

INSURANCE ACT 1998

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ACT NO. 36 OF 1998

AN ACT

TO PROVIDE FOR THE REGULATION OF THE BUSINESS OF INSURANCE, FOR
THE LICENSING AND SUPERVISION OF INSURERS AND INSURANCE
INTERMEDIARIES, AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands-

Part I-PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Insurance Act 1998.

(2) This Act comes into force on a date to be appointed by the Minister and published in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires-

“actuary means a person appointed under section 61;

“agent means a person who-

- (a) as representative of an insurer, carries on the business of channeling, soliciting, or procuring insurance business for the insurer for or in expectation of payment by way of commission, allowance, return or other remuneration; and
- (b) is licensed under section 43(1) to carry on such business;

“appointed date means the date appointed under section 1 for the coming into force of this Act;

“auditor means a person appointed under section 52;

“binder means an authority given by an insurer to an insurance intermediary-

- (a) to enter into, as agent for the insurer, contracts of insurance on behalf of the insurer as insurer; or
- (b) to deal with and settle, as agent for the insurer, claims against the insurer as insurer,

but does not include an authority of a kind referred to in paragraph (a) that is limited to effecting contracts of insurance, or contracts of insurance in a particular class, by way of interim cover;

“broker means a person who-

- (a) as representative of an insured, carries on the business of arranging contracts of insurance for or in expectation of payment by way of brokerage, commission, fee, allowance, return or otherwise; and
- (b) is licensed under section 43(1) to carry on such business;

“class means a specific type of insurance business such as, but not limited to, fire insurance business, motor insurance business or term life insurance business;

“continuous disability policy means a contract of insurance which is by its terms to be of more than one year's duration and under which a benefit is payable in the event of the occurrence, within the duration of the contract, of-

- (a) death by accident, or by some other cause specified in the contract, of the person whose life is insured (The insured);
- (b) injury or disability of the insured caused by accident or sickness; or
- (c) the insured being found to have a specified condition or disease;

“controller means a person appointed under section 82;

“director means any person occupying the position of a director of a body corporate, by whatever name he is called, and includes a member of a local board of a body corporate whose head office is situated outside the Fiji Islands;

“Fiji business and Fiji insurance business means any insurance business where the subject matter of the business is situated in the Fiji Islands or in respect of which premiums are ordinarily payable in the Fiji Islands and includes-

- (a) property that at the time of making the contract of insurance is in the Fiji Islands or in transit to or from the Fiji Islands;
- (b) the life, safety, fidelity or insurable interest of an individual who at the time of making the contract of insurance is ordinarily resident in the Fiji Islands;
- (c) insurance business in respect of any vessel, hovercraft or aircraft registered or ordinarily located in the Fiji Islands; and
- (d) insurance business wherever conducted by an insurer licensed under this Act where the liability in respect of that business accrues to that insurer;

“Fiji citizen means a person who is a citizen of the State;

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

“general insurance business means insurance business of any class or classes not being life insurance business;

“industrial policy means a policy in respect of which the premiums are contracted to be paid at regular intervals of less than 2 months and the insurer expressly or tacitly undertakes to send a person to the insured or to the insureds residence or place of work to collect the premium;

“inspector means a person appointed under section 73;

“insurance business means-

- (a) the business of undertaking liability by way of insurance, including reinsurance, in respect of a life, or any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event; and
- (b) business relating to the continuance, renewal or revival of the business referred to in paragraph (a),

and includes business incidental to the business referred to in paragraph (a) or (b);

“insured means a person who is insured, or who intends to become insured, under this Act;

“insurer means a body corporate licensed under section 25(1) to commence or carry on insurance business and includes a reinsurer;

“intermediary means an agent or broker;

“investment-linked benefits means any benefits payable under an investment-linked contract;

“investment-linked contract means any individual policy which provides for life insurance where the policy value at any time varies according to the value of the underlying assets at the time;

“life insurance business means business that consists of the issuing of life policies or the undertaking of liability under life policies or any business that relates to the business of issuing life policies, including business relating to the investment, administration and management of the assets of a statutory fund;

“life policy means, subject to subsection (2), any policy that provides for the payment of money on the death of a person (otherwise than by way of personal accident, disease or sickness only) or on the happening of a contingency dependent on the termination or continuance of human life, and includes-

- (a) a policy which is subject to payment of premiums for a term dependent on the termination or continuance of human life;
- (b) a policy securing the grant of an annuity for such a term;
- (c) a continuous disability policy; and
- (d) an investment-linked contract;

“minister means the Minister for the time being responsible for the administration of this Act;

“net claims outstanding provision means the total liability provision for claims reduced by reinsurance recoveries on such claims;

“net premium income means the gross premium paid by the insured after deduction of return premiums, reinsurance outwards premiums, commissions, stamp duty and other statutory charges;

“non-participating policy means a life policy not conferring any right to share in the profits or surplus arising from the business of the insurer or any part of it;

“ordinary life insurance business means life insurance business being business of, or in relation to, the issuing of or the undertaking of liability under policies of insurance upon human life, or the granting of annuities upon human life, but excludes industrial life business;

“participating policy means a policy by the terms of which the owner of the policy is entitled to a share in surpluses or profits which may be distributed by the insurer, and Participating Business is to be construed accordingly;

“Policy includes-

- (a) in relation to ordinary life insurance business or industrial life insurance business D an instrument evidencing a contract to pay an annuity upon human life;
- (b) in relation to bond investment business D a bond, certificate, receipt or other instrument evidencing the contract with the insurer; and
- (c) in relation to other classes of insurance business D any instrument under which there is for the time being an existing liability already accrued or under which any liability may accrue;

“premium includes an installment of premium;

“prescribed means prescribed by regulations made under section 169;

“principal officer means an officer appointed under section 18;

“record includes a book, account, register, statement, abstract and document, however compiled, recorded or stored;

“reinsurers means any body corporate which commences or carries on reinsurance business;

“reinsurance business means the business of undertaking liability to pay money to insurers or reinsurers in respect of liabilities incurred by insurers or reinsurers on the basis of policies of insurance or reinsurance;

“Reserve bank means the Reserve Bank of Fiji established by the Reserve Bank of Fiji Act;

“statutory fund means a fund established under section 111;

“term life insurance means a type of insurance business whereby the insurer promises to pay the agreed amount of cover as stipulated in the policy if the insured dies during a period specified in the policy, but if the insured survives the period the contract expires without value.

(2) A contract that provides for the payment of money on the death of a person is not a life policy if, by the terms of the policy, the duration of the policy is to be not more than one year.

(3) A person is related to an insurer if-

- (a) that person directly or indirectly controls, by any means whatsoever, the management of the insurer;
- (b) that person owns directly or indirectly 20% or more in nominal value of the equity share capital, as defined in section 156 of the Companies Act, of the insurer;
- (c) the insurer directly or indirectly controls, by any means whatsoever, that person; or
- (d) the insurer owns directly or indirectly 20% or more of the equity share capital, as defined in section 156 of the Companies Act, of that person.

Part II-ADMINISTRATION

Reserve Bank

3.—(1)The Reserve Bank has the responsibility for administering this Act and must perform all the functions assigned to it by or under this Act.

(2) The functions assigned to the Reserve Bank by this Act include-

- (a) the formulation of standards governing the conduct of insurance business and insurance broking business in the Fiji Islands;
- (b) the superintendence of the conduct of agents, brokers and insurers in the Fiji Islands;
- (c) advising the Minister with regard to all matters concerning insurance;
- (d) recommending to the Minister regulations for the carrying out of Government policies relating to insurance;
- (e) the approval of standard terms and conditions contained in policies of insurance;
- (f) the determination, with the approval of the Minister, of the rates of insurance with respect to any class or classes of business; and
- (g) such other functions relating to the supervision of Fiji insurance business, or business incidental to Fiji insurance business, as are assigned to it by the Minister.

(3) The Reserve Bank may in writing, with the written approval of the Minister, delegate any of its powers, duties or functions under this Act.

Part III-GENERAL

Liability for conduct of agents and employees

4.—(1)This section applies to any conduct of an employee or agent of an insurer-

- (a) on which a person in the circumstances of the insured could be reasonably expected to rely; and
- (b) on which the insured in fact relied in good faith.

(2) An insurer is responsible, as between the insurer and insured, for the conduct of an employee of the insurer in relation to any matter relating to insurance, whether or not the employee acted within the scope of his employment.

(3) If a person is the agent of one insurer only, the insurer is responsible, as between the insurer and the insured, for the conduct of an agent of the insurer in relation to any matter relating to insurance, whether or not the agent acted within the scope of the authority granted to the agent by the insurer.

- (4) If a person-
- (a) is the agent of one insurer in respect of one class or classes of insurance business; and
 - (b) is the agent of another insurer in respect of another class or other classes of insurance business,
- the provisions of this section do not operate-
- (c) so as to make the insurer in paragraph (b) responsible for the conduct of the agent in respect of the class or classes of insurance business of the insurer in paragraph (a); or
 - (d) so as to make the insurer in paragraph (a) responsible for the conduct of the agent in respect of the class or classes of insurance business of the insurer in paragraph (b).

(5) If a person is the agent of more than one insurer and the person engages in any conduct relating to a class of insurance business in which the person is not the agent of any of those insurers, the insurers are jointly and severally liable for that conduct, as between themselves and the insured, despite the fact that the agent acted outside the scope of the authority granted by any of the insurers.

(6) If a person (the Principal agent) is an agent of an insurer and the principal agent appoints a second person (the sub-agent) to act as agent of the principal agent, then for the purpose of determining the ultimate responsibility of the insurer under this section the actions of the sub-agent are to be the actions of the principal agent irrespective of whether-

- (a) the insurer and principal agent have an agreement which forbids the principal agent from appointing a sub-agent; or
- (b) the sub-agent acted outside the scope of his authority.

(7) The responsibility of an insurer under subsection (2), (3), (4), (5) or (6) extends so as to make the insurer liable to an insured in respect of any loss or damage suffered by the insured as a result of the conduct of the agent or employee.

(8) Subsections (2) to (7) do not affect any liability of an agent or employee of an insurer to an insured.

(9) An agreement, in so far as it purports to alter or restrict the operation of subsections (2) to (7), is void.

(10) An insurer must not make, or offer to make, an agreement that is, or would be, void by reason of subsection (9).

(11) An insurer who contravenes subsection (10) commits an offence and is liable on conviction to a fine of \$10,000.

Payments to intermediaries

5.—(1) If a contract of insurance is arranged or effected by an insurance intermediary, payment to the insurance intermediary of moneys payable by the insured to the insurer under or in relation to the contract, whether in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of the liability of the insured to the insurer in respect of those moneys.

(2) Payment to an insurance intermediary by or on behalf of an intending insured of moneys in respect of a contract of insurance to be arranged or effected by the intermediary, whether the payment is in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(3) Payment by an insurer to an insurance intermediary of moneys payable to an insured, whether in respect of a claim, return of premiums or otherwise, under or in relation to a contract of insurance, does not discharge any liability of the insurer to the insured in respect of those moneys.

(4) An agreement, in so far as it purports to alter or restrict the operation of subsection (1), (2) or (3), is void.

Duty of intermediary to explain proposal and policies

6.—(1) Notwithstanding any other written or other law, an intermediary must-

- (a) provide a reasonable explanation to a person proposing to enter into or renew a contract of insurance, of the contents of all documents required to be signed by the person;
- (b) communicate to the insurer all information of which the intermediary was aware at any time before or during any negotiations for a contract of insurance or for renewal of insurance which is likely to affect the contract; and
- (c) provide a reasonable explanation to an insured whose policy was placed or procured by or through the intermediary of the contents of that policy and particularly the extent of cover and exclusions contained in the policy.

(2) An intermediary who contravenes subsection (1) is liable to the insurer and to the person for whom the intermediary is acting for any loss resulting from the contravention.

(3) The obligations imposed by this section are in addition to and do not lessen the liability of an intermediary under the provisions of any other law, whether written or unwritten.

Duty of intermediary to remit premiums, etc

7.—(1) In this section, insurer means a person who carries on insurance business in the Fiji Islands or elsewhere, whether licensed under this Act or not.

(2) If-

- (a) money is received by an intermediary from, or on behalf of, an insured as a premium or an installment of premium in connection with a contract of insurance or a proposed contract of insurance; and
- (b) the risk, or part of the risk, to which the contract or proposed contract relates is accepted by or on behalf of an insurer,

the intermediary must pay such money to the insurer within 30 days following receipt of the money by the intermediary.

(3) If the amount of the premium, or of an installment of the premium, payable in respect of a contract of insurance has not been received by an intermediary within 35 days after the day on which the cover provided by the insurer under the contract commenced, or the first day of the period to which the installment relates, as the case may be, the intermediary must notify the insurer in writing, within 7 days of the end of the month in which the relevant period expired, that the intermediary has not received the amount.

(4) If an intermediary receives money from, or on behalf of, an insurer for payment to, or on behalf of, an insured, the intermediary must pay an amount equal to that money to, or on behalf of, the insured as soon as possible, but no later than 7 days, after the day on which the intermediary received the money.

Intermediaries to give certain information

8.—(1) an intermediary who arranges or effects a contract of insurance must, before arranging or effecting the contract, or as soon as practicable after the contract is effected—

- (a) if so requested by the insured, give to the insured particulars in writing of any fees or other amounts charged by the intermediary in respect of his services in connection with the contract; and
- (b) inform the insured of the name of the insurer and of the place of business of the insurer.

(2) If the contract of insurance is one of a number of contracts arranged or effected by an intermediary as a group of contracts of insurance, it is sufficient for compliance with subsection (1) if the intermediary gives the required particulars in relation to the group of contracts.

(3) An intermediary who arranges or effects a contract of insurance must give to the insured, as soon as possible after the contract is effected, a receipt for all moneys received from the insured in respect of the contract.

Disclosure by broker acting under binder

9.—(1) in this section, insurer means a person who carries on insurance business in the Fiji Islands or elsewhere, whether licensed under this Act or not.

(2) A broker who intends to act under a binder in arranging a contract of insurance as agent for an insurer must, before arranging the contract, notify the intending insurer in writing, and in the prescribed form, if any, that—

- (a) in arranging the contract the broker will be acting under an authority given by the insurer to do so; and
- (b) the broker will be arranging the contract as agent of the insurer and not of the intending insured.

(3) A broker who intends to act under a binder in dealing with or settling a claim under a contract of insurance must, before dealing with or settling the claim on behalf of the insurer, notify the insured in writing, and in the prescribed form, if any, that—

- (a) in dealing with or settling the claim the broker will be acting under an authority given by the insurer to do so; and
- (b) the broker will be dealing with or settling the claim as agent of the insurer and not of the insured.

(4) A contract arranged, or claim dealt with or settled in contravention of this section is avoidable at the option of the insured, subject to—

- (a) the rights of parties acquired without notice and for good and valuable consideration; and
- (b) compliance with the principles of common law and equity with respect to the avoidance of contracts.

(5) A broker must not enter into a binder arrangement with an insurer without the prior written approval of the Reserve Bank.

(6) A broker who contravenes this section commits an offence and is liable on conviction to a fine of \$5,000.

Restriction as to receipt and payment of remuneration to brokers

10.—(1) A broker must not receive from an insurer or from a person on behalf of an insurer a gift, benefit or other reward (however described) except as remuneration for services rendered to the insurer-

- (a) in arranging or effecting a particular contract of insurance; or
- (b) in connection with dealing with or settling a claim under a particular contract of insurance.

(2) An insurer must not pay to a broker, and a broker must not receive from an insurer, in respect of the arranging or effecting of contracts of insurance by that broker with the insurer, remuneration at a rate or on a basis that has been varied from the normal rate or basis, having regard to any one or more of the following-

- (a) the number of contracts so arranged or effected;
- (b) the total amount of premiums paid or payable under such contracts; or
- (c) the total amount of sums insured under such contracts.

(3) An insurer or broker who contravenes this section commits an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

Insurer not to permit person to act as agent unless licensed

11. An insurer must not cause or permit a person to arrange, or hold himself out as entitled to arrange, a contract of insurance as agent for that insurer unless the person has been licensed under this Act as agent of the insurer for the class of insurance business in which that contract is included.

Management of licensed insurers and brokers

12. Every licensed insurer or broker must-

- (a) endeavor to place qualified Fiji citizens in management positions in its operations in the Fiji Islands within such time as may be agreed upon between the insurer or broker and the Reserve Bank; and
- (b) present to the Reserve Bank a programme of training in order to place Fiji citizens in management positions in its operations in the Fiji Islands as required by the Reserve Bank from time to time.

Part IV-LICENSING

Division 1-General

Only licensed body corporate to carry on insurance business

13.—(1) Subject to this Act, only a body corporate licensed under section 25(1) may commence or carry on insurance business in the Fiji Islands, whether in respect of Fiji business or otherwise.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$20,000 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

Only licensed persons to carry on business as an intermediary

14.—(1) Subject to this Act, only a person licensed under section 43(1) may commence or carry on the business of agent or broker in the Fiji Islands, whether in respect of Fiji business or otherwise.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months and, in the case of a continuing offence, to a further fine of \$500 for every day during which the offence continues.

Holding out as licensed insurer or intermediary

15.—(1) A person who holds himself or itself out to be licensed under this Act to commence or carry on any insurance business or any business of insurance agent or broker when that person is not so licensed commits an offence and is liable on conviction—

- (a) in the case of holding out as a licensed insurer, to a fine of \$20,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues;
- (b) in the case of holding out as a licensed intermediary, to a fine of \$5,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$500 for every day during which the offence continues.

