

P.N.D.C.L. 227
INSURANCE ACT, 1989
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P.N.D.C.L. 227

INSURANCE ACT, 1989¹

AN ACT to provide for the effective administration, supervision, regulation and control of the business of insurance and for related matters.

*Establishment of National Insurance Commission***1. Establishment of National Insurance Commission**

(1) There is hereby established a body corporate to be known as the National Insurance Commission.

(2) The Commission has perpetual succession and shall have a common seal and may sue and be sued in its corporate name.

(3) The Commission may, for the performance of its functions, acquire and hold movable or immovable property, dispose of the property and enter into a contract or any other transaction.

2. The object and functions of the Commission

(1) The object of the Commission is to ensure effective administration, supervision, regulation and control of the business of insurance.

(2) For the attainment of its object under subsection (1), the Commission shall

- (a) ensure strict compliance with this Act and the Regulations and any other enactment relating to insurance;
- (b) register insurers and insurance intermediaries who transact insurance business;
- (c) establish standards for the conduct of insurance business for compliance by insurers and insurance intermediaries;
- (d) approve rates of insurance premiums and commissions in respect of the classes of insurance;
- (e) protect insurance policy-holders, insurance beneficiaries and third parties to an insurance contract;
- (f) approve standards, conditions and warranties to be applicable to insurance;

1. The Act was issued as the Insurance Law, 1989 (P.N.D.C.L. 227) made on the 19th day of September, 1989 and notified in the *Gazette* on 29th December, 1989.

- (g) provide a bureau to which complaints may be submitted by the members of the public;
- (h) settle the insurance claims that are referred to it by the parties to an insurance contract;
- (i) ensure adequate insurance protection and security for national strategic assets and properties;
- (j) formulate proposals for the promotion of a sound and an efficient insurance market;
- (k) supervise and control transactions between local insurers and their re-insurers abroad;
- (l) undertake sustained and methodical public education on the insurance business in general; and
- (m) generally perform any other functions necessary or incidental to the functions specified under this section.

3. Directions by the Minister

The Minister may give directions of a general nature to the Commission on matters of policy and the Commission shall give effect to the directives.

4. The Board of the Commission

(1) The governing body of the Commission is a Board consisting of

- (a) the chairman,
- (b) the Commissioner of Insurance appointed under section 7,
- (c) one representative of the Ministry of Finance not below the rank of chief economic officer or its equivalent,
- (d) one representative of the Ghana Insurance Association,
- (e) one representative of the Insurance Institute of Ghana,
- (f) one representative of the Police Service,
- (g) one representative of the Private Road Transport Union,
- (h) one representative of the National Council on Women and Development, and
- (i) three other persons.²

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The term of office of a member of the Board, other than the Commissioner is three years, and a member is eligible for re-appointment.

(4) A member of the Board, other than the Commissioner, may resign from office by writing addressed to the Minister, and a member may be removed from office by the President acting on the advice of the Minister.

2. Substituted by paragraph (a) of the Insurance (Amendment) Law, 1991 (P.N.D.C.L. 260).

(5) The members of the Board other than the Commissioner, may be paid the allowances determined by the President on the advice of the Minister.

5. Meetings of the Board

(1) The Board shall meet at least once in every month for the dispatch of business at the times and at the places it may determine.

(2) A special meeting of the Board shall be called on the written request signed by the chairman or by any three members of the Board addressed to the secretary to the Board.

(3) The chairman shall preside at meetings of the Board and in the absence of the chairman one of the members present shall preside.

(4) The quorum for a meeting of the Board is five.³

(5) Decisions at meetings of the Board shall be determined by a majority of the members present.

(6) The chairman or the person presiding at a meeting of the Board shall in the event of an equality of votes have a casting vote.

(7) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment of any of them.

(8) A member of the Board who has an interest in a contract proposed to be made with the Commission shall disclose the nature of the interest to the Board and is disqualified from participating in the deliberations of the Board in respect of that contract.

(9) Except as otherwise provided in this section, the Board shall regulate its own procedure.

6. Committees of the Board

(1) The Board may, for the performance of the functions of the Commission, appoint committees which shall consist of members of the Board or non-members or both and may assign to a committee a function of the Board.

(2) A member of the Board shall be appointed chairman of a committee.

(3) The members of a committee of the Board shall be paid the allowances determined by the Board.

7. Commissioners of Insurance

(1) The chief executive of the Commission is the Commissioner of Insurance who shall be appointed by the President in accordance with article 195 of the Constitution.

(2) The deputy chief executive of the Commission is the Deputy Commissioner of Insurance who shall be appointed by the President in accordance with article 195 of the Constitution.

3. Substituted by paragraph (b) of the Insurance (Amendment) Law, 1991 (P.N.D.C.L. 260).

(3) A person shall not be appointed the Commissioner or the Deputy Commissioner unless that person is of recognised competence and experience in insurance business and administration.

