

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**Life Insurance Act 2000,**

Being an Act to make provision for the licensing, regulation and supervision of companies involved in life insurance business and the activity of life insurance agents, to amend various acts and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1 – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3 C (*qualified rights*) of the *Constitution*, namely:

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act relates to a matter of national interest.

(3) For the purposes of Section 53 (*Protection from unjust deprivation of property*) the licensing, regulation and supervision of companies involved in life insurance business and the activity of life insurance agents are hereby declared to be public purpose.

**2. PURPOSE OF THIS ACT.**

The purpose of this Act is to -

- (a) make provision for the licensing and regulation of the life insurance industry in Papua New Guinea in a manner consistent with the continued development of a viable competitive industry; and
- (b) make provision for the prudent management of licence holders and life insurance agents; and
- (c) provide for the protection of interests of policyholders and prospective policyholders of life policies; and
- (d) for related purposes.

**3. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears -

“approved actuary” means a person approved by the Central Bank from time to time;

“approved auditor” means a person approved by the Central Bank from time to time;

“associate” in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a body corporate means -

- (a) a relative of the person; or
- (b) any body corporate of which that person is a director; or
- (c) a person who is an employee or partner of that person; or
- (d) where that person is a licence holder -
  - (i) any director of that licence holder; or
  - (ii) any subsidiary of that licence holder; or
  - (iii) any director or employee of any such subsidiary; or
- (e) where that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person;

“authorized officer” means an officer of the Central Bank authorized under Section 139;

“Board” means the Board of the Central Bank;

“books” includes:

- (a) any record; or
- (b) any accounts or accounting records, however compiled, recorded or stored; or
- (c) a document;

“business of a statutory fund” has the meaning ascribed to it by Section 8;

“Central Bank” means the Bank of Papua New Guinea;

“classes of life insurance business” has the meaning ascribed to it by Section 7;

“contravene” includes fail to comply with;

“defined or guaranteed benefit” means a benefit which is to be paid to a policyholder based on:

- (a) the amount of the policyholder’s salary at a particular date; or
- (b) the average of the policyholder’s salary at a particular date; or
- (c) the average of the policyholder’s salary over a period; or
- (d) an amount identified as the defined or guaranteed benefit in the constituent document of the fund;

“defined or guaranteed benefit fund” means a superannuation fund authorized under Section 8(2) of the *Superannuation Act* to operate as a defined or guaranteed benefit fund;

“Deputy Governor” means a Deputy Governor of the Central Bank;

“director” means -

- (a) with respect to companies registered in Papua New Guinea, the same meaning as in Section 107(1)(a) of the *Companies Act 1997*; and
- (b) with respect to a body corporate incorporated outside Papua New Guinea, means any person, including a member of a board, who occupies a position that in the opinion of the Central Bank is

analogous to that of a director of a company under Section 107(1)(a) of the *Companies Act 1997*; and

- (c) with respect to any body corporate, means a person who occupies a position that in the opinion of the Central Bank is analogous to that of a director of a company under Section 107(1)(a) of the *Companies Act 1997*;

“disclose” in relation to information means give, reveal or communicate in any way;

“entity” means an individual, statutory authority, unincorporated partnership or body, or a corporation, as the context permits;

“external administrator” means any of the following:-

- (a) a liquidator,
- (b) a receiver,
- (c) any other form of administrator or person having an analogous role under the laws of any place,

and expressions used in this definition have the same meanings as they have in the *Companies Act 1997*;

“financial accommodation” means -

- (a) any indebtedness, present or future, actual or contingent, under or in respect of moneys borrowed or raised; or
- (b) any other financial indebtedness whatsoever;

and includes -

- (c) indebtedness under or in respect of a negotiable or other financial instrument; or
- (d) a guarantee of financial indebtedness; or
- (e) interest; or
- (f) gold and currency exchange; or
- (g) a hedge or currency exchange; or
- (h) a redeemable share; or
- (i) a share the subject of a guarantee; or
- (j) a discounting arrangement; or
- (k) a financing lease or capital lease;

“foreign country” means a country other than Papua New Guinea;

“general insurance” has the same meaning as in the *Insurance Act 1995*;

“Governor” means the Governor of the Central Bank;

“group” in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

“guarantee” means -

- (a) any guarantee, indemnity, legally binding undertaking, letter of credit, acceptance or endorsement of a bill of exchange or promissory note or other legally binding obligation in favour of any person to secure to enable the payment by any third party of any moneys or the performance or observance of any other obligation owed by the third party; or
- (b) any legally binding obligation to provide funds to a third party by the advance of moneys, the purchase of or subscription for securities (as defined in the *Securities Act 1997*); or

(c) any legally binding obligation to ensure the solvency or financial condition of any third party; or

(d) any put and/or call option whereby its grantor is legally obliged upon the exercise of the option to buy and/or sell;

“indirect controller” means either -

(a) a person or persons in accordance with whose direction or instructions the directors of the licence holder or any holding company or any shareholder controller of a licence holder are accustomed to act or are under an obligation, whether formal or informal, to act; or

(b) a person or persons declared by the Central Bank to be an indirect controller for the purposes of this Act by written notice under Section 29;

“invest” means -

(a) apply property in any way, or

(b) make a contract,

for the purpose of gaining interest, income, profit or gain;

“investment accounts benefit” has the meaning ascribed to it by Section 9;

“issue and ownership of policies” has the meaning ascribed to it by Section 5;

“licence holder” means a life insurance company or a life insurance broker licensed under this Act;

“life insurance agent” means a person providing marketing, selling, management or any other similar services to a licensed life insurance company under this Act;

“life insurance broker” means a person who, for or in expectation of gain, acts as or carries on business as the agent of a policyholder or a proponent for a life policy in connection with the transaction of life insurance business;

“life insurance business” has the meaning ascribed to it by Section 6;

“life insurance company” means a company incorporated under the *Companies Act 1997*, carrying on life insurance business;

“life policy” has the meaning ascribed to it by Section 4;

“nominee” means a person nominated by a policyholder to receive the benefits under the life policy;

“non participating benefit” has the meaning ascribed to it by Section 10;

“officer” includes -

(a) a chief executive officer, director, manager of a licence holder, or employee; or

(b) a person referred to in Subsection (3);

“ordinary business” means life insurance business other than superannuation business and general insurance;

“participating benefit” is any benefit other than a non-participating benefit;

