director, shareholder or policy holder) who has reasonable grounds for believing that he would be adversely affected by the carrying out of the scheme

to write or make oral representations to the Commissioner within thirty days of the publication of the notice, stating the grounds on which he believes he would be adversely affected by the carrying out of the scheme of amalgamation or transfer.

115. (1) The Commissioner shall not determine an application under this Part which involves or includes a transfer of long term insurance business, unless the scheme involves a transfer of assets relating to the long term insurance business proposed to be transferred in accordance with the provisions of this section.

Conditions for approval in relation to long term insurance business.

(2) If the transfer covers all the long term insurance business of the transferor, all the assets representing the statutory fund maintained by the transferor shall, subject to subsection (4), be transferred.

(3) If the transfer applies to a part only of the long term insurance business of the transferor, the approved proportion of the assets representing the statutory fund maintained by the transferor shall, subject to subsection (4), be transferred.

(4) For the purposes of subsections (2) and (3)—

(a) subject to paragraphs (b) and (c) of this subsection, assets of not less than the actuarial value of the liabilities on all the policies, after making adequate provision for maintenance of bonuses at current levels, and for the reasonable expectations of policy holders, liabilities being calculated on a proper basis, shall be transferred;

(b) where the total assets available in terms of subsection (2) or (3) are less in value than the figure arrived at under paragraph (a) of this subsection, the whole of the assets so available shall be transferred, and the Commissioner shall decide, after taking into account the relevant actuarial considerations, whether any other assets of the insurer shall also be transferred and whether any provision for reduction of contracts shall be made in the scheme of transfer;

(c) where the total assets available in terms of subsection (2) or (3) exceed the figure arrived at under paragraph (a) of this subsection, the assets transferred shall be of value equal to the figure arrived at under

paragraph (a) plus the following proportions of the excess of the assets in terms of subsection (2) or (3) over the figure arrived at under paragraph (a) namely—

- (i) if the excess is equal to or less than forty per cent of the figure arrived at under paragraph (a), ninety per cent of such excess; and
- (ii) if the excess is more than forty per cent of the figure arrived at under paragraph (a), ninety per cent of the portion of the excess amounting to forty per cent of the figure arrived at under paragraph (a) plus fifty per cent of the balance of the excess;

except that where the transferor does not have a share capital, the entire excess of the assets in terms of subsection (2) or (3) over the figure arrived at under paragraph (a) shall be transferred in addition to the assets of value equal to the figure arrived at under paragraph (a).

(5) For the purposes of subsections (2) and (3), the total assets shall include all assets held by the insurer in Kenya which are applicable to, or were built out of, all the long term insurance business carried on in the past irrespective of whether they are shown against long term insurance business and irrespective of whether the business was carried on in the past solely in Kenya or elsewhere.

(6) In determining the “value of the assets” due provision should be made for any possible tax liabilities arising on account of the value placed on the assets or on account of the transfer of the assets.

(7) In this section—

“proper basis” means the minimum basis prescribed, the basis adopted at the latest preceding valuation, or such other basis as the actuary considers proper, whichever brings out the highest figure of liability;

“approved proportion” means the proportion which is approved by the Commissioner as reasonable in the circumstances of the case.

116. The Commissioner shall not approve an amalgamation or transfer on an application under section 113 unless he is satisfied that—

Further conditions for approval.

(a) every policy included in the amalgamation or transfer evidences a contract which—

(i) was entered into before the date of the application; and

(ii) imposes on the insurer obligations the performance of which will constitute the carrying on of insurance business in Kenya; and

(b) the amalgamated insurer or transferee, as the case may be, is, or immediately after the approval will be, authorized under this Act to carry on in Kenya insurance business of the appropriate class or classes,

and unless in his opinion the amalgamated insurer's or transferee's financial resources and the other circumstances of the case justify the giving of his approval.

117. (1) The Commissioner may, after considering the documents and reports deposited with him under this Part and the representations, if any, made under section 114 (2), subject to such terms and conditions as he considers necessary, approve the scheme of amalgamation or transfer.

Approval or refusal.

(2) On determining an application made under subsection (1) the Commissioner shall—

(a) publish a notice of his decision in the Gazette and in such other manner as he thinks fit; and

(b) send a copy of that notice to the parties to the amalgamation or the transferor and the transferee and every person who made representations in accordance with the notice referred to in section 114,

and if he refuses the application he shall inform the parties to the amalgamation or the transferor and the transferee in writing of the reasons for his refusal.

118. (1) Subject to subsection (2), an instrument giving effect to an amalgamation or transfer approved by the Commissioner under section 117 shall be effectual in law—

Effect of approval under section 117.

(a) to transfer to the amalgamated insurer or the transferee all the transferor's rights and obligations under the policies included in the instruments; and

(b) if the instrument so provides, to secure the continuation by or against the amalgamated insurer or the transferee of any legal proceedings by or against either party to the amalgamation or against the transferor which relate to those rights or obligations, notwithstanding the absence of any agreement or consent which would otherwise be necessary for it to be effectual in law for those purposes.

(2) Except in so far as the Commissioner may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by either of the insurers involved in the amalgamation or transfer.

(3) Where an amalgamation or transfer has been approved, the amalgamated insurer or the transferee insurer shall within ten days from the date of completion of the amalgamation or transfer deposit with the Commissioner certified copies of—

- (a) statements of his respective assets and liabilities; and
- (b) the documents under which the amalgamation or transfer was effected.

PART XII—INSOLVENCY AND WINDING UP

Insurer defined for this Part.

119. In this Part “insurer” means an insurer carrying on insurance business in Kenya.

Voluntary liquidation. Cap. 486.

120. Notwithstanding anything to the contrary in the Companies Act, an insurer carrying on long term business shall not be wound up voluntarily.

Winding up by court.

121. Where a petition for the winding up of an insurer is presented by a person other than the Commissioner, a copy of the petition shall be served on the Commissioner and the Commissioner shall be entitled to be heard on the petition.

Insolvency.

122. For the purpose of section 219 of the Companies Act, an insurer shall be deemed to be unable to pay his debts if at any time the requirements of section 41 (which relate to margins of solvency) are not observed by the insurer.

Petitions
for winding
up.