(4) The Commissioner is, subject to the general directions given by the Board on matters of policy, responsible for the day-to-day administration of the affairs of the Commission.

(5) The Deputy Commissioner shall assist the Commissioner in the performance of functions and shall perform any other functions that the Board may, in consultation with the Commissioner, direct.

(6) The Commissioner and the Deputy Commissioner shall hold office on the terms and conditions determined by the President.

8. Secretary and other staff of Commission

(1) The Commission shall have an officer to be designated as the secretary to the Board who shall be appointed by the President in accordance with article 195 of the Constitution on the terms and conditions determined by the President.

(2) The secretary to the Board shall perform the functions that the Board or the Commissioner may direct.

(3) The Commission may engage any other officers and employees necessary for the proper and effective performance of its functions on the terms and conditions determined by the President.

(4) Public officers may be transferred or seconded to the Commission.

Financial Provisions

9. Funds of the Commission

(1) The funds of the Commission include

- (a) fees and any other charges payable by insurers and intermediaries,
- (b) grants from the Government or any other sources,
- (c) moneys accruing to the Commission by way of revenue,
- (d) loans granted to the Commission by the Government, a bank or any other recognised financial institution,
- (e) donations from any other sources, and
- (f) any other moneys prescribed by the Regulations as moneys of the Commission.

(2) A registered insurer and an insurance intermediary shall pay to the Commission an annual contribution in a sum of money determined by the Commission in consultation with the Ghana Insurance Association and the Ghana Insurance Brokers Association.

10. Borrowing powers

Subject to article 181 of the Constitution, the Commission

- (a) may obtain loans and any other credit facilities on the guarantee of the Government from banks and any other financial institutions approved by the Minister; and
- (b) may, with the approval of the Minister, borrow money from any other source.

11. Accounts and audit

(1) The Commission shall keep proper books of account and proper records in relation to the accounts in the form approved by the Auditor-General.

(2) The books and account shall at the end of each financial year be audited by the Auditor-General.

(3) The Board shall pay in respect of the audits the fees agreed on between the Board and the Auditor-General.

(4) The Board shall, not later than three months after receiving the report of the Auditor-General, forward the report to the Minister, who shall submit the report with the Minister's observations on the report to Parliament.

12. Annual reports

The Board shall, not later than three months after the expiration of each financial year, submit to the Minister an annual report dealing with the activities of the Commission during that financial year.

13. Financial year of Commission

The financial year of the Commission shall be the same as the financial year of the Government.

14. Transfer of assets and liabilities

*Spent.*⁴

*Obligations of Insurers***15. Registration of insurers**

(1) A person shall not carry on an insurance business unless that person is registered as an insurer under this Act.

4. The section provided that,
 "All assets, rights and liabilities of the Insurance Commission existing immediately before the commencement of this Law are hereby transferred to the Commission."

(2) *Spent.*⁵

(3) An application for registration as an insurer shall be made to the Commission.

16. Insurers to be corporate bodies

(1) A person shall not carry on an insurance business, unless that person is a body corporate incorporated in the Republic.

(2) A person shall not carry on an insurance business unless at least forty percent of the capital or any other proprietary interest in that business is owned by a citizen.

(3) In this section “**citizen**” includes a company, partnership, an association or a body, whether corporate or unincorporated, the majority capital or financial interest in which is owned by citizens, and a statutory corporation.⁶

17. Classification of insurance business

For the purposes of this Act, an insurance business comprises

- (a) life insurance,
- (b) non-life insurance consisting of
 - (i) fire insurance,
 - (ii) marine insurance,
 - (iii) transport and aviation insurance,
 - (iv) motor vehicle insurance,
 - (v) workmen’s compensation insurance, and
 - (vi) an insurance business not mentioned in this paragraph, and
- (c) reinsurance business covering any or all of the insurance businesses mentioned in this section.

18. Capital requirements for carrying on insurance business

- (1) A person shall not carry on an insurance business in the Republic unless
- (a) the requirements of this Act prescribed by the Regulations or the Minister are complied with, and
 - (b) that person has and maintains while carrying on that business, a paid-up share capital and deposited securities,
 - (i) in the case of a life insurance business, a paid-up capital of not less than twenty million cedis of which a minimum of two million cedis is deposited as security deposit with the Bank of Ghana in Government securities;

5. This subsection provided that,

“An insurer carrying on insurance business in Ghana immediately before the commencement of this Law shall, within three months from the commencement of this Law make an application for registration to continue the particular class of insurance business in respect of which the application has been made.”

6. Substituted by the Insurance (Amendment) Law, 1993 (P.N.D.C.L. 316).

- (ii) in the case of a non-life insurance business, a paid-up capital of not less than forty million cedis of which a minimum of four million cedis is deposited as security deposit with the Bank of Ghana in Government securities;
- (iii) in the case of a composite insurance business, that is a combination of life and non-life insurance business, a paid-up capital of sixty million cedis out of which a minimum of six million cedis is deposited as security deposit with the Bank of Ghana in Government securities;
- (iv) in the case of a re-insurance business, a paid-up capital of six hundred million cedis of which a minimum of sixty million cedis is deposited as security deposit with the Bank of Ghana in Government securities.