(2) In this section, person includes, where the context requires, a body corporate and, every director or manager of a body corporate.

(3) It is a defense to a charge under this section for a person to prove that the holding out was made without his or its consent or knowledge.

Reserve Bank may investigate unlicensed person

16.—(1) if the Reserve Bank has reason to believe that any person is carrying on any class of insurance business or carrying on the business of agent or broker without having been licensed under this Act, the Reserve Bank may call for and examine, inspect, or investigate the books, accounts and records of that person in order to ascertain whether or not that person has contravened or is contravening any provision of this Act.

(2) A person who fails or refuses to submit books, accounts and records called for under subsection (1) or to allow the examination, inspection or investigation of them under that subsection commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for a period of 6 months and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

Fiji insurance business to be placed only with licensed insurers

17.—(1) subject to this section, no person may place Fiji insurance business with an insurer not licensed under this Act.

(2) A person may apply to the Reserve Bank to place the whole or part of any Fiji insurance business with a person who is carrying on insurance business outside the Fiji Islands and is not licensed under this Act.

(3) If an application is made under subsection (2) and the insurance is being arranged or effected by an intermediary, the intermediary must give notice to the intending insured before he arranges or effects the contract, informing the intended insured that an insurer not licensed under this Act is proposed to be the insurer, or one of the insurers, under the contract.

(4) A notice under subsection (3) must be in writing in the prescribed form and a copy must be lodged with the application made under subsection (2).

- (5) If the Reserve Bank is satisfied in respect of an application under subsection (2) that—
- (a) no insurer licensed under this Act carries on the insurance business to which the application relates; or
 - (b) it is in the public interest that the application be permitted,

the Reserve Bank may, by notice in writing, subject to such terms and conditions as it considers necessary, give permission to place the whole or part of any Fiji business with one or more insurers located outside the Fiji Islands and not licensed under this Act.

(6) The Reserve Bank may exempt insurers and their reinsurance brokers from the requirements of this section in respect of insurance business placed with unlicensed overseas reinsurers under facultative or treaty reinsurance arrangements.

(7) Any person who, without the prior written permission of the Reserve Bank, directly or indirectly places any Fiji insurance business with an insurer not licensed under this Act commits an offence and is liable on conviction-

- (a) in the case of an intermediary, to a fine of \$10,000 or a sum equivalent to the brokerage, commission, fee, allowance or other remuneration due to or received by the intermediary relating to the business placed offshore, whichever is higher; or
- (b) in the case of any other person, to a fine of \$10,000 or a sum equivalent to the gross premium paid in respect of Fiji insurance business placed outside of the Fiji Islands,

whichever is higher.

(8) If the Reserve Bank has reason to believe that any person has, without its prior written permission, directly or indirectly placed any Fiji insurance business with an insurer not licensed under this Act, the Reserve Bank may call for and examine, inspect, or investigate the books, accounts and records of that person in order to ascertain whether or not that person has contravened or is contravening any provision of this Act.

(9) A person who fails or refuses to submit books, accounts and records called for under subsection (8) or to allow the examination, inspection or investigation of them under that subsection commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

Appointment of principal officer

18.—(1) No insurer or broker may commence or carry on insurance business or broking business unless the insurer or broker has-

- (a) appointed a person to be its principal officer for the Fiji Islands; and
- (b) notified the Reserve Bank in writing of the appointment.

(2) To be appointed as a principal officer under subsection (1), a person must be-

- (a) an individual; and
- (b) resident in the Fiji Islands.

(3) A principal officer is responsible for the general control and supervision of the Fiji insurance business of the insurer or broking business of the broker and its compliance with this Act and represents the insurer or broker for the purposes of this Act.

(4) An insurer or broker may, at any time, give the Reserve Bank written notice advising it of the revocation of a persons appointment as principal officer and specifying another person as the principal officer.

(5) If the Reserve Bank is of the opinion that a person who has been appointed as a principal officer has insufficient experience or qualifications, or has failed to perform adequately the responsibilities of a principal officer as provided for in this Act, the Reserve

Bank may direct the insurer or broker to revoke the appointment of that person as principal officer and to appoint another person.

(6) A direction given by the Reserve Bank under subsection (5) must be in writing and specify the grounds on which the direction has been given.

(7) If the principal officer of an insurer or broker appointed under subsection (1) is, or is about to be, absent from the Fiji Islands or, for any reason, unable to perform the duties of a principal officer, the insurer or broker must, if it does not revoke the appointment and appoint another person under that subsection, appoint another person resident in the Fiji Islands to act as the principal officer of the insurer or broker for the purpose of the Act during the absence or inability.

(8) An insurer or broker who contravenes subsection (1) or a direction given by the Reserve Bank under subsection (5) commits an offence and is liable on conviction to a fine of \$10,000 and, if the offence is a continuing one, to a further fine of \$1,000 for every day during which the offence continues.

Alterations in particulars

19. If, after an insurer or intermediary has been licensed under this Act, circumstances arise which affect any of the contents of any document or information provided by the insurer by virtue of section 24 or by the intermediary by virtue of section 42, the insurer or intermediary must forthwith provide to the Reserve Bank full details of the circumstances.

Deposits

20.—(1) an insurer licensed under this Act must make and maintain a deposit which-

- (a) is of the prescribed nature and in the prescribed form;
- (b) is acceptable to the Reserve Bank; and
- (c) has a market value of not less than the surplus of assets over liabilities required to be maintained by the insurer under section 31.

(2) A broker licensed under this Act must make and maintain a deposit, or provide a guarantee, which-

- (a) is of the prescribed nature and form;
- (b) is acceptable to the Reserve Bank;
- (c) has a market value, or is for an amount, of not less than the deductible or excess amount applicable to the professional indemnity and fidelity guarantee insurance policies required to be maintained by the broker under section 44.

(3) The amount of the deposit maintained by an insurer under subsection (1) must be adjusted annually within 3 months after the end of each calendar year in order to ensure that the amount of the deposit complies with subsection (1)(c).

(4) Where a deposit is made in the form of any Fiji Government security, the value of such security for the purposes of this Act will be deemed to be the current market value of the security.

(5) All income accruing in respect of a deposit is payable to the insurer or broker making the deposit.

(6) an insurer or broker may at any time substitute for a deposit made under subsection (1) or (2) another deposit, provided the market value of the substituted deposit on the date of the substitution is not less than the amount required in subsection (1) or (2), as the case may be.

Use of deposit

21. A deposit made by an insurer under this Act will be deemed to be part of the assets of the insurer and is not-

- (a) capable of being transferred, assigned, or encumbered with any mortgage or other charge, by the insurer;
- (b) except with the written permission of the Reserve Bank, available for the discharge of any liability of the insurer other than a liability in the Fiji Islands in respect of Fiji insurance business arising out of a policy of insurance issued by the insurer;
- (c) liable to attachment in execution of any judgement except a judgement obtained by an insured of the insurer in respect of a debt which is due upon a policy issued in respect of Fiji insurance business and which the insured has been unable to recover in any other way.

Return of deposit

22.—(1) A deposit made under this Act by an insurer must be retained by the Reserve Bank until it is satisfied that an insurer has ceased to carry on insurance business in Fiji and that all liabilities in respect of its insurance business have been satisfied, whereupon the deposit must be returned to the insurer.

(2) A deposit made under this Act by a broker must be retained by the Reserve Bank until the brokers licence has been cancelled under section 101, whereupon the deposit must be returned to the broker.

(3) If the amount of a deposit made under this Act exceeds the amount required to be maintained under section 20, the insurer or broker as the case may be may withdraw the excess.

Disqualified persons

23.—(1) For the purpose of this section, a person is a disqualified person if, at any time, whether before or after the appointed date-

- (a) the person has been convicted of an offence under this Act;
- (b) the person has been convicted of an offence against any law in the Fiji Islands or elsewhere in respect of-
 - (i) conduct relating to insurance; or
 - (ii) dishonest conduct; or
- (c) the person has-
 - (i) become bankrupt;
 - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with his creditors.

(2) A disqualified person must not be, or act as, a director, principal officer, general manager, secretary or similar officer of a licensed insurer or broker.

(3) A licensed insurer or broker must not permit a disqualified person to be, or to act as, a director, principal officer, general manager, secretary or similar officer of the insurer or broker.

(4) In a prosecution under this section it is a defense if the defendant proves that-

- (a) the defendant did not know, and had no reasonable grounds to suspect, that the person was disqualified; and
- (b) the defendant had made all reasonable efforts to ascertain whether the person was disqualified.

(5) A failure to comply with this section does not effect the validity of an appointment or transaction.

Division 2-Licensing of Insurers

Application for licence

24.—(1) A body corporate that-

- (a) is either incorporated in the Fiji Islands under the Companies Act or registered under Part X of the Companies Act; and
- (b) is not a private company as defined in section 32 of the Companies Act,

may apply to the Reserve Bank to be licensed to carry on insurance business under this Act.

(2) In this Division, a body corporate that makes an application under subsection (1) is referred to as The applicant.

(3) An application under subsection (1) must be in the prescribed form and must be accompanied by the prescribed fee.

(4) The Reserve Bank may in writing require an applicant to provide any specified information.

(5) A person who in an application under this section knowingly or recklessly provides information which is false or misleading in any particular commits an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 2 years.

Licensing of insurers

25.—(1)subject to this section, where an application under section 24(1) has been made and the Reserve Bank is satisfied that-

- (a) in the case of an applicant with share capital, the paid up share capital is not less than \$1,000,000;
- (b) in the case of an applicant incorporated in the Fiji Islands, the value of its assets exceeds the amount of its liabilities by not less than \$1,000,000;
- (c) in every case, the value of the assets in the Fiji Islands of the applicant exceeds the amount of its liabilities in the Fiji Islands by not less than \$1,000,000;
- (d) the reinsurance arrangements of the applicant are adequate;
- (e) the applicant has adequate technical knowledge and expertise available in insurance matters;
- (f) the directors and other persons concerned with the management of the applicant are fit and proper persons;
- (g) the applicant has appropriate accounting and reporting systems in place;
- (h) the name of the applicant is not identical to the name of another licensed insurer, nor so nearly resembles it as to be likely to mislead;
- (i) the applicant is, and is likely to continue to be, able to comply with the margin of solvency specified in section 31 and all other provisions of this Act applicable to it; and
- (j) it is not against the public interest that the applicant be licensed,

the Reserve Bank may, subject to such terms and conditions as it considers necessary, license the applicant to carry on insurance business in respect of the class or classes of insurance business specified in the licence.

(2) The Reserve Bank must not license an applicant under subsection (1) if-

- (a) the deposit required under section 20 has not been made; or
- (b) the Minister directs, in writing, that in the public interest the applicant should not be licensed.

(3) Where the Minister, under subsection (2), directs in writing that in the public interest an applicant should not be licensed, the Minister must record the reasons for the decision and provide a copy of them to the applicant.

(4) If an applicant carries on, or proposes to carry on, any class of insurance business in the Fiji Islands which is general insurance business, the applicant must not be licensed to carry on any class of life insurance business, and where an applicant carries on or proposes to carry on life insurance business, the applicant must not be licensed to carry on any class of general insurance business.

(5) An insurer must not commence or carry on any class of insurance business for which it has not been licensed under subsection (1).

(6) An insurer who contravenes subsection (5) commits an offence and is liable on conviction to a fine of \$20,000 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

Issue of licence to an insurer

26.—(1) Upon licensing a body corporate under section 25(1) the Reserve Bank must issue to it a licence in writing setting out-

- (a) the name and business address of the body corporate;
- (b) the date of the licence; and
- (c) the class or classes of insurance business for which the licence has been granted.

(2) A licence issued under this section must be kept at all times at the insurers principal place of business in the Fiji Islands and prominently displayed in a public area there.

(3) A licence issued under this section is *prima facie* evidence of the fact that the person named in it is licensed, and of the particulars set out in the licence.

(4) The Reserve Bank may, on payment of the prescribed fee, issue a duplicate licence to replace a licence which has been lost, destroyed or damaged, or in any case where the Reserve Bank considers it to be necessary.

(5) An insurer who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$1,000.

Publication of licence

27. If a licence has been granted under section 25, the Reserve Bank must give notice of it in the *Gazette* and in a daily newspaper circulating in the Fiji Islands.

Refusal to license

28. If the Reserve Bank refuses to license a body corporate which has applied under section 24(1), the Reserve Bank must record the reasons for the decision and provide a copy of them to the applicant.

Conditions of licence

29.—(1)the Reserve Bank may at any time after issuing a licence under section 20 by notice in writing add to or vary the existing terms or conditions of the licence or impose any terms or conditions on the licence.

(2) An insurer who fails to comply with any terms or conditions imposed under section 25(1) or subsection (1) of this section commits an offence and is liable on conviction to a fine of \$20,000 and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

Annual fees

30.—(1)Every insurer must pay the prescribed annual fee for the continuation of a licence issued under section 25.

(2) Without limiting subsection (1)-

- (a) different fees may be determined for different classes of insurance business or for different types of insurers; and
- (b) in prescribing fees, the Minister may, on the advice of the Reserve Bank, have regard to the anticipated costs of the Reserve Bank in performing its functions under this Act.

(3) If an insurer ceases to issue new policies and only carries on insurance business for the purpose of maintaining existing policies and liabilities, the Reserve Bank may by notice in writing grant that insurer an exemption from the payment of annual fees referred to in this section.

(4) The annual fee payable under this section is to be paid to the Reserve Bank before 1st January in every year following the year in which the licence was granted.

Minimum capital and solvency requirements

31.—(1)an insurer licensed to carry on any class of life insurance business must maintain at all times-

- (a) if the insurer has a share capital, paid up capital of not less than \$1,000,000;
- (b) a surplus of assets in the Fiji Islands over liabilities in the Fiji Islands of not less than-
 - (i) \$1,000,000; or
 - (ii) the sum of 5% of the amount of net liabilities under life policies in the Fiji Islands up to net liabilities of \$100,000,000 plus 2.5% of the amount of net liabilities under life policies in the Fiji Islands that exceed \$100,000,000,

whichever is the greater;

- (c) if the insurer is incorporated in the Fiji Islands, a surplus of assets over liabilities of-
 - (i) \$1,000,000; or
 - (ii) the sum of 5% of the amount of net liabilities under life policies up to net liabilities of \$100,000,000 plus 2.5% of the amount of net liabilities under life policies that exceed \$100,000,000,

whichever is the greater.

(2) An insurer licensed to carry on any class of general insurance business must maintain at all times-

- (a) if the insurer has a share capital, paid up capital of not less than \$1,000,000;
- (b) a surplus of assets in the Fiji Islands over liabilities in the Fiji Islands of not less than-

- (i) \$1,000,000;
- (ii) 20% of net premium income derived in the Fiji Islands during the last 12 months; or
- (iii) 15% of net claims outstanding provision in respect of policies in the Fiji Islands,

whichever is the greatest;

- (c) if the insurer is incorporated in the Fiji Islands, a surplus of assets over liabilities of

- (i) \$1,000,000;
- (ii) 20% of net premium income derived during the last 12 months; or
- (iii) 15% of net claims outstanding provision,

whichever is the greatest.

Assets

32.-(1) For the purposes of this Act, a reference to assets does not include a reference to-

- (a) a loan to a person who is, or when the loan was made was-
 - (i) a director, principal officer, manager, actuary or auditor of the insurer;
 - (ii) a director or principal officer of a body corporate related to the insurer;
 - (iii) the spouse or other immediate family member of a person referred to in sub-paragraph (i) or (ii), unless-
 - (A) the Reserve Bank has approved the loan under subsection (2); or
 - (B) the loan was a loan by way of mortgage of a policy of life insurance issued by the insurer; or
 - (C) the loan was a loan advanced against the surrender value of a life policy issued by the insurer;
- (b) a loan to, amount due from, debenture of, prepayment with, or share in a body corporate which is related to the insurer, except to the extent that the Reserve Bank has approved the loan, amount, debenture, prepayment or share under subsection (3);
- (c) an unsecured loan to a person who is, or when the loan was made was, an employee of the insurer;
- (d) 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;
- (e) an unpaid premium, other than an unpaid premium secured against a life policy, that became due to the insurer more than 3 months previously unless it is, under subsection (5), approved as an asset;
- (f) an amount due from a reinsurer that became due more than 3 months previously unless it is, under subsection (5), approved as an asset;
- (g) a guarantee given to or in relation to the insurer, except to the extent that the Reserve Bank has approved the guarantee under subsection (6); and
- (h) any other intangible asset.

(2) An insurer may apply in writing to the Reserve Bank to approve as an asset for the purposes of this Act a loan described in subsection (1)(a), and the Reserve Bank may, in writing, approve the loan if the Reserve Bank is satisfied that-

- (a) the loan is sufficiently secured; and
- (b) the terms and conditions (including interest rate and repayments) upon which the loan is offered are of a commercial arms length nature and not unduly favorable to the borrower.

(3) An insurer may apply in writing to the Reserve Bank to approve as an asset for the purposes of this Act a loan to, an amount due from, a debenture of, a prepayment with or a share in a body corporate which is related to the insurer and, subject to subsection (4), the Reserve Bank may, in writing, approve the loan, amount, debenture, prepayment or share, or such part of the loan, amount, debenture, prepayment or share as the Reserve Bank determines.