“policyholder” means the person to whom the policy is issued or if the rights of that person under the policy have been assigned under this Act or transferred by the operation of the policy, the person who has the rights;

“property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

“prudential matters” in relation to a licence holder or life insurance agent means

matters relating to the conduct by that entity and any group of which it is a member of any of their affairs -

- (a) in such a way as -
  - (i) to keep itself in a sound financial position; and
  - (ii) not to cause or promote instability in the Papua New Guinea life insurance industry; and
- (b) such that they are conducted with integrity, prudence and professional skill; and
- (c) which ensure compliance with the relevant obligations placed on the entity by or under this Act;

“prudential standard” has the meaning given to it under Part VII;

“related corporation” means a corporation that in accordance with the *Companies Act 1997* is taken to be related to another corporation;

“relative” in relation to a person, means -

- (a) the person’s spouse, including the legal or customary spouse; or
- (b) another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person, or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a son, daughter or remoter lineal descendant of the person; or
- (e) a brother or sister of the person;

“security interest” includes any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset;

“shareholder controller” means a person who, either alone or with any associate or associates has a stake in -

- (a) a licence holder under this Act; or
- (b) a holding company of a licence holder, of more than 15%;

“stake” means the aggregate of the voting power that a person controls in a body corporate at a general meeting;

“statutory fund” means a fund that is established in the records of a licence holder relating solely to the life insurance business of the licence holder;

“statutory manager” means either the Central Bank or an entity appointed by the Central Bank;

“superannuation business” means life insurance business, including a defined or guaranteed benefit, that is maintained by a fund, whether operating as a superannuation fund or solely as a defined or guaranteed benefit fund;

“superannuation fund” means an indefinitely continuing fund created for retirement or other related purposes by statute or trust deed or other instrument;

“*Superannuation Act*” means the *Superannuation (General Provisions) Act 2000* and any regulations or prudential standards made under or pursuant to that Act;

“this Act” includes the regulations and prudential standards made under this Act;

“unclaimed money” has the meaning given by Subsection (4).

(2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Companies Act 1997*.

(3) For the purposes of this Act, a reference to a person who held the office or position of chief executive officer, director, manager or employee of a licence holder at a particular time includes a person who held that office or position within two years before that time.

(4) For the purposes of this Act, money payable to a policyholder is taken to be unclaimed money where –

- (a) the policyholder has died; and
- (b) the licence holder determines that a benefit (other than a pension) is immediately payable in respect of the policyholder; and
- (c) neither the policyholder or its nominee has applied to the licence holder to have the amount of his benefits under the life policy paid to him; and
- (d) the licence holder is unable to pay those benefits to the policyholder or its nominee because the licence holder, after making reasonable efforts to find the policyholder or its nominee, is unable to do so.

#### **4. LIFE POLICY.**

(1) Each of the following constitutes a life policy for the purposes of this Act:-

- (a) a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life;
- (b) a contract of insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life;
- (c) a contract of insurance that provides for the payment of an annuity for a term dependent on the continuance of human life;
- (d) a contract (whether or not it is a contract of insurance) that constitutes an investment account contract;
- (e) a continuous disability policy.

(2) A contract that provides for the payment of money on the death of a person is not a life policy where -

- (a) by the terms of the contract, the duration of the contract is to be not more than one year; and
- (b) payment is only to be made in the event of;
  - (i) death by accident; or
  - (ii) death resulting from a specified sickness.

(3) A continuous disability policy is a contract of insurance -

- (a) that is, by its terms, to be of more than three years duration; and
- (b) under which a benefit is payable in the event of -
  - (i) the death, by accident or by some other cause stated in the contract, of the person whose life is insured; or
  - (ii) injury to, or disability of, the insured as a result of accident or sickness; or

(iii) the insured being found to have a stated condition or disease.

(4) A contract of insurance that is, by its terms, to be of a duration of not more than three years is taken to comply with Subsection (3)(b)(i) where -

- (a) contracts of insurance of the same kind as the contract are usually of more than three years duration; and
- (b) the contract is of a lesser duration only because of the age of the owner of the policy at the time when it was entered into.

(5) A contract of insurance is not a continuous disability policy where the terms of the contract permit alteration, at the instance of the licence holder concerned, of the benefits provided for by the contract or the premiums payable under the contract.

(6) A contract of insurance the terms of which permit alteration, at the instance of the life company concerned, of the benefits provided for by the contract is not excluded by Subsection (5) from being a continuous disability policy, where, by those terms, the only alterations that are permitted to be made are alterations that improve the benefits and are made following an offer made by the licence holder and accepted by the owner of the policy.

(7) A contract of insurance the terms of which permit alteration, at the instance of the licence holder concerned, of the premiums payable under the contract is not excluded by Subsection (5) from being a continuous disability policy where the terms of all contracts of the same kind as that contract only permit such alterations where they are made on a simultaneous and consistent basis.

(8) A contract of insurance entered into in the course of carrying on health insurance business is not a continuous disability policy.

## **5. ISSUE AND OWNERSHIP OF POLICIES.**

For the purposes of this Act -

- (a) a licence holder issues a policy when the licence holder enters into the contract that constitutes the policy; and
- (b) a policy is issued to the person with whom the licence holder enters into the contract.

## **6. LIFE INSURANCE BUSINESS.**

(1) A reference in this Act to life insurance business is a reference to business that consists of any or all of the following:-

- (a) the issuing of life policies;
- (b) the undertaking of liability under life policies;
- (c) superannuation business; and
- (d) any business that relates to business referred to in Paragraphs (a), (b) and (c).

(2) Without limiting Subsection (1), a business referred to in Subsection 1(a) includes a business relating to the investment, administration and management of the property of a statutory fund.

## **7. CLASSES OF LIFE INSURANCE BUSINESS.**

(1) A reference in this Act to classes of life insurance business is a reference to one or both of the following:-

- (a) ordinary business;
- (b) superannuation business.

(2) Where the Central Bank has made a declaration under Section 14 the life insurance business carried on by a licence holder included in one class of life insurance business is to be treated as being included in that class of life insurance business nominated in the declaration.

## **8. BUSINESS OF A STATUTORY FUND.**

(1) A reference to the business of a statutory fund of a licence holder is a reference to the life insurance business to which the fund relates.

(2) For the purposes of this definition a liability (including a policy liability) is taken to be referable to the business of a statutory fund if the liability is -

- (a) of a kind that may be discharged out of the property of the fund; and
- (b) is an expense of a statutory fund that may be met out of the property of the fund.