(2) An insurer shall keep deposited with the Bank of Ghana the security deposits specified in subsection (1) for the period during which that insurer carries on an insurance business.

(3) The Minister may, on the recommendations of the Commission, by legislative instrument, increase the minimum paid-up capital or the security deposit requirements under the terms and conditions determined by the Minister.

19. Withdrawal from security deposit

(1) Where an insurer suffers a substantial loss arising from liability to claimants, and the loss cannot reasonably be met from its available resources, the Commission may, after ascertaining the nature of the claim, and on application made to it by the insurer, approve the withdrawal from the security deposit of the insurer an amount of money of not more than ten percent of the security deposit, and the amount so withdrawn shall be replaced by the insurer not later than ninety days after the date of the withdrawal.

(2) The security deposit shall be regarded as assets held by the insurer, but except as provided in subsection (1), it shall be available to the insurer only in the event of the closure or winding up of the insurance business for the discharge of the liabilities arising out of policies transacted by the insurer and remaining undischarged at the time of the closure or winding up of the insurance business.

20. Mutual insurance company

(1) Sections 18 and 19 do not apply to a mutual insurance company.

(2) The capital requirement of a mutual insurance company are the assets of the company plus a surplus of not less than fifteen percent of its assets over its liabilities or any other percentage determined by the Board.

(3) A mutual insurance company shall not carry on life insurance business together with any other insurance business except personal accident or health insurance.

21. Margin of solvency

(1) The solvency margin of an insurer,

- (a) in the case of an insurer carrying on life insurance business, is that the liabilities of the insurer shall not exceed the amount of the life insurance fund of the insurer;
- (b) in the case of any other class of insurance business, is that the assets of the insurer shall exceed its liabilities by a minimum of one tenth of the premium income.

(2) The Minister may, on the advice of the Board, prescribe the standard of solvency margin for insurers that the Minister considers appropriate.

(3) The Minister shall on the advice of the Board, by legislative instrument, make Regulations prescribing the method for calculating the assets and liabilities of an insurer for the purposes of this section.

22. Life insurance fund and its control

(1) Where an insurer carries on life insurance business together with any other class of insurance business, the insurer shall keep a separate account of the receipts in respect of the life insurance business.

(2) The receipts referred to in subsection (1) shall form a separate life insurance fund with an appropriate name.

(3) The investments of the life insurance fund shall be kept separate from the investment of any other fund of the insurer.

(4) The life insurance fund

- (a) shall be the security of the policy-holders and shall be held by the insurer as though it were an insurer carrying on only the business of a life insurance;
- (b) shall not be applied for a liability arising out of a contract of the insurer for which it would not be applicable if the business of the insurer were only life insurance business; and
- (c) shall not be applied directly or indirectly for a purpose other than that of the life insurance business referred to in subsection (1).

23. Reserves

(1) An insurer shall establish and maintain in respect of each class of insurance business,

- (a) reserves for unexpired risks,
- (b) reserves for outstanding claims, and
- (c) contingency reserves to cover fluctuations in securities and variations in statistical estimates.

- (2) An insurer shall maintain with respect to non-life insurance business,
- (a) in the case of a non-life insurance business other than a marine insurance business, the reserves for unexpired risks, amounting to not less than forty-five percent of the total net premiums;
 - (b) in the case of a marine insurance business, the reserves for unexpired risks amounting to not less than seventy-five percent of the net premiums;
 - (c) in the case of reserves for outstanding claims, the reserves which are equal to the total estimated amount of the outstanding claims together with a further amount representing twenty percent of the estimated amount of the outstanding claims in respect of claims incurred but not reported at the end of the last preceding year; and
 - (d) in the case of contingency reserves, the reserves which are not less than three percent of the total premiums or twenty percent of the net profits whichever is the greater, and that amount shall accumulate until it reaches the minimum paid-up capital or fifty percent of the net premiums, whichever is the greater.
- (3) An insurer shall maintain with respect to a life insurance business,
- (a) a general reserves fund which shall be credited with an amount equal to the net liabilities on policies in force at the time of the actuarial valuation, and
 - (b) contingency reserves which shall be credited with an amount equal to one percent of the premiums.

24. Dividend of an insurer

- (1) An insurer shall not declare or distribute a dividend except from profits approved by its governing body as profits on hand after retaining unimpaired,
- (a) the entire paid-up capital stock,
 - (b) the statutory margin of solvency, the statutory reserve fund or technical reserve, and
 - (c) a sum of money sufficient to pay the net losses reported or in the course of settlement, and the liabilities for expenses of management, rates and taxes.

(2) A dividend declared or distributed under subsection (1) shall be reported to the Commission within thirty days after the declaration or distribution.