(4) An approval under subsection (3) must not be given until the Reserve Bank has had regard to all matters that it considers relevant which must include the following matters-

- (a) the proportion that the value of the loan, amount, debenture, prepayment or share, together with the aggregate value of all other loans to, amounts due from, debentures of, prepayments with and shares in, the body corporate made by the insurer, whether approved under this subsection or not, bears to the total value of the assets of the insurer;
- (b) the proportion that the value of the loan, amount, debenture, prepayment or share, together with the aggregate value of all other loans to, amounts due from, debentures of, prepayments with and shares in body corporates described in subsection (1)(b) made by the insurer, whether approved under this subsection or not, bears to the total value of the assets of the insurer;
- (c) the proportion that the value of the loan, amount, debenture, prepayment or share bears to the total value of the assets of the body corporate;
- (d) the nature, and the degree of diversity, of the assets of the insurer;
- (e) the nature, and the degree of diversity, of the assets of the body corporate; and
- (f) the nature of the business carried on by the body corporate.

(5) An insurer may apply in writing to the Reserve Bank to approve as an asset for the purposes of this Act unpaid premiums or amounts due from reinsurers that became due to the insurer more than 3 months but not more than 6 months previously and the Reserve Bank may, in writing, approve those premiums or amounts due where it is satisfied that the premiums or amounts due will be paid.

(6) An insurer may apply in writing to the Reserve Bank to approve as an asset for the purposes of this Act the whole or part of a guarantee given to or in relation to the insurer, and the Reserve Bank may, subject to subsection (7), approve the guarantee or such part of the guarantee as it determines.

(7) The Reserve Bank must not give an approval under subsection (6) unless-

- (a) the guarantor, or each of the guarantors, is a bank licensed under the Banking Act;
- (b) the guarantee is in a form satisfactory to the Reserve Bank and includes provision to the effect that, in the event of the winding-up of the insurer, amounts due under the guarantee are to be available to meet the liabilities of the insurer; and
- (c) the guarantee is not revocable without the approval of the Reserve Bank.

(8) If a determination has been made and approval given under subsection (2), (3), (5) or (6), and it appears to the Reserve Bank that the approval or determination is no longer necessary or should be varied, the Reserve Bank may, by notice in writing served on the insurer concerned, revoke or vary the determination or approval, as the case may be.

Treatment of assets outside the Fiji Islands

33. The Reserve Bank may treat assets held outside the Fiji Islands as assets in the Fiji Islands for the purpose of this Act.

Reinsurance debtors

34. The Reserve Bank must treat amounts owed to an insurer by a person outside the Fiji Islands under a contract of reinsurance as assets of the insurer in the Fiji Islands for the purposes of this Act.

Value of assets

35.—(1) For the purposes of this Act, the value of an asset of an insurer as at a particular time is the market value of the asset at that time.

(2) If the Reserve Bank is not satisfied that an asset of an insurer is valued in accordance with subsection (1), the Reserve Bank may, by written notice to the insurer, direct the value of the asset to be the value specified in the notice.

(3) If a direction has been given to an insurer under subsection (2) and it appears at any time to the Reserve Bank that the direction is no longer necessary or should be varied, the Reserve Bank must, by written notice to the insurer, revoke or vary the direction.

(4) If an insurer to which a direction has been given under subsection (2) or (3) applies in writing to the Reserve Bank for the direction to be revoked or varied, the Reserve Bank must-

- (a) revoke or vary the direction if the Reserve Bank is satisfied that the direction is no longer necessary or should be varied; or
- (b) refuse to revoke or vary the direction in any other case,

and must give the insurer written notice of its decision.

(5) If an insurer in respect of whom a direction has been given under subsection (2) or (3) commences to be wound up, the direction ceases to have effect.

Assets to be in name of insurer and beneficially owned by insurer

36. All of the assets of an insurer must be kept in the name of the insurer, and be beneficially owned by the insurer, unless other arrangements have been previously agreed to in writing by the Reserve Bank.

Specified investments

37.- The assets of an insurer must be invested in the manner and as regards such amounts, if any, as are prescribed.

Liabilities

38.—(1) In computing the amount of the liabilities of an insurer, all contingent and prospective liabilities (other than liability in respect of share capital) must be taken into account.

(2) For purposes of this Act, the Reserve Bank must by notice in writing served on the insurer, direct that the insurer make in its accounts a provision, or further provision-

- (a) of a specified amount; or
- (b) of an amount determined in a particular manner.

(3) If a direction has been given to an insurer under subsection (2) and it appears at any time to the Reserve Bank that the direction is no longer necessary or should be varied, the Reserve Bank must, by written notice to the insurer, revoke or vary the direction.

(4) If an insurer to which a direction has been given under subsection (2) or (3) applies in writing to the Reserve Bank for the direction to be revoked or varied, the Reserve Bank must-

- (a) revoke or vary the direction if the Reserve Bank is satisfied that the direction is no longer necessary or should be varied; or
- (b) refuse to revoke or vary the direction in any other case,

and must give the insurer written notice of its decision.

(5) If an insurer in respect of whom a direction has been given under subsection (2) or (3) commences to be wound up, the direction ceases to have effect.

Reinsurance

39.-(1) an insurer must at all times have in place arrangements approved by the Reserve Bank for reinsurance of liabilities in respect of risks against which persons are, or are to be, insured by the insurer in the course of its carrying on insurance business in the Fiji Islands.

(2) An insurer must submit details of its reinsurance arrangements to the Reserve Bank as soon as possible after the commencement of the period of cover provided by the arrangements.

(3) In determining whether an insurer's arrangement for reinsurance are satisfactory, the Reserve Bank must have regard to all matters that it 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 retained by the insurer during its last preceding financial year in respect of each class of business carried on by it;
- (c) the amount of premiums expected to be retained in respect of each class of business by the insurer during its next financial year;
- (d) the retention limits in each class of insurance business carried on or proposed to be carried on by the insurer;
- (e) the Insurers exposure to catastrophic loss;
- (f) the amount of the Insurers capital and free reserves;
- (g) the nature and value of the assets of the insurer;
- (h) the places in which liabilities of the body corporate may be incurred; and
- (i) the person or persons by whom the reinsurance is or is proposed to be undertaken.

(4) If the Reserve Bank approves arrangements for reinsurance under this section it must so notify the insurer in writing.

Premium rates for life insurance business

40.—(1) An insurer licensed to carry on any life insurance business must not issue any policy of insurance unless the rate of premium chargeable under the policy is a rate which has been approved by the directors, having regard to written advice from the actuary, as reasonable for the class of policy to which that policy belongs.

(2) The Reserve Bank may, at any time, in writing require any insurer carrying on life insurance business to obtain and furnish to the Reserve Bank a report by the actuary as to the suitability of the rates of premium chargeable under any class of policy by the insurer and, if

the actuary considers that the rates are not suitable, a report as to the rates of premium which the actuary considers suitable in respect of that class of policy.

(3) On the evidence of a report received pursuant to subsection (2), the Reserve Bank may direct an insurer as to the rates of premium chargeable under a class of policy.

Division 3-Licensing of Intermediaries

Interpretation

41. In this Division-

“applicant means a person who applies to the Reserve Bank to carry on the business of agent or broker;

“licence means a licence to carry on business as a broker or as an agent for a nominated insurer;

“nominated insurer means an insurer who has, through an agreement or appointment letter, appointed a person to carry on the business of agent of the insurer.

Application for licence

42.—(1) A person may apply to the Reserve Bank-

- (a) for a licence;
- (b) for renewal of a licence.

(2) An application under subsection (1) must be in accordance with the prescribed form and accompanied by-

- (a) the prescribed fee, if any;
- (b) if the application is for a licence as a broker, either a professional indemnity policy of insurance and a fidelity guarantee policy of insurance, or details of proposals for both types of insurance, in such form and for such amounts, if any, as are prescribed; and
- (c) if the application is for a licence as an agent of a nominated insurer, a document under the hand of the principal officer of the nominated insurer, or some other person representing the nominated insurer and approved by the Reserve Bank in writing, certifying that the applicant has been appointed by the insurer and that the insurer is satisfied that the person has the knowledge and experience necessary to carry on the business of agent.

(3) The Reserve Bank may by notice in writing require an applicant to provide any specified written information.

(4) An application for renewal of a licence must be submitted to the Reserve Bank on or before 30th November of the year in which the licence expires.

(5) The Reserve Bank must not renew a licence unless an application for renewal is submitted to the Reserve Bank within the time referred to in subsection (4).

(6) An applicant who makes a false or misleading statement in an application for a licence or renewal, or in written information provided under subsection (3), commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Licensing of intermediaries

43.—(1) Subject to this section, if the Reserve Bank is satisfied on an application under section 42 that-

- (a) the applicant, or, in the case of an applicant who is a body corporate the senior manager in the Fiji Islands of the applicant, has sufficient experience in and knowledge of insurance matters;
- (b) the financial standing and general character of the applicant are sound;
- (c) the directors and other persons concerned with the management of the applicant are fit and proper persons;
- (d) the applicant has appropriate accounting and reporting systems in place;
- (e) in the case of an application for a Brokers licence, the name of the applicant is not identical to the name of another licensed broker, or so nearly resembles it so as to be likely to mislead;
- (f) the applicant is, and is likely to continue to be, able to comply with applicable provisions of this Act;
- (g) in the case of an application for a Brokers licence or renewal, the applicant has in force a contract of professional indemnity insurance and a contract of fidelity guarantee insurance acceptable to the Reserve Bank;
- (h) in the case of an application for an agents licence or renewal, the applicant has been appointed by the nominated insurer; and
- (i) there are no public interest reasons for not granting a licence or renewal to the applicant,

the Reserve Bank may, subject to such terms and conditions as it considers necessary, issue to the applicant a licence or renewal.

(2) A person must not be licensed to carry on business as agent for more than one insurer in respect of any one class of insurance business.

(3) If a person has been licensed to carry on business as an agent for more than one insurer, the person must notify forthwith to each insurer for which he is the agent, the name of all other insurers for which he is the agent of and the classes of insurance business that the person has been licensed to arrange for each insurer.

(4) Subject to subsection (5), a person must not be licensed to carry on business as broker if that person, or any director or manager of that person, is a director, manager, employee or shareholder of an insurer.

(5) The Reserve Bank may in writing, grant an exemption from the prohibition on shareholding in subsection (4) if it is satisfied that no prejudice will be occasioned to any insured by such exemption.

(6) A licence or renewal of a licence expires on the 31st December of the year in respect of the year to which it relates.

brokers to have professional indemnity and fidelity guarantee insurance

44.—(1) No broker may carry on the business of broker in the Fiji Islands unless the broker has in force at all times a professional indemnity policy of insurance and a fidelity guarantee policy of insurance in the prescribed form and for the prescribed amounts.

(2) A broker who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months and, if the offence is a continuing one, to a further fine of \$500 a day for every day during which the offence continues.

Issue of licence to an intermediary

45.—(1) Upon licensing an intermediary under section 43(1), the Reserve Bank must issue to the intermediary a licence in writing which must be-

- (a) kept at all times at the insurance intermediary's principal place of business; and
- (b) produced by the intermediary when requested either by the Reserve Bank, a person authorized by the Reserve Bank, or a person with whom the intermediary is dealing in the capacity of intermediary.

(2) The Reserve Bank must specify on a licence issued under section 43(1) the class or classes of insurance business for which the applicant has been licensed to carry on the business of agent or broker and, in the case of an agent, the nominated insurer for each class.

(3) The Reserve Bank may, on payment of the prescribed fee, if any, issue a duplicate licence to replace a licence which has been lost, destroyed or damaged or in any other case if the Reserve Bank considers it to be necessary.

Intermediary deemed to be registered

46. If-

- (a) an application by a licensed intermediary for renewal of a licence under section 42 is made to the Reserve Bank on or before the 30th November of the year in which the licence expires; and
- (b) the Reserve Bank has not refused to renew the registration of the intermediary,

the intermediary is not guilty of an offence under section 14 by carrying on business as an intermediary after the expiration of the period of registration.

Refusal to license

47. If the Reserve Bank refuses to issue a licence or renewal, the Reserve Bank must record the reasons for the decision and provide a copy of the decision and reasons to the applicant.

Conditions of licence

48.—(1)the Reserve Bank may by notice in writing at any time add to or vary any existing terms or conditions of a licence, or impose any terms or conditions on it.

(2) An intermediary who fails to comply with any of the terms or conditions imposed on a licence commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months and, in the case of a continuing offence, to a further fine of \$500 for every day during which the offence continues.

Misdescription of business

49.—(1) An intermediary must not-

- (a) carry on business under a name; or
- (b) describe himself or his business in a way,

that would be likely to mislead a person into believing that the intermediary is an insurer.

(2) An agent must not-

- (a) carry on business under a name; or
- (b) describe himself or his business in a way,

that would be likely to mislead a person into believing that the agent is a broker.

(3) An intermediary who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for 6 months.

Part V-ACCOUNTS, RECORDS, AUDIT AND ACTUARIAL MATTERS

Division 1-General

Accounting records to be kept

50.—(1)an insurer or broker must keep books and records in the Fiji Islands that correctly record and explain-

- (a) the transactions engaged in by the insurer or broker; and
- (b) the financial position of the insurer or broker.

(2) Books and records kept under subsection (1) must be-

- (a) kept so that the Insurers or Brokers accounts can be properly prepared and audited;
- (b) kept in writing in English or in a form such that they can be readily convertible into writing in English; and
- (c) retained in the Fiji Islands for at least 7 years after the completion of the transactions to which they relate.

(3) Every insurer and broker must, by notice in writing, advise the Reserve Bank of the place where the books and records kept under subsection (1) are kept.

Audit

51. The accounts and other statements mentioned in section 60(1) in the case of an insurer or in section 66(1) in the case of a broker, must be audited and the insurer or broker, as the case may be, must make all relevant arrangements to enable the audit to proceed.

Appointment of auditor

52.—(1)an insurer or broker licensed under this Act must appoint an auditor to carry out the auditing functions conferred by or under this Act.

(2) No person may act as auditor for an insurer or broker in relation to any accounts, statements or other returns required by or under this Act unless that person, whether as an individual or as a member of a firm, is approved in writing by the Reserve Bank on application by the insurer or broker in the prescribed manner.

(3) the Reserve Bank must not approve the appointment of a person under subsection (2) unless the person-

- (a) has a place of business in the Fiji Islands;
- (b) is a person other than a director, principal officer, manager, employee, related to or agent of the insurer or broker;
- (c) holds a current certificate of public practice issued by the Fiji Institute of Accountants;
- (d) has had suitable experience to enable him to audit accounts of insurance business; and
- (e) is competent to audit such accounts.

(4) If the Reserve Bank is satisfied that an auditor has failed to fulfil his obligations under this Part, the Reserve Bank may, by written notice to the insurer or broker, revoke the appointment of the auditor.

(5) A copy of a notice given under subsection (4) must be provided to the auditor whose appointment is revoked.

(6) If the Reserve Bank refuses to approve an appointment under subsection (2) or revokes an appointment under subsection (4), the Reserve Bank must record the reasons for the decision and provide a copy of it to the insurer or broker.

Audit report

53.—(1) the auditor of an insurer or broker must give to the insurer or broker a report relating to the accounts and statements which the auditor has audited under this Act and the insurer or broker must lodge the report with the Reserve Bank together with the accounts and statements referred to in section 51, within the time specified in section 60(1) or 66(1) as the case may be.

(2) An auditor must, in the report given under subsection (1)-

- (a) state whether the accounts and statements to which the report relates are, in the opinion of the auditor, in accordance with this Act, and give particulars of any matter that is not, in the opinion of the auditor, in accordance with it;
- (b) state whether the accounting records of the insurer or broker in respect of the relevant period have been, in the opinion of the auditor, properly kept and whether they record and explain correctly the transactions and financial position of the insurer or broker during that period, and give particulars of-
 - (i) any accounting records that, in the opinion of the auditor, have not been so kept; and
 - (ii) any transactions that, in the opinion of the auditor, are not correctly recorded and explained;
- (c) state whether the auditor has obtained the information and explanations that the auditor requested from the insurer or broker for the purposes of the audit, and give particulars of any information and explanations the auditor requested but did not obtain;
- (d) state whether, in the opinion of the auditor, the accounts and statements referred to in paragraph (a) agree with the accounting records of the insurer or broker in respect of the period to which the accounts and statements relate and truly represent the transactions and financial position of the insurer or broker, as the case may be, in respect of that period, and if any of those accounts, in the opinion of the auditor, fail to represent the transactions and financial position, give particulars of the failure.

Disclosure of information by auditors

54. If an auditor, in the course of performing his duties as an auditor, is satisfied that-

- (a) there has been a contravention of a provision of this Act;
- (b) a criminal offence involving fraud or dishonesty has been committed;
- (c) any transaction or dispute has taken place which will have a material effect on the solvency of the insurer or broker, or of a statutory fund;
- (d) serious irregularities, or any irregularities that jeopardize the interests of insureds, have occurred; or
- (e) the insurer or broker is unable, or is likely to become unable, to meet his or its liabilities,

the auditor must immediately report the matter to the directors of the insurer or broker and to the Reserve Bank.

Additional reports from auditors, actuaries or other appointed persons

55.—(1) the Reserve Bank may, by notice in writing to an insurer or broker, require the insurer or broker to provide to the Reserve Bank, by a time specified in the notice, a report, prepared by an auditor or actuary or by some person approved by the Reserve Bank, on such matters as the Reserve Bank may determine.