123. (1) The Commissioner may, unless the insurer is already being wound up by the court, present an application to the court for winding up the insurer in accordance with the Companies Act under any of the following circumstances—

- (a) in terms of section 19 (5) or 67 (3) of this Act;
- (b) in the case of an insurer carrying on long term insurance business as a closed fund within the meaning of that term in section 21, on the grounds that the business has continued as a closed fund for a period of more than five years (excluding any period before the appointed date), that the insurer has failed to implement a scheme approved or framed by the Commissioner under section 10, and that the continuance of the insurer without winding up is detrimental to the interests of the policy holders;
- (c) on the ground that the insurer is unable to pay his debts within the meaning of section 219 of the Companies Act;
- (d) on the ground that the insurer, having failed to comply with any requirement of this Act, has continued that failure, or having contravened any provision of this Act, has continued that contravention for a period of six months after notice of failure or contravention has been given to the insurer by the Commissioner;
- (e) on the ground that the insurer is unable to fulfil the reasonable expectations of policy holders or potential policy holders;
- (f) on the ground that it is just and equitable in the interests of the policy holders that the insurer should be wound up.

(2) The court may, after considering the petition presented by the Commissioner, order the winding up of the insurer if it is of the opinion that there are sufficient grounds and it is just and equitable for the insurer to be wound up.

124. (1) Where the insurance business or any part of the insurance business of an insurer has been transferred to an insurer to which this Act applies under an arrangement in pursuance of which the first-mentioned insurer (in this section

Secondary
companies.

called the secondary company) or the creditors thereof has or have claims against the insurer to which the transfer was made (in this section called the principal company) then, if the principal company is being wound up by or under the supervision of the court, the court shall, subject to the provisions of this section, order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two insurers and make provision for such other matters as may seem to the court necessary, with a view to the insurers being wound up as if they were one insurer.

(2) The commencement of the winding up of the principal company shall, except as otherwise ordered by the court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several insurers between themselves, the court shall have regard to the constitution of the insurers, and to the arrangements entered into between the insurers in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single insurer or as near thereto as circumstances admit.

(4) Where an insurer alleged to be the secondary company is not in process of being wound up at the same time as the principal company to which the insurer is secondary, the court shall not direct the secondary company to be wound up unless, after hearing any objections that may be urged by or on behalf of the insurer against being wound up, the court is of the opinion that the insurer is secondary to the principal company and that the winding up of the insurer in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of a secondary company in conjunction with a principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where an insurer stands in the relation of a principal company to one insurer, and in the relation of a secondary company to another insurer, or where there are several insurers standing in the relation of secondary companies to

one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

125. (1) Where an insurer is a subsidiary of a company which is not an insurer, and the latter company is wound up under the Companies Act or otherwise—

Insurers being subsidiaries of non-insurers.

(a) the subsidiary shall not be wound up except on the basis of a separate application for winding up; and

(b) where the subsidiary carries on long term insurance business, whether with or without other classes of insurance business, and is ordered to be wound up, all the admitted assets of the statutory funds together with any other assets of the subsidiary which have been included in a separate balance sheet relating to the long term insurance business, and together also with any assets which, though not shown against the statutory funds or in that balance sheet, should in the opinion of the court be equitably related to the long term policy holders, shall be treated as exclusively reserved for the benefit of the policy holders of long term insurance business, and those assets shall not be utilized directly or indirectly for any purpose other than for the benefit of the long term insurance policy holders as long as those policy holders have not been fully discharged or otherwise provided for.

126. (1) In any proceedings upon a petition to wind up an insurer presented by the Commissioner under section 123 (1), evidence that the insurer was insolvent at the close of the period to which the accounts and balance sheet of the insurer last deposited under section 61 relate, or at any date as at which an investigation was last made under section 57 or 58, shall be evidence that the insurer continues to be unable to pay his debts, unless the contrary is proved.

Supplemental provisions as to winding up.

(2) Rules made under section 344 of the Companies Act may regulate the procedure and the practice to be followed in proceedings with respect to the winding up of insurers under this Act.

Valuation of
assets and
liabilities.

127. (1) Subject to any directions which may be given by the court—

(a) the value of the assets and liabilities shall be ascertained in such manner and upon such basis as the liquidator thinks fit;

(b) the liabilities of an insurer in respect of the current policies of long term insurance business shall, as far as practicable, be calculated by the method and upon the basis to be determined by an actuary appointed by the court;

(c) the liabilities of an insurer in respect of current policies of general insurance business shall, as far as practicable, be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

(2) The actuary appointed under subsection (1) shall, in the determination of liabilities, take into account any special directions which may be given to him by the court.

Continuation of
business of
insurer in
liquidation.

128. (1) The liquidator shall, so far as it may be possible and unless the court otherwise orders, carry on the insurance business of an insurer with a view to it being transferred as a going concern to another insurer, whether an existing company or a company formed for the purpose; and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

(2) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to his business require the appointment of a special manager of the business, he may apply to the court, and the court may on the application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(3) The court may require the special manager to give such security as it considers necessary.

(4) The court may make such order as it considers appropriate with regard to the payment of remuneration to the special manager.

(5) The court may, subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by an insurer in the course of carrying on his business as an alternative to winding up or otherwise.

PART XIII—THE KENYA REINSURANCE CORPORATION

129. (1) There is hereby established a corporation which shall be a body corporate known by the name of the Kenya Reinsurance Corporation.

Establishment
of Corporation.

(2) The Corporation shall have perpetual succession and shall in its corporate name be capable of suing and being sued, taking, purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property, borrowing or lending money and doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

(3) The Corporation shall not be subject to any of the provisions of the Companies Act.

130. The Corporation is the successor to the Kenya Reinsurance Corporation established by the Kenya Reinsurance Corporation Act (now repealed) and, subject to this Act, all rights, duties, obligations, assets and liabilities of the Kenya Reinsurance Corporation existing at the appointed date shall be automatically and fully transferred to the Corporation and any reference to the Kenya Reinsurance Corporation in any contract or document shall for all purposes be deemed to be a reference to the Corporation established under section 129.

Corporation to
be successor
to Kenya
Reinsurance
Corporation.
Cap. 485 (1970).

131. (1) The Corporation shall have a common seal.

Seal and
execution of
documents.

(2) The common seal of the Corporation shall be affixed in the presence of two persons, generally or specially authorized thereto by the Board, who shall sign in token of their presence.

(3) All documents, other than those required by law to be under seal, and all decisions of the Board, may be attested, signified or certified under the hand of the chairman.

Functions of Corporation.