25. Prohibition on credit

An insurer shall not allow credit on the premium payable on an annual policy for a period exceeding three months.

26. Investments

(1) An insurer shall, in respect of the insurance business transacted by it in the Republic, invest and hold invested in the Republic assets equivalent to not less than the amount of the funds in the insurance business shown in the balance sheet.

(2) Subject to any other provision of this Act, the investment of insurance funds referred to under subsection (1) shall be made up,

- (a) in respect of life insurance fund,
 - (i) of fifty percent in Government securities, and
 - (ii) of fifty percent in the investments approved by the Commission,
- (b) in respect of non-life insurance fund,
 - (i) twenty-five percent in Government securities, and
 - (ii) seventy-five percent in any other investments approved by the Commission.

(3) The Minister may, by legislative instrument, vary the proportion of the percentage of the insurance fund to be invested under this section.

27. Prior approval for increase of premium rates

(1) An insurer shall not, except with the prior approval in writing of the Commission, increase the rates of premium charged by it.

(2) The Commission may by written directives adjust the rates of premium when it is necessary to do so.

Registration of Insurers

28. Application for and registration of insurers

(1) An application for registration as an insurer shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed documents or as directed by the Board.

(2) The Commission shall grant an application for registration as an insurer where it is satisfied that,

- (a) the class of insurance business in respect of which the application is made will be conducted in accordance with sound insurance principles;
- (b) the relevant capital and any other requirements for insurers specified under this Act have been complied with by the applicant;
- (c) the margin of solvency of the insurer is adequate having regard to the Regulations made under section 72;
- (d) there are at least two professionally qualified principal officers in the insurance business with not less than ten years experience in the business of insurance in the managerial position of the company; and
- (e) the management and administration of the applicant assure the safety and protection of the interest of policyholders and the public.

29. Notice of refusal to grant applications

Where the Commission refuses to grant an application for registration under section 28 it shall notify the applicant in writing of its refusal to grant the application.

30. Appeal to the High Court

(1) A person aggrieved by the refusal of the Commission to grant an application for registration as an insurer may, within sixty days after the date of the notice of refusal, appeal to the High Court.

(2) Where the appeal is allowed, the Commission shall register the applicant as an insurer.

(3) Notice of the registration or of the dismissal of the appeal, shall be published in the *Gazette*.

31. Restriction on the use of the words "insurance" and "assurance"

A person, other than a person registered under this Act, shall not, after the expiration of three months from the commencement of this Act, use the words "insurance" or "assurance" or a combination or derivative of any of those words as part of the business name, style or title of that person.

32. Suspension or cancellation of registration

(1) The Board may suspend or cancel the registration of an insurer where it is satisfied that,

- (a) the insurer lacks the prescribed calibre of personnel or facilities; or
- (b) the class of insurance business of the insurer is not being conducted in accordance with sound insurance principles and ethics of practices; or
- (c) the relevant capital requirements specified in section 18 or in the Regulations have not been complied with by the insurer; or
- (d) the insurer has ceased to carry on insurance business for at least twelve months without the written permission of the Commission; or
- (e) the insurer has requested in writing for the suspension or cancellation of the registration; or
- (f) a judgment arising out of an insurance liability obtained in a Court against the insurer remains unsatisfied without good reason for thirty days after the date of the judgment; or
- (g) the insurer has made a statement to the Commission material to the insurer's registration which the insurer knows or ought to have known to be false; or
- (h) the insurer has ceased to qualify as an insurer under this Act.

(2) The Commission shall, before the suspension or cancellation of a registration, give notice to the insurer in the manner determined by the Board, and shall, in the notice, require the insurer to remedy the breach, and where the breach cannot be remedied, to show cause to the satisfaction of the Board why the registration should not be suspended or cancelled.

(3) The Commission shall give notice in writing to an insurer where the registration is suspended or cancelled.

(4) An insurer may within sixty days of the suspension or cancellation of the registration appeal to the High Court.

33. Prohibition of business on cancellation of registration

Except for the purposes of winding up its business, an insurer shall not carry on insurance business after the expiration of three months from the date of the cancellation of its registration, and where there is an appeal to the High Court under subsection (4) of section 32 and the appeal is dismissed, after the expiration of three months from the dismissal.

Carrying on of Insurance Business by Insurers

34. Head office and branches

(1) An insurer shall maintain a head office in the Republic and shall notify the Commission in writing of the location and address of the head office.

(2) An insurer shall not undertake a new class of insurance business, open a new branch or agency or close down or change the location of a branch or an agency of its business without the prior approval in writing of the Commission.

35. Standards of principal officers of insurers

(1) An insurer shall have high calibre directors, principal officers and expert technical and professional staff and shall maintain the insurance business standards prescribed or directed by the Commission.