## **9. INVESTMENT ACCOUNT BENEFITS.**

(1) The expression “investment account benefits” refers to benefits payable under an investment account contract.

(2) An investment account contract is a contract that -

- (a) provides for benefits to be paid -
  - (i) on death; or
  - (ii) on a specified date or specified dates or on death before the specified date; and
- (b) provides for the benefits to be calculated by reference to -
  - (i) a running account under the contract; or
  - (ii) units the value of which are guaranteed by the contract not to be reduced; and
- (c) provides for the account to be increased (for example, by the amounts of premiums paid or interest payable).

(3) A contract is not an investment account contract where it provides for the account to be reduced, otherwise than by withdrawals, by the person responsible for the payment of premiums or by the amounts of charges payable under the contract.

## **10. PARTICIPATING AND NON-PARTICIPATING BENEFITS.**

(1) A participating benefit is any benefit other than a non-participating benefit.

(2) A non-participating benefit is a benefit that has the following features:-

- (a) it does not include any entitlement to share in any distribution of profits and surplus by the licence holder;
- (b) the amount of it is specified in the policy document or is to be calculated according to a formula that -
  - (i) is set out in the policy documents; and



- (ii) does not include any element which is dependent on, or to be ascertained according to, a decision of the licence holder concerned.

(3) A benefit is a non-participating benefit where it is declared by prudential standards to be a non-participating benefit.

#### **11. APPLICATION OF OTHER ACTS.**

(1) The requirements of this Act are in addition to and not in derogation of or substitution for the requirements of the *Companies Act 1997* or the *Securities Act 1997* but in the case of a conflict or inconsistency between the provisions of this Act and a provision of the *Companies Act 1997* or the *Securities Act 1997*, the provisions of this Act will prevail.

(2) The requirements of this Act, in relation to superannuation funds which are authorized under Section 8(2) of the *Superannuation Act*, are in addition to and not in derogation of or substitution for the requirements of the *Superannuation Act*.

### **PART II. - FUNCTIONS AND POWERS OF THE CENTRAL BANK.**

#### **12. FUNCTIONS AND POWERS.**

(1) The principal function of the Central Bank under this Act is to promote the general stability, regulation and supervision of the life insurance industry for the protection of the rights and interests of policyholders.

- (2) The functions of the Central Bank under this Act include -
- (a) licensing of life insurance companies; and
  - (b) authorizing licence holders to accept premiums paid in respect of life policies; and
  - (c) assuming responsibility for supervising compliance with the provisions of this Act and any prudential standards; and
  - (d) collecting and analyzing information in respect of prudential matters relating to licence holders and life insurance agents; and
  - (e) promoting, encouraging and enforcing proper standards of conduct and sound and prudent business practices in the life insurance industry including the issue of prudential standards; and
  - (f) evaluating the effectiveness of carrying out those practices; and
  - (g) suppressing or aiding in the suppression of illegal or improper practices within the life insurance industry.

### **PART III. – LICENSING OF LIFE INSURANCE COMPANIES AND LIFE INSURANCE BROKERS.**

#### **13. UNAUTHORIZED OPERATIONS.**

- (1) An entity which -
- (a) carries on the operations of a licence holder operating a life insurance business; or
  - (b) carries on any aspect of life insurance business; or

- (c) carries on the operations of a life insurance broker or any aspect of the business of a life insurance broker; or
- (d) accepts funds from another person for the purpose of operating life insurance business,

and has not first obtained a licence under this Part, is guilty of an offence under this Act.

(2) A licence holder that operates any aspect of life insurance business otherwise than in accordance with the conditions (if any) of its licence is guilty of an offence.

#### **14. DECLARATIONS THAT INSURANCE BUSINESS IS LIFE INSURANCE BUSINESS.**

(1) The Central Bank may, on application of a licence holder or where it considers necessary, declare that certain business (other than health insurance or business against loss of or damage to property as defined by the *Insurance Act 1995*) -

- (a) that is carried on by the licence holder; or
- (b) that the licence holder proposes to carry on; or
- (c) that is carried on by an entity which is not a licence holder under this Act,

is to be treated for the purposes of this Act as if it was life insurance business.

(2) In making a declaration under Subsection (1), the Central Bank shall also state the class of life insurance business in which the licence holder may deal.

(3) Where a declaration is made under Subsection (1)(c) the entity to which the declaration applies shall apply for a licence under Section 10 within 15 days of the date of the declaration.

#### **15. APPLICATION FOR LICENCE.**

(1) An applicant for a licence under this Act shall be a corporation incorporated under the *Companies Act 1997*.

(2) Only one licence may be held by an entity at any time.

(3) Subsection (2) does not prevent more than one corporation within a group from being licence holders.

(4) An application under this section shall -

- (a) include the matters specified in Schedule 1; and
- (b) contain any other information required by the Central Bank; and
- (c) be accompanied by an application fee for the prescribed amount.

(5) The Central Bank may request the applicant, in writing, to provide the Central Bank with such further information for determination of the licence application as specified in the request.

(6) An applicant which makes an application under this section that is false or misleading in a material respect is guilty of an offence.

(7) A licence is personal to the licence holder and is incapable of being transferred.

**16. MINIMUM REQUIREMENTS.**

(1) A licence shall only be granted to an applicant for a licence to act as a licence holder where the Central Bank is satisfied that: -

- (a) the applicant meets the fit and proper criteria set out in Schedule 2; and
- (b) the applicant's officers meet the fit and proper criteria set out in Schedule 2; and
- (c) the applicant can be relied on to perform, in a fit and proper manner, the duties of a licence holder; and
- (d) the applicant satisfies -
  - (i) the financial requirements set out in Schedule 3; or,
  - (ii) where required by the Central Bank, that it is entitled to the benefit of an approved guarantee of an amount not less than the amount in Schedule 3, being a guarantee in respect of the applicant's duties as licence holder; and
- (e) the applicant satisfies the Central Bank that it has appointed, or will on the granting of a licence, appoint the appropriate life insurance agents.

**17. MATTERS TO BE CONSIDERED BY CENTRAL BANK.**

The Central Bank may have regard to any matter it considers relevant when considering an application under Section 15.

**18. APPROVAL OF APPLICATION.**

On the granting of a licence under this Part, the Central Bank shall cause a notice of the issue of a licence to be published in the National Gazette and the licence takes effect from the date of publication of the notice in the National Gazette.