132. The functions of the Corporation shall be to undertake, carry on and transact in any manner whatsoever, whether in Kenya or elsewhere, reinsurance business of all kinds, classes, nature and descriptions whatsoever and such direct insurance business as may be prescribed.

Board of Directors.

133. (1) There shall be a board of directors of the Corporation (in this Part referred to as "the Board") which shall, subject to the provisions of this Act, be responsible for the direction and control of the operations of the Corporation.

(2) The Board shall consist of a chairman and not less than six and not more than eight directors appointed by the Minister.

Tenure of office.

134. (1) Subject to this section, a director shall hold office for such period as the Minister shall specify at the time of his appointment, and a retiring member shall be eligible for re-appointment.

(2) If the Minister is satisfied that a director—

(a) is guilty of improper conduct; or

(b) is incapacitated by prolonged physical or mental illness; or

(c) is unable or unfit, for any other reason, to discharge the duties of his office,

and that it would be in the interests of the Corporation so to do, he may terminate the appointment of that director.

(3) The office of a director shall become vacant—

(a) upon the expiry of the term of his appointment;

(b) upon the termination of his appointment under subsection (2);

(c) upon the expiry of one month, or such shorter period as may be agreed, after the date upon which the Minister receives a written notice, signed by the director, of his intention to resign;

(d) if he is absent without the permission of the Board for three consecutive meetings of the Board of which he has had reasonable notice.

135. The directors shall be paid by the Corporation such remuneration and allowances as the Minister may from time to time determine.

Remuneration.

136. (1) The quorum necessary for the transaction of any business by the Board shall be the chairman and such number of other directors as together constitute not less than two-thirds of the total membership of the Board:

Procedure.

Provided that in the case of the absence of the chairman from Kenya, or of his incapacity to act, the quorum shall be any directors making up the required number.

(2) Where a director has an interest in any business for consideration at a meeting of the Board he shall, at the commencement of the consideration of that business, declare his interest.

(3) Subject to this Act, the Board shall regulate its own procedure and the conduct of the Corporation in such manner as the Board may think fit.

137. (1) The Minister shall appoint, from among the directors on such terms and conditions of service as the Board may determine, a managing director who shall undertake, subject to the directions of the Board, executive responsibility for the effective functioning of the Corporation and who shall perform such other functions as the Board may determine.

Staff.

(2) The Board may, on such terms and conditions of service as the Minister may approve, appoint or secure on secondment such staff as may be necessary or desirable for the efficient conduct and operation of the affairs of the Corporation.

138. (1) No director, and no officer or servant of the Corporation, shall in any manner disclose any information which he has acquired in the performance of his functions as director, officer or servant to any person except in so far as it may be necessary for the performance of those functions or due compliance with any requirements of or proceedings under this Act or with the order of a court.

Secrecy.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

Capital of Corporation.
Cap. 485 (1970).

139. (1) The capital of five million shillings of the Kenya Reinsurance Corporation established under the Kenya Reinsurance Corporation Act (now repealed) shall constitute the initial capital of the Corporation.

(2) The capital of the Corporation may be increased out of its own funds by the Board with the prior approval in writing of the Minister.

Reserves and application of profits.

140. (1) The Corporation shall establish and maintain such reserves as are required by or under this Act or are usually provided for by insurance companies and such other reserves as are necessary or desirable for the proper functioning of the Corporation under this Act.

(2) The reserves to be maintained and amounts transferred to or from reserves from time to time shall be reasonably adequate and not unreasonably excessive:

Provided that if any doubt arises about the adequacy, inadequacy or excess of any reserve or transfer to or from a reserve, the Commissioner shall decide the question and his decision shall be final.

(3) If, for any financial year, a surplus in terms of section 46 (5) becomes available for the benefit of the shareholders in respect of long term insurance business carried on by the Corporation, or profits accrue from general insurance business carried on by the Corporation, the surplus, and in the latter case the balance of the profits after making provision for reserves and other matters for which provision is necessary or expedient, shall be paid to the Treasury.

Investments.

141. Subject to this Act, and to the approval of the Minister in writing, given either generally or in respect of particular investments, the funds of the Corporation shall be invested as the Board may think fit.

Financial year.

142. The financial year of the Corporation shall be the calendar year and the accounts of the Corporation shall be closed at the end of each financial year.

143. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Corporation.

Accounts and
audit.

(2) At the end of each financial year the accounts of the Corporation shall be audited by the Controller and Auditor-General.

(3) The Minister may, at any time, direct an extraordinary audit of the accounts of the Corporation.

(4) Upon completion of an audit under this section the auditor shall make a report thereon to the Board and shall at the same time furnish a copy of the report to the Minister.

144. (1) The provisions of this Act, shall subject to subsection (2), be applicable *mutatis mutandis* to the Corporation.

Application of
provisions of
Act to
Corporation.

(2) The provisions of Parts III, IV, XII and XIV shall not apply to the Corporation.

PART XIV—MANDATORY REINSURANCE CESSIONS

145. (1) Subject to this Act, every insurer shall reinsure with the Kenya Reinsurance Corporation such proportion of each policy of insurance issued or renewed in Kenya by the insurer, in such proportion and in such manner and subject to such terms and conditions as are prescribed.

Certain business
to be ceded to
Kenya
Reinsurance
Corporation.

(2) Subject to this Act, every insurer shall also place with the Corporation, in addition to the reinsurance specified under subsection (1), such proportion of its reinsurance business from Kenya placed in the international reinsurance market, excluding facultative reinsurance, in such proportion and in such manner and subject to such terms and conditions as are prescribed.

146. (1) The Corporation may refuse to accept any reinsurance offered pursuant to this Part, and in that case the Corporation shall furnish the insurer concerned, if so requested, the reasons for its refusal.

Power to
decline business.

(2) An insurer may, within fourteen days after receiving reasons for refusal under this section, appeal to the Tribunal against the refusal, and thereupon the Tribunal may confirm

the refusal or may direct the Corporation to accept the re-insurance concerned, and any decision of the Tribunal on an appeal shall be final and conclusive.

(3) Where reinsurance is refused under this section any liability of the insurer under this Part in respect of that re-insurance shall cease.

Payment.

147. Payment by insurers to the Corporation in respect of reinsurance effected under this Part shall be made within such period as the Minister may, by notice in the Gazette, prescribe.

Returns and information.