(2) Without prejudice to subsection (1), a person does not qualify to be a director, manager, secretary or any other officer concerned in the management of an insurance company if that person,

- (a) is certified by a medical practitioner to be a person suffering from a mental disorder,
- (b) is adjudged or otherwise declared bankrupt by a Court,
- (c) compounds with the creditors of that person, or
- (d) is convicted by a Court or tribunal of an offence involving fraud or dishonesty.

(3) Except with the express authority of the Commission, a person who has been concerned in the management of an insurance company, whether or not as a director, which has been wound up pursuant to an order of a Court, shall not be directly concerned in the management of any other insurance company.

36. Notification of certain changes and particulars

An insurer shall, within two months after the end of each financial year, notify the Commission in writing of a change in the senior executive personnel or technical operation of the insurer which occurred in that financial year and of the particulars relating to the change required to be so notified under this Act.

37. Furnishing of information to Commission

An insurer shall furnish the Commission with the essential information concerning its capitalisation, its reserves, the classes of insurance business it carries on and any other information required by the Commission.

38. Records to be kept

An insurer shall keep records of its business transacted in and outside the Republic as may be prescribed.

39. Accounts to be furnished to the Commission

An insurer shall, within six months after the end of each financial year, prepare and furnish to the Commission in the prescribed form,

- (a) a certificate as to the solvency of the insurer, signed in the case of a life insurer, by an actuary;
- (b) a balance sheet duly audited showing the financial position of the insurance business of the insurer at the close of that year together with a copy of the relevant profit and loss account;
- (c) a statement of life insurance business, other than business in connection with industrial insurance and sinking fund policies carried on by the insurer in the Republic in that year;
- (d) a certified copy of the revenue account in respect of the non-life insurance business carried on by the insurer in that year;
- (e) copies of board and management reports on the affairs of the insurer for the financial year as submitted to the policyholders or shareholders of the insurer duly signed and certified;
- (f) an analysis of the investments, deposits and expenses of management separately for life and non-life business; and
- (g) the documents and information relating to the relevant accounts and balance sheet requested by the Commission.

40. Amendment of accounts

(1) Where in the opinion of the Commission an account or a balance sheet furnished by an insurer under section 39 is incorrect or is not prepared as prescribed, the Commission may, by notice in writing, call on the insurer to amend the account or balance sheet, or to furnish a correct account or balance sheet.

(2) Where an insurer fails to comply with a notice referred to in subsection (1) to the satisfaction of the Board, the Board

- (a) may itself amend the account or balance sheet giving the insurer particulars of the amendment, or
- (b) may reject the account or balance sheet.

(3) An account or a balance sheet amended by an insurer or the Board under this section shall be treated as if it had been originally submitted in its amended form.

(4) Where the Board amends an account or a balance sheet under this section, the insurer if dissatisfied with the amendment may appeal to the Minister.

(5) The appeal shall be lodged with the Minister within thirty days after receipt by the insurer of the amended account or balance sheet.

41. Approved auditor and audit of accounts

(1) The accounts of an insurer shall be audited annually by an auditor who is not an employee, a manager or director of the insurer, and approved by the Commission.

(2) The auditor shall be satisfied that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(3) The auditor shall certify whether

- (a) adequate information from the books and records of the insurer were obtained,
- (b) the accounts of the insurer accord with the information given by the insurer for the purposes of the audit, and
- (c) the balance sheet and profit and loss account respectively of the insurer give a true and fair view of the insurer's financial position and profit or loss.

42. Financial year of insurers

The financial year of an insurer shall end on the 31st day of December of the year.

43. Publication of authorised capital

An insurer shall not publish or issue a document in which is printed a statement

- (a) of the authorised capital, unless the statement also sets out the amount of the subscribed capital and of the paid-up capital, or
- (b) of the subscribed capital, unless the statement also sets out the amount of the paid-up capital.

44. Inspection of balance sheet

(1) A policyholder may inspect a copy of the balance sheet of the insurer during normal business hours at the principal office of the insurer.

(2) A fee shall not be paid to the insurer for an inspection of the balance sheet of the insurer under subsection (1).

(3) On a request by a policyholder for a copy of the balance sheet, and on payment to the insurer of the prescribed fee, the insurer shall supply a copy of the balance sheet to the policyholder.

45. Prohibition of payment of commission

An insurer shall not pay a commission to an insurance intermediary who or which is not registered under this Act.

46. Investigation by the Commission

(1) Where an insurer fails to comply with a provision of this Act or of the Regulations, the Commission may carry out an investigation into the affairs of that insurer.

(2) For the purposes of an investigation under subsection (1), the Commission may require a person

- (a) to attend at the time and place indicated by the Board to give evidence or produce a document in the possession or control of that person which relates to a matter indicated by the Board, or
- (b) to give to the Commission an information or a document that it may require for the purposes of an investigation before it.

(3) A person who appears before the Commission under subsection (2) may be examined on oath or affirmation administered by the Board.

