



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$3.68

WINDHOEK - 18 June 1998

No. 1888

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Government Notices

MINISTRY OF FINANCE

No. 144

1998

COMMENCEMENT OF THE LONG-TERM INSURANCE ACT, 1998

Under the powers vested in me by section 75 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998), I hereby determine that the provisions of that Act shall come into operation on 1 July 1998.

NANGOLO MBUMBA
MINISTER OF FINANCE

Windhoek, 5 June 1998

MINISTRY OF FINANCE

No. 145

1998

LONG-TERM INSURANCE REGULATIONS

The Minister of Finance has under section 72 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998), made the regulations set out in the Schedule.

SCHEDULE***Definitions***

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it and, unless the context otherwise indicates -

“aggregate liabilities”, in relation to a registered insurer and reinsurer, means the aggregate of -

- (a) the net liabilities in respect of which the registered insurer or reinsurer is required to hold assets in Namibia in terms of section 27 of the Act; and
- (b) the amount of the liabilities which, by virtue of the registered insurer's or reinsurer's shareholding in investment subsidiaries, is deemed to be the liabilities of the registered insurer or reinsurer in terms of regulation 15(3)(a)(ii);

“any other stock exchange within the common monetary area” means any stock exchange authorized by or under the laws of a country of the common monetary area to function as or carry on the business of a stock exchange in that country;

“associate”, in relation to a registered insurer and reinsurer, includes -

- (a) a person who controls such insurer or reinsurer;
- (b) a person who controls the person referred to in paragraph (a);
- (c) a subsidiary of such insurer or reinsurer or of a person referred to in paragraph (a) or (b);
- (d) a director, the chief executive officer, other executive officers or the secretary of such insurer or reinsurer or of a person referred to in paragraph (a) or (b) or of a subsidiary referred to in paragraph (c);
- (e) a partner of such insurer or reinsurer or of a person referred to in paragraph (a) or (b); or
- (f) the spouse or minor child of any of the natural persons referred to in paragraphs (a) to (e),

but does not include an investment subsidiary or a property company;

“associated company” means a company associated in any manner set out in the definition of “associate”, but does not include an investment subsidiary or a property company;

“banking institution” means a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act No. 23 of 1965);

“building society” means a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act No. 2 of 1986);

“common monetary area” means the Kingdom of Lesotho, the Kingdom of Swaziland and the Republic of South Africa;

“deposit” means any amount or security deposited with the Treasury in terms of the Act;

“depositor” means a registered insurer, reinsurer, insurance broker or reinsurance broker, as the case may be, which or who has made a deposit;

“investment subsidiary”, in relation to a registered insurer and reinsurer, means a company -

- (a) which by virtue of shareholding, voting power, power to appoint directors, or otherwise, is controlled by the registered insurer or reinsurer concerned;
- (b) which is used by the registered insurer or reinsurer concerned for the purposes of holding investments; and
- (c) whose shares are not listed on the Namibian Stock Exchange or any other stock exchange within the common monetary area;

“linked business” means any business of assuming obligations under a contract under which no investment guarantees are given by a registered insurer or reinsurer, either explicitly or implicitly, and in respect of which investment benefits are determined solely by reference to the value of specific assets to which the contract is linked and which assets are actually held by the registered insurer or reinsurer or, with the approval of the Registrar, by a person on behalf of the registered insurer or reinsurer under section 30(1) of the Act;

“local authority” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“long-term insurance business” means long-term insurance business as defined in section 1(1) of the Act, but does not include linked business;

“market value”, in relation to -

- (a) the value of every quoted asset, means the price at which it was quoted on the Namibian Stock Exchange or any other stock exchange within the common monetary area within a period of three months immediately preceding the date to which the statement relates, which value shall be shown in the statement at an amount not exceeding the value determined according to the price last

so quoted: Provided that if such quotation relates to a date other than the date to which the statement of assets relates, the said amount shall be properly adjusted in the case of -

- (i) any interest-bearing asset, by the difference between the amount of the interest which had accrued from the last date on which interest was payable up to the date of the quotation in question and the corresponding amount of interest accrued up to the date to which the statement relates; and
 - (ii) any share on which dividends have been declared, by the difference between the amount of any dividend which had been declared but not paid on the date of the quotation in question and the amount of any dividend which had been declared but not paid on the date to which the statement relates;
- (b) assets to which the provisions of paragraph (a)(i) do not apply, means the value determined in accordance with section 29 of the Act;

“Namibian Stock Exchange” means the Namibian Stock Exchange licensed under the Stock Exchange Control Act, 1985 (Act No. 1 of 1985);

“Post Office Savings Bank” means the Post Office Savings Bank controlled and managed by the Namibia Post Limited in terms of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992);

“property company” means a company -

- (a) of which 50 per cent or more of the market value of its assets consists of immovable property, irrespective of whether such property is held directly by the company as registered owner or indirectly by way of ownership of the shares of the company which is the registered owner of the property or which exercises control over the company which is the registered owner of the property; or
- (b) of which 50 per cent or more of its income is derived from investments in immovable property, or from an investment in a company 50 per cent or more of the income of which is derived from investments in immovable property;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“spouse” includes a party to a customary union;

“the Act” means the Long-term Insurance Act, 1998 (Act No. 5 of 1998).