148. An insurer required to effect reinsurance under this Part shall produce or submit to the Corporation all returns, statements, books, records, accounts or other documents, or true copies thereof, and shall furnish any information, which may be required by the Corporation for the purposes of this Part.

Offences and penalty.

149. An insurer who—

- (a) fails to effect reinsurance or make any payment as, and in such manner as, is required by or under this Part;
- (b) fails to comply with a requirement of the Corporation under section 148 within a reasonable time after the making thereof; or
- (c) furnishes information which is false in whole or in part, or produces or submits as true and correct any document or copy thereof which is not true and correct, in purported compliance with any such requirement,

shall be guilty of an offence and liable to a fine.

PART XV—INTERMEDIARIES, RISK MANAGERS, LOSS ASSESSORS, LOSS ADJUSTERS, INSURANCE SURVEYORS AND CLAIMS SETTLING AGENTS

Only registered brokers, agents, risk managers, loss assessors, loss adjusters, surveyors and claims settling agents to carry on business.

150. (1) No person shall, after the expiry of three months from the appointed date, commence, transact or carry on in Kenya the business of a broker, agent, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent unless he is registered under this Act.

(2) No person shall, after the expiry of three months from the appointed date, use the name of broker, agent, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent in a manner to give the impression that he is registered to commence, transact or carry on any such business, unless he is so registered.

(3) Nothing in this Act shall prohibit or otherwise render unlawful the continuance of the business of a risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent in Kenya in so far as it is necessary to complete any assignment which was undertaken before the appointed date.

(4) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and, if the offence is a continuing one, to a further fine not exceeding one thousand shillings for every day during which the offence continues.

151. (1) An application for registration under section 150 or renewal of registration under section 188 shall be in the form required by the Commissioner and shall be accompanied by—

Application for registration.

(a) where the application is for registration as a broker, a professional indemnity policy of insurance in such form as may be prescribed and for such amount as may be prescribed whether as a single sum or according to a specific formula;

(b) where the application is for registration as an agent, a document under the hand of the principal officer of the insurer for whom he proposes to function as an agent certifying that the person has been appointed as an agent by the insurer through an agreement or appointment letter, and that the insurer is satisfied that the applicant has the knowledge and experience necessary to act as an agent;

(c) a statement of business transacted in the preceding financial year in the prescribed form;

(d) the prescribed fee;

(e) such other documents as may be prescribed.

(2) No person shall—

(a) make a statement in an application, account, written

information or document submitted under this section; or

- (b) give to the Commissioner a certificate under subsection (1) (b),

that is false or misleading.

(3) A person who contravenes the provisions of subsection (2) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Disqualifications.

152. The Commissioner shall not register or renew the registration of or keep registered any person as a broker, agent, risk manager, loss assessor, loss adjuster, insurance surveyor or claims settling agent if—

- (a) the applicant has been found to be of unsound mind by a court of competent jurisdiction;
- (b) he has within the five years preceding the date of application been convicted of an offence relating to fraud or dishonesty;
- (c) he has at any time within the five years preceding the date of his application become bankrupt, applied to take the benefit of the law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit;
- (d) the applicant, being a broker, is a director, employee or shareholder of an insurer;
- (e) the applicant is a natural person, the applicant, or where the applicant is a corporate person, the principal officer in Kenya of the applicant responsible for the transaction of business—
- (i) does not, in the opinion of the Commissioner, have sufficient knowledge, skill and experience to satisfactorily discharge his duties and functions; or
- (ii) has been found guilty of, or warned or cautioned in writing by the Commissioner on at least three separate occasions with regard to, unethical business practices.

Registration and re-registration.

153. (1) Where the Commissioner is satisfied that—

- (a) the volume of business which is likely to be available

- to, and the earning prospects of, an applicant are adequate;
- (b) the business in respect of which the application is made will be conducted in accordance with accepted professional standards;
 - (c) in the case of a corporate person the financial standing of the applicant is sound;
 - (d) the knowledge, skill and experience of the applicant or, in the case of a corporate person, the knowledge, skill and experience of the principal officer in Kenya, are adequate;
 - (e) in the case of a broker, the professional indemnity policy of insurance is satisfactory;
 - (f) the applicant is not disqualified under this Act;
 - (g) the applicant is, and is likely to continue to be, able to comply with such of the provisions of this Act and regulations and directions made or issued under this Act as are applicable to the applicant;
 - (h) the prescribed fee has been paid;
 - (i) it is otherwise in the public interest that the applicant should be registered.

he may, subject to such terms and conditions as he considers necessary, including in the case of a broker the provision of such bank guarantee as may be prescribed, register or renew the registration of an applicant under this Part.

(2) Subject to subsection (3) and notwithstanding anything to the contrary contained in this Act, no broker shall be registered under this Act unless he is a company incorporated under the Companies Act with a paid up capital of not less than two hundred thousand shillings of which not less than sixty per cent is owned by Kenya citizens:

Provided that a broker who is not incorporated under the Companies Act on the appointed date may be registered as on that date but his registration shall not be renewed at the time of the next renewal unless he is incorporated under the Companies Act at that time.

(3) A broker already carrying on business as an insurance broker on the appointed date without complying with the provisions of subsection (2) relating to paid up

capital may be registered as a broker, but at the time of each subsequent renewal of the registration until he complies fully with the requirement his registration shall not be renewed unless he has acquired after the immediately preceding registration or renewal of registration, as the case may be, paid up capital or additional paid up capital equal to not less than one-third of the deficiency which existed on the appointed date.

(4) Subject to subsection (3), a broker already carrying on business as an insurance broker on the appointed date without complying with the minimum shareholding by Kenya citizens as required under subsection (2) shall comply with that requirement before the expiry of three years from the appointed date.

(5) Notwithstanding anything to the contrary contained in this Act, no insurance agent shall be registered under this Act unless—

- (a) if an individual, he is a citizen of Kenya; or
- (b) if a partnership, all the partners are citizens of Kenya; or
- (c) if a company incorporated under the Companies Act, it is wholly owned by citizens of Kenya.

Business by
agents.

154. Subject to the terms and conditions contained in the agreement or appointment letter referred to in section 151 (1) (b), an agent may enter into a contract which has the effect of enabling him to solicit or procure insurance business of the same class or sub-class of insurance business or other classes of insurance business for more than one insurer, or to solicit or procure insurance business of the same class or sub-class of insurance business for more than one insurer.

Returns.