**19. REFUSAL OF APPLICATION.**

Where the Central Bank proposes to refuse an application for a licence it will give the applicant written notice under Section 29.

**20. OFFICERS TO BE FIT AND PROPER.**

(1) A licence holder shall ensure that, at all times, its officers and any actuaries and auditors appointed or engaged by it, satisfy -

- (a) the criteria specified in Schedule 2; and
- (b) any relevant prudential standards.

(2) The Central Bank may, by written notice under Section 29, require the removal of an officer, actuary or auditor of a licence holder who does not, in the opinion of the Central Bank, satisfy the provisions of Subsection (1).

**21. APPOINTMENT OF LIFE INSURANCE AGENTS.**

When appointing a life insurance agent, a licence holder shall be satisfied that the life insurance agent -

- (a) meets the fit and proper criteria set out in Schedule 2; and
- (b) where it is a company, its officers meet the fit and proper criteria set out in Schedule 2; and

- (c) can be relied on to perform, in a fit and proper manner, the duties of the relevant life insurance agent; and
- (d) meets any prudential standards issued by the Central Bank; and
- (e) has the necessary skill, experience, expertise and resources to provide the relevant core services.

## **22. CONDITIONS ON LICENCE.**

(1) The Central Bank may impose such conditions on a licence when granting the licence under this Act, or at any time, by written notice under Section 29, as it considers appropriate for the implementation of, or compliance with, the provisions of this Act.

(2) A condition may be expressed to have effect notwithstanding anything in the prudential standards or the regulations to this Act.

## **23. DURATION OF LICENCE.**

Unless sooner surrendered, suspended or revoked a licence remains in force until the expiration of 31 December of the year in which the licence took effect or was last renewed.

## **24. RENEWAL OF LICENCE.**

A licence in force immediately before 1 January in any year may be renewed on payment of the prescribed fee.

## **25. REVOCATION OR SUSPENSION OF LICENCE.**

(1) The Central Bank may, by written notice under Section 29, revoke or suspend a licence granted under this Act where it appears to the Central Bank that -

- (a) any criteria specified in Schedule 2 are not being fulfilled or may not be fulfilled by a licence holder; or
- (b) the licence holder has failed to comply with any obligation imposed on it by or under this Act; or
- (c) the licence holder has failed to comply with any condition imposed on the licence; or
- (d) an entity has become a shareholder controller or an indirect controller of the licence holder in contravention of this Act or has become or remains a shareholder controller or indirect controller after being given a notice of objection by the Central Bank under this Act; or
- (e) the Central Bank has been provided with false, misleading or materially inaccurate information -
  - (i) by or on behalf of the licence holder; or
  - (ii) in connection with an application for a licence; or
  - (iii) by or on behalf of a person who is an officer of the licence holder; or
- (f) the interests of policyholders or potential policyholders of life insurance are in any other way threatened, whether by the manner in which the licence holder is conducting or proposes to conduct its affairs or for any other reason; or
- (g) any of the following has occurred with respect to the licence holder:-
  - (i) a composition or arrangement with creditors has been made;
  - (ii) an external administrator or statutory manager has been appointed;

- (iii) it has ceased to operate, gone into liquidation or has been wound up or dissolved or where anything having an analogous effect has occurred in the place of incorporation of the licence holder;
- (iv) in the case of a licence holder whose principal place of business changes to outside Papua New Guinea, anything having an analogous effect as referred to in Subparagraph (iii).

(2) Where the Central Bank suspends a licence under Subsection (1), the Central Bank may appoint an appropriate licence holder to act for the period of suspension or until a new appointment of a licence holder is made.

(3) Notwithstanding the suspension of a licence, the licence holder concerned may, with the approval of the Central Bank, assist in the orderly transfer of the property of the licence holder to another licence holder.

## **26. SURRENDER OF LICENCE.**

(1) A licence holder may, by notice in writing to the Central Bank request approval to surrender its licence.

(2) The Central Bank may accept a request under Subsection (1) where it is satisfied that the surrender would not be contrary to the interests of policyholders.

(3) The Central Bank shall publish notice of a surrender under this section in the National Gazette, and may also cause notice of the surrender of the licence to be published in any other way it considers appropriate.

## **27. REVOCATION OF LICENCE – FAILURE TO COMMENCE OPERATIONS.**

The Central Bank may, by written notice under Section 29, revoke a licence granted under this Act where the Central Bank is of the opinion that the licence holder, having been licensed under this Act for 12 months has not commenced operating in Papua New Guinea.

## **28. PUBLICATION OF NAMES OF LICENCE HOLDERS.**

- (1) The Central Bank may, from time to time, publish a list of -
- (a) licence holders; or
  - (b) exemptions and any conditions attached to such exemptions.

(2) The Central Bank shall include a list of licence holders and any exemptions including any conditions attached to such exemptions when delivering annual reports to the Minister as required by the *Central Banking Act 2000*.

(3) Where a licence holder proposes to change its name it shall give written notice to the Central Bank of the proposed change of name.

(4) Where the Central Bank objects to a change of name it shall issue a notice under Section 29.

(5) Where the Central Bank does not object the proposed change of name under Subsection (3) it shall publish that fact, together with the licence holder's new name, in the National Gazette.

#### **PART IV. - POWER TO ISSUE NOTICE OR DIRECTION.**

##### **29. ISSUE OF NOTICE OR DIRECTION.**

(1) For the purposes of this section, "recipient" means an entity receiving a notice or direction issued by the Central Bank, including, but not limited to, a licence holder or an officer of a licence holder, a shareholder controller or indirect controller, an auditor, actuary or legal representative engaged by a licence holder, and any service provider engaged by a licence holder.

(2) The Central Bank may issue a notice or direction to a recipient for the purposes of implementing, or ensuring compliance with, the provisions of this Act or any prudential standard, which notice shall state -

- (a) the proposed action; and
- (b) the reasons for the proposed action; and
- (c) the rights of the recipient under Subsection (6).

(3) Prior to issuing a notice or direction under Subsection (2), the Central Bank shall issue a preliminary notice, attaching the proposed notice or direction, to the intended recipient.

(4) A recipient may, within a period of 28 days beginning on the day on which the preliminary notice or direction was given (preliminary notice period), make written representations to the Central Bank, and the Central Bank will take into account those representations before making a final determination.

(5) The Central Bank may, by written request to the recipient, require further information to be provided by the recipient prior to making a final determination.