Deposits

2. (1) Where a depositor has in terms of the Act deposited with the Treasury -

- (a) any amount -
 - (i) interest at a rate fixed from time to time by the Minister shall accrue to the amount so deposited; and
 - (ii) the accrued interest shall be paid to the depositor concerned by the Treasury within seven days from the last day of each successive period of six months, reckoned from the date on which the amount was deposited;
- (b) any security approved by the Registrar, the depositor shall be entitled to continue to receive any income deriving therefrom.

(2) A depositor -

- (a) may at any time with the approval of the Registrar -
 - (i) but subject to the provisions of paragraph (a)(ii) of subregulation (1), withdraw so much of a deposit contemplated in the said subregulation as exceeds the amount or value of the deposit which the depositor is required to make in terms of a provision of the Act;
 - (ii) substitute for any such deposit, or any part thereof, any other deposit of equal value;
- (b) shall, if at any time so requested in writing by the Registrar, to the extent that the amount or value of the depositor's deposit falls short of that required in terms of the Act, make a further deposit with the Treasury to remedy the shortfall within such period as may be determined by the Registrar.

(3) If the registration of a depositor is cancelled in terms of the Act, the Registrar may appropriate or cause to be appropriated so much of any deposit made by the depositor concerned as may be required to meet that depositor's liabilities under policies or policies relating to a particular class of long-term insurance business issued by that depositor and, if the Registrar is satisfied that those liabilities have been met, he or she shall grant written approval for any balance of such deposit remaining to be returned to that depositor by the Treasury.

(4) Upon an order being made by the High Court for the winding-up of a registered insurer or reinsurer, any amount or security deposited with the Treasury by the registered insurer or reinsurer shall be made available to the liquidator appointed in terms of subsection (2)(a) of section 40 of the Act for distribution in accordance with subsection (6) of that section.

(5) At the request of a depositor, the Treasury shall once in any financial year of the depositor, furnish the depositor with a certificate in a form determined by the Treasury in confirmation of the deposit made by the depositor with the Treasury, and of its value.

Payment of premiums received**3. (1) Where -**

- (a) money is received by an insurance agent or an insurance broker or a reinsurance broker from or on behalf of a person insured or to be insured, or from another insurance agent or insurance broker or reinsurance broker on behalf of a person insured or to be insured, as a premium payable under a policy or proposed policy;
- (b) the risk, or a part of the risk, to which the policy or proposed policy relates is accepted by a registered insurer or reinsurer; and
- (c) the insurance agent or insurance broker or reinsurance broker who so received the money is informed by the registered insurer or reinsurer of, or otherwise ascertains, the amount of the premium to be paid,

the insurance agent or insurance broker or reinsurance broker who so received the money shall, in accordance with the provisions of subregulation (2), pay to the registered insurer or reinsurer by whom the risk, or a part of the risk, to which the policy or proposed policy relates, is accepted, an amount equal to so much of the money as does not exceed the amount of the premium to be paid, less any commission due to the insurance agent or insurance broker or reinsurance broker by the registered insurer or reinsurer in respect of such premium.

(2) For the purposes of subregulation (1), every insurance agent, insurance broker and reinsurance broker shall -

- (a) close off his or her records of all premium receipts not later than the last day of the month during which the due date of such premiums occurred;
- (b) pay the amount contemplated in subregulation (1) to the registered insurer or reinsurer concerned within 15 days after closing the records referred to in paragraph (a); and
- (c) simultaneously furnish that registered insurer or reinsurer with a statement containing detailed particulars of a payment made in terms of paragraph (b).

(3) Payment of a premium by a policyholder under a policy to an insurance agent or an insurance broker or a reinsurance broker shall be deemed to be specific performance under the policy.

Report of non-payment

4. If an insurance agent or an insurance broker or a reinsurance broker fails to make a payment as required in terms of regulation 3, the registered insurer or reinsurer concerned shall, within 30 days from the date on which payment was required to be made, notify the Registrar in writing of such failure.

Prohibition of differentiation, inducements and assumption of obligations

5. (1) No registered insurer or reinsurer shall make or permit any differentiation as between one life policy and another in regard to their terms and conditions unless and then only to the extent that the valuator of the registered insurer or reinsurer has satisfied himself or herself that such differentiation is justified on actuarial grounds.

(2) No person shall, directly or indirectly, pay, allow or give, or offer to pay, allow or give to any other person any valuable consideration as an inducement to that other person to take out any domestic policy, and no person shall knowingly receive or offer to receive as such an inducement any such valuable consideration.

(3) No registered insurer or reinsurer shall assume an obligation under a domestic policy unless and until it has received at least one-twelfth of the first year's premium in respect thereof or has satisfied itself that such part of such premium will be paid by stop order, debit order, credit card, or other instruments approved by the Registrar, not later than 30 days after the assumption by it of such obligation.

Insurance tables

6. No registered insurer or reinsurer shall make use of any table or statement of the rates of premium which it ordinarily charges and of the benefits which it ordinarily undertakes to grant in respect of domestic policies unless the actuarial soundness of such table or statement has been examined and attested by the valuator of the registered insurer or reinsurer in terms of section 24(3)(a) of the Act.