155. (1) Every corporate person registered under this Part shall furnish such audited accounts, statements and returns relating to its business at such time and in such form as may be required by the Commissioner.

(2) If it appears to the Commissioner that any account, statement or return furnished to him under provisions of this Act is inaccurate or incomplete in any respect, he may—

- (a) require further information, which shall be certified, if he so directs, by an auditor or other person, as he may consider necessary; or

(b) require any document for his examination.

(3) Where—

(a) a person registered under this Part fails to comply with a requirement made under subsection (2); or

(b) the Commissioner is not satisfied as to the truth or accuracy of any account, statement or return supplied under subsection (1), or of any further information or document supplied under subsection (2), and has in writing so informed the person registered, giving his reasons,

Advance
payment of
premiums.

that person shall be deemed to have failed to comply with subsection (1).

156. (1) No insurer shall assume a risk in Kenya in respect of insurance business on which a premium is not ordinarily payable outside Kenya unless and until the premium payable thereon is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed, or unless and until a deposit, of a prescribed amount, is made in advance in the prescribed manner.

(2) Where a risk is placed with an insurer by a broker which the insurer has directly or by implication accepted, the insurer shall, for purposes of subsection (1), be deemed to have received the premium thereon on the date on which the risk is so placed with that insurer, but notwithstanding this subsection, the broker shall remit the amount of premium to the insurer before the last day of the month next following that in which the risk commences.

(3) No agent shall collect the premium of a policy of insurance canvassed or solicited by him, and no agent shall signify acceptance of the risk on a policy of insurance canvassed or solicited by him, except in so far and to the extent that he has been authorized by an insurer to collect the premium or to issue cover notes, as the case may be; but nothing in this subsection shall prohibit an agent from collecting and transmitting to an insurer a cheque drawn in favour of an insurer.

(4) A premium collected by an agent or a cheque received by him shall be deposited with, or despatched to, the insurer, such time as may be prescribed by the Minister.

(5) The requirements of this section may be relaxed by regulations in respect of particular categories of the policies.

PART XVI—THE INSURANCE ADVISORY BOARD

Establishment of Board.

157. (1) The Minister shall, by notice in the Gazette, appoint an Insurance Advisory Board, in this Part referred to as the Board, which shall consist of thirteen members as follows—

- (a) a chairman, who shall be a person not connected with any insurer, broker or insurance agency;
- (b) the Commissioner;
- (c) two persons nominated by insurers carrying on long term insurance business;
- (d) two persons nominated by insurers carrying on general insurance business;
- (e) one person nominated by insurance brokers;
- (f) four persons appointed by the Minister as representing interests which the Minister considers should be represented on the Board;
- (g) one representative of the Kenya National Assurance Company Limited;
- (h) one representative of the Kenya Reinsurance Corporation.

(2) Members of the Board, other than the Commissioner, shall hold office for a period of three years from the date of their appointment.

(3) A member of the Board may resign his membership of the Board by notice in writing addressed to the chairman of the Board to that effect, with a copy to the Minister.

(4) Casual vacancies in the Board, whether caused by resignation, death or otherwise, shall be filled by nomination by the Minister.

(5) No act of the Board shall be called in question on the ground merely of the existence of any vacancy in, or defect in, the constitution of the Board.

Quorum and voting.

158. (1) Nine members including the Commissioner shall form the quorum for meetings of the Board.

(2) In case of a tie in the voting on any matter the chairman shall, if the Commissioner is not acting as chairman for the time being, have a casting vote in addition to his deliberative vote.

(3) In the absence of the chairman, the Commissioner shall act as the chairman.

(4) The Commissioner shall not vote on a matter coming before the Board.

159. Subject to this Part, the Board may, with the approval of the Minister, make rules which need not be published in the Gazette for the transaction of business at meetings of the Board, and any such rules may provide that a member of the Board who is interested in a matter for the time being before the Board may not be present or take part in any meeting thereof.

Procedure
of Board.

160. If the chairman at any time becomes connected with an insurer, broker, or insurance agency he shall inform the Minister of that fact within fifteen days of the event, and he shall cease to be the chairman on the expiry of that period unless he has resigned and his resignation has earlier been accepted by the Minister.

Provisions
relating to
chairman.

161. The Board may, with the previous approval of the Minister, form committees consisting of such persons as it may think fit, to discharge any functions which may be delegated thereto, and for this purpose may co-opt on to those committees such persons having specialized knowledge or experience in particular lines of insurance business as it may consider expedient.

Committees.

162. The secretary of the Board, who shall not be a member of the Board, shall be an official working under the Commissioner nominated by the Minister, and shall function under the direct control of the Commissioner in regard to all matters of administration of the Board.

Secretary.

163. The functions of the Board shall be—

- (a) to assist the Commissioner in formulating standards in the conduct of business with which members of the insurance industry must comply;

Functions of
Board.

(b) to advise the Commissioner and the Minister with regard to any matter concerning the insurance industry, including rates, terms and conditions of policies and the operation of this Act as may be referred to the Board by the Commissioner or the Minister for advice.

PART XVII—ADVERTISEMENTS AND STATEMENTS

Misleading advertisements, etc. prohibited.

164. (1) A person who, by an advertisement, statement, promise or forecast which he knows to be misleading, false or deceptive, or by dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of an advertisement, statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a contract, transaction or arrangement with a member of the insurance industry relating to insurance business, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

(2) For the purpose of this section, including proceedings under this section, an advertisement, statement, promise or forecast issued by a person on behalf of or to the order of another person shall be treated as an advertisement, statement, forecast or promise issued by that other person.

(3) A person who in the ordinary course of his business issues an advertisement, statement, promise or forecast to the order of another person, being an advertisement, statement, promise or forecast the issue of which by that other person constitutes an offence under subsection (1) shall not himself be guilty of the offence if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control.

Advertisements relating to capital.

165. (1) Where an advertisement, notice or other official publication of an insurer or broker to whom this Act applies contains a statement of the amount of the authorized capital of the insurer or broker, the publication shall also contain a statement of the amount of capital which has been subscribed and the amount paid up.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

166. (1) No person shall publish in respect of an insurer or broker, or in respect of an insurer or broker proposed to be formed, a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in, or debentures of, the company or proposed company unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Commissioner.

Issue of shares
or debentures
by companies.

(2) A person acting as promoter of a proposed insurer or broker shall not accept an office of profit in the insurer or broker or the offer of a pecuniary advantage, other than as provided in the prospectus, notice, circular, advertisement or other invitation.