(2) Without limiting subsection (1), the Reserve Bank may require a report provided under that subsection to include an opinion by an auditor, actuary or other person on the Insurers or Brokers liquidity, liability under life policies, solvency and compliance with statutory provisions and on the accounting systems and internal controls of the insurer or broker.

insureds right to information

56.—(1) an insured is entitled, on written request, to be provided by the insurer with a copy of any prescribed return or report.

(2) An insured who is dealing with a broker is entitled, on written request, to be provided by the broker with a copy of any prescribed return or report.

(3) Copies provided under subsection (1) or (2) are to be provided free of charge and within 7 days of the request.

Further information for Reserve Bank

57. An insurer or broker must, if so required by the Reserve Bank in writing, provide within a period specified in the notice, not being less than 7 days after the requirement, any further returns, abstracts, statements or other information specified in the notice.

Penalty

58. An auditor who fails to comply with section 54 commits an offence and is liable on conviction to a fine of \$5,000 or to imprisonment for 12 months and, in the case of a continuing offence, to a further fine of \$500 for every day during which the offence continues.

Division 2-Specific Requirements Relating to Insurers

Policy and claim registers to be kept

59.—(1) an insurer must keep in respect of each class of insurance business which it carries on-

- (a) a register of policies, showing for every policy issued-
 - (i) the name and address of the insured;
 - (ii) the policy number;
 - (iii) the date of inception of the policy;
 - (iv) the term of the policy;
 - (v) the premium relating to the policy;
 - (vi) for life policies, the sum insured and bonuses, and
 - (vii) for life policies, a record of any transfer, assignment, or nomination of which the insurer has notice;
- (b) a register of claims, showing for every claim made-
 - (i) the name and address of the claimant;
 - (ii) the claim number;
 - (iii) the policy number to which it relates;
 - (iv) the date of the claim;
 - (v) the amount of the claim;

- (vi) the amount paid on the claim and the date it was paid; and
- (vii) in the case of a claim that is rejected the date the claim is rejected.

(2) If an insurer carries on any class of insurance business outside the Fiji Islands, the insurer must for the purposes of subsection (1) keep separate registers of Fiji business and non Fiji business.

(3) Registers kept by an insurer under subsection (1) and (2) must be retained in the Fiji Islands for at least 7 years after the completion of the transactions to which they relate.

Statements by insurers

60.—(1) an insurer must prepare, with reference to each calendar year, the prescribed statements of account and other prescribed statements and send them, duly audited in accordance with Division 1, to the Reserve Bank, within 3 months after the end of the year.

(2) An insurer must, within 6 weeks after each 31st March, 30th June, 30th September and 31st December, prepare and send to the Reserve Bank any prescribed statements.

(3) The Reserve Bank may extend the period allowed for sending statements under subsection (1) by up to 1 month if-

- (a) the insurer applies in writing to the Reserve Bank for an extension of the period before the period expires; and
- (b) the Reserve Bank considers sufficient cause is shown in the application to justify extension of the period.

(4) Copies of all accounts, statements and reports laid before shareholders of the insurer at the Insurers annual general meeting must be provided to the Reserve Bank as soon as practicable after the meeting.

(5) A licensed insurer who is not incorporated in the Fiji Islands must, within 6 months after the end of each financial year, send to the Reserve Bank-

- (a) a copy of any accounts and statements, other than any accounts and statements specified by the Reserve Bank which have been prepared for the purpose of the law of the place in which the insurer is incorporated in respect of any business of insurance carried on by the insurer during that year; and
- (b) a statement signed by at least 2 directors, or if there is only 1 director, by that director, of the insurer stating whether during that year the insurer contravened a law relating to the carrying on of insurance in any place outside the Fiji Islands in which the insurer had, during that year, carried on such business, with particulars of the contravention.

Appointment of actuary

61.—(1) an insurer licensed under this Act to carry on any class of life insurance business must appoint an actuary to carry out any actuarial functions imposed by or under this Act.

(2) An actuary appointed under subsection (1) must be a person who is a fellow of a professional actuarial body that is satisfactory to the Reserve Bank.

(3) An insurer must within 14 days of making an appointment under subsection (1) notify the Reserve Bank of-

- (a) the name;
- (b) the experience and qualifications;

- (c) the date of the appointment; and
- (d) any other particulars required by the Reserve Bank, of the person appointed.

(4) If the Reserve Bank considers that a person under subsection (1) has insufficient experience or qualifications, or has failed to perform adequately and properly the functions and duties of an actuary conferred by or under this Act, the Reserve Bank may by notice in writing direct the insurer to appoint another person as actuary for the purposes of this Act.

Actuarial investigation

62.—(1) an insurer licensed under this Act in respect of any class of life insurance business must at the end of each calendar year, or at any other time as the Reserve Bank may in writing direct, cause an investigation to be made by an actuary into the financial affairs of the business, including a valuation of liabilities under life policies of every statutory fund established by the insurer under section 111, and must cause an abstract of the investigation to be made in accordance with the prescribed directions.

(2) The provisions of subsection (1) regarding the making of an abstract each year also apply to an actuarial investigation into the financial affairs of an insurer carrying on life insurance business with a view to the declaration of or distribution of any surplus or to an actuarial investigation the results of which are to be made public.

(3) An abstract made under subsection (1) or (2) must have appended a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability (either existing or contingent) have been furnished to the actuary for the purpose of the investigation.

(4) An abstract made under subsection (1) or (2) must have appended a statement, in the prescribed form, of the life insurance business subsisting at the date to which the accounts of the insurer are made up for the purposes of the abstract.

(5) Where an actuarial investigation into the financial affairs of an insurer is made under this section at a date other than the last day of the year of account, the accounts for the period since the close of the preceding year of account, and the balance sheet as at the date at which the investigation is made, must be prepared and audited in the manner required by this Act.

Disclosure of information by the actuary

- 63.**—(1) If an actuary, in the course of performing duties as an actuary, is satisfied that—
- (a) there has been a contravention of a provision of this Act;
 - (b) a criminal offence involving fraud or dishonesty has been committed;
 - (c) any transaction or dispute has taken place which will have a material effect on the solvency of the insurer or of a statutory fund;
 - (d) serious irregularities, or any irregularities that jeopardize the interests of insureds, have occurred; or
 - (e) the insurer is unable, or likely to become unable, to meet its liabilities,

the actuary must immediately report the matter to the directors of the insurer and to the Reserve Bank.

(2) An actuary who fails to comply with subsection (1) commits an offence and is liable to the penalty provided for in section 58.

Division 3-Specific Requirements Relating to Intermediaries

Register to be kept

64.—(1) an intermediary licensed under this Act must maintain and make available to the Reserve Bank, or a person authorized by the Reserve Bank, on demand

- (a) a register of policies placed or procured by or through the intermediary showing for each policy-
 - (i) the name and address of the insured;
 - (ii) the name and address of each insurer with whom any policy is placed;
 - (iii) the date when the proposal or application for insurance was received by the intermediary;
 - (iv) the date when the policies were effected;
 - (v) the premiums paid or payable (whether in the Fiji Islands or elsewhere); and
 - (vi) commission received on the premium,
- (b) any other register or records required by the Reserve Bank.

(2) Registers and records kept by an intermediary under subsection (1) must be retained in the Fiji Islands for at least 7 years after the completion of the transactions to which they relate.

Insurance broking accounts

65.—(1) From the appointed date, a broker must establish and maintain, with a bank licensed under the Banking Act, an account to be kept solely for the purposes of this section.

(2) A broker must pay into an account established under subsection (1) all moneys received by the broker-

- (a) from or on behalf of an insured for or on account of an insurer in connection with a contract of insurance or proposed contract of insurance; or
- (b) from or on behalf of an insurer for or on account of an insured.

(3) An account maintained under subsection (1) must be called Insurance Broking account, with or without other words of description.

(4) Except with the consent in writing of the Reserve Bank, a broker may withdraw moneys from an account maintained under subsection (1) only for the purpose of-

- (a) payment to or for a person entitled to receive payment of the moneys, including the broker in so far as the broker is entitled to receive such payment;
- (b) payment to or for an insurer in respect of amounts due to the insurer under or in relation to a contract of insurance (including a contract of insurance that has been cancelled);
- (c) repayment of moneys that were paid into the account in error.

(5) Interest or other income received from an account maintained under subsection (1) may be retained by the broker for the Broker's own benefit and need not be retained in the account.

(6) Subject to subsection (7), moneys received by a broker as mentioned under subsection (2), both before and after those moneys are paid into an account maintained under subsection (1) are not capable of being attached or otherwise taken in execution or of being made subject to a set-off, charge or charging order or to any similar process.

(7) Nothing in subsection (6) prevents moneys being attached, taken in execution or made the subject of a set-off, charge, charging order or similar process at the suit of any person for whom or on whose account moneys have been paid into the relevant account under

subsection (1) and to whom or on whose account payment in respect of those moneys has not been made.

(8) A broker who contravenes this section commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Returns by brokers

66.—(1) A broker must, prepare with reference to each calendar year, the prescribed statements of account and other prescribed statements and send them to the Reserve Bank within 3 months after the end of the year.

(2) A broker must, within 4 weeks after each 31st March, 30th June, 30th September and 31st December, prepare and send to the Reserve Bank any prescribed statements.

(3) The Reserve Bank may extend the period allowed for sending statements under subsection (1) by up to 1 month if-

- (a) the broker applies in writing to the Reserve Bank for an extension of the period before the period expires; and
- (b) the Reserve Bank considers sufficient cause is shown in the application to justify extension of the period.

Part VI-CONTROL OVER AGENTS, BROKERS AND INSURERS

Division 1-General

Interpretation

67. In this Part-

“

licensed person means any person licensed under this Act.

“prescribed person means a person who-

- (a) is, or has at any time been, a director, secretary, principal officer, employee or agent of a licensed person;
- (b) acts or has at any time acted as banker, solicitor, auditor, actuary, or in any other capacity for a licensed person;
- (c) has, or has at any time had, in his possession any property of a licensed person;
- (d) is indebted to a licensed person; or
- (e) is capable of giving information concerning the affairs of a licensed person.

Priority over Fiji assets of insurer

68.—(1) if an insurer becomes insolvent or is unable to meet its liabilities or in the case of an insurer incorporated outside the Fiji Islands, if it goes into liquidation, becomes bankrupt or is dissolved in the country of incorporation-

- (a) the assets of the insurer in the Fiji Islands must be available to meet the Insurers liabilities to all insureds and creditors in the Fiji Islands;
- (b) those liabilities will have priority over all other liabilities of the insurer; and
- (c) the Reserve Bank may take all steps necessary to protect and preserve that priority.

(2) In the administration of subsection (1), priority must be given to insureds in preference to creditors where there is any conflict between the interests of insureds and creditors in the matter of priority.

Requirement to give information

69.—(1) For the purposes of this Act, the Reserve Bank may, by notice in writing, require a licensed person to provide it with any of the following-

- (a) written information concerning any matter relating to, or in respect of, the insurance affairs of the licensed person;
- (b) written information concerning any matter relating to a subsidiary or other related person of the licensed person;
- (c) any document, or copy document, relating to the matters mentioned in paragraph (a) and (b) held by the licensed person.

(2) A notice under subsection (1) may specify a reasonable period, not less than 7 days from the day on which it is given, within which the information, document or copy document must be furnished to the Reserve Bank.

Requirement to produce records

70.—(1) For the purposes of this Act, the Reserve Bank may give a licensed person written notice requiring the licensed person to produce to the Reserve Bank or a specified authorized person, at a reasonable time and place specified in the notice, which may include the premises of the licensed person, any records relevant to, or in respect of, the insurance affairs of that person.

(2) The Reserve Bank or the authorized person may inspect, take extracts from and make copies of any record produced under subsection (1).

(3) If-

- (a) a requirement is made under subsection (1); and
- (b) the information that constitutes the records to which the requirement relates is stored, in whole or in part, by electronic means,

the licensed person to whom the requirement is directed does not comply with it unless the licensed person produces the records in a comprehensible written form, with any special computerized format altered to ensure comprehensibility to a layman.

(4) A person who complies with a requirement of the Reserve Bank, or a specified authorized person, does not incur any liability to any other person by reason only of that compliance.

Access to premises

71.—(1) For the purpose of ascertaining whether a licensed person has contravened this Act, the Reserve Bank may, with the consent of the occupier of the premises, or, if the occupier does not give consent, by court order, enter any premises for the purpose of searching for, inspecting, taking extracts and making copies of any records that the Reserve Bank reasonably believes relate to, or are in respect of, the insurance affairs of the licensed person.

(2) A person who obstructs or hinders the Reserve Bank in exercising its powers under this section commits an offence and is liable on conviction to a fine of \$1,000.

Division 2- Investigations

Reserve Bank may investigate a licensed person

72.—(1) Subject to this section, if-

- (a) the Reserve Bank has reason to believe that

- (i) an insurer is, or is likely to become, unable to meet its policy or other liabilities as they fall due; or
 - (ii) a licensed person has contravened a provision of this Act or a direction given to the licensed person under this Act or a condition imposed on the licence; or
- (b) a licensed person has not complied with a requirement of a notice given to the licensed person under section 69 or 70,

the Reserve Bank may investigate, or order an investigation by an inspector into, the affairs of the licensed person.

(2) Except as provided in subsection (3), the Reserve Bank may not investigate or order an investigation into the affairs of a licensed person without giving the person a reasonable opportunity to make representations to the Reserve Bank.

(3) In a case of emergency, if an immediate investigation is, in the opinion of the Reserve Bank, needed in the public interest, the requirement of subsection (2) may be dispensed with by the Reserve Bank.

Appointment of inspector

73.—(1) the Reserve Bank may appoint any person it considers has the relevant experience, knowledge and qualifications as an inspector to carry out an investigation under this Division, but such a person must not be employed by, or related to, the licensed person to be investigated.

(2) An appointment of an inspector under subsection (1) must be in writing.

(3) A copy of the instrument appointing an inspector must be given to the licensed person to be investigated and must include details of the scope of the investigation.

Investigation of related person

74.—(1) if the Reserve Bank or an inspector believes it is necessary for the purposes of an investigation under section 72 to investigate the whole or some part of the affairs of a person who is, or has at any relevant time been, related to the licensed person in respect of whom the investigation is being carried out (in this section called *The related person*) the Reserve Bank or inspector may investigate the whole or that part of the affairs of the related person.

(2) Before commencing an investigation under subsection (1), the Reserve Bank must in writing notify the related person that the Reserve Bank or an inspector proposes to investigate the whole or part of the affairs of that person.

Access to premises

75.—(1) if the Reserve Bank or an inspector believes on reasonable grounds it is necessary to enter premises for the purposes of an investigation of the business of a licensed person, the Reserve Bank or inspector may, with the consent of the occupier, or if the occupier does not give consent by court order, enter any premises and-

- (a) inspect any record or document found on the premises that the Reserve Bank or inspector reasonably believes relate to, or are in respect of, the insurance affairs of the licensed person; and
- (b) take extracts from, or make copies of, any such record or document.

(2) A person who obstructs or hinders the Reserve Bank or an inspector in exercising the powers under this section commits an offence and is liable on conviction to a fine of \$1,000.

Powers of inspector

76.—(1) the Reserve Bank or an inspector may, by written notice to a prescribed person, require the person to-

- (a) produce to the Reserve Bank or inspector all or any of the records relevant to, or in respect of, the insurance affairs of the licensed person that are in the custody or under the control of the prescribed person;
- (b) give to the Reserve Bank or inspector all reasonable assistance in connection with the investigation;
- (c) appear before the Reserve Bank or inspector and answer questions concerning matters relevant to the investigation.

(2) If records are produced to the Reserve Bank or an inspector under this section, the Reserve Bank or inspector-

- (a) may take possession of the records for as long as is necessary for the purposes of the investigation;
- (b) may make copies of and take extracts from the records;
- (c) must permit a person who would be entitled to inspect any of the records if they were not in the possession of the Reserve Bank or an inspector to inspect at all reasonable times such of the records as the person would be entitled to inspect.

(3) If-

- (a) a requirement is made under subsection (1)(a); and
- (b) the information that constitutes the records to which the requirement relates is stored, in whole or part, by electronic means,

the person to whom the requirement is directed does not comply with it unless the person produces the records in a comprehensible written form, with any special computerized format altered to ensure comprehensibility to a layman.

(4) A person who complies with a requirement of the Reserve Bank or an inspector under this section does not incur any liability to any other person by reason only of that compliance.

Persons to comply with requirements of inspector

77.—(1) A person must not-

- (a) refuse or fail to comply with a requirement of the Reserve Bank or of an inspector under section 76 (a requirement;
- (b) in purported compliance with a requirement, furnish information or make a statement that the person knows or suspects to be false or misleading;
- (c) refuse to be sworn or to make an affirmation;
- (d) when appearing before the Reserve Bank or an inspector to answer questions in pursuance of a requirement, make a statement that the person knows or suspects to be false or misleading;
- (e) conceal, destroy, mutilate, alter or remove any record without the written consent of the Reserve Bank or an inspector; or
- (f) obstruct or hinder the Reserve Bank or an inspector from exercising powers under this Part.

(2) A person called on to do so pursuant to this Part must render all possible assistance to the Reserve Bank or an inspector in the fulfillment of the duties of the Reserve Bank or inspector under this Part.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of \$2,000 and to imprisonment for 6 months.