Maximum sum insurable on life of a minor under fourteen years of age

7. No person shall effect and no registered insurer or reinsurer shall issue any policy on the life of a minor who is under the age of fourteen years which provides for the payment of a certain sum of money which exceeds, or which when added to any amount which to the knowledge of such person or insurer or reinsurer is payable upon the death of that minor under any other policy exceeds, the sum of -

- (a) an amount equal to the aggregate of all premiums paid in respect of such policy plus interest on each pre-mium at a rate not exceeding ten per cent per annum, compounded annually; and
- (b) an amount, upon the death of that minor -
 - (i) before he or she attains the age of six years, of N\$10 000; or
 - (ii) on or after he or she attains the age of six years, but before he or she attains the age of fourteen years, of N\$30 000,plus the amount of any bonuses accrued to any such amount.

Payment of monetary benefits under funeral policies

8. (1) Every funeral policy -

- (a) shall provide that the owner thereof shall, at his or her option, be entitled to the payment of a sum of money instead of the provision of a funeral or the granting of any other non-monetary benefit under such policy;
- (b) may provide that the registered insurer or reinsurer liable under such policy shall likewise have the option to pay such sum of money instead of providing for any such funeral or other non-monetary benefit,

and such option and the sum of money to which it relates shall be stated expressly and clearly in such policy and in every premium receipt book issued in connection therewith, in printed or typed letters not smaller than, and as legible as, the letters of the main provisions thereof.

(2) The sum of money to which an option referred to in subregulation (1) relates shall be not less than the amount specified in the funeral policy to be the monetary limit upon the value of any claim that may be brought in respect of the provision of a funeral or the granting of any other non-monetary benefit under such policy.

Proof of age and procedure when accepted age found incorrect

9. (1) It shall, in respect of a life policy and a funeral policy, be the duty of the policyholder to provide and of the registered insurer or reinsurer to obtain, before the expiry of three years from the date on which any such policy was effected, reasonable proof by documentary evidence, medical examination or otherwise of the age or date of birth of the person whose life is insured under any such policy or upon whose death a funeral, any other non-monetary benefit or a sum of money is to be provided under any such policy, and the age or date of birth of that person so provided and obtained shall, subject to the provisions of subregulation (2), be accepted as the correct age or date of birth of that person.

(2) If on the date on which a claim is brought under any policy referred to in subregulation (1) the provisions of the said subregulation have not been complied with, any written statement made in the proposal or application for the policy in question as to the age or date of birth of the person whose life is insured under such policy shall be accepted as the correct age of that person for the purposes of the claim.

(3) If -

- (a) after the issue of any policy referred to in subregulation (1); or
- (b) before the payment of a claim referred to in subregulation (2),

and contrary to what has been accepted as the correct age or date of birth of the person whose life is insured under the policy in question, it is proved that the accepted age or date of birth of that person, upon which such policy is based, is incorrect, the sum insured and other benefits under such policy shall -

- (i) in the case of a life policy, be the same as those which the premiums

payable under such policy would have secured had such policy been based upon the correct age of that person; or

- (ii) in the case of a funeral policy, not be altered but the premiums payable under such policy shall be the same as those which would have been payable had such policy been based upon the correct age of that person and the registered insurer or reinsurer shall -

- (aa) be entitled to recover from the policyholder any amount by which premiums have by reason of such incorrect age been underpaid; or

- (bb) refund to the policyholder any amount by which premiums have by reason of such incorrect age been overpaid:

Provided that if the Registrar is satisfied that the actuarial nature of any particular policy or kind of policy is such as to render the application of the foregoing provisions of this subregulation inequitable, he or she may direct the registered insurer or reinsurer to apply, in respect of such policy or kind of policy, such other method of adjustment as he or she may deem equitable.

Lost Policies

10. (1) When a domestic policy which constitutes any long-term policy has been lost or destroyed and the loss or destruction has been proved and a notice of the alleged loss or destruction has been published in terms of subregulations (2), (3) and (4), the registered insurer or reinsurer liable under the lost or destroyed policy shall, at the request of the owner of such policy and upon payment by him or her to the registered insurer or reinsurer of the fees prescribed in subregulation (5), issue upon the expiry of a period of at least 30 days, reckoned from the date of publication of such last notice, to that owner a correct and certified copy of such policy (including any endorsement made on the original policy after its issue) and of any record in the possession of the registered insurer or reinsurer of any dealings with such policy, and such certified copy shall thereafter for all purposes take the place of the policy so lost or destroyed and be the sole evidence of the contract made in terms of such policy.

(2) For the purposes of subregulation (1), the owner of a lost or destroyed policy shall submit to the registered insurer or reinsurer liable under such policy -

- (a) an affidavit in which he or she deposes -
 - (i) that he or she is the owner of such policy; and
 - (ii) either -
 - (aa) that he or she has made or caused to be made proper search for such policy and is unable to find it; or
 - (bb) that to the best of his or her knowledge and belief such policy has been lost or destroyed in circumstances stated in the affidavit; and

- (b) such other proof of the loss or destruction of such policy as the registered insurer or reinsurer may require.

(3) A notice of the alleged loss or destruction of a policy, which is in the form prescribed in subregulation (4), shall be published by the registered insurer or reinsurer once in the *Gazette* and at least once in each of two newspapers, or, if the registered insurer or reinsurer so prefers, twice at an interval of not less than three weeks in one newspaper, nominated by the registered insurer or reinsurer and circulating in Namibia.

(4) A notice referred to in subregulation (3) shall be substantially in the form as set out below:

Name and address of registered insurer/reinsurer*
 =Person whose life is insured
 Owner of policy
 Policy number Date of policy
 Sum insured

Notice is hereby given that proof of the loss or destruction of the above-mentioned policy has been submitted to the registered insurer/ reinsurer*. Any person in possession of this policy, or claiming to have any interest therein should communicate immediately by registered post with the registered insurer/reinsurer*, failing which a certified copy of the policy (which will be the sole evidence of that contract) will be issued to the owner.