(4) A person who

- (a) refuses or wilfully neglects to attend in obedience to a requirement by the Commission under paragraph (a) of subsection (2) to give evidence as required, or
- (b) wilfully alters, suppresses, conceals, destroys or refuses to produce a document which that person is required to produce under paragraph (a) of subsection (2), or
- (c) refuses or wilfully neglects to furnish an information required under paragraph (b) of subsection (2),

commits an offence and is liable on summary conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

47. Transfer of life insurance business

(1) Despite anything to the contrary in this Act, where an insurer carrying on a life insurance business exclusively or with any other insurance business intends to transfer the entire insurance business or the life insurance business to another insurer, the insurer by whom the transfer is to be effected, shall, as the transferor, apply to the Commission for approval of the transfer.

(2) The Commission may, after hearing the transferor, the transferee, the policyholders and any other interested person whom the Board considers appropriate, approve the transfer subject to the conditions that it may specify.

(3) Before an application is made to the Commission under subsection (1),

- (a) notice of the intention of the transferor to make the application shall be published in the *Gazette*, and
- (b) a statement of the nature of the proposed transfer, together with an abstract containing the material facts relating to the transfer, and any other matters that may be prescribed, shall be transmitted to each policyholder of the transferor at the time that the notice referred to in paragraph (a) is published in the *Gazette*.

(4) A policyholder may instead of continuing as a policyholder of the insurer to whom the insurance business was transferred, elect in writing

- (a) to surrender the policy and accept the surrender value of the policy, and the amount of money representing the surrender value shall forthwith be paid to the policyholder; or
- (b) to accept a paid-up policy, and the actual value shall be deposited in trust with the Bank of Ghana or a person authorised in that behalf by the Bank of Ghana, to be made available to the policy holder on fulfilment of the contract.

48. Winding up of insurers

Where

- (a) the Board is satisfied that a person is carrying on an insurance business without being registered under this Act, or
- (b) the margin of solvency of an insurer is less than that specified under this Act, or
- (c) in the absence of an appeal or dismissal of an appeal under subsection (4) of section 32 the suspension or cancellation of a registration takes effect,

the Commission may petition the High Court for a winding up of the business of the insurer and the Court shall observe the procedure, give the directions and make the order it considers appropriate.

Registration of Insurance Brokers, Adjusters, Chief Agents and Agents

49. Registration of insurance brokers, adjusters

(1) Subject to subsection (2), a person shall not act as an insurance broker, insurance adjuster, insurance chief agent or insurance agent unless that person is registered as an insurance intermediary under this Act.

(2) Subsection (1) does not apply to a person who has acted as an insurance intermediary on or after the commencement of this Act, if

- (a) immediately before the commencement that person was acting as an insurance intermediary, and
- (b) within three months after the commencement, that person applies for registration under section 50 and is so registered within that period.

50. Application for registration as insurance intermediary

(1) An application for registration as an insurance intermediary may be made to the Commission by a person who has the prescribed qualifications.

(2) An application shall be in the prescribed form, contain the prescribed particulars and shall be made in the prescribed manner.

(3) The Commission may grant or refuse to grant an application.

- (4) The Commission shall refuse to grant the application of a person
- (a) who has in terms of an enactment in force,
 - (i) been adjudged insolvent or bankrupt and has not been discharged, or
 - (ii) made an assessment to or an arrangement or composition with creditors which has been rescinded or set aside; or
 - (b) who has been convicted by a Court or tribunal of an offence involving fraud or dishonesty, an appeal against the conviction not having been brought or having been brought was withdrawn or dismissed.

51. Operation of registered agent, chief agent

An insurance chief agent or agent shall act only as an insurance chief agent or agent for an insurer named in the certificate of registration and shall operate under the terms and conditions of that insurer as approved by the Commission.

52. Insurance agents to be agents of insurers

(1) Despite anything to the contrary contained in a contract of insurance where an insurance chief agent or agent completes an insurance proposal form or a similar document on behalf of a person, the agent is, for the purposes of this Act, the agent of the insurer and not the agent of the person on whose behalf the proposal form is completed.

(2) A knowledge acquired by an insurance chief agent or agent in the course of completing an insurance proposal form or a similar document under subsection (1) is knowledge acquired by the insurer.

(3) Nothing contained in a contract of insurance shall absolve the insurer from liability in respect of a knowledge obtained by the insurance agent or chief agent under subsection (2).

53. Special provisions relating to insurance brokers and adjusters

(1) A person does not qualify for registration as an insurance broker, or an insurance adjuster, unless it is a company or a partnership.

(2) An insurance broker or adjuster shall not carry on the business of insurance broking or insurance adjusting unless the broker or adjuster has, and maintains while carrying on that business, a paid-up share capital of not less than five million cedis of which a security deposit of not less than one half of a million cedis is deposited with the Bank of Ghana in Government securities.

(3) The Minister may, on the advice of the Board, by Regulations made by legislative instrument, increase the minimum paid-up capital or the security deposit requirement specified in subsection (2).