Self-incrimination

78.—(1) A person required under this Part-

- (a) to produce a record;
- (b) to answer a question; or
- (c) to make a statement,

is not excused from doing so on the grounds that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.

(2) The following are not admissible against a person in any criminal proceeding or in any proceeding for the imposition of a penalty (other than a proceeding for an offence against, or arising out of, section 77)-

- (a) evidence of the production of a record, the answer to a question or the making of a statement under this Part;
- (b) evidence of any information, document, or thing obtained as a direct or indirect consequence of the production of the record, the answer to the question or the making of a statement under this Part.

Investigation report

79.—(1) an inspector may make one or more reports in writing to the Reserve Bank during an investigation and must, on completion or termination of the investigation, report in writing to the Reserve Bank on the result of the investigation.

(2) The Reserve Bank must, on completion or termination of an investigation made by the Reserve Bank, report in writing on the result of the investigation.

(3) A report prepared under subsection (1) or (2) must be finalised within 30 days following the completion or termination of an investigation.

(4) If the Minister so requests, the Reserve Bank must give to the Minister a copy of any written report made in connection with an investigation.

Division 3-Directions

Reserve Bank may issue directions

80.—(1) Subject to this section, if the Reserve Bank is satisfied that a licensed person-

- (a) is, or is likely to become, unable to meet his or its liabilities;
- (b) is carrying on his or its business in a manner detrimental to his or its interests or those of any insured, or to the public interest;
- (c) has contravened a provision of this Act; or
- (d) has contravened any term or condition attached to the Persons licence,

the Reserve Bank may issue to the licensed person any written directions it considers necessary, effective from a specified date, and the licensed person must comply with those directions.

(2) Except as provided in subsection (3), the Reserve Bank must not issue a direction under subsection (1) to any licensed person without giving the person a reasonable opportunity to make representations to the Reserve Bank.

(3) In a case of emergency, if the immediate issue of directions is, in the opinion of the Reserve Bank, needed in the public interest, the requirement of subsection (2) may be dispensed with by the Reserve Bank.

(4) Without affecting the powers conferred by subsection (1), if it appears to the Reserve Bank that an insurer is, or is likely to become, unable to meet its policy or other liabilities, or has contravened a provision of this Act, the Reserve Bank may, in writing, direct that the insurer-

- (a) must not issue policies or undertake liability under contracts of insurance;
- (b) must not issue policies in respect of, or undertake liability under contracts of insurance included in, a class or classes of insurance business specified in the direction;
- (c) must not renew policies in respect of a class or classes of insurance business specified in the direction;
- (d) must not dispose of, otherwise deal with or remove from the Fiji Islands an asset or assets specified in the direction;
- (e) must make arrangements with respect to reinsurance as specified by the Reserve Bank;
- (f) must not, except with the written consent of the Reserve Bank-
 - (i) enter into an arrangement or agreement for the sale or disposal of its business by amalgamation or otherwise or for the carrying on of its business in partnership with another body corporate; or
 - (ii) effect a reconstruction of the insurer.

(5) if a direction has been given to a licensed person under this section and it appears to the Reserve Bank at any time that the direction is no longer necessary or should be varied, the Reserve Bank must, by written notice to the licensed person, revoke or vary the direction.

(6) A licensed person who has been given a direction under this section may apply to the Reserve Bank, in writing, with full particulars in support of the application, for the direction to be revoked or varied, and the Reserve Bank must, on receipt of such an application-

- (a) confirm the direction; or
- (b) if it considers that the direction is no longer necessary or should be varied, revoke or vary the direction; and
- (c) in either case give the licensed person written notice of the decision.

(7) A direction to a licensed person under this section ceases to have effect if an order is made for the winding up of the licensed person.

(8) A contravention of a direction given under this section does not affect the validity of a transaction.

Division 4-Controllership

Reserve Bank may assume control of a licensed person

81.—(1)if the Reserve Bank is satisfied that-

- (a) having regard to a statement provided under section 60 or to the results of an investigation carried out under Division 2 of this Part, an insurer-
 - (i) is, or is likely to become, unable to meet its policy or other liabilities as they become due;
 - (ii) has failed to comply with section 31;

- (b) a licensed person-
 - (i) having failed to comply with any direction, notice, term or condition of a licence or other requirement of or under this Act has continued the failure; or
 - (ii) having contravened any provision of this Act, has continued such contravention, for 2 weeks after written notice of the failure or contravention has been given to the licensed person by the Reserve Bank;
- (c) a broker has failed to comply with section 65;
- (d) having regard to the results of an investigation under Division 2 of this Part, it is just and equitable in the interests of insureds or in the public interest,

the Reserve Bank may, with the consent of the Minister, assume control of, or appoint a person to assume control of, the business or part of the business of a licensed person, from which time the licensed person is under controllership.

(2) Except as provided in subsection (3), the Reserve Bank must not place a licensed person under controllership without giving the person a reasonable opportunity to make representations to the Reserve Bank.

(3) In a case of emergency, if the immediate control of a licensed person is, in the opinion of the Reserve Bank, needed in the public interest, the requirement in subsection (2) may be dispensed with by the Reserve Bank.

(4) If the Reserve Bank assumes control of, or appoints a person to assume control of, the business or part of the business of a licensed person, the Reserve Bank must-

- (a) notify the licensed person in writing of the assumption or appointment;
- (b) publish in the *Gazette* a notice of the assumption or of the appointment.

Appointment of controller

82.—(1) the Reserve Bank may appoint as a controller any person it considers has the relevant experience, knowledge and qualifications and who is not employed by, or related to, the licensed person who is to be controlled.

(2) An appointment of a controller must be in writing.

(3) A copy of the instrument appointing a controller must be served on the licensed person who is to be controlled.

(4) The Reserve Bank may cancel the appointment of a controller for disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Reserve Bank, and may appoint another person as controller.

(5) A person appointed as a controller may resign the appointment by written notice to the Reserve Bank.

Purpose of controllership

83. The purpose of placing a licensed person under controllership is-

- (a) to carry on the business of the licensed person so as to preserve and keep intact so far as practicable the property and assets of the person; and

- (b) to ascertain the state of the business and affairs of the licensed person in order to determine whether the Reserve Bank should-
 - (i) allow the licensed person to carry on the business after a period of controllership;
 - (ii) transfer the business, or part of the business, to another licensed person;
 - (iii) take steps to wind up the licensed person; or
 - (iv) take any other course of action in respect of the business of the licensed person.

Duration of controllership

84. If the Reserve Bank assumes control or appoints a controller over the business or part of the business of a licensed person, the controllership remains in force until-

- (a) the Reserve Bank, by written notice, cancels the controllership; or
- (b) the licensed person is ordered by a court to be wound up.

Cancellation of controllership

85.—(1) if it appears to the Reserve Bank that the purpose of placing a licensed person under controllership has been fulfilled, or that for any reason it is not desirable that the controllership should remain in force, the Reserve Bank may cancel the controllership and thereupon the Reserve Bank or controller is divested of the management of the licensed person and the management re-vests in the board of directors or other governing body of the licensed person.

(2) The following persons may in writing apply to the Reserve Bank for cancellation of a controllership-

- (a) the controller of the licensed person under controllership;
- (b) the licensed person;
- (c) any person having a legitimate interest in the subject matter of the controllership.

Controller to comply with directions of Reserve Bank

86.—(1) A controller of a licensed person must comply with any directions given in writing by the Reserve Bank relating to the exercise of the powers of the controller under this Division.

(2) A controller must-

- (a) consult with the Reserve Bank, to the extent required by the Reserve Bank, as to the exercise of the controllers powers; and
- (b) provide any written report the Reserve Bank may require as to the state of the affairs and business of the licensed person under controllership.

Management vests in Reserve Bank or controller

87.—(1) if a licensed person is placed under controllership, the management of the licensed person from the day specified in the notice issued under section 81(4) or, if no date is specified in a notice, immediately, vests in the Reserve Bank or controller, as the case may be.

(2) If the Reserve Bank or controller assumes control of the business or part of the business of a licensed person under section 81, the Reserve Bank or controller must carry on all or that part of the business of the licensed person and has, and may exercise in relation to the licensed person, all such powers, rights and authorities as necessary to carry on the business.

(3) If a licensed person is placed under controllership, no director, manager, or other person may be engaged in the management or conduct of its business, or act as an officer, agent, or servant of the licensed person, except with the written permission of the Reserve Bank or controller and as far as that permission extends.

Insurer not to issue policies

88. An insurer must not issue any policy, or renew any policy, if the insurer, or any part of the business of the insurer, is under controllership, except with the written approval of the Minister.

Powers of controller

89.—(1) For the purpose of carrying on the business of a licensed person under controllership, the Reserve Bank or a controller may—

- (a) bring or defend any legal proceedings in the name and on behalf of the licensed person;
- (b) appoint a legal practitioner or actuary (other than the appointed actuary) to help in the performance of controllership duties;
- (c) pay, in whole or in part, any creditor or class of creditors of the licensed person;
- (d) sell or otherwise dispose of all or any of the property of the licensed person;
- (e) do all acts and execute in the name and on behalf of the licensed person all deeds, receipts and other documents;
- (f) for the purpose of paragraph (c), use the company's common or official seal;
- (g) subject to the Bankruptcy Act, prove in the bankruptcy of any debtor of the licensed person or under any deed executed under that Act;
- (h) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the licensed person;
- (i) obtain credit, whether on the security of the licensed person or otherwise;
- (j) take out letters of administration of the estate of a deceased debtor, and to do anything necessary for obtaining payment of any money due from a debtor, or his estate, that cannot conveniently be done in the name of the licensed person; and
- (k) appoint an agent to do anything that it is not practicable to do personally or that it is unreasonable to expect to be done personally.

(2) The powers conferred by this section are in addition to powers conferred on the Reserve Bank or a controller by any other provision of this Part.

Cancellation of contracts or agreements

90. If the Reserve Bank or controller considers that the contract or agreement between a licensed person under controllership and any other person is detrimental to the interests of insureds, the Reserve Bank or the controller may, with the approval of the Minister, cancel, suspend or vary, either with or without conditions, the contract or agreement.

Duty to deliver books and property to controller

91.—(1) A person who has possession or control of any records or other property belonging to a licensed person under controllership must, within 7 days after the licensed person becomes subject to controllership, deliver or give possession of those records or other property to the Reserve Bank or a controller.

(2) A person who fails after 7 days to comply with subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and, if the offence is a continuing one, to a further fine of \$500 for every day during which the offence continues.

(3) It is not a defense to proceedings under this section that the person in possession or control of any property is, or was, a trustee of the property for the licensed person, or entitled to a lien or other charge over the property, or was a receiver or manager of the property.

Offence to destroy, alter or conceal records

92.—(1) A person who-

- (a) with intent to defeat the purposes of this Part-
 - (i) destroys, alters or conceals any record of or relating to a licensed person under controllership; or
 - (ii) sends or attempts to send out of the Fiji Islands any such record; or
- (b) in response to any question which the person is asked by the Reserve Bank or by a controller in relation to any such record or to any other property of the licensed person-
 - (i) fails or refuses to answer to the best of the Persons knowledge and ability; or
 - (ii) willfully gives a false answer,

commits an offence, and is liable on conviction to a fine of \$5,000.

(2) If, in a prosecution for an offence under this section, it is proved that the person charged with the offence has destroyed, altered or concealed any record or has sent, or attempted to send, any such record out of the Fiji Islands, the onus of proving that in doing so the person did not contravene this section lies on that person.

Prohibition against removal of assets

93.—(1) Except with the consent of the Reserve Bank or a controller, no person may transfer or remove from the Fiji Islands any property or assets of a licensed person under controllership.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction-

- (a) to a fine of \$250,000; or
- (b) to a fine equivalent to the market value of any property or asset that was transferred or removed from the Fiji Islands, whichever is the greater; and
- (c) to imprisonment for 3 years.

(3) Nothing in subsection (2) prevents the issue of an injunction or the making of any order to prevent any property or assets being removed from the Fiji Islands.

Sale or transfer of licensed person

94.—(1) Subject to subsection (2), the Reserve Bank or a controller may sell, transfer or amalgamate any part of the business of a licensed person under controllership to or with another licensed person, or to or with the business of another licensed person, subject to such terms and conditions as the Reserve Bank or controller thinks fit.

(2) A controller must not sell, transfer, or amalgamate any part of the business of a licensed person unless the Reserve Bank has given written approval to the sale, transfer or amalgamation and to the terms and conditions of it.

(3) Any sale, transfer or amalgamation of a licensed person under this section must be carried out in accordance with Part IX.

Moratorium

95.—(1) if a licensed person is under controllership, no person may, except as provided in subsections (2) and (5)-

- (a) commence or continue any action or other proceedings, including proceedings by way of counterclaim, against the licensed person;
- (b) issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgement or order obtained in respect of the licensed person;
- (c) petition to wind up the licensed person;
- (d) foreclose, enter into possession, sell, appoint a receiver, or take or continue any power or rights whatsoever under or in pursuance of any mortgage, charge, debenture, instrument, or other security over the property of the licensed person;
- (e) determine or forfeit any tenancy, distrain for rent, re-take or re-enter any premises or take or continue any power or rights whatsoever under or in pursuance of any lease, tenancy, or agreement to let or lease, against the licensed person; or
- (f) exercise any right of set-off acquired prior to controllership against the licensed person.

(2) For the purpose of determining whether any right or liability exists, an action or proceeding may be commenced or continued against a licensed person under controllership-

- (a) with the written consent of the Reserve Bank or the controller; or
- (b) with the leave of the court and in accordance with any terms imposed by the court.

(3) An application for leave under subsection (2)(b) must be served on the Reserve Bank, which is entitled to be heard on it.

(4) Neither the Reserve Bank nor a controller incurs any liability as a result of a refusal to give a consent for the purposes of subsection (2).

(5) The Reserve Bank or a controller may waive the application of the whole or part of subsection (1) (except paragraph (c)) in favor of any secured creditor or class of creditors of the licensed person under controllership in respect of the whole or part of any claim of, or security held by, that creditor or class of creditors.

(6) Nothing in subsection (1) affects the existence of any security over the property of any licensed person under controllership or its priority in relation to other debts.

Continued application of Act

96. The appointment of a controller under this Part does not affect the continued operation of other Parts of this Act in relation to the licensed person under controllership or the obligation of the licensed person to comply with other Parts of this Act.

Remuneration of controller

97. Where a controller has been appointed, the Reserve Bank must fix the remuneration to be paid to the controller and such remuneration must be paid by the licensed person under controllership.

Expenses of controllership

98.—(1) All costs, charges and expenses properly incurred by the Reserve Bank or a controller or by any person appointed to assist the Reserve Bank or controller in the exercise

of the functions and powers of a controller, are payable out of the property of the licensed person under controllership, in priority to all other claims.

(2) Costs, charges and expenses referred to in this section include costs, charges and expenses in relation to all obligations duly entered into by a controller or person assisting the controller and shall not be limited to personal or out of pocket expenditure.

(3) The controller must disclose to creditors the amount of any costs, charges and expenses paid or payable under subsection (1) in a form and by a method approved by the Reserve Bank.

Indemnity

99. Neither the Reserve Bank nor a controller incurs any liability as a result of anything done or omitted to be done in the performance or intended performance of any functions under this Division, unless the act or omission was in bad faith.

Division 5-Cancellation of Licence

Cancellation of an insurers licence

100.—(1) If an insurer in writing requests the Reserve Bank to cancel its licence and the Reserve Bank is satisfied that the insurer has no liabilities-

- (a) in respect of Fiji insurance business; and
- (b) if the insurer is incorporated in the Fiji Islands, in respect of insurance business outside the Fiji Islands,

the Reserve Bank may by written notice to the insurer cancel the licence.

(2) The Reserve Bank may, by notice in writing, cancel the licence of an insurer-

- (a) if the insurer fails to commence carrying on insurance business within the period of 6 months after it was licensed;
- (b) if the Reserve Bank is satisfied that an insurer has not during the preceding 12 months carried on insurance business in the Fiji Islands or elsewhere, and has not had, during that period, liabilities in respect of insurance business carried on by it in the Fiji Islands or elsewhere; or
- (c) if the insurer goes into liquidation, commences to be wound up, or is otherwise dissolved.

(3) Before canceling a licence under subsection (2)(a) or (b), the Reserve Bank must give the insurer written notice of the proposed cancellation.

(4) A notice under subsection (3) must specify the grounds on which the cancellation is based and must give the insurer an opportunity of submitting to the Reserve Bank within 14 days a written statement to show cause why the licence should not be cancelled.

(5) The cancellation of an Insurers licence by the Reserve Bank takes effect on a date specified in the notice issued under subsection (1) or (2).

(6) Notice of the cancellation of an insurers licence must be published in the *Gazette* and in a daily newspaper circulating in Fiji.

(7) A reference in this section to an insurer having no liabilities in respect of insurance business carried on by it includes a reference to an insurer that has, under Part IX, transferred and assigned to another body corporate licensed under this Act the whole of its interests,

including rights and benefits, under all contracts of insurance in respect of insurance business carried on by it.

(8) Within 7 days after the cancellation of an Insurers licence takes effect, the insurer must return to the Reserve Bank the licence issued under section 26.

Cancellation of intermediary's licence

101.—(1) the Reserve Bank may at any time cancel a licence issued to an intermediary if the Reserve Bank considers there are reasonable grounds for doing so.