*Delete whichever is inapplicable.

=To be omitted in the case of a policy other than a life policy.

(5) The fees payable in terms of subregulation (1) shall be the total amount of -

- (a) such amount as the registered insurer or reinsurer may determine that does not exceed N\$50; and
- (b) the actual expenses incurred by the registered insurer or reinsurer in providing the owner with a certified copy of the policy in question, including any stamp duty payable in respect thereof.

Days of grace, paid-up policies and non-forfeiture rules: life policies

11. (1) If a premium has not been paid on its due date in respect of a life policy under which there are to be two or more premium payments, the registered insurer or reinsurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties thereto, without charge maintain the policy in force for the full sum insured for a period of 30 days from the due date of the unpaid premium and, if that premium is not paid within that period -

- (a) in the case of a life policy the value of which, as at that due date, is equal to or less than half of the total amount of the premium payments due under the policy in the period of 12 months commencing on that

due date, the registered insurer or reinsurer shall maintain the policy in force by the application, in accordance with the rules made by such insurer or reinsurer in terms of subregulation (4), of the non-forfeiture value of the policy until the policy no longer has any such value remaining whereupon, unless payment of premiums has been resumed, the policy shall lapse; or

- (b) in the case of a life policy the value of which, as at that due date, is more than half of the total amount of the premium payments due under the policy in the period of 12 months commencing on that due date, the registered insurer or reinsurer shall within 14 days after the expiry of the said period of 30 days, by written notice sent to the policyholder at his or her last known address or place of work, notify him or her -
 - (i) of the amount of that value; and
 - (ii) that the policy is to be so dealt with that it will be maintained in force by the application, in accordance with the rules made by such insurer or reinsurer in terms of subregulation (4), of the non-forfeiture value of the policy until -
 - (aa) the policy no longer has any such value re-maining whereupon, unless payment of pre-miums has been resumed, the policy shall lapse; or
 - (bb) if the policyholder so requests, the terms of the policy are altered, in accordance with the rules of the registered insurer or reinsurer, so that it becomes a policy which is fully paid-up; or
 - (cc) if the policyholder so requests, the policy is surrendered in accordance with the rules of the registered insurer or reinsurer,

and the registered insurer or reinsurer shall then deal with the policy accordingly:

Provided that if, within six months after the policy was dealt with in accordance with the provisions of paragraph (b), the policyholder notifies the Registrar in writing that he or she has not received such notice, and if the Registrar is not satisfied that the policyholder has been duly notified, the Registrar may require the registered insurer or reinsurer, upon payment within a period determined by the Registrar of the overdue premium and of any other premiums that would by then have been payable but have not been paid, to revive the policy without any alteration to its terms.

(2) If a claim under a life policy arises during any period of grace referred to in subregulation (1), the registered insurer or reinsurer shall be entitled to deduct the value of any unpaid premium from the sum payable in terms of that claim.

(3) Notwithstanding the provisions of subregulation (1), a registered insurer or reinsurer -

- (a) may grant to a policyholder more favourable terms than those contemplated in the said subregulation;
- (b) shall be entitled to receive interest, in accordance with the rules made by such insurer or reinsurer in terms of subregulation (4), on any such overdue or unpaid premium.

(4) Every registered insurer and reinsurer shall make rules which its valuator is satisfied provide a sound basis on which and the methods by which a long-term insurance policy is to be valued and otherwise be dealt with for the purposes of subregulation (1).

Days of grace: funeral policies

12. (1) If a premium under a funeral policy has not been paid on its due date, the registered insurer or reinsurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties thereto, without charge maintain the policy in force for the full value of the benefits thereunder for a period of 30 days from the due date of the unpaid premium and -

- (a) if the overdue premium is paid within that period, the policy shall be renewed by the registered insurer or reinsurer and continue in force;
- (b) if the premium is not paid within that period, the registered insurer or reinsurer shall notify the policyholder in writing that the premium is overdue and that the policy is due to lapse upon the expiry of such period -
 - (i) determined by the registered insurer or reinsurer in terms of subregulation (2); and
 - (ii) specified in the notice sent to the policyholder at his or her last known address or place of work at least 14 days before the expiry of that specified period,

and if, on or before the last day of that specified period, the overdue premium and every other premium that falls due during the period so specified -

- (aa) have been paid, the policy shall be renewed by the registered insurer or reinsurer and continue in force;
- (bb) have not been paid, the policy shall then lapse.

(2) The period referred to in paragraph (b) of subregulation (1) shall be determined in accordance with rules made by the registered insurer or reinsurer concerned, and made known to the policyholder not later than the date of issue of the funeral policy, but shall be not less than a number of months equal to the number of complete years for which premiums have been paid before the due date of the unpaid premium.

(3) If a claim under a funeral policy arises during any period of grace referred to in subregulation (1), the registered insurer or reinsurer shall be entitled to deduct the value of any unpaid premium from the value of any benefit payable or to be provided in terms of that claim.

(4) Notwithstanding the provisions of subregulation (1), a registered insurer or reinsurer -

- (a) may grant to a policyholder more favourable terms than those contemplated in the said subregulation;
- (b) may not after the date contemplated in paragraph (b) of the said subregulation grant to a policyholder, in respect of a funeral policy effected before such date, terms which are less favourable than those which were applicable to the discontinued policy on such date;
- (c) shall be entitled to receive interest, in accordance with the rules made by such insurer or reinsurer in terms of subregulation(2), on any such overdue or unpaid premium.