(6) After expiration of the preliminary notice period, the Central Bank shall decide whether -

- (a) to proceed with the action proposed in the notice or direction; or
- (b) cancel the notice or direction,

and shall notify the recipient, in writing, of its final determination and, except where the final determination is to cancel the notice or direction, the Central Bank shall state the reasons for its decision.

(7) A final determination under Subsection (6) shall have the effect of issuing the notice or direction on the recipient and such notice or direction shall take effect on and from the date of the final determination.

(8) A notice or direction given under Subsection (6) shall be given -

- (a) within the period of 42 days beginning on the day on which the representations under Subsection (4) were made to the Central Bank; or
- (b) where no representations were made to the Central Bank under Subsection (4), within a period of 35 days beginning on the day on which the notice under Subsection (3) was given.

(9) Where the Central Bank issues a notice or direction under this section, the Central Bank -

- (a) may cause the notice or direction to be published in the National Gazette, and
- (b) may also cause notice of the notice or direction to be published in any other way it considers appropriate.

(10) An entity which fails to comply with the requirements of a notice issued under this section is guilty of an offence.

### **30. DIRECTION NOT GROUNDS FOR DENIAL OF OBLIGATIONS.**

(1) Subject to Subsection (2), the fact that a licence holder is subject to a direction by the Central Bank under this Act is not a ground for any other party to a contract to which the licence holder is a party -

- (a) to deny any obligations under that contract; or
- (b) to accelerate any debt under that contract; or
- (c) to close out any transaction relating to that contract.

(2) Regulations may prescribe circumstances under which Subsection (1) does not apply.

(3) The Central Bank may publish in the National Gazette notice of any direction made under this Division, and such notice shall include the name of the licence holder and a summary of the direction.

### **31. NO NOTICE IN CASES OF URGENCY.**

(1) No notice need be given under Section 29 prior to issuing a notice or direction where it appears to the Central Bank there is a significant risk to the interest of the policyholders of a licence holder.

(2) A notice under Subsection (1) will state the reasons for which the Central Bank has acted and particulars of the rights conferred by Subsection (3).

(3) A licence holder to which notice is given under this section may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Central Bank.

(4) After giving a notice under Subsection (1) and taking into account any representations made in accordance with Subsection (3) the Central Bank shall decide whether -

- (a) to confirm or rescind its original decision; or
- (b) to impose a different condition or direction.

(5) The Central Bank shall, within the period of 28 days beginning on the day on which the notice was given under Subsection (1), give the licence holder concerned written notice of its decision under Subsection (4), and except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(6) Where a notice under Subsection (5) is a decision to take action specified in Subsection (4)(b), the notice under Subsection (5) shall have the effect of imposing the condition or making the variation specified in the notice and with effect from the date on which it is given.

(7) Where a notice under Section 29 is followed by a notice revoking its licence under this section, the latter notice shall have the effect of terminating any right to make representations under Section 29.

## **PART V. – INFORMATION AND INVESTIGATION.**

### **32. CENTRAL BANK TO BE SUPPLIED WITH CERTAIN DOCUMENTS.**

(1) A proposed alteration to the charter, deed of settlement, constitution, memorandum and articles of association or other constituent document of the licence holder shall be submitted to the Central Bank for approval.

(2) Where the Central Bank does not approve the document submitted under Subsection (1) it shall issue a notice under Section 29.

(3) A licence holder, which fails to supply the information or document required by this section, is guilty of an offence.

### **33. POWER TO OBTAIN INFORMATION AND REQUIRE PRODUCTION OF DOCUMENTS.**

(1) The Central Bank may, by notice in writing served on a licence holder or officer of a licence holder -

- (a) require the licence holder to provide the Central Bank, at such time as may be specified in the notice, with such information or documents as the Central Bank may reasonably require for the performance of its functions under this Act; and
- (b) require the licence holder to provide the Central Bank with a report by an approved auditor on any matter which the Central Bank requires the licence holder to provide information under Paragraph (a); and
- (c) authorize an officer or agent of the Central Bank, on producing evidence of his authority, to require a licence holder to produce to him forthwith, such information or documents as specified in a notice under Paragraph (a) or (b),

being information or documents the Central Bank may reasonably require for the performance of its functions under this Act.

(2) The Central Bank may, by notice in writing served on an entity or an officer of an entity which appears to be in possession of them, require the production of documents referred to in Subsection (1), but where any entity from which such production is required claims a lien on documents produced by him, the production will be without prejudice to the lien.

(3) The power under this section to require production of any documents includes powers -

- (a) where the documents are produced, to take copies of them or extracts from them and to require that licence holder entity, or an officer or any person



who was at any time employed by or acting as an employee of, the licence holder entity in question to provide an explanation of any of them; and

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

(4) Where it appears to the Central Bank to be necessary or desirable in the interests of policyholders, it may also exercise the powers conferred by this section in relation to -

- (a) any body corporate which is or has at any relevant time been -
- (i) a holding company, subsidiary or related company of the licence holder; or
  - (ii) a subsidiary or a related company of a holding company of the licence holder; or
  - (iii) a holding company of a subsidiary of the licence holder ; or
  - (iv) a body corporate which is a shareholder controller of the licence holder; and
- (b) any other business including a partnership or joint venture of which that licence holder is or has been at any relevant time a participant.

(5) The Central Bank may, by notice in writing served on an officer of a licence holder, require him to provide to the Central Bank, within such time as may be specified in the notice, such information or documents as the Central Bank may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) The Central Bank may exercise the powers conferred by this section in relation to any person who is a shareholder controller or indirect controller of a licence holder where it appears to the Central Bank to be necessary or desirable in the interests of policyholders or potential policyholders.

(7) The Central Bank may exercise the powers conferred by this section in relation to any person where the Central Bank considers there is a contravention or a reasonable likelihood of a contravention of this Act.

(8) A person who, without reasonable excuse, fails to comply with a notice under this section, is guilty of an offence.

(9) Nothing in this section may compel the production of a documents which is subject to legal professional privilege.

#### **34. RIGHT OF ENTRY TO OBTAIN INFORMATION.**

An officer or agent of the Central Bank may, on producing evidence of his authority, enter any premises occupied by a person on whom a notice has been served under Section 33 for the purpose of obtaining the information or documents required by that notice and of exercising the powers conferred by this Part.