(2) Without limiting subsection (1), there are reasonable grounds to cancel a licence if-

- (a) the intermediary contravenes or fails to comply with-
 - (i) this Act or any regulations made under it;
 - (ii) any term or condition imposed on the licence; or
 - (iii) any notice or direction issued by the Reserve Bank to the intermediary under this Act;
- (b) the intermediary-
 - (i) becomes bankrupt or insolvent; or
 - (ii) is convicted, in the Fiji Islands or elsewhere, of an offence of dishonesty;
- (c) the Reserve Bank is satisfied that the business of the intermediary-
 - (i) is not being conducted in accordance with sound insurance, accounting or commercial principles; or
 - (ii) is being conducted in a manner detrimental to the interests of insureds, insurers, the insurance industry or the public interest;
- (d) the Reserve Bank is satisfied the intermediary has ceased to carry on the business for which the intermediary was licensed; or
- (e) the intermediary goes into liquidation, commences to be wound up or is otherwise dissolved.

(3) Within 7 days after the cancellation of an Intermediary's licence takes effect, the intermediary must return to the Reserve Bank the licence issued under section 45.

Continuing business of broker after cancellation

102. The Reserve Bank may by notice in writing-

- (a) direct a person whose licence to carry on the business of intermediary has been cancelled to continue to carry on the business for a period specified by the Reserve Bank for the purpose of concluding or disposing of transactions commenced but not concluded on behalf of clients of the business; and
- (b) impose any directions on the person the Reserve Bank thinks fit as to the manner in which the business is to be concluded, or as to any other matter relating to the cessation or termination of the business in order to protect clients and potential clients of the business and the public generally.

Division 6-Wind-up

Voluntary liquidation

103. Notwithstanding any other written law, a licensed person may not be wound up voluntarily without the prior written authority of the Reserve Bank.

Winding-up by court

104.—(1) Subject to this Division, the winding-up of a licensed person is to be conducted in accordance with the Companies Act.

(2) For the purposes of Part VI of the Companies Act, an insurer is deemed to be unable to pay its debts if at any time the margin of solvency specified in section 31 is not maintained.

(3) For the purposes of proceedings under the Companies Act for the winding-up of the affairs of an insurer, evidence that the insurer was insolvent at the close of the period to which the accounts and other statements last prepared under section 60(1) relate is evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

Reserve Bank to be heard

105. If a petition for the winding-up of a licensed person is presented by a person other than the Reserve Bank, a copy of the petition must be served on the Reserve Bank, which is entitled to be heard on the petition.

Reserve Bank may petition court

106.—(1) the persons who may petition under the Companies Act for the winding up of a licensed person include the Reserve Bank.

(2) in addition to the circumstances set out in section 220 of the Companies Act, a licensed person may be wound up by the court if the Reserve Bank presents a winding-up petition to the court on the grounds that-

(a) having regard to statements provided under section 60 or to the results of an investigation carried out under Division 2 of this Part the insurer-

- (i) is, or is likely to become, unable to meet its liabilities as they become due; or
- (ii) has failed to maintain the margin of solvency specified in section 31; or

(b) a licensed person-

- (i) having failed to comply with any direction, notice, term or condition of a licence or other requirement of or under this Act has continued the failure or;
- (ii) having contravened any provision of this Act, has continued the contravention,

for 4 weeks after written notice of the failure or contravention has been given to the licensed person by the Reserve Bank;

(c) a broker has failed to comply with section 65.

Power of Reserve Bank to ask for information

107.—(1) the Reserve Bank may, in writing, from time to time require a liquidator to supply information concerning the winding-up of a licensed person.

(2) A liquidator must comply with a request under subsection (1) as soon as practicable after receiving it.

Valuation of assets and liabilities

108. In the winding-up of an insurer, the value of the assets and liabilities of the insurer may be ascertained in any manner and upon any basis that the liquidator thinks fit, subject, so far as applicable, to any directions given by the court and to the following rules—

- (a) the liabilities of an insurer in respect of current policies of life insurance business must be calculated by a method and upon a basis determined by an actuary appointed by the court after consultation with the Reserve Bank and the actuary, in such determination, must take into account
 - (i) the purpose for which the valuation is to be made;
 - (ii) the rates of interest and of mortality and sickness to be used in the valuation; and
 - (iii) any special directions given to the actuary by the court after the court has given the Reserve Bank an opportunity to be heard; and
- (b) the liabilities of current policies other than life policies must be of the last premium paid proportionate to the unexpired portion of the policy in respect of which the premium was paid.

Notice of policy values

109.—(1) in relation to each person who, according to the Insurers records, appears to be—

- (a) the owner of a policy issued by the insurer; or
- (b) interested in a policy issued by the insurer,

the liquidator must determine whether the insurer has a policy liability to the person and, if so, the amount that represents the value of the liability.

(2) the liquidator must, in a manner directed by the court, notify each person referred to in subsection (1) of the amount determined under that subsection in respect of each policy of which the person is the owner or in which the person is interested.

Liability of directors etc for loss to statutory fund

110.—(1) If—

- (a) an insurer contravenes this Act in relation to a statutory fund;
- (b) the contravention results in loss to the statutory fund; and
- (c) the court orders that the insurer be wound up,

any person who, at the time the contravention occurred, was a director, general manager, secretary or other similar officer of the insurer, or was purporting to act in any such capacity, is liable to pay to the insurer an amount equal to the amount of the loss.

(2) Where more than one person occupies a position mentioned in subsection (1), liability is joint and several.

(3) A person is not liable under subsection (1) or (2) if the person proves that the contravention occurred without his consent or connivance and that he used due diligence to prevent the occurrence of the contravention.

(4) On application by the liquidator of an insurer, the court may order any person liable under subsection (1) or (2) to pay to the insurer the whole or any part of a loss resulting from a contravention in relation to a statutory fund.

(5) A person cannot be made liable both under this section and under section 122 in respect of the same contravention.

Part VII-STATUTORY FUNDS

Establishment of statutory funds

111.—(1) Subject to this section, an insurer who carries on life insurance business in the Fiji Islands must at all times have at least one statutory fund in respect of that business, but may have more than one statutory fund in respect of that business if it chooses.

(2) an insurer who carries on life insurance business consisting of the provision of investment-linked benefits must maintain a statutory fund or statutory funds exclusively for that business so far as it is carried on in the Fiji Islands.

(3) an insurer incorporated in the Fiji Islands who carries on life insurance business outside the Fiji Islands must have a statutory fund or statutory funds exclusively in respect of that business.

(4) the Reserve Bank may require an insurer transacting or carrying on life insurance business to establish and maintain such statutory funds as the Reserve Bank may determine.

(5) if the only class of life insurance business carried on by an insurer is term life insurance business where the period of cover under policies is of no more than 3 years duration, the Reserve Bank may in writing grant the insurer exemption from subsection (1).

Notice when fund established

112.—(1) In respect of every statutory fund which it establishes, an insurer must give the Reserve Bank written notice of-

- (a) the establishment of the fund;
- (b) the date on which the fund was established; and
- (c) the nature of the insurance business to which the fund relates.

(2) in addition to the information required by subsection (1), the Reserve Bank may in writing request further information in relation to the establishment of a statutory fund and the insurer must comply with the request.

(3) an insurer who establishes a statutory fund must, for all business written after the commencement of this Act, give to the owner of every policy referable to the fund written notice of the establishment of the fund containing the other information required by subsection (1).

Identification of policies referable to a statutory fund

113.—(1) Every policy document issued after the appointed date must specify the statutory fund or statutory funds to which the policy is referable.

(2) A provision in a policy document that a policy is referable to 2 or more statutory funds is not effective unless it specifies-

- (a) the benefits under the policy that are to be provided out of each fund; and
- (b) either-
 - (i) the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the said fund; or
 - (ii) the way in which that proportion is calculated.

Payments to statutory fund

114. An insurer must pay into a statutory fund all receipts properly attributable to the business to which the fund relates, including premiums payable under policies referable to the fund and income from the investment of the assets of the fund.

Assets of statutory fund to be kept separate

115. An insurer must keep the assets of a statutory fund distinct and separate from assets of other statutory funds and from all other money, assets or investments of the insurer.

Application of statutory fund

116.—(1) an insurer must not apply, or deal with, the assets of a statutory fund, either directly or indirectly, except in accordance with this section.

(2) The assets of a statutory fund may only be applied-

- (a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund;
- (b) for the making of investments of the fund; or
- (c) for the purposes of a distribution under section 120.

(3) the assets of a statutory fund must not, without the prior written approval of the Reserve Bank, be invested directly or indirectly in any share or interest in any other insurer.

(4) an insurer must not mortgage or charge any of the assets of a statutory fund except with the prior written approval of the Reserve Bank.

Statutory fund accounts and records

117.—(1) an insurer must maintain for each statutory fund-

- (a) records of the income and expenditure of the fund which properly record the affairs and transactions of the insurer in respect of:
 - (i) participating business; and
 - (ii) non-participating business,

for each class of business to which the fund relates; and

- (b) records which enable assets and liabilities of the fund to be identified.

(2) Where a receipt or expenditure relates both to the business of a statutory fund and to other business of the insurer, or to more than one statutory fund, the insurer must apportion the amount, in a manner satisfactory to the Reserve Bank, between the fund and other business or between the funds, as the case may be.

Prohibition of reinsurance between funds

118.—(1) an insurer must not engage in the practice of reinsurance between its statutory funds.

(2) For the purpose of subsection (1) the practice of reinsurance between statutory funds consists of the following elements-

- (a) part of the premium payable under a policy referable to one statutory fund is credited to another statutory fund to which the policy is not referable;

- (b) a corresponding proportion of the liability under the policy is treated as a liability for the discharge of which the assets of the reinsuring fund are available.

Division or amalgamation of funds

119.—(1) an insurer must not divide an existing statutory fund or amalgamate 2 or more statutory funds, unless the Reserve Bank has by written notice approved the division or amalgamation.

(2) an insurer who divides a statutory fund or amalgamates 2 or more statutory funds must give to the owner of every policy referable to any of the funds divided or amalgamated written notice of the division or amalgamation containing the information required by section 112(1).

Allocation of surplus

120.—(1) if an investigation of a statutory fund has been carried out in accordance with section 62 and the investigation reveals that the fund has assets surplus to those required to satisfy the sum of the liabilities of the fund and the margin of solvency specified in section 31, the insurer may allocate the surplus, or part of it, to insureds and shareholders in accordance with the instruments constituting the insurer and the articles of association or other rules of the insurer.

(2) an allocation under subsection (1) may not proceed unless the instruments constituting the insurer and the articles of association or other rules of the insurer, or any amendment to such instruments, articles or rules governing the allocation of surplus assets, have been approved by the Reserve Bank.

Reserve Bank may give notice

121.—(1) if an insurer contravenes this Part the Reserve Bank may give the insurer written notice requiring the insurer, within a specified period, to take specified action to remedy the contravention.

(2) the period specified in a notice under subsection (1) must end not earlier than 21 days after the giving of the notice.

(3) the action to be specified in a notice under subsection (1) is such action as the Reserve Bank thinks appropriate and reasonable to overcome the effects of the contravention.

(4) At any time before the end of the period specified in a notice under subsection (1), the Reserve Bank may in writing extend the period as it thinks fit.

Liability of directors etc

122.—(1) If a contravention of this Part results in a loss to a statutory fund, any person who, at the time the contravention occurred, was a director, general manager, secretary or other similar officer of the insurer, or was purporting to act in any such capacity, is jointly and severally liable to pay to the insurer an amount equal to the amount of the loss.

(2) A person is not liable under subsection (1) if the person proves that the contravention occurred without his consent or connivance and that he used due diligence to prevent the occurrence of the contravention.

Reserve banks power to sue

123. If the Reserve Bank considers that it is in the interests of the owners of policies subject to a statutory fund to do so, the Reserve Bank may bring an action against a person in the name, and for the benefit, of an insurer for the recovery of an amount that the insurer is entitled to recover under section 122.

Part VIII-PROVISIONS RELATING TO POLICIES

Division 1-General

Policy not to be invalidated

124.—(1) Failure on the part of an insurer, broker or agent to comply with any provision of this Act does not invalidate any policy issued by the insurer.

(2) Without affecting subsection (1), a policy issued by an insurer through or as a consequence of the actions of an intermediary is not invalidated merely because the intermediary was not licensed under this Act.

Notification of expiration of contracts of general insurance

125.—(1) in this section Renewable insurance cover means insurance cover that-

- (a) is provided for a particular period of time; and
- (b) is of the kind that it is usual to renew or for the renewal of which it is usual to negotiate.

(2) Not later than 14 days before the day on which renewable insurance cover provided under a contract of general insurance or under any prescribed class of insurance (in this section called the Original contract) expires, the insurer must give to the insured or to a person acting on behalf of the insured written notice of the day on which, and the time at which, the cover will expire and whether the insurer is prepared to negotiate to renew or extend the cover.

(3) if-

- (a) an insurer fails to comply with subsection (2); and
- (b) before the original contract expires the insured has not obtained insurance cover from some other insurer to replace that provided by the original contract,

there exists between the parties to the original contract a contract of insurance providing insurance cover as provided by the original contract, except that the cover provided-

- (c) commences immediately after the insurance cover provided by the original contract expires; and
- (d) expires, unless the contract is sooner cancelled, at-
 - (i) the expiration of a period equal to the period during which insurance cover was provided by the original contract; or
 - (ii) the time when the insured obtains from some other insurer, insurance cover to replace that provided by the original contract,

whichever is the earlier.

(4) where a contract of insurance is in force by virtue of subsection (3), the insurer may charge the insured a premium for the subsequent period, not exceeding the premium paid under the original contract.

Procedure for cancellation of insurance contracts

126.—(1) an insurer who wishes to exercise a right to cancel a contract of insurance must give written notice of the proposed cancellation to the insured, or to a person acting on behalf of the insured.

(2) A notice under subsection (1) cancels the contract of insurance at the earlier of the following times-

- (a) the time when another contract of insurance between the insured and the insurer or some other insurer, being a contract that is intended by the insured to replace the first mentioned contract, is entered into; or
- (b) the latest of the following times-
 - (i) 4 o'clock in the afternoon of the 14th day, or in the case of a life policy midnight on the 28th day, after the day on which the notice was given under subsection (1);
 - (ii) if a time is specified for the purpose in the contract at that time; or
 - (iii) if a time is specified in the notice at that time.

(3) this section does not apply to contracts of insurance to which section 137 applies.

Policies to be expressed in Fiji currency

127.—(1) Subject to this section, the sum insured, premium and every other amount of money mentioned in a policy of insurance issued in the Fiji Islands on or renewed after the appointed date must be stated in Fiji currency.

(2) the Reserve Bank may give written permission for a policy to be stated in a currency other than the Fiji currency.

(3) the Reserve Bank must not give permission under subsection (2) unless each of the parties to the particular policy of insurance have at or subsequent to the time of issue of the policy expressly stated their agreement for the policy to be stated in another currency.

(4) where the Reserve Bank has given permission under subsection (2), that fact, and the fact that each of the parties has agreed, must be clearly endorsed on the policy.

(5) the continued payment of any premium in respect of any policy relating to life insurance business does not constitute a renewal of the policy for the purpose of subsection (1).

Proposal and policy documents not to be misleading

128.—(1) A form of proposal for insurance, a policy document or any endorsement of a policy document, or any form of written matter used by an insurer which describes the terms or conditions of, or the benefits to be or likely to be derived from a policy of insurance, must not contain anything inaccurate or likely to mislead an insured.

(2) the Reserve Bank may give an insurer written notice requiring the insurer to submit to the Reserve Bank any document mentioned in subsection (1).

(3) if the Reserve Bank considers that a document submitted under subsection (2) does not comply with subsection (1) the Reserve Bank may give the insurer written notice-

- (a) setting out particulars of the way in which the document is misleading or otherwise fails to comply with subsection (1); and
- (b) inviting the insurer to make submissions to the Reserve Bank on any matter set out in the notice.

(4) if at least 14 days have elapsed since the Reserve Bank gave notice to the insurer and either-

- (a) the insurer has not made any submissions to the Reserve Bank; or
- (b) having taken into account the submissions made by the insurer, the Reserve Bank remains unsatisfied,

the Reserve Bank may give the insurer a written direction to change the relevant document in the way specified in the notice.

(5) an insurer must not make use of a document in respect of which the Reserve Bank has given a direction under subsection (4), nor allow such a document to be used by a representative of the insurer, unless the document has been changed in accordance with the direction.

Return of insurance policy

129.—(1) Subject to subsection (2), if an insured, on receipt of a life policy, or a policy in respect of any other prescribed class of insurance-

- (a) objects to any term or condition of the policy;
- (b) decides that the policy is not required; or
- (c) decides that the policy cannot be afforded,

the insured may, in writing, advise the insurer of the objection or decision and return the policy to the insurer.

(2) ÷Subsection (1) only has effect during the first 28 days after an insured has personally received the policy or is deemed to have received the policy.

(3) Upon receiving a policy returned by an insured under subsection (1), the insurer must forthwith refund any premium, without deduction for commission or any other expenses, which the insurer has been paid in respect of the policy and must cancel the policy.

(4) For the purposes of this section, if a policy and written advice are sent by registered post to an insured, the date of the sending is deemed to be the date of return of the policy and written advice.

(5) Every policy to which this section applies, issued on or after the appointed date, must have either printed on it or annexed to it, in a form and manner acceptable to the Reserve Bank, a notice informing the insured of the rights conferred by subsection (1) and the time-limit specified in subsection (2).