Limitation of remuneration

13. (1) No consideration shall in respect of long-term insurance business, directly or indirectly, be paid, allowed or given to, or accepted by or on behalf of, an insurance agent or an insurance broker or a reinsurance broker or any other person as remuneration for rendering services as an intermediary towards effecting, maintaining or servicing any long-term policy otherwise than by way of commission in monetary form.

(2) The commission payable in respect of a long-term policy shall, regardless of the number of intermediaries involved, in total not exceed the maximum rate of commission specified in Annexure A.

(3) No commission shall be paid, allowed, given or accepted in respect of a long-term policy before the date on which the premium in respect of which it is payable is paid to the registered insurer or reinsurer concerned: Provided that in respect of such policy commission relating to any particular policy year may at the commencement of that year be paid, allowed, given or accepted in advance of receipt of any premium for that year, provided -

- (a) for the purposes of calculating the amount of the advance commission, it shall be assumed that the premium becomes due with the same frequency as the commission; and
- (b) if any such premium remains partially or wholly un-paid, the registered insurer or reinsurer shall reverse the commission relating to at least the unpaid part or the whole, as the case may be, of such premium.

(4) If a premium or any part thereof is for any reason refunded by a registered insurer or reinsurer, the commission paid, allowed or given in respect of

that premium or part of that premium, if any, shall be refunded to the registered insurer or reinsurer by the person to whom it was paid, allowed or given.

Fees

14. (1) The fees payable in terms of sections 14(3)(b)(ii), 15(2)(b)(ii), 18(3)(b)(ii), 55(2)(b)(ii) and 64 of the Act are as set out in the second column of Annexure B opposite the type of transaction set out in the first column of that Annexure.

(2) No fees shall be payable by a Government office, ministry or agency.

Limits of investment

15. (1) The value of the assets which every registered insurer and reinsurer is, subject to the provisions of subregulation (2), required to hold in Namibia in respect of its long-term insurance business in terms of section 27 of the Act, shall, in respect of the kinds or categories of assets set out in the first column of Annexure C, not exceed the percentage set out opposite each such kind or category of asset in the second column of that Annexure, which percentage expresses a percentage of the aggregate liabilities of the long-term insurance business of the registered insurer or reinsurer: Provided that -

- (a) assets of the kinds or categories referred to in items 5 to 10, inclusive, in the first column of that Annexure held in respect of long-term insurance business shall not exceed 95 per cent of the aggregate liabilities of the long-term insurance business of the registered insurer or reinsurer; and
- (b) assets of the kinds or categories referred to in items 5 and 6 in the first column of that Annexure held in respect of long-term insurance business shall not exceed 90 per cent of the aggregate liabilities of the long-term insurance business of the registered insurer or reinsurer.

(2) The assets which every registered insurer and reinsurer is required to hold in terms of subregulation (1) shall, but without any limitation per kind of asset, include -

- (a) assets of the kinds referred to in items 1 and 8 of Schedule 1 to the Act; and
 - (b) assets of the kinds referred to in items 2 to 6, inclusive, of Schedule 1 to the Act: Provided that the limitations per institutions set out in items 2 and 3 of Annexure C to these regulations shall apply there-to.
- (3) For the purposes of -
- (a) subregulation (1) -
 - (i) assets of the kinds referred to in Schedule 1 to the Act (excluding amounts due by a registered insurer or reinsurer

to an investment subsidiary) of an investment subsidiary shall to the following extent be deemed to be assets of such insurer or reinsurer in lieu of such insurer's or reinsurer's shares in and net loans to the investment subsidiary:

- (aa) That part of each asset of the investment subsidiary which is included as an asset of such insurer or reinsurer in lieu of such insurer's or reinsurer's net loans to the investment subsidiary, calculated as follows:

$$\frac{\text{market value of each asset of investment subsidiary}}{\text{market value of total assets of investment subsidiary}} \times \text{insurer's or reinsurer's net loans to investment subsidiary};$$

- (bb) that part of each asset of the investment subsidiary which is included as an asset of such insurer or reinsurer in lieu of such insurer's or reinsurer's non-equity interest in the investment subsidiary, calculated as follows:

$$\frac{\text{market value of each asset of investment}}{\text{market value of total assets of investment subsidiary}} \times \text{insurer's or reinsurer's non-equity interest in investment subsidiary};$$

- (cc) the remaining part of each asset of the investment subsidiary after the deduction of the parts referred to in items (aa) and (bb), shall be included as an asset of such insurer or reinsurer in lieu of such insurer's or reinsurer's equity shares in the investment subsidiary, calculated as follows:

$$\frac{\text{market value of remaining part of each asset of investment subsidiary after the deduction of the parts in terms of items (aa) and (bb)}}{\text{total equity shares in investment subsidiary}} \times \text{insurers or reinsurer's equity shares in investment subsidiary}$$

- (ii) the liabilities of an investment subsidiary (excluding its liabilities towards such insurer or reinsurer), as well as the non-equity interest in an investment subsidiary (excluding such insurer's or reinsurer's share thereof), shall be deemed to be the liabilities of such insurer or reinsurer and shall be included as liabilities of such insurer or reinsurer, calculated as follows:

<i>liabilities of investment subsidiary (excluding towards insurer or reinsurer)</i>	<i>x</i>	<i>insurers or reinsurer's equity shares in investment subsidiary</i>
<i>plus non-equity interest in investment subsidiary (excluding insure's and reinsurer's share thereof)</i>		<i>total equity shares in investment subsidiary;</i>

(b) paragraph (a) of this subregulation -

“each asset”, in relation to an investment subsidiary, means an asset of the investment subsidiary of the kinds referred to in Schedule 1 to the Act, excluding an amount due by a registered insurer or reinsurer to an investment subsidiary;

“equity shares”, in relation to an investment subsidiary, means the issued shares of the investment subsidiary, but not shares which, concerning neither dividends nor capital, grant a right to participate in excess of a determined amount in a distribution;

“net loans”, in relation to an investment subsidiary, means all loans by a registered insurer or reinsurer to the investment subsidiary less all loans by the investment subsidiary to the registered insurer or reinsurer;

“non-equity interest”, in relation to an investment subsidiary, means the issued shares of the investment subsidiary (excluding equity shares) plus the value to be apportioned thereto by virtue of the excess or shortfall of assets over liabilities;

“total assets”, in relation to an investment subsidiary, means all assets of the investment subsidiary of the kinds referred to in Schedule 1 to the Act, excluding amounts due by a registered insurer or reinsurer to the investment subsidiary.

(4) Notwithstanding the provisions of subregulation (1), no registered insurer or reinsurer shall in respect of its long-term insurance business invest more than 65 per cent of its total assets outside Namibia: Provided that assets consisting of shares in a company incorporated outside Namibia shall, if such shares have -

- (a) been designated by the Minister by notice in the *Gazette* for the purposes of this subregulation; and
- (b) been acquired on the Namibian Stock Exchange,

be regarded as assets invested in Namibia.

(5) Every registered insurer and reinsurer shall annually, within six months after the end of its financial year, submit to the Registrar in such form as may be determined by the Registrar, a statement containing such particulars as the Registrar may require to determine whether the registered insurer or reinsurer is complying with the provisions of subregulation (1).

(6) The Registrar may on prior written application by a registered insurer or reinsurer in writing exempt the registered insurer or reinsurer from any of the provisions of this regulation subject to such conditions as he or she may determine.

General offences and penalties

16. Any -

- (a) person who contravenes or fails to comply with a provision of regulation 5(2), 7 or 13; or
- (b) registered insurer or reinsurer which contravenes or fails to comply with a provision of regulation 5, 6, 7 or 15(1) or (2); or
- (c) insurance agent or insurance broker or reinsurance broker who contravenes or fails to comply with a provision of regulation 3(1) or (2),

shall be guilty of an offence and on conviction be liable -

- (i) in the case of a contravention of or failure to comply with a provision of regulation 3(1) or (2), 5, 6, 7 or 13, to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; and
- (ii) in the case of a contravention of or failure to comply with a provision of regulation 15(1) or (2), to a fine not exceeding N\$150 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

Penalty for failure to submit certain documents or to furnish certain information

17. (1) A registered insurer or reinsurer which fails -

- (a) to submit to the Registrar any statement, report, return or other document; or
- (b) to notify the Registrar of any non-payment or other particulars,

in accordance with a requirement of these regulations within the period determined by or under these regulations or, if that period has been extended by the Registrar under section 7 of the Act, within the extended period, shall be liable to a fine of N\$1 000 for each day during which such failure continues.

(2) Any amount of penalty payable in terms of subregulation (1) shall constitute a debt due to the State by the registered insurer or reinsurer concerned and may be recovered by the Registrar by means of proceedings instituted in any competent court.

(3) Notwithstanding the provisions of subregulations (1) and (2), the Registrar may waive the payment of or refund the whole or any part of a fine payable

in terms of subregulation (1) if the Registrar is satisfied that the failure of the registered insurer or reinsurer concerned to comply with a requirement contemplated in subregulation (1) was not due to wilful conduct or the want of reasonable care on the part of that registered insurer or reinsurer.

Penalty for failure to comply with certain financial requirements

18. (1) A depositor which or who fails to comply with a provision of regulation 2(2)(b) shall be liable to an immediate fine of one per cent of the amount of the shortfall referred to in that regulation and in addition thereto to a fine of one per cent of the amount of that shortfall for each month or part of a month, reckoned from the end of the period referred to in that regulation until the date on which the shortfall has been remedied, during which the shortfall continues to exist.

(2) Any amount of penalty payable in terms of subregulation (1) shall constitute a debt due to the State by the depositor concerned and may be recovered by the Registrar by means of proceedings instituted in any competent court.

(3) Notwithstanding the provisions of subregulations (1) and (2), the Registrar may waive the payment of or refund the whole or any part of a fine payable in terms of subregulation (1) if the Registrar is satisfied that it will be in the interests of policyholders to do so.