(3) In this section—

“debenture”, in relation to a company, includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of the company, whether constituting a charge on the property of the company or not;

“share”, in relation to a company, means a share in the capital of the company, and includes stock.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

167. (1) No person shall publish an account, abstract, report or other document deposited with or required to be deposited with the Commissioner by or under this Act in a form other than that in which it has been furnished to the Commissioner:

Publication
of returns.

Provided that nothing in this subsection shall prevent a person from publishing a true and accurate summary from any such account, abstract, report or other document for the purpose of publicity.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

PART XVIII—LEGAL PROCEEDINGS AND APPEALS

Protection for
officials acts.

168. (1) No legal proceedings shall be instituted in any court against the Minister or Commissioner or any person authorized by the Minister or Commissioner for anything done or intended to be done in good faith under this Act.

(2) No compensation shall be payable to any person for any loss, damage or harm directly or indirectly caused by anything done or intended to be done in good faith by the Minister or Commissioner or any person authorized by the Minister or Commissioner under this Act.

The Tribunal.

169. (1) The Minister may, by notice in the Gazette, establish a Tribunal for the purpose of hearing appeals under this Act.

(2) The Tribunal shall consist of a chairman and not less than two and not more than four other members who shall be appointed by the Minister and shall hold office for such period and upon such terms and conditions as the Minister may determine.

(3) The quorum for a meeting of the Tribunal shall be the chairman and two other members.

(4) The members of the Tribunal shall be entitled to receive such allowances as the Minister may determine.

(5) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(6) The Minister may make rules—

(a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;

(b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;

(c) prescribing the manner in which the Tribunal shall be convened and the places where and the time at which sittings shall be held;

- (d) prescribing a scale of costs which may be awarded by the Tribunal; and
- (e) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

170. (1) On the hearing of an appeal the Tribunal shall have all the powers of a subordinate court of the first class to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

Powers of
Tribunal.

(2) Where the Tribunal considers it desirable for the purpose of avoiding expense or delay or any other special reason so to do, it may receive evidence by affidavit and administer interrogatories and require the person to whom interrogatories are administered to make a full and true reply to the interrogatories within the time specified by the Tribunal.

(3) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.

(4) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.

(5) All summonses, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.

(5) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of the party.

171. (1) Where the Tribunal awards costs in any appeal, the Tribunal shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

Enforcement
of orders for
costs.

(2) Every certificate issued under subsection (1) may be filed in the court by the person in whose favour the costs have been awarded and, upon being so filed, shall be deemed to be a decree of the court and may be executed as such; but an order for costs against the Government shall not be enforced except in the manner provided for by the Government Proceedings Act.

Penalty for disobedience of summons to give evidence etc.

172. Any person summoned by the Tribunal to attend and give evidence or to produce any records, books of account, statements, or other documents, or required to answer interrogatories and who, without sufficient cause—

- (a) refuses or fails to attend at the time and place mentioned in the summons served on him;
- (b) refuses or fails to answer, or to answer fully and satisfactorily, to the best of his knowledge and belief all questions lawfully put to him by or with the concurrence of the Tribunal; or
- (c) refuses or fails to produce any records, books of account, statements or other documents which are in his possession or under his control mentioned or referred to in any summons served on him,

shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

Appeals from Commissioner's decisions.

173. (1) A person aggrieved by a decision of the Commissioner under this Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal which may, subject to such terms and conditions as it may consider necessary, uphold, reverse, revoke or vary that decision.

(2) Except as provided in this section the decision of the Tribunal on an appeal made to it under subsection (1) shall be final and conclusive.

(3) A person aggrieved by a decision of the Tribunal made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the court.

(4) A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding.

(5) The Chief Justice may make rules for regulating the practice and procedure in connection with an appeal under subsection (3) and for the better carrying into effect the provisions of that subsection.

Cognizance of offences and restrictions on institution of proceedings.

174. (1) No court inferior to that of a magistrate's court of the first class shall hear and determine any matter relating to an offence under this Act.

(2) No proceedings for an offence under this Act shall be instituted without the written sanction thereto of the Attorney-General.

(3) Proceedings for an offence under this Act may (without prejudice to any jurisdiction apart from this subsection) be taken against a body corporate at any place at which the body corporate has a place of business, and against any other person at any place at which he has a place of business or is for the time being resident.

175. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, principal officer, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence unless he proves that he did not know of the commission of the offence and was not reasonably in a position to know of it, or that he took all reasonable steps to prevent the commission of the offence.

Criminal liability of directors, etc.

176. (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body shall be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if that body were a corporation.

Criminal proceedings against unincorporated bodies.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Act shall be paid out of the funds of that body.

177. (1) Every document purporting to be certified by the Commissioner to be a document deposited with him under the provisions of this Act, and every document purporting to be similarly certified to be a copy of that document, shall be deemed to be such a document or copy, as the case may be, and shall be received in evidence as if it were the original document unless some variation between it and the original document is proved.

Documents to be received in evidence.

(2) The Minister may direct any documents deposited with the Commissioner under this Act, or certified copies

thereof, to be kept open for inspection, and copies thereof may be procured by any person on payment of such fees as may be prescribed.

(3) Every document purporting to be certified by the Registrar of Companies to be a copy of a document deposited with him under this Act, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original is proved.

General penalty.

178. A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is imposed shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

PART XIX—MINISTER'S POWERS

Policy holder's
compensation
fund.

179. (1) The Minister may, if he deems it necessary for the protection of policy holders, establish a policy holders' compensation fund, for the purpose of providing assistance to the policy holders of an insolvent insurer.

(2) The Minister may, by notice in the Gazette, prescribe all matters relating to the policy holders' compensation fund.

(3) If a contribution is paid by an insurer to the policy holders' compensation fund, the contribution may be treated as an item of expenses of management of the insurer for the financial year in which the amount is paid.

Power to
prescribe.

180. The Minister may prescribe all matters which by this Act are required or permitted to be prescribed, or which are necessary, desirable or convenient to be prescribed, for giving effect to this Act.

Power of
exemption.

181. The Minister may, by notice in the Gazette, subject to such terms and conditions as he may specify, exempt any person from any of the provisions of this Act.

PART XX—GENERAL PROVISIONS RELATING TO REGISTRATIONS AND CERTIFICATES

Interpretation
of part.