Division 2-Specific Requirements Relating to Life Policies

Effect of suicide and capital punishment on life policy

130. An insurer carrying on any class of life insurance business may only avoid a life policy on the ground that the person whose life is insured by the policy committed suicide or suffered capital punishment if the policy expressly excludes liability in the case of suicide or capital punishment.

Condition as to war risk void

131.—(1) Subject to subsection (2), any term or condition of a life policy is void if it limits, to an amount less than the total of the sum insured and bonuses, the amount payable under the policy if the life insured by the policy dies on war service.

(2)Subsection (1) does not apply if there is written on the policy document or on an annexure to the policy document a statement or acknowledgment signed by the person to whom the policy was issued that the policy is subject to the relevant term or condition.

minors policies

132.—(1) A person aged 10 years or more who has not attained the age of 18 years may, with the written consent of a parent or guardian-

- (a) enter into a life policy on his own life or on another life; or
- (b) take an assignment of a life policy,

and, subject to subsection (2), is as competent in all respects to have and exercise the powers and privileges of an insured in relation to a policy of which he is the owner as if he were of full age.

(2) A person who has not attained the age of 18 is not competent to assign or mortgage a policy except with the consent in writing of his parent or guardian.

Protection of interests of beneficiaries

133.—(1) Subject to the Bankruptcy Act, the rights and interests of a person under-

- (a) a life policy effected on his own life; or
- (b) a life policy effected on the life of the Person's spouse,

are not liable to be applied or made available by any judgement, order or process of a court in discharge of a debt owed by the person.

(2) Subsection (1) applies-

- (a) regardless of when a policy was issued; and
- (b) in the case of a policy referred to in subsection (1)(a), whether or not the policy is owned by the person.

Protection of policy money on Person's death

134.—(1) Subject to the Bankruptcy Act, if, on the death of a person after the appointed date, money becomes payable to the Person's estate under a policy effected on the Person's life, the following provisions apply-

- (a) except as permitted by paragraph (b), the money is not liable to be applied or made available under any judgement, order, process of a court, or in any other manner whatsoever in payment of the Person's debts;
- (b) the money may be applied in payment of a debt of the person-
 - (i) if the person had entered into a contract that provided expressly for the money to be so applied;
 - (ii) the person had charged the money with the payment of the debt; or
 - (iii) the person gave an express direction in a will or other testamentary document signed by the person, that the money be so applied;
- (c) none of the following constitutes an express direction for the purposes of paragraph (b)(iii)-
 - (i) a mere direction that debts be paid;
 - (ii) a charge of debts on the whole or a part of the Person's estate; or
 - (iii) the creation of a trust for the payment of debts.

(2) This section has effect regardless of when a policy was issued.

Paid-up policies

135.—(1) the owner of a life policy on which premiums have been paid for at least 3 years may, in writing, request the insurer concerned to-

- (a) vary the policy so that no further premiums are payable; and
- (b) treat the policy as a paid-up policy.

(2) On receiving a request under subsection (1), the insurer must vary the policy to a paid-up policy for an amount to be certified by the actuary.

(3) if, when a request is made under subsection (1), the insured owes a debt to the insurer under, or secured by, the policy the insurer may either-

- (a) treat the debt as a debt secured by the paid-up policy; or
- (b) take the debt into account, upon a basis approved by the Reserve Bank, in calculating a reduced amount payable under the policy, whereupon the debt is discharged.

Surrender of policies

136.—(1) the owner of a life policy which has been in force for at least three years may, in writing, request the insurer who issued the policy to surrender the policy.

(2) Subject to subsection (4), if the insured makes a request under subsection (1), the insurer must pay to the insured an amount equal to the surrender value of the policy less the amount of any debt owing to the insurer under, or secured by, the policy.

(3) Every policy issued on or after the appointed date must have either printed on it or annexed to it, in a form and manner acceptable to the Reserve Bank, a notice informing the insured of the rights conferred by subsection (1).

(4) On written application from an insurer, the Reserve Bank may, in writing, suspend or vary the Insurers obligations to make payments under subsection (2) if the Reserve Bank is of the opinion that such payments would prejudice-

- (a) the financial stability of the insurer; or
- (b) the interests of the insureds of the insurer.

(5) A suspension or variation under subsection (4) will be for such period and subject to such conditions as the Reserve Bank thinks fit.

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

137.—(1) an ordinary life policy is not liable to be forfeited by reason only of the non-payment of a premium (in this section referred to as the Outstanding premium) if-

- (a) at least 3 years premiums have been paid on the policy; and
- (b) the surrender value of the policy (calculated as at the day immediately preceding that on which the outstanding premium falls due) exceeds the total of-

- (i) the amount of the outstanding premium; and
- (ii) the total of any other amounts owed to the company under, or secured by, the policy.

(2) Until an outstanding premium is paid, the insurer may charge interest on it on terms not less favorable to the insured than any prescribed terms.

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

(4) an insurer may only forfeit an ordinary life policy because of the non-payment of a premium if-

- (a) the insurer has given the insured a written notice-
 - (i) setting out the amount of the premium and the day on which it became, or will become, due; and
 - (ii) stating that the policy will be forfeited at the end of 28 days after the giving of the notice or 28 days after the day on which the premium became, or will become, due, whichever is the later, if the amount due to the insurer has not been paid; and
- (b) at least 28 days have elapsed since the day on which the notice was given or the day on which the premium became due, whichever is the later.

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

138.—(1) an industrial life policy on which less than one years premiums have been paid must not be forfeited only because of the non-payment of any premium unless the premium has remained unpaid for at least 4 weeks after it became due.

(2) an industrial life policy on which premiums have been paid for at least one year, but less than 2 years, must not be forfeited only because of the non-payment of any premium unless the premium has remained unpaid for at least 8 weeks after it became due.

(3) an industrial life policy on which premiums have been paid for at least 2 years, but less than 3 years, must not be forfeited only because of the non-payment of any premium unless the premium has remained unpaid for at least 12 weeks after it became due.

(4) if an industrial life policy on which not less than 3 years premiums have been paid is forfeited because of the non-payment of any premium, the insurer must, without requiring an application from the insured, grant a paid-up policy for an amount not less than an amount calculated by the actuary and approved in writing by the Reserve Bank.

(5) A paid-up policy granted under subsection (4) is payable upon the happening of the contingency on which the amount insured under the original policy would have been payable.

(6) an insurer must notify the insured in writing of the fact that a paid-up policy has been granted under subsection (4) and must specify the amount of the policy and the contingency upon which the policy is payable.

Certain policies exempted from sections 135-138

139. Sections 135, 136, 137 and 138 do not apply to-

- (a) a policy securing the grant of an annuity for a term dependent upon a human life; or
- (b) a policy under which no policy moneys are necessarily payable, not being a policy which provides for the payment of policy moneys on a death after a specified period.

Payment of life policy without probate or letters of administration

140.—(1) if money is payable by a particular insurer to the personal representative of a deceased person, the insurer may, without requiring the production of any probate or letters of administration, pay the money to a person who-

- (a) is the immediate relation of the deceased person; or

- (b) satisfies the insurer that the person is entitled to the property of the deceased person under the deceased Persons will or under the law relating to the disposition of property of deceased persons; or
- (c) satisfies the insurer that the person is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased Persons estate.

(2) an insurer who makes a payment under this section is discharged from all further liability in respect of the money payable under the policy.

(3) A person to whom an insurer makes a payment under this section must apply the money in due course of administration.

(4) in this section, money, in relation to a life policy, means the total of the money payable under the policy, less any debt due to the insurer under, or secured by, the policy.

Death of policy owner who is not the life insured

141.—(1) if the owner of a life policy dies before the person whose life is insured by the policy, the person whose life is insured may apply to the insurer to become the owner of the policy.

(2) To become the owner of a policy under subsection (1), the person whose life is insured must satisfy the insurer that the person is entitled-

- (a) to the benefit of the policy under the will or on the intestacy of the deceased owner; or
- (b) to obtain probate of the will or to take out letters of administration of the estate of the deceased owner.

(3) an insurer who is satisfied in terms of subsection (2) may endorse on the policy a declaration that the person whose life is insured has so satisfied the insurer and is the owner of the policy, and thereupon that person becomes, subject to subsection (4), the owner of the policy.

(4) Subsection (3) does not-

- (a) confer on a person declared to be the owner of a policy any beneficial interest in the policy that the person would not otherwise have had; or
- (b) affect any right or interest of a person other than the person declared to be the owner in relation to the policy.

(5) the insurer may endorse a policy under subsection (3) without requiring the production of any probate or letters of administration.

(6) For the purposes of this section, the adjusted surrender value of a policy is the surrender value of the policy as at the date on which the owner died, less any debt due to the insurer under, or secured by, the policy.

Insurer must pay by certain time but not responsible for application of payment

142.—(1) notwithstanding any law or agreement to the contrary, all payments due under a life policy must be paid within a reasonable time.

(2) if any payment due under a life policy is not paid within a reasonable time, the insurer must pay compound interest at the prescribed rate, if any, on the amount not paid.

(3) an insurer is not, in any circumstances, bound to see to the application of any money it pays in respect of a policy.

Power to pay money into court

143.—(1) an insurer may pay into the court any money payable by the insurer in respect of a policy for which, in the Insurers opinion, no sufficient discharge can otherwise be obtained.

(2) Payment of money into the court under subsection (1) discharges the insurer from any liability under the policy in relation to the money.

(3) Money paid into the court under subsection (1) is to be dealt with according to the order of the court.

(4) this section has effect subject to any Rules of Court.

Unclaimed moneys

144.—(1) an insurer licensed to carry on life insurance business must, within 3 months after the end of each calendar year, provide to the Reserve Bank a statement, in the prescribed form, of all unclaimed moneys as at the end of that year.

(2) When an insurer provides a statement under subsection (1), it must at the same time pay moneys to the Reserve Bank an amount equal to the amount of unclaimed moneys and such moneys must be credited to the general revenue of the Government and paid into the Consolidated Fund.

(3) if, between the end of the calendar year and the date on which a statement is provided under subsection (1), the insurer has paid any money to persons to whom the amounts were due by the insurer, the insurer must provide to the Reserve Bank, together with the statement under subsection (1), a statement in the prescribed form relating to the amount so paid.

(4) Subject to subsection (5), an insurer is, upon payment to the Reserve Bank of any amount under this section, discharged from further liability in respect of that amount.

(5) where unclaimed moneys have been paid to the Reserve Bank under this section, and the Minister is satisfied that, but for subsection (4), a person would be paid those unclaimed moneys by the insurer (or, if that insurer is no longer carrying on insurance business, by an insurer to which the first mentioned insurer has been sold or transferred), those unclaimed moneys shall be paid to that insurer and the insurer must thereupon pay those amounts to that person.

(6) For the purpose of this section Unclaimed money means:

- (a) all sums of money that have become legally payable by a company in respect of policies; but
- (b) in respect of which the time within which proceedings may be taken for their recovery has expired,
and includes-
- (c) sums of money payable on the maturity of a life policy which are not claimed within 7 years after the maturity date of the policy; and
- (d) any money that the company believes should be treated as unclaimed money.

No deduction in respect of other policies

145. If a claim arising under a life policy is paid, no deductions are to be made on account of premiums or debts due to the insurer under any other policy, except with the written consent of the claimant.

Lost or destroyed policy

146.—(1) if a life policy is lost or destroyed or becomes defaced or illegible, the insurer liable under the policy may, upon proof of those matters, issue to the person entitled to it a replacement policy document in substitution for the original policy.

(2) A replacement policy document must-

- (a) be a copy, as far as possible, of the original policy document;
- (b) contain a copy, as far as possible, of every endorsement on the original policy document; and
- (c) state the reason why the replacement policy document was issued.

(3) In the case of a life policy, before issuing a replacement policy document, an insurer must give at least 2 weeks notice of its intention to do so in the *Gazette* and in a newspaper published and circulating in the Fiji Islands.

(4) if an insurer does not issue a replacement policy document within one month after it receives a written request for such document from a person entitled to make the request, the Reserve Bank may, after notice to the insurer and upon such evidence as the Reserve Bank considers appropriate, direct the insurer upon such terms and within such time as the Reserve Bank thinks fit to issue a replacement policy document.

(5) when a replacement policy document is issued, the original policy document becomes void and the replacement policy document is thereupon valid and available for all purposes for which the original policy would have been valid and available.

(6) if a replacement policy document is issued, the insurer must arrange to record in its register of policies-

- (a) the fact that a replacement policy document has been issued; and
- (b) the reason for the issue of the replacement policy document.

(7) the expenses of the notices to be published under subsection (3) and all other expenses connected with the issue of a replacement policy document must be paid for, by the person applying for the replacement policy document, when application is made.

(8) if a replacement policy document is lost or destroyed or becomes defaced or illegible, this section applies to the replacement policy document as if it were an original policy document.

Assignments

147.—(1) the rights of a person as owner of a life policy may only be assigned under this section.

(2) this section is subject to sections 150 and 151.

(3) an assignment is not effective unless the following requirements have been satisfied-

- (a) the assignment must be by memorandum of transfer in accordance with, or substantially in accordance with, the prescribed form;
- (b) the memorandum must be endorsed on the policy or on an annexure to the policy that is referred to in the policy or in another annexure to the policy;

- (c) the memorandum must be signed by the transferor and the transferee;
- (d) the assignment must be registered in a register of assignments kept by the insurer concerned;
- (e) the date of registration must be inserted in the memorandum; and
- (f) the memorandum must be signed by the principal officer of the insurer or by a person authorized by the principal officer to sign such memorandum.

(4) if all the requirements of subsection (3) are satisfied, an assignment has the following effects-

- (a) the transferee has all the rights and powers, and is subject to all the liabilities, of the transferor under the policy;
- (b) the transferee may sue in his own name on the policy;
- (c) payment to the transferee of money due under the policy discharges the insurer from all liability under the policy in respect of the money;
- (d) the memorandum of transfer is presumed to have been registered in accordance with subsection (3) on the date shown in the memorandum;
- (e) as between the insurer and a person claiming money under the policy, the transferee is conclusively presumed, for all purposes, to have been the absolute owner of the policy at the time of registration of the assignment, free from all trusts, rights, equities and interests, and entitled to receive the money and give a good discharge for it;
- (f) any security over the policy given by the transferee is effective in spite of any trust or any right, equity or interest of another person;
- (g) the surrender of the policy by the transferee is effective in spite of any trust or any right, equity or interest of another person;
- (h) the insurer, in respect of any dealing it has with the transferee, is not required or concerned to inquire as to the circumstances in which, or the consideration for which, the policy was assigned to the transferee or any previous transferee; and
- (i) subject to section 149, the insurer, in respect of any dealing it has with the transferee, is not affected by express, implied or constructive notice of any trust, right, equity or interest.

(5) an assignment under this section does not make the transferee a member of the insurer, or deprive the transferor of membership of the insurer in respect of the policy, except in accordance with the articles of association of the insurer.

(6) this section does not-

- (a) impose on a minor any liability to which he would not be subject apart from this section;
- (b) confer on a minor any power or capacity he would not have apart from this section; or
- (c) validate a receipt, surrender, or security given by a minor if it would not be effective apart from this section.

(7) the rights and liabilities under a life policy are not merged or extinguished either at law or in equity, merely because the policy is assigned, whether at law or in equity, to the insurer that issued the policy.

Mortgages and trusts

148. If a life policy is assigned by way of mortgage or on trust-

- (a) the mortgage or trust is not effective unless it is created by some means other than the memorandum of transfer;
- (b) no notice of the mortgage or trust is to be entered on the memorandum of transfer or endorsed on the policy;
- (c) subject to section 149, the insurer is not affected by express, implied or constructive notice of the mortgage or trust.

Effects of notice on trust

149.—(1) an insurer is not entitled to rely on section 147 or 148 in relation to a matter in which the insurer has not acted in good faith.

(2) an insurer is not entitled to rely on section 148 or 149 in relation to any trust, right, equity or interest of which the insurer has received express notice in writing.

(3) if an insurer has received express notice in writing of a trust, right, equity or interest claimed under a policy, the insurer may pay the money representing such trust, right, equity or interest into the court.

(4) payment of money into the court under subsection (3) discharges the insurer from liability to any person in respect of the money.

(5) money paid into the court under subsection (3) is to be paid out in accordance with an order of the court.

No assignment of industrial life policy

150.—(1) an industrial life policy must not be assigned without the written consent of the insurer liable under the policy.

(2) Any assignment purporting to have been made which does not have the Insurers written consent is invalid.

(3) if an insurer refuses its consent to the assignment of a policy under this section, the insured may appeal to the Reserve Bank which may, at its discretion, uphold or reverse the decision of the insurer.

Trustees

151.—(1) If-

- (a) a policy has been issued or assigned to, or the ownership of a policy is otherwise vested in, a person as trustee; and
- (b) the person is no longer the trustee under the relevant trust,

another person may give the insurer liable under the policy written notice that the person giving the notice is now trustee under the trust.

(2) A notice under subsection (1) must be given in the form of, or be verified by, a statutory declaration made by the person giving the notice.

(3) If a notice has been given in accordance with this section and the insurer has no reason to doubt the appointment of the person giving the notice as trustee, the insurer may record the name of the person who gave the notice as the owner of the policy and thereupon the ownership of the policy vests in that person as trustee of the trust.

Nomination

152.—(1) the owner of a policy of insurance on his own life (The owner) may, when effecting the policy or at any time before the policy matures for payment, nominate a person

or persons to whom the payment secured by the policy is to be paid in the event of his death (The nominee).