Repeal of regulations

19. The regulations published under Government Notices Nos. R.1285 of 27 August 1965, R.252 of 23 February 1968, R.2036 of 2 November 1973, R.2489 of 28 December 1973, R.1442 of 20 August 1976, R.333 of 1 March 1977, R.838 of 20 May 1977, R.1249 of 8 July 1977, R.2274 of 4 November 1977, R.947 of 12 May 1978, R.1631 of 11 August 1978, R.120 of 26 January 1979, R.353 of 20 February 1981, R.396 of 27 February 1981, R.905 of 24 April 1981, R.2046 of 2 October 1981, R.446 of 4 March 1983, R.2145 of 28 September 1984, R.81 of 18 January 1985, R.2117 of 20 September 1985, R.2324 of 18 October 1985, R.431 of 14 March 1986, R.949 of 16 May 1986, R.2584 of 12 December 1986, R.2628 of 12 December 1986, R.2288 of 16 October 1987, R.2501 of 9 December 1988, R.1345 of 30 June 1989, R.1447 of 7 July 1989, R.1922 of 1 September 1989 and 59 of 24 March 1995 are hereby repealed in so far as they are unrepealed.

Short title

20. These regulations shall be called the Long-term Insurance Regulations, 1998.

ANNEXURE A

**LIMITATION OF REMUNERATION
(regulation 13)**

The maximum rate of commission is as set out below:

1. Individual life insurance business**(1) Regular premium policies:****(a) Retirement annuity policies:**

First year's commission of 3 per cent $X n X P$, subject to a maximum of 75 per cent of P .

(b) All other policies:

(i) For each separately identifiable constituent of the policy, the first year's commission of 3 per cent $X n X P$, subject to a maximum of 85 per cent of P : Provided that payment of any part of such commission may be made conditional upon payment of the premium of any later year and that in such event the said part may be increased by not more than 15 per cent per annum, compounded annually until payment of the said part.

(ii) Renewal commission, payable after the first year of the policy, of which the aggregate value, discounted at 15 per cent per annum to the commencement of the second year, does not exceed $33\frac{1}{3}$ per cent of the first year's commission as determined in accordance with sub-item (1)(b)(i), but excluding the proviso thereto.

(2) Single premium policies:**(a) Immediate annuity policies:**

(i) No commission in the case of tied annuities under retirement annuity policies or under schemes.

(ii) One-half per cent of the consideration in the case of compulsory purchases under un-tied retirement annuity policies or under schemes providing for untied annuities.

(iii) One and a half per cent of the consideration in all cases not mentioned in sub-item (2)(a)(i) and (ii).

(b) Term insurance policies:

Seven and a half per cent of the single premium payable under the policy in question.

(c) All other single premium policies:

Two and a half per cent of the single premium payable under the policy in question.

2. Pension funds, provident funds, group schemes and health insurance business

- (1) In any one scheme year, in respect of any one scheme, m/12 of the aggregate commission, calculated as follows:
 - (a) For the first N\$68 000 of the annualized contributions, seven and a half per cent of such contributions;
 - (b) for that part of the annualized contributions in excess of N\$68 000, but not exceeding N\$115 000, five per cent of such contribution;
 - (c) for that part of the annualized contributions in excess of N\$115 000, but not exceeding N\$250 000, three per cent of such contributions;
 - (d) for that part of the annualized contributions in excess of N\$250 000, but not exceeding N\$770 000, two per cent of such contributions;
 - (e) for that part of the annualized contributions in excess of N\$770 000, one per cent of such contributions.
- (2) In respect of the first scheme year, after setting up a new scheme, commission additional to that determined in accordance with sub-item (1), but not exceeding N\$3 450 or seven and a half per cent of annualized contributions for that scheme year, whichever is the lesser, and such additional commission shall apply only when a scheme is first established.

3. Sinking fund insurance business

- (1) Recurring premium policies:

Two and a half per cent of the premium payable under the policy in question, provided such commission shall be payable only as and when the premium is received by the registered insurer or reinsurer.

- (2) Single premium policies:

Two and a half per cent of the single premium payable under the policy in question.

4. Definitions

In this Annexure -

“annualized contributions”, in relation to a scheme, means $12/m$ of the total contributions due under such scheme during a scheme year, but excluding transfer values inwards and excluding credits to the employer arising in the scheme by reason of the withdrawal of a member;

“group scheme” means a scheme or arrangement which provides for the entering into of a policy, other than an individual policy, in terms of which two or more persons without an insurable interest in each other are the lives insured;

“m” means the number of months in any scheme year;

“n” means -

(a) in relation to each separately identifiable constituent of a life policy

- (i) if only C of the numbers A, B and C is applicable to such constituent, C;
- (ii) if C and only one or both of the other abovementioned numbers are applicable to such constituent, the smaller or smallest, as the case may be, of such numbers as are applicable,

and for the purposes of this definition -

“A” means the number of years in the premium-paying term, if such term is uniquely defined;

“B” means the number of years in respect of which premiums are payable before the earliest survival benefit (including a surrender value but excluding a disability benefit) of at least a specifically stated or predeterminable monetary amount becomes available;

“C” means the greater of 10 and 75 minus age next birthday at entry; and

(b) in relation to retirement annuity policies -

- (i) under which there is a stated premium-paying term, the number of years in such term, but limited to the greater of 10 and 66 minus age next birthday at entry;
- (ii) under which there is no stated premium-paying term, the greater of 10 and 66 minus age next birthday at entry;

“P”, in relation to any policy year, means, for each separately identifiable constituent of a policy, the premium which in terms of the policy is payable in respect of that year;

“pension fund” means a pension fund as defined in section 1 of the Income Tax Act, 1981 (Act No. 24 of 1981);

“provident fund” means a provident fund as defined in section 1 of the Income Tax Act, 1981 (Act No. 24 of 1981);