(4) An insurance broker or adjuster shall prepare in the prescribed form and furnish to the Commission within three months after the end of each financial year,

- (a) a report containing the prescribed particulars relating to the insurance transactions undertaken during that financial year,
- (b) a certified true copy of its financial statement and annual report, and
- (c) any other information requested by the Commission.

54. Cancellation of registration

(1) The Commission

- (a) may cancel or suspend the registration of an insurance intermediary on a ground on which it could have refused to grant the application for registration; and
- (b) shall cancel the registration of a broker or an adjuster who fails to satisfy the paid-up capital and security deposit requirements under section 53.

(2) Before cancelling or suspending a registration, the Commission shall give notice in writing to the insurance intermediary setting out the grounds for the proposed cancellation or suspension and shall afford the insurance intermediary an opportunity to be heard by the Board.

(3) On cancellation of registration, the relevant certificate of registration shall be surrendered by the holder to the Commission.

55. Records to be kept by insurance intermediaries

(1) An insurance intermediary shall keep records of the insurance transactions undertaken by the intermediary.

(2) Records kept under of subsection (1) shall contain particulars as to the names and addresses of the insured persons and the insurer's under coverages procured by the insurance intermediary, the nature of the coverages, the premiums collected and any other prescribed particulars.

56. Investigation of insurance intermediaries

For the purposes of satisfying itself as to whether or not this Act is being complied with, the Commission may

- (a) authorise an investigator to conduct an examination of the business of an insurance intermediary as may be considered reasonable in the circumstances; and
- (b) by notice in writing require an insurance intermediary to produce a document or an information on a matter relating to insurance contracts negotiated or solicited by the intermediary.

*Miscellaneous Provisions***57. Disclosure of material facts**

(1) A party to a contract of insurance is not under an obligation to disclose a fact about which a question is not asked by the insurer or the agent.

(2) Despite subsection (1), where a party to a contract of insurance with intent to avoid the rejection of the risk by the insurer or the payment of higher premiums, conceals from, or fails to disclose to the other party to the contract, a fact which that party knows or believes or has reasons to believe to be material to the contract, the contract may be rescinded by that other party.

58. Test of materiality

For the purpose of a contract of insurance, a fact is material if in the circumstances it would be considered material by a reasonable person.

59. Effect of misstatement

Subject to section 57, and despite anything contained in a contract of insurance, a defence to a claim shall not be maintainable by reason of a misstatement of fact by the insured, where

- (a) the insured can prove that the statement was true to the best of the knowledge or belief of the insured, or
- (b) the fact misstated is not material to the risk.

60. Jurisdiction for insurance contracts

Unless otherwise provided in the contract of insurance, the Courts are the only Courts competent to hear actions arising from an insurance contract entered into in the Republic or in respect of persons or entities who, at the date of the contracts, were resident or domiciled in the Republic or who had assets situated in the Republic.

61. Notification of judgment obtained

(1) An insurer shall notify the Commission of a judgment obtained against the insurer and shall provide the Commission with evidence whether the judgment has been satisfied or not.

(2) An insurer shall notify the Commission of a judgment obtained against a policyholder of that insurer in respect of which judgment the insurer has liability under the policy.

62. Non-destruction of documents of disabled claimants

An insurer shall not destroy a document relevant to a contract of insurance involving a person under a disability from personal injury connected with the contracts, unless the extension of the period of limitation provided under subsection (2) of section 16 of the Limitation Act, 1972⁷ has expired.

63. Insurance of imports

(1) Except in the case of personal effects, an insurance effected in respect of goods imported into the Republic shall be placed with an insurer registered under this Act.

(2) An insurer or re-insurer shall utilise the available local capacity in a class of insurance business before recourse to an overseas facultative reinsurance.

64. Insurance with State Insurance Corporation

The insurance effected by the Government, a statutory corporation or a body in which the Government or a statutory corporation owns more than fifty percent of the proprietary interest and the insurance effected in respect of or an interest held by or in trust for the

7. N.R.C.D. 54.

Government, statutory corporation or that body, shall be placed with the State Insurance Corporation without the intervention of an intermediary to whom commission is payable by the Corporation.

65. Conflict of interest

(1) A person holding five percent or more of the proprietary interests in any one insurance company shall not serve as a management personnel or a principal officer of an insurance intermediary firm registered under this Act.

(2) A person holding five percent or more of the proprietary interest of any one insurance company shall not own more than fifty percent of the equity shares of an insurance brokerage or intermediary firm registered under this Act.

66. Inspection of documents

A person may, on payment to the Commission of the prescribed fee, inspect or make copies of or obtain certified copies of a document in the custody of the Commission which has been submitted to the Commission under this Act.

67. Fees

The Commission may charge the prescribed fees in connection with the registration and renewal of registration of insurers and insurance intermediaries.

68. Exemption

Subject to article 181 of the Constitution, the President may, on the advice of the Board and in the public interest, by legislative instrument, exempt an insurer or a body or person from a provision of this Act or of the Regulations.