#### **35. NO NOTICE IN CASE OF URGENCY.**

(1) Where the Central Bank has reasonable cause to believe that a notice served under Section 33 -

- (a) would not be complied with; or
- (b) that any documents to which the notice would relate, would be removed, tampered with or destroyed,

an officer or agent of the Central Bank may, on producing evidence of his authority, enter, during daylight hours, any business premises occupied by an entity on which such notice could be served, for the purpose of obtaining information or documents that could be required by such notice.

(2) A person, who intentionally obstructs an officer or agent of the Central Bank exercising rights conferred by this section, is guilty of an offence.

### **36. INVESTIGATIONS ON BEHALF OF THE CENTRAL BANK.**

(1) Where it appears to the Central Bank desirable to do so in the interests of policyholders or potential policyholders of a licence holder, the Central Bank may appoint one or more competent persons, by an instrument in writing, to investigate and report to the Central Bank on -

- (a) the nature, conduct or state of a licence holder's business or any particular aspect of it; or
- (b) the ownership or control of the licence holder,

and the Central Bank shall give written notice of any such appointment to the licence holder concerned.

(2) Where a person, appointed under Subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate -

- (a) the business of any body corporate which is or has at any relevant time been -
  - (i) a holding company, subsidiary or related company of the licence holder; or
  - (ii) a subsidiary or a related company of a holding company of the licence holder; or
  - (iii) a holding company of a subsidiary of the licence holder ; or
  - (iv) a body corporate which is a shareholder controller of the licence holder either alone or with any associated or associates, and is entitled to exercise or control the exercise of more than 15% of the voting power at a general meeting; and
- (b) any other business including a partnership or joint venture in which that licence holder is or has been at any relevant time a participant.

(3) Where a person, appointed under Subsection (1) decides to investigate the business of any entity by virtue of Subsection (2), he shall give written notice to the Central Bank and the entity to that effect.

(4) It shall be the duty of every person who is an officer, agent, banker, auditor or lawyer of an entity which is under investigation (whether by virtue of Subsection (1) or (2)), any person appointed to make a report in respect of that entity under Subsection (1) and anyone who is a shareholder controller or indirect controller in relation to the entity -

- (a) to produce to the person appointed under Subsection (1) within such time and at such place as they may require, all documents relating to the licence holder concerned which are in his custody or power; and
- (b) to attend before the persons so appointed, to answer questions in relation to the entity, at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give,

and those persons may take copies of or extracts from any documents produced to them under Paragraph (a).

(5) The foregoing provisions of this section shall apply to a former licence holder as they apply to a current licence holder.

(6) For the purpose of exercising his powers under this section a person appointed under Subsection (1) may enter any premises occupied by an entity which is being investigated by him under this section, but he shall not do so without giving prior notice in writing to that entity unless he has reasonable cause to believe that where such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

(7) A person exercising powers by virtue of an appointment under this section shall, where so required, produce a copy of the instrument of appointment as evidence of his authority.

(8) An entity who -

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under this section; or
- (b) without reasonable excuse fails to attend before the person appointed under Subsection (1) when required to do so; or
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a licence holder which is under investigation or a body which is being investigated by virtue of this section; or
- (d) intentionally obstructs a person in the exercise of the rights conferred by Subsection (6),

is guilty of an offence.

(9) Nothing in this section can compel the production of a document which is subject to legal professional privilege.

### **37. OBSTRUCTION OF INVESTIGATIONS.**

(1) An entity which knows or suspects that an investigation is being or is likely to be carried out under Section 36 is guilty of an offence where it -

- (a) falsifies, conceals, destroys or otherwise disposes of; or
- (b) causes or permits the falsification, concealment, destruction or disposal of, documents which it knows or suspects are or would be relevant to such an investigation, unless it proves that it had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

- (2) A person or an officer of an entity which -
- (a) assaults, resists or obstructs or allows the assault, resistance or obstruction of an authorized officer or agent of the Central Bank in the exercise of his powers or the discharge of his duties under this Part; or
  - (b) fails or refuses to answer any question put to it by an authorized officer or the Central Bank, or gives a false or misleading answer to any such question; or
  - (c) fails or refuses to comply with a request of an authorized officer or agent; or
  - (d) when required to furnish information under this Act by an authorized officer or agent -
    - (i) fails or refuses to give the information; or
    - (ii) gives false or misleading information; or
  - (e) fails or refuses, without reasonable excuse (proof of which is on the entity) -
    - (i) to produce any book, account or record that it is required to produce under this Act by an authorized officer or agent; or
    - (ii) to allow an authorized officer or agent to make copies of or take extracts from any such book, account or record; or
  - (f) directly or indirectly prevents any person from appearing before or being questioned by an authorized officer or agent; or
  - (g) uses any threatening, abusive or insulting language to an authorized officer or agent, while he is carrying out an authorized inspection under this Act; or
  - (h) in any other way obstructs the Central Bank's investigative powers under this section,

is guilty of an offence.

### **38. FALSE AND MISLEADING INFORMATION.**

An entity, which knowingly or recklessly provides the Central Bank, an authorized officer or agent of the Central Bank or any other person with information which is false or misleading in a material particular, is guilty of an offence where the information is provided -

- (a) in purported compliance with a requirement imposed by or under this Act; or
- (b) otherwise than as mentioned in Paragraph (a) but in circumstances in which the entity providing the information intends or could reasonably be expected to know, that the information would be used by the Central Bank for the purpose of exercising its functions under this Act.

### **39. DUTY TO GIVE INFORMATION.**

(1) A licence holder is under a duty promptly to provide the Central Bank with any information in its possession where the licence holder knows or has reasonable cause to believe -

- (a) that the information is relevant to the exercise by the Central Bank of its functions under this Act in relation to the licence holder; and
- (b) that the withholding of the information is likely to result in the Central Bank being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the licence holder.

- (2) A person who is or has been -
- (a) an officer of a licence holder; or
  - (b) an auditor of a licence holder; or
  - (c) an auditor of a body corporate in the licence holder's group; or
  - (d) an actuary of a body corporate in the licence holder's group; or
  - (d) a person appointed to make a report under this Act,

is under a duty promptly to inform the Central Bank of any matter where he has reasonable cause for believing that -

- (e) the licence holder is insolvent, or there is a significant risk that the licence holder will become insolvent; or
- (f) an existing or proposed state of affairs may materially prejudice the interests of policyholders of a licence holder.

(3) In relation to an auditor referred to in Subsection (2), this subsection applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the licence holder and any group to which it belongs.

(4) In relation to an actuary referred to in Subsection (2), this subsection applies to any matter of which he becomes aware in his capacity as actuary and which relates to the business or affairs of the licence holder and any group to which it belongs.

(5) No duty to which a person specified in this section may be subject will be regarded as contravened by reason of his communicating in good faith to the Central Bank, whether or not in response to a request made by the Central Bank, any other information or opinion, which is relevant to any function of the Central Bank under this Act.

(6) A person, who contravenes this section, is guilty of an offence.

#### **40. ACTION AS A RESULT OF INVESTIGATION.**

Following the conduct of an investigation and the issue of a written summary and conclusions under this Part, the Central Bank is entitled to issue directions as it determines necessary to overcome breaches of this Act or to protect the interests of policyholders.

#### **41. DUTY TO NOTIFY THE CENTRAL BANK OF SIGNIFICANT ADVERSE EVENTS.**

(1) Where a licence holder, officer of a licence holder, actuary or auditor of a licence holder becomes aware of the occurrence of an event having a significant adverse effect on the financial position of a licence holder or any adverse effect on the interests of policyholders, the licence holder, officer, actuary or auditor shall give written notice to the Central Bank setting out particulars of the event, no later than the third business day after becoming aware of the event.

(2) An event has a significant adverse effect where, as a result, policyholders' benefits will be materially written down in either the current or future accounting periods of the licence holder.

(3) Contravention of this section is an offence under this Act.

## **PART VI. - OWNERSHIP AND CONTROL OF LICENCE HOLDERS.**

### **42. OBJECTIONS TO SHAREHOLDER CONTROLLERS OR INDIRECT CONTROLLERS OR INCREASES IN STAKE BY THE CENTRAL BANK.**

(1) No entity shall become a shareholder controller or an indirect controller of a licence holder or increase its stake in a licence holder incorporated in Papua New Guinea beyond the maximum specified by the Central Bank pursuant to Subsection (2) unless -

- (a) notification has been provided to the Central Bank of the intention of the entity; and
- (b) the Central Bank has not issued a notice under Section 29, within 14 days of receiving notification under Paragraph (a), objecting to the entity becoming such a controller or increasing its stake.

(2) The Central Bank may issue a notice of objection in accordance with Subsection (1)(b) where it considers -

- (a) that the entity does not meet the fit and proper criteria set out in Schedule 2; or
- (b) that an officer of the entity does not meet the fit and proper criteria set out in Schedule 2; or
- (c) the interest of policyholders would be threatened by the entity becoming a shareholder controller or indirect controller or increasing its stake.

(3) Any notification under Subsection (1) will lapse where the entity has not become a shareholder controller or indirect controller or increased its stake within one year.

### **43. OBJECTIONS BY THE MINISTER IN NATIONAL INTEREST.**

(1) Where -

- (a) a notification specified in Section 42(1)(a) is a notification of intention to become a shareholder controller or indirect controller of a licence holder; or
- (b) a notification specified in Section 42(1)(a) is a notification of intention to increase a stake in a licence holder beyond that permitted under this Part; or
- (c) the Central Bank becomes aware that an entity has become a shareholder controller or an indirect controller of a licence holder or has increased its stake in a licence holder beyond that permitted under this Part, in either case without the required notice under Section 42(1)(a),

the Central Bank shall promptly notify the Minister.

(2) After receiving a notification from the Central Bank under Subsection (1), the Minister may direct the Central Bank to issue a notice of objection, with or without reasons, to the entity where it appears to the Minister that to do so would be in the national interest.

(3) The Minister may give reasons for a direction under Subsection (2).

(4) The Minister may direct the Central Bank to require such further information and documents as he may reasonably require in connection with the matter from the entity which is the subject of the notification.

(5) Any direction under Subsection (2) shall be given before the end of the period of three months beginning on the day on which the notification from the Central Bank was received by the Minister and, where the Minister has directed the Central Bank under Subsection (4), before the end of whichever of the following first expires:-

- (a) the period of three months beginning with the day on which the additional information or documents are provided to the Minister;
- (b) the period of six months beginning with the day on which the notification was received by the Minister.

(6) The Central Bank shall promptly serve a notice of objection on that entity where directed by the Minister.

(7) A notice of objection served under this section shall have the effect of terminating any right to make representations under Section 29.

#### **44. OBJECTIONS TO EXISTING SHAREHOLDER CONTROLLERS AND INDIRECT CONTROLLERS.**

Where it appears to the Central Bank that an entity who is a shareholder controller or an indirect controller of a licence holder does not or no longer meets the requirements set out in this Act to be such a controller, the Central Bank may, by written notice under Section 29, object to it being such a controller.

#### **45. CONTRAVENTIONS BY SHAREHOLDER CONTROLLER AND INDIRECT CONTROLLER.**

(1) Subject to Subsection (2), an entity who contravenes this Act by failing to give the notice required by Section 42, is guilty of an offence.

(2) An entity is not guilty of an offence under Subsection (1) where it shows that it did not know of the acts or circumstances by virtue of which it became a shareholder controller or indirect controller, or increased its stake in the licence holder beyond the maximum permitted by the Central Bank, but where an entity becomes a shareholder controller or indirect controller or increases its stake without such knowledge and subsequently becomes aware of the fact it is guilty of an offence unless it gives the Central Bank written notice of the fact within 14 days of becoming aware of that fact.

#### **46. REMEDIAL ORDERS.**

(1) The powers conferred by this section are exercisable where an entity has contravened this part by becoming or continuing to be a shareholder controller or indirect controller or increasing its stake beyond the maximum specified by the Central Bank after being served with a notice of objection to its becoming or remaining a shareholder controller or indirect controller or increasing its stake beyond the maximum specified by the Central Bank.

(2) Where an entity contravenes this Part by becoming or continuing to be a shareholder controller or increasing its stake beyond the maximum specified by the Central Bank, the Central Bank may, by notice in writing served on the entity concerned including any associate, direct that any specified shares to which this section applies shall, until further notice, be subject to restrictions as notified by the Central Bank including all or any of the following:-

- (a) any transfer of, or agreement to transfer, those shares or, in the cases of unissued shares, any transfer or agreement to transfer the right to be issued with them shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.

(3) Where an entity contravenes this Part by becoming or continuing to be an indirect controller, the Central Bank may, by written notice to that entity, require that entity to take such steps as are necessary to ensure that the entity ceases to be an indirect controller.

(4) A copy of the notice served on the entity concerned under Subsections (2) and (3) shall be served on the licence holder to whose shares it relates and, where it relates to shares held by an associate of that entity, on that associate.

(5) Without prejudice to Subsection (2) or (3), where an entity contravenes this Part, the National Court may, on application by the Central Bank, make such orders as the Court considers appropriate for the purpose of ensuring that that situation ceases to exist.

(6) Orders of the National Court under Subsection (5) may include -

- (a) in the case of a shareholder controller -
  - (i) an order directing the disposal of shares; or
  - (ii) an order restraining the exercise of any rights attached to shares; or
  - (iii) an order prohibiting or deferring the payments of any sums due to an entity in respect of shares held by the entity; or
  - (iv) an order that any exercise of rights attached to shares be disregarded; or
- (b) in the case of an indirect controller, an order to ensure the entity ceases to be an indirect controller.

(7) Subsection (6) does not, by implication, limit Subsection (5).

(8) In addition to the powers of the National Court under Subsections (5) and (6), the Court -

- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any entity to do or refrain from doing a specified act; and
- (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.

(9) The National Court may, before making an order under this section, direct that notice of the application be given to such entities as it thinks fit to be published in such manner as it thinks fit, or both.

(10) The National Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.



- (11) This section applies -
- (a) to all the shares in the licence holder of which the entity in question is a shareholder controller which are held by it or any associate of it and were not so held immediately before becoming a shareholder controller of the licence holder ; and
  - (b) where the entity in question became a shareholder controller of a licence holder as a result of the acquisition by it or any associate of it of shares in another body corporate, to all the shares in that body corporate which are held by it or any associate of it and were not so held before it became a shareholder controller of this licence holder.

**47. RESTRUCTURING OF LICENCE HOLDERS.**

- (1) It is an offence where -
- (a) a licence holder -
    - (i) enters into an arrangement or agreement for -
      - (A) any sale or disposal of its business or a material part of it by amalgamation or otherwise; or
      - (B) the carrying on of business in partnership with another person; or
    - (ii) effects a reconstruction of the licence holder; and
  - (b) the Central Bank did not give prior consent in writing.
- (2) Any arrangement, agreement or reconstruction referred to in Subsection (1), and any such sale or disposal or acquisition in pursuance of any such arrangement or agreement, entered into -
- (a) without the prior written consent of the Central Bank; or
  - (b) that is not in accordance with any condition attached to such consent, is void and of no effect.
- (3) The Central Bank may withhold its consent unless the licence holder satisfies the Central Bank that the arrangement agreement or reconstruction would not be contrary to the interests of policyholders.

**PART VII. – PRUDENTIAL SUPERVISION.**

**48. THE CENTRAL BANK MAY MAKE PRUDENTIAL STANDARDS.**

- (1) The Central Bank may, in writing, determine prudential standards in relation to prudential matters to be complied with by -
- (a) a licence holder and life insurance agents; or
  - (b) a specified class of licence holders and life insurance agents; or
  - (c) one or more specified licence holders or life insurance agents; or
  - (d) shareholder controllers; or
  - (e) indirect controllers.
- (2) A prudential standard may impose different requirements to be complied with in different situations or in respect of different activities.

(3) The Central Bank may at any time determine, vary or revoke a prudential standard.

(4) A prudential standard -

(a) comes into force -

(i) unless Subparagraph (ii) applies - on the day on which the determination of the prudential standard is made; or

(ii) where that determination specifies a later day as the day on which the prudential standard comes into force - on the day so specified; and

(b) continues in force until it is revoked.

(5) Subject to Subsection (6), the Central Bank shall circulate to all licence holders and shall publish in such manner as it thinks fit, each prudential standard, and any variation or revocation of such standard.

(6) Where the Central Bank considers that a prudential standard or any variation or revocation of a prudential standard contains commercially sensitive or confidential information -

(a) the Central Bank is not required to circulate or publish that information under Subsection (5); but

(b) the Central Bank may include some or all of that information in the circulation or publication under Subsection (4) where the Central Bank considers it appropriate to do so.

(7) A failure to comply with this section does not affect the validity of the variation or revocation of the prudential standard concerned.

#### **49. SCOPE OF PRUDENTIAL STANDARDS.**

The Central Bank may issue prudential standards applicable to the operation of licence holders, the officers of licence holders and life insurance agents and any other entity for the purposes of this Act, which it considers necessary to implement, and ensure compliance with, the provisions of this Act.

#### **50. PUBLIC INTEREST PROVISIONS.**

Regulations may prescribe matters in relation to trade practices, disclosure of information to policyholders, pricing or consumer protection matters to be complied with by -

(a) licence holders and life insurance agents; or

(b) a specified class of licence holders or life insurance agents; or

(c) one or more specified licence holders or life insurance agents; or

(d) shareholder controllers; or

(e) indirect controllers.

#### **51. PART NOT TO LIMIT OPERATION OF OTHER PROVISIONS.**

Nothing in this Part is intended to limit the operation of any other provision of this Act or of the *Central Banking Act 2000*.

#### **52. INVESTMENT GUIDELINES.**

The Central Bank may issue and publish in the National Gazette investment guidelines in relation to the investments by licence holders, and such investment guidelines are binding on all licence holders in the management of life insurance business of a licence holder.

#### **PART VIII. – DUTIES OF LICENCE HOLDERS.**

##### **53. RESPONSIBILITY FOR APPOINTEES.**

(1) A licence holder that appoints an entity as a life insurance agent or any other entity to provide services to the licence holder is vicariously liable for the actions of the entity (whether or not those actions constitute an offence).

(2) No provision, contained in the constitution of a licence holder or in any service contract entered into by the licence holder, may derogate or diminish the responsibilities of a licence holder under this Act, including the delegation by a licence holder of all or any of its powers or functions, whether to an officer or agent of the licence holder, to another licence holder or to a life insurance agent.

##### **54. DUTY TO KEEP AND MAINTAIN REGISTER OF POLICYHOLDERS.**

(1) A licence holder shall establish and maintain a register of policyholders, which shall be kept at the registered office of the licence holder.

(2) The register of policyholders referred to in Subsection (1) shall include the following:-

- (a) details of every policyholder of the licence holder;
- (b) the type of life policy held by the policyholder;
- (c) total premiums paid by the policyholder;
- (d) any other information the Central Bank may require as set out in the prudential standards.

#### **PART IX. - DUTIES AND LIABILITIES OF DIRECTORS OF LICENCE HOLDERS.**

##### **55. DUTY OF DIRECTORS