182. In this Part—

“applicant” means a person applying for registration, renewal of registration or alteration of registration under this Act;

“register” means a register required to be kept and maintained under section 183;

“registered person” means a person registered under this Act as an insurer, reinsurer, broker, agent, insurance surveyor, risk manager, loss assessor, loss adjuster or claims settling agent.

183. (1) For the purposes of this Act, the Commissioner shall cause to be kept and maintained one or more registers in respect of persons required to be registered thereunder.

Registers of authorized persons to be kept by Commissioner.

(2) Subject to this Act and to any regulations made thereunder, a register shall be kept and maintained in such form and manner as the Commissioner directs.

184. The Commissioner shall notify in the Gazette, within one year of the appointed date or soon as practicable thereafter, and at intervals of not more than one year thereafter, the names of registered persons and the type of business in respect of which they are registered.

Notification of registered persons.

185. Any person may, on application in accordance with the directions of the Commissioner and on payment of the prescribed fee (if any), inspect a register.

Inspection of registers.

186. A certificate under the hand of the Commissioner certifying as to any matter relating to the contents of a register shall be received in all courts as evidence of the matter certified.

Evidence of matters in register.

187. Where a registered person—

- (a) in accordance with this Act ceases to carry on business of the type in respect of which he is registered; or
- (b) being an insurer, gives notice in writing to the Commissioner that he wishes to carry on insurance business of a class not previously undertaken,

Alteration of registration.

the Commissioner may, subject in the case of additional registration to compliance with the provisions relating thereto and to such terms and conditions as he considers necessary—

- (i) cancel the registration;

- (ii) alter the relevant register;
- (iii) cancel the certificate of registration;
- (iv) alter the certificate of registration;
- (v) issue a new certificate of registration,

as the circumstances require.

Expiry and
renewal of
registration.

188. (1) Subject to this Act, the registration of a registered person shall expire on the 31st December of the year of registration.

(2) Subject to subsection (3), an application for the renewal of registration for a year shall be made on or before the 30th November of the preceding year in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Commissioner may extend the time for making an application for renewal of registration on payment of such penalty, not exceeding the prescribed fee for registration, as he may require.

Issue, display
and surrender
of certificates.

189. (1) Upon the registration or renewal of any registration, the Commissioner shall issue a certificate of registration which shall be prominently displayed by the registered person at his principal place of business in Kenya in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of the branches of the registered person in Kenya.

(2) The Commissioner may, on payment of the prescribed fee, issue a duplicate certificate to replace a certificate which has been lost, destroyed or damaged or in any case where he considers it necessary.

(3) Upon the cancellation of a registration the person who was registered shall forthwith return his certificate of registration to the Commissioner.

(4) A registered person shall not display a certificate of registration after the cancellation or expiry of the registration in respect of which it is issued.

(5) A person who contravenes the provisions of subsection (3) or (4) shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.

190. (1) If the name of a registered person who has been registered is identical to a name by which another registered person has already been registered, or so nearly resembles it as to be likely to deceive, the second registered person shall, if directed in writing to do so by the Commissioner and subject to the Companies Act, change his name within a time to be specified in the direction.

Name of registered person.

(2) No insurer shall, after the expiry of six months from the appointed date, use, or carry on business under, a name which is likely to mislead the public or to give the impression that the insurer is carrying on any business other than insurance business.

(3) No broker, agent, insurance surveyor, loss assessor, loss adjuster, risk manager or claims settling agent shall, after the expiry of six months from the appointed date, use, or carry on business under, a name which includes the word "insurance" or "assurance" in such a way as to mislead the public or to give the impression that he carries on insurance business.

(4) A person who contravenes the provisions of subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, and where the offence is a continuing one, to a further fine of one hundred shillings for every day during which the offence continues.

191. (1) No person shall be registered under this Act as an insurer, reinsurer or broker if he carries on or intends to carry on in Kenya any business other than the business in respect of which he applies for registration.

Prohibition of other business.

(2) No person registered under this Act as an insurer, reinsurer or broker shall carry on in Kenya any business other than the business in respect of which he is registered.

(3) For the purposes of this section, an insurer shall not be deemed to be carrying on a business other than that in respect of which he is registered merely by reason of his having a subsidiary which is registered for a class of insurance business for which the insurer is not registered:

Provided that nothing in this subsection shall allow an insurer not registered for long term insurance business to own a subsidiary registered for any class of long term insurance business.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Further information.

192. The Commissioner may in writing require an applicant for registration or renewal of registration under this Act to furnish him with such written information as he may require relating to the applicant or his business in respect of which registration or renewal thereof is sought, and the Commissioner shall not proceed with an application until that information has been furnished.

Alteration in particulars furnished.

193. (1) Whenever any circumstances arise which affect the application or the contents of a document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration, the applicant or registered person, as the case may be, shall in writing, within seven days of those circumstances arising, furnish full details of the circumstances to the Commissioner.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

False or misleading statements.

194. A person who makes a false or misleading statement in an application for registration or renewal of registration or alteration of registration, or in any document furnished under this Act to the Commissioner with or in support of or in connection with an application for registration or renewal of registration, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Refusal to register.

195. Where the Commissioner refuses to register an applicant for registration or renewal of registration or alteration of registration, the Commissioner shall record the reasons for his decision and furnish a copy thereof to the applicant.

Cancellation of registration.

196. (1) Where a registered person requests, by notice in writing given to the Commissioner, that his registration be cancelled either totally or in respect of any particular part of his business, the Commissioner may, subject to such terms and conditions as he considers necessary, by notice in writing, cancel the registration of the person, either totally or in respect of any particular part of his business.

(2) The Commissioner, after giving a registered person a reasonable opportunity of making representations and with the approval of the Minister, may by notice in writing cancel the registration of that person, either totally or in respect of any particular part of his business—

- (a) if the person fails to comply with or acts in contravention of this Act, or any regulation or direction made or issued under this Act;
- (b) in the case of an insurer, if the Commissioner has reason to believe that an amount due by the insurer under a judgment entered in an action in Kenya arising out of a policy of insurance issued by the insurer has remained unpaid for three months after the date of the final adjudication in that action;
- (c) if the Commissioner is satisfied that the business of the person registered is not being conducted in accordance with sound insurance or business principles;
- (d) where, having regard to the financial circumstances of the person registered, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (e) where, having regard to the nature and quality of the staff of the registered person, including the professional qualifications, knowledge and experience of the staff, the Commissioner is satisfied that the person cannot carry on the business, or a part of the business, for which he is registered, as the case may be, in a satisfactory and efficient manner;
- (f) if the person is in liquidation;
- (g) if the business of the registered person has been transferred to or amalgamated with the business of another person without the approval of the Commissioner;
- (h) in the case of an insurer, if the business of the insurer is wholly or to an unreasonable extent reinsured with another person;

- (i) where the Commissioner has reason to believe that the person registered has not commenced to carry on insurance business or any class of business in Kenya within the period of twelve months after he was registered;
- (j) where the Minister considers it is otherwise in the public interest and so directs the Commissioner in writing.