69. Inspection of premises

(1) The Board may inspect the premises of a person engaged in the insurance business and may for that purpose appoint inspectors.

(2) An inspector appointed under this Act may, at a reasonable time, enter any premises which the inspector reasonably suspects to be used for a purpose to which this Act applies, to inspect the premises or generally to perform a function directed by the Board or the Commissioner or for ensuring that this Act is complied with.

70. Offences and penalties

A person who contravenes a provision of this Act or of the Regulations, commits an offence and is liable except where the penalty is specified, on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

71. Offences by bodies of persons

(1) Where an offence is committed under this Act or under the Regulations by a body of persons,

- (a) in the case of a body corporate, other than a partnership, every director or officer of the body shall be deemed to have committed that offence, and

- (b) in the case of a partnership, every partner or officer of the partnership shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1) if it is proved that the offence was committed without the knowledge or connivance of, and that due care and diligence was exercised by, that person to prevent the commission of the offence having regard to the circumstances.

72. Regulations

(1) The Minister may on the advice of the Board, by legislative instrument, make Regulations

- (a) prescribing the amount of compensation payable by insurers for personal injuries;
- (b) prescribing fees and any other charges in respect of registration of insurers and intermediaries;
- (c) prescribing a matter or thing to be prescribed or required by this Act to be prescribed;
- (d) in relation to any other matter or thing authorised or required by this Act to be done by or in accordance with the Regulations; and
- (e) generally, for the purpose of giving effect to this Act.

(2) Regulations made under subsection (1) may make different provisions for different classes of insurers and insurance intermediaries.

73. Interpretation

In this Act, unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**Board**” means the governing body of the Commission as provided for under section 4;

“**citizen**” means a citizen of Ghana;

“**Commission**” means the National Insurance Commission established under section 1;

“**Commissioner**” means the Commissioner of Insurance;

“**Court**” means a court of competent jurisdiction;

“**insurer**” includes a person carrying on an insurance business, otherwise than as an insurance agent, insurance broker or insurance chief agent, and an association of underwriters;

“**insurance adjuster**” means a person duly registered under this Act to undertake professional insurance adjusting business for or on behalf of an insurer, an insured or a person;

“**insurance agent**” means a person appointed and authorised by an insurer to solicit applications for insurance or negotiate for insurance coverages on behalf of the insurer and to perform the functions assigned by the insurer;

“insurance broker” means a person who acts as an independent contractor and for commission or any other compensation and not being an agent of the insurer, solicits or negotiates insurance business on behalf of an insured or prospective-insured, other than that person;

“insurance business” includes assurance and reinsurance;

“insurance chief agent” means an agent who is authorised by power of attorney by the insurer to accept proposals and to sign and issue cover notes, policies renewals and receipts in connection therewith, in the office of the agent on behalf of the insurer;

“insurance intermediary” means an insurance broker, insurance adjuster, chief agent or an insurance agent;

“life insurance business” means the business of assuming the obligations of an insurer under a life policy, an industrial insurance policy or a sinking fund policy;

“life insurance fund” means the fund into which the receipts of an insurer in respect of the life insurance business are paid;

“life policy” means a policy relating to the business of life insurance;

“Minister” means the Minister responsible for Finance;

“mutual insurance company” means an insurance company without share capital which is owned by and operated in the interests of its policy holders or members only and the affairs of which are directed by the board of trustees or directors elected by the members;

“policy” includes a writing by which a contract of insurance is made or agreed to be made;

“prescribed” means prescribed by this Act or the Regulations;

“Regulations” means the Regulations made under this Act;

“sinking fund policy” means a policy where one party to the contract assumes the obligation to pay, during a specified period of time or after the expiration of an agreed period of time, a sum of money to a particular person in return for the payment or the promise of payment of a specified sum of money by the other person to the contract, but does not include an annuity business or an industrial insurance business;

“stock insurance company” includes an insurance company with permanent share capital owned and controlled by its shareholders and a statutory corporation carrying on insurance business.

74. Repeal and saving

*Spent.*⁸

8. The section provided that,

“(1) The following enactments are hereby repealed—

(a) the Insurance Act, 1965 (Act 288);

(b) the Insurance Act, 1965 (Amendment) Decree, 1967 (N.L.C.D. 181);

(c) sections 8, 9, and 18 of the Insurance (Amendment) Decree, 1972 (N.R.C.D. 95);

(d) the Insurance (Amendment) Decree, 1975 (N.R.C.D. 313).

(2) The *Gazette* notice under section 9 of the Insurance (Amendment) Decree, 1972 (N.R.C.D. 130) is hereby cancelled.

(3) Notwithstanding the repeal of the enactments specified in subsection (1) of this section, any regulations made under the repealed enactments shall, so far as they are consistent with the provisions of this Law, continue in force as if they were regulations made under section 72 of this Law.”