(2) A nominee may be a minor, in which case the owner of the policy may, in the prescribed manner, appoint a person to receive the payment secured by the policy in the event of the owners death during the minority of the nominee.

(3) A nomination under subsection (1) must-

- (a) be incorporated into the text of the policy; or
- (b) be made by an endorsement on the policy, in which case written notice of the nomination must be communicated to the insurer who must record it in its register of policies.

(4) Subject to subsection (5), a nomination may be cancelled or changed at any time before the policy matures for payment either by another endorsement or by the will of the owner.

(5) Unless written notice of a cancellation or change has been given by the owner to the insurer, the insurer is not liable for any payment under the policy made to a nominee mentioned in the text of the policy or in the Insurers register of policies.

(6) the insurer must acknowledge in writing to the owner that it has registered a nomination, or a cancellation or change to a nomination, and may charge a fee, not exceeding any amount prescribed for such registration.

(7) Subject to subsection (8), an assignment of a policy made in accordance with section 147 cancels a nomination.

(8) if either-

- (a) a policy has been assigned to an insurer in consideration of a loan granted on the security of the policy and the value of the loan is less than the surrender value of the policy; or
- (b) an insurer has re-assigned a policy on repayment of a loan granted on security of the policy,

a nomination must not be cancelled but only affects the rights of the nominee to the extent of the Insurers interest in the policy.

(9) if the nominee survives or, if there is more than one nominee, one or more of the nominees survive the person whose life is insured, the money secured by the policy is payable to the survivor or survivors.

(10)if money secured by a policy becomes payable during the lifetime of the person whose life is insured, or if the nominee dies or, if there is more than one nominee, all the nominees die before that time, the money secured by the policy is payable to the owner or his estate, as the case may be.

Part IX-AMALGAMATIONS, TRANSFERS, SALES AND ACQUISITIONS

Interpretation

153. In this Part-

“controlling interest, in respect of an insurer, means an interest held by a person-

- (i) by whom more than 15% of the shares, or more than 15% of the nominal capital, or more than 15% of the paid up capital, or more than 15% of the voting power is held; or
- (ii) who has control of the insurer by any other means, including directorship.

“scheme means a scheme for the purposes of this Part.

Scheme to be established

154. An insurer incorporated in the Fiji Islands who is licensed under this Act or to whom this Act applies must not-

- (a) sell or otherwise transfer any part of its insurance business to another insurer;
- (b) buy or otherwise acquire any part of the insurance business of another insurer; or
- (c) amalgamate any part of its insurance business with the insurance business of any other insurer,

except under a scheme approved by the Reserve Bank under this Part.

(2) an insurer not incorporated in the Fiji Islands who is licensed under this Act, or to whom this Act applies, must not-

- (a) sell or otherwise transfer any part of its Fiji insurance business to another insurer;
- (b) buy or otherwise acquire any part of the Fiji insurance business of another insurer; or
- (c) amalgamate any part of its Fiji insurance business with the insurance business of any other insurer,

except under a scheme approved by the Reserve Bank under this Part.

(3) A person who has a controlling interest in an insurer incorporated in the Fiji Islands must not transfer the controlling interest through sale or otherwise to another person except under a scheme approved by the Reserve Bank under this Part.

(4) No person may acquire at any time a controlling interest in an insurer incorporated in the Fiji Islands except under a scheme approved by the Reserve Bank under this Part.

(5) A scheme must set out-

- (a) the terms of the agreement or deed under which the proposed transfer, amalgamation, acquisition or sale is to be carried out; and
- (b) particulars of any other arrangements necessary to give effect to the scheme.

(6) an insurer who contravenes subsection (1) or (2), and any person who contravenes subsection (4) or (5), commits an offence and is liable on conviction to a fine of \$250,000.

Application

155.—(1) an insurer or other person who is a party or proposed party to a deed or agreement by which the transfer, amalgamation, acquisition or sale provided for by the scheme is to be carried out must apply in writing to the Reserve Bank for approval of the scheme.

(2) an application under subsection (1) must be accompanied by a copy of each of the following documents-

- (a) the scheme;
- (b) any actuarial report and other reports on which the scheme is founded;
- (c) an audited balance sheet of each insurer involved in the scheme as at a date not more than 3 months before the date of the application;
- (d) the proposed balance sheet of each insurer involved in the scheme as at the date immediately after the scheme would become effective;
- (e) a report which addresses the likely effects of the scheme on insureds of each of the insurers involved;
- (f) a statement of proposals regarding reinsurance arrangements.

(3) Upon receipt of an application under subsection (1), the Reserve Bank may call for any other report, abstract or information, oral or written, which it considers necessary in order to make a decision on the scheme.

Actuarial report on scheme

156.—(1) when a copy of a scheme has been given to the Reserve Bank under section 155(2), the Reserve Bank may arrange for an independent actuary to make a written report on the scheme.

(2) the Reserve Bank must give a copy of a report made under subsection (1) to each insurer concerned with the scheme.

Approval of scheme

157.—(1) Upon an application for approval of a scheme under section 155, and after considering the documents provided under section 155(2) and any other information provided under section 155(3), the Reserve Bank may—

- (a) approve the scheme without modification;
- (b) approve the scheme subject to any modification or terms and conditions the Reserve Bank thinks appropriate; or
- (c) refuse to approve the scheme.

(2) if the Reserve Bank refuses to approve a scheme it must record the reasons for the decision and provide a copy of the reasons to the insurer or person who made the application.

(3) if a scheme has been approved by the Reserve Bank, the insurer or other person who made the application under section 155 must, within 30 days after the scheme takes effect—

- (a) lodge with the Reserve Bank certified copies of—
 - (i) the scheme;
 - (ii) any actuarial report, or other reports, on which the scheme is founded;
 - (iii) the agreement or deed under which the scheme is effectuated; and
 - (iv) a statement of the assets and liabilities as at the date immediately after the scheme has been effected of each registered insurer concerned with the scheme;
- (b) lodge with the Reserve Bank a declaration signed by every party concerned or, in the case of a sale of a company, by the chairman and principal officer of both the purchasing company and the selling company, that to the best of their belief every payment made to any person whatsoever on account of the amalgamation, transfer, acquisition or sale is fully set out in the scheme and that no other payments beyond those set out have been made or are to be made in any form by or with the knowledge of any parties to the amalgamation, transfer, acquisition or sale; and

- (c) cause notice of the scheme to be published in the *Gazette* and in a newspaper published and circulating in the Fiji Islands.

(4) the Reserve banks decision on an application under section 155(1) must be made within 30 days after receipt of the application or, if further documents and information are called for under section 155(3), within 30 days after receipt of those documents and information.

(5) if the Reserve Bank fails to make a decision on the approval of a scheme within the time specified in subsection (4), the scheme is deemed to have been approved by the Reserve Bank.

Part X-MISCELLANEOUS

Service of notices

158.—(1) any notice, direction or document issued under this Act, by the Reserve Bank or by a person appointed under section 73 or 82, may be served or given-

- (a) in the case of a person not licensed under this Act, by delivering it to that person or by sending it by registered post to the person at the usual or last known place of abode or business of the person; or
- (b) in the case of a person licensed under this Act, by delivering it to the person or by sending it by registered post to the person at the address given in the application for licensing as the address for service of notices, or an amended address of which the Reserve Bank has been notified in writing.

(2) For the purpose of subsection (1), any notice, direction or document sent by registered post will be deemed, unless the contrary is proved, to have been received at the time when the notice, direction or document would be delivered in the ordinary course of post.

Secrecy

159.—(1) No director, officer, or employee of the Reserve Bank, nor any person appointed under section 73 or 82 of this Act, may publish or disclose to any person any information, return or data relating to the affairs of any licensed person or other person which he has acquired in the performance of duties under this Act or which relates to the exercise or possible exercise of powers conferred by this Act, except-

- (a) for the purpose of the performance of duties or the exercise of functions under this Act;
- (b) when lawfully required to do so by any court, or in connection with any proceedings for an offence against this Act;
- (c) with the consent of the person to whom the information relates;
- (d) to the extent that the information is available under any Act or in a public document;
- (e) in aggregated or summary form, in a manner which prevents any information disclosed from being identified as relating to a particular person;
- (f) in confidence to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Reserve Bank under this Act.

(2) No person to whom any information is disclosed under subsection (1) may disclose or use the information except-

- (a) in accordance with any conditions specified by the Reserve Bank; or
- (b) as necessary or desirable in connection with the performance of any function under a written law.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of \$20,000.

No restriction on selection of insurer

160.—(1) notwithstanding the provisions of any other written law, each of the following-

- (a) a bank, as defined in the Banking Act;
- (b) a financial institution, as defined in the Banking Act;
- (c) a body corporate incorporated or empowered by an Act to lend money in accordance with the Act;
- (d) a moneylender, as defined in the Moneylenders Act;
- (e) any other person or class of person whose business includes the lending of money or the provision of credit, and who or which is specified by the Minister in the *Gazette*,

is prohibited from requiring, as a condition for making a loan, that the person applying for the loan must insure any risk with a particular insurer or class of insurer.

(2) A person specified in subsection (1) who contravenes that subsection commits an offence and is liable on conviction to a fine of \$10,000 and if the offence is a continuing one, to a further fine of \$1,000 a day for every day during which the offence continues.

(3) A policy of insurance issued in contravention of subsection (1) is not invalidated by reason only of that contravention.

Remittance of overseas payments

161.—(1) this section applies to any person who directly, or through any insurer, broker or agent, has placed any Fiji insurance or reinsurance business with an insurer or reinsurer carrying on insurance business outside the Fiji Islands and not licensed under this Act.

(2) Subject to subsection (3), a person to whom subsection (1) applies and to whom any payment is made by an insurer or reinsurer carrying on insurance business outside the Fiji Islands, whether the payment is in respect of a claim, a return of premium or otherwise, must immediately remit these payment to the Fiji Islands.

(3) the Reserve Bank may, on written application by a person referred to in subsection (1) and subject to such terms and conditions as the Reserve Bank thinks necessary, give written approval for the whole or part of any amount due and paid out by insurers or reinsurers carrying on insurance business outside the Fiji Islands to be remitted to the Fiji Islands at a later date or dealt with in some other manner.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$20,000 and, if the offence is a continuing one, to a further fine of \$2,000 for every day during which the offence continues.

Liability of directors and employees

162. A director of a body corporate, and any officer, employee or agent (whether of a body corporate or of an individual), who aids, abets, counsels or procures the commission of an offence against this Act by the body corporate or individual, as the case may be, commits an offence and is liable to the penalty provided for the commission of the original offence.

Registers to be kept by Reserve Bank

163.—(1) For the purposes of this Act, the Reserve Bank must keep and maintain the following registers-

- (a) a register of licensed insurers;
- (b) a register of licensed brokers; and
- (c) a register of licensed agents.

(2) Subject to this Act and to any regulations, the registers may be kept and maintained in a form and manner determined by the Reserve Bank.

Inspection of registers

164.—(1) the Reserve Bank must ensure that the registers maintained under section 163(1) are current and that they are available for inspection by any person during normal working hours.

(2) any person may, on payment of the prescribed fee, if any, inspect, copy or take extracts from any of the registers maintained under section 163(1).

Annual Report

165.—(1) the Reserve Bank must, on or before 30th June in each year, prepare and submit a report to the Minister on the working of this Act during the previous calendar year.

(2) Subject to subsection (3), the Reserve Bank may include in a report under subsection (1), in such manner as it determines, all accounts, balance sheets, statements, abstracts and other returns provided or purporting to be provided under this Act, and may include in the report any notes made on those account and other items by the Reserve Bank and any correspondence relating to them.

(3) the Reserve Bank must include in a report under subsection (1) the name and type of business of every person listed in each of the registers maintained under section 163(1).

(4) the Minister, on receiving a report under subsection (1), must cause the report to be laid before both Houses of the Parliament as soon as practicable.

Protection for official acts

166. No legal proceedings may be instituted in any court against the Reserve Bank, or any person appointed or authorized by the Reserve Bank, for anything done or omitted to be done, or intended to be done or omitted to be done, in good faith under this Act.

Appeals

167.—(1) Subject to subsection (2), a person aggrieved by a decision of the Reserve Bank under this Act may within one month of receiving notice of the decision appeal against it by petition in writing to the Minister.

(2) on receipt of an appeal under subsection (1) the Minister must give all interested parties an opportunity to make representations, and must then either confirm or reverse the decision appealed against, or substitute any decision which the Reserve Bank could have made under this Act.

(3) the decision of the Minister on an appeal under subsection (1) is final and conclusive except that a person aggrieved by a decision may, if it involves a question of law, within one month of receiving notice of the decision, appeal against it to the High Court.

General penalty and enforcement

168.—(1) an insurer who contravenes a section listed in Part A of the Schedule commits an offence and is liable on conviction to a fine of \$5,000.

(2) A person who contravenes a section listed in Part B of the Schedule is liable to a penalty not exceeding \$5,000 and if the contravention is a continuing one, to a further penalty not exceeding \$500 for every day during which the contravention continues.

(3) the penalty to be imposed under subsection (2) must be determined and levied by the Reserve Bank, after allowing the person liable to the penalty an opportunity to make representations in writing as to-

- (a) whether there has been a contravention; and
- (b) the penalty to be imposed.

(4) Section 167 (as to appeals to the Minister) applies to a decision of the Reserve Bank under this section.

(5) the Reserve Bank may recover any penalty imposed under subsection (2), and not cancelled on appeal under subsection (4), as a debt in a court of competent jurisdiction.

Regulations

169.—(1) the Reserve Bank may, with the written approval of the Minister, make regulations generally for the purpose of carrying out or giving effect to the provisions of this Act.

(2) Regulations under this section may prescribe penalties not exceeding \$2,000 for a contravention of the regulations, such penalties to be imposed and collected by the Reserve Bank under section 168(2) to (5).

How this Act affects existing insurers, agents and brokers

170.—(1) A person registered or licensed under the *Insurance Act 1976* immediately before the appointed date is deemed, for the purposes of this Act, to be licensed under this Act and, unless otherwise indicated, all provisions of this Act apply to such person from the appointed date.

(2) if, immediately before the appointed date, a person to whom subsection (1) refers was subject to a term or condition imposed on it by the Commissioner under section 15(1) or section 60(1) of the *Insurance Act 1976*, the term or condition has effect as if it were a condition imposed under section 25(1) or section 43(1) respectively of this Act.

(3) if, immediately before the appointed date, a person to whom subsection (1) refers was subject to a direction under section 7(1) of the *Insurance Act 1976*, the direction has effect as if it were a direction imposed under section 80(1) of this Act.

(4) if, immediately before the appointed date, an insurer was required to lodge an abstract, statement, account, report, return, document or other information under the *Insurance Act 1976* and the insurer had not satisfied the requirement before the appointed date, the *Insurance Act 1976* continues in force in relation to the obligation to satisfy the requirement and any failure to comply with the requirement.

(5) Section 18 applies to an existing insurer as if the insurer were licensed under this Act.

(6) Section 100 applies to an existing insurer as if the periods of time referred to in subsection (2)(a) and (b) of that section began on the day on which the insurer was registered under the *Insurance Act 1976*.

(7) Unless otherwise stated by the Reserve Bank, a certificate of registration issued under section 17(1) of the *Insurance Act 1976* to an insurer, or a licence issued under section 60(1) of that Act to an agent or broker, has the same status, and this Act has the same effect, as if

the certificate or licence had been issued under section 26(1) or section 43(1) respectively of this Act.

(8) Section 31 applies to insurers licensed under the *Insurance Act 1976* (in this section referred to as Existing insurers) immediately before the appointed date as follows-

- (a) subsections (1)(a) and (2)(a) do not apply to existing insurers; and
- (b) subsection (2) applies progressively to existing insurers as follows-
 - (i) paragraphs (b)(i) and (c)(i) apply to the extent of \$500,000 from the appointed date, \$750,000 from 1st January following the appointed date and to the full extent of \$1,000,000 from 1st January in the second calendar year after the appointed date;
 - (ii) paragraphs (b)(ii) and (c)(ii) apply to the extent of 15% from the appointed date, 17.5% from the 1st January following the appointed date and to the full extent of 20% from the 1st January in the second calendar year after the appointed date; and
 - (iii) the requirements of paragraph (b)(iii) and (c)(iii) apply to the extent of 5% from the appointed date, 10% from 1st January following the appointed date and to the full extent of 15% from 1st January in the second calendar year after the appointed date.

Repeal

171. The Insurance Act 1976 is repealed.

SCHEDULE
(Section 168)

Part A

Sections a contravention of which is an offence

Section 11
Section 116
Section 23
Section 88
Section 114
Section 115
Section 116
Section 118
Section 119
Section 120
Section 121
Section 128

Part B

Sections a contravention of which results in a penalty

Section 7
Section 8
Section 12
Section 19
Section 20
Section 30
Section 37

Section 40
Section 43(3)
Section 48(1)
Section 50
Section 51
Section 52
Section 53
Section 55
Section 56
Section 57
Section 59
Section 60(6)
Section 61
Section 62
Section 64
Section 66(4)
Section 69
Section 70
Section 86
Section 91(2)
Section 100(8)
Section 101(3)
Section 107(2)
Section 111
Section 112
Section 113
Section 117
Section 127
Section 144
Section 145

Passed by the House of Representatives this 14th day of August, 1998.

Passed by the Senate this 3rd day of September, 1998.