(3) A cancellation of registration made by the Commissioner under subsection (2), other than paragraph (f), (g) or (i) thereof, shall take effect thirty days after the date of the notice, and after that time no insurer whose registration has been cancelled shall enter into a new contract of insurance; but all rights and liabilities in respect of contracts of insurance entered into by him before the cancellation takes effect shall, subject to subsection (5), continue as if the cancellation had not taken place.

(4) The Commissioner may revive a registration which has been cancelled under the provisions of subsection (2), other than paragraph (f), (g) or (i) thereof, if within six months from the date on which cancellation took place the registered person concerned satisfies the Commissioner that he has complied with any requirement of this Act or any subsidiary legislation made thereunder and complies with any further directions given to him by the Commissioner.

(5) Where the registration of an insurer has been cancelled under this section the Commissioner may, after the expiry of six months from the date on which the cancellation took effect, apply to the court to wind up the insurer unless the registration of that insurer has been revived under subsection (4) or an application for winding up the insurer has already been made to the court.

(6) Where in any case referred to in subsection (1) the default or circumstances relates to one or more, but not all, of the parts of business carried on by the registered person, the Commissioner may, upon the cancellation of the registration of the person, subject to such terms and conditions as he considers necessary, register the person in respect of any part of the business and issue a new certificate in respect of that class of business.

197. (1) A broker or agent registered under this Act shall keep and maintain at his principal place of business in Kenya a record of the name of every client, policy number, premium paid, subject matter of insurance, the date of the inception of the policy, date of renewal, sum insured and, in respect of claims settled by the broker on behalf of an insurer, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.

Records to be maintained by registered persons.

(2) An insurer registered under this Act for carrying on general insurance business shall keep a record of the name of every policy holder, policy number, premium paid, subject matter of insurance, the date of the inception of the policy, date of renewal, sum insured, the amount and date of claim made, the date on which the claim was paid, the amount paid, and, in the event of a claim being repudiated, the date and reasons for repudiation, and, in the event of partial settlement, the reasons therefor.

(3) An insurer registered under this Act for carrying on long term insurance business shall keep and maintain the particulars referred to in subsection (2) and in addition a record of the name of any assignee or other person having an interest in a policy, and the name of every nominee and the dates of assignment or nomination, as the case may be.

(4) A person registered under this Act other than an insurer, broker or agent shall keep and maintain a full record of all services undertaken by him in pursuance of his registration.

(5) Every person registered under the Act shall also keep and maintain such further records of information as may be prescribed.

PART XXI—SUPPLEMENTARY PROVISIONS

198. (1) A notice, direction or document issued under this Act may be served by delivering it or by sending it by registered post to the address mentioned in an application for registration under this Act as the principal place of business of that person or, if the Commissioner has been notified of a change of address, to the new address.

Service of notice on registered person.

(2) A notice, direction or document served by post in accordance with the provisions of subsection (1) shall be deemed to have been served on the date on which it would have been delivered in the ordinary course of post.

Service of
notice on
policy holder.

199. A document which is by this Act required to be sent to a policy holder may be addressed and sent by post to the person to whom notices in respect of the policy are usually sent, and a document so addressed and sent shall be deemed, unless the contrary is proved, to have been received by the policy holder in the normal course of transit:

Provided that where a person claiming an interest under a policy has given notice in writing thereof to the insurer, a copy of any such document shall also be sent to that person at the address specified by him in his notice.

Conversion of
currency.

200. Where this Act has effect with respect to an amount or value in relation to a person and in relation to a particular day and that amount or value is in a currency other than Kenya currency, the amount or value shall be converted into Kenya currency at the rate of exchange that is, at the close of business on that day, the telegraphic transfer buying rate of exchange of the principal banker of the person or, if there is no such rate on that day, at the telegraphic transfer buying rate of exchange of the banker at the close of business on the last day on which there was such a rate.

Consent of
Commissioner
required for
insurance
remittances.

201. (1) Subject to this section and notwithstanding any other law or agreement, on and after the appointed date, no remittance or transfer of any sum of money or securities out of Kenya in respect of or by way of premium, reserve value, claim, management expense, profit, surplus, investment income, or other payment or sum of money which directly or indirectly arises out of insurance business, shall be made without the prior written approval of the Commissioner.

(2) An application for the approval of the Commissioner under this section shall be in the prescribed form and contain the prescribed particulars.

(3) Approval granted by the Commissioner under this section shall not exempt a bank or any person from compliance with any other law regulating the remittance or transfer of money or securities out of Kenya.

202. Where a document is by this Act required to be printed, the Commissioner may permit it to be typewritten, or to be reproduced by any mechanical means approved by him.

Printing of documents.

203. (1) Every insurer shall, in respect of claims arising out of policies of insurance issued by it, pay the claims within sixty days of the admission of liability and settlement of the amount due and establishment of the identity of the claimant:

Settlement claims.

Provided that if for any reason the insurer is unable to pay the claim within the period specified under this subsection, he shall apply to the Commissioner for an extension of time and the Commissioner may grant thirty days.

(2) Where the Commissioner is satisfied that undue delays are being or are likely to be experienced by claimants in the settlement of their claims, he shall, after giving the insurer a reasonable opportunity of being heard, direct the insurer to expedite the settlement of claims.

204. (1) The Insurance Companies Act and the Kenya Reinsurance Corporation Act are repealed.

Repeals and amendments.
Cap. 487.
Cap. 485.
Cap. 486.

(2) The Companies Act is amended—

(a) in section 386—

(i) in subsection (1), by deleting “an insurance company or” from the third line;

(ii) by deleting subsection (6);

(b) in the Ninth Schedule, by deleting “INSURANCE COMPANY AND” from the heading.