“retirement annuity policy” means a policy in which a member of a retirement annuity fund as defined in section 1 of the Income Tax Act, 1981 (Act No. 24 of 1981), is the life insured;

“scheme” means a pension fund, provident fund or group scheme underwritten by means of a life policy;

“scheme year”, in relation to a scheme, means a period commencing on -

- (a) the date of commencement or the inception date, as the case may be, of the scheme with a registered insurer or reinsurer; or
- (b) the date of the appointment of an insurance agent or an insurance broker or a reinsurance broker, as the case may be, to the scheme,

whichever is the later, and ending on -

- (i) the day preceding the next succeeding inception date of the scheme;
- (ii) the date of termination of the scheme with the registered insurer or reinsurer; or
- (iii) the date of termination of the appointment of the insurance agent or insurance broker or reinsurance broker, as the case may be, to the scheme,

whichever is the earliest;

“single premium policy” means a policy under which the premium is payable in one amount only.

ANNEXURE B**FEES
(regulation 14)**

Type of transaction	Fees payable N\$
1. Application for registration:	
(a) Registered insurer or reinsurer (section 14(3)(b)(ii) or 15(2) or 15(2)(b)(ii)), per class of long-term insurance business	200
(b) Insurance agent or insurance broker or reinsurance broker (section 55(2)(b)(ii))	200
2. Application for change of name (section 18(3)(b)(ii)	100
3. Inspection of any document (section 64), per document inspected	50
4. Copying of or making an extract from any document (section 64), per page or part thereof	20
5. Certification of copy of or extract from any document (section 64), per document certified	50

ANNEXURE C**LIMITS OF INVESTMENT
(regulation 15)**

Kinds or categories of assets	Maximum per- centage of ag- gregate liabi- lities
1. Credit balance in a current or savings account with, or a deposit (including a negotiable deposit) ac- cepted by, a banking institution or a building so- ciety or money market instruments in terms of which such banking institution or building soci- ety is liable, including the paid-up shares of a building society or deposits in the Post Office Savings Bank:	
Per banking institution	20%

	Per building society	20%
	Post Office Savings Bank	20%
2.	Bills, bonds or securities issued or guaranteed by or loans to or guaranteed by -	
	(a) a local authority or regional council authorized by law to levy rates upon immovable property,	
	per local authority or regional council	20%
	(b) South West Africa Water and Electricity Corporation	20%
	(c) Agricultural Bank of Namibia	20%
	(d) National Housing Enterprise	20%
	(e) Namibia Development Corporation	20%
	(f) Namibian Ports Authority	20%
	(g) Namibian Broadcasting Corporation	20%
	(h) TransNamib Ltd.	20%
	(i) Telecom Namibia Ltd.	20%
3.	Bills, bonds or securities issued by or loans to an institution, which bills, bonds, securities or loans the Registrar has approved in terms of item 5 of Schedule 1 to the Act, and also bills, bonds and securities issued by or loans to an institution, which institution the Registrar has likewise approved:	
	Per institution	20%
4.	Bills, bonds or securities issued by the government of or by a local authority in a country other than Namibia, which country the Registrar has approved in terms of item 6 of Schedule 1 to the Act, and also bills, bonds or securities issued by an institution in such an approved country, which institution the Registrar has likewise approved	20%
5.	Immovable property, units in unit trust schemes in property shares, and shares in, loans to and debentures, both convertible and non-convertible, of property companies	25%

	Provided that the investment in a single property or property development project shall be limited to ...	5%	
6.	Preference and ordinary shares in companies and associated companies (but excluding shares in property companies and investment subsidiaries), convertible debentures, whether voluntarily or compulsorily convertible (but excluding such debentures of property companies), and units in unit trust schemes (but excluding units in unit trust schemes in property shares) held in respect of a long-term insurance business	75%	
	Provided that -		
	(a) unlisted shares, unlisted convertible debentures and shares and convertible debentures listed in the development capital sector of any stock exchange within the common monetary area shall be limited to ...	5%	
	(b) shares and convertible debentures in a single company or associated company listed on any stock exchange within the common monetary area in a sector other than in the development capital sector -		
	(i) with a market capitalization of N\$2 000 million or less shall be limited to	10%	
	(ii) with a market capitalization of more than N\$2 000 million shall be limited to	15%	
	(c) shares and convertible debentures in a single company or associated company listed on the Namibian Stock Exchange -		
	(i) with a market capitalization of N\$500 million or less shall be limited to	10%	
	(ii) with a market capitalization of more than N\$500 million shall be limited to	15%	
	(d) unlisted shares in Namibian companies shall be limited to	5%	
7.	Loans to and non-convertible debentures of associates and associated companies	5%	

<p>8. Claims secured by mortgage bonds on immovable property, debentures (listed and unlisted but excluding convertible debentures) or any other secured claims against natural persons (but excluding assets of the kinds referred to in items 8 and 9 of Schedule 1 to the Act, loans to investment subsidiaries, associates or associated companies and loans to and debentures of property companies)</p>	25%
<p>Provided that -</p>	
<p>(a) claims against any one natural person shall be limited to</p>	0,25%
<p>(b) claims against any single company shall be limited to</p>	5%
<p>9. Computer equipment, furniture and other office machinery, and motor vehicles shall be limited to :</p>	
<p>(a) Computer equipment</p>	5%
<p>(b) Other equipment and motor vehicles</p>	2,5%
<p>10. Any other assets of the kinds referred to in Schedule 1 to the Act</p>	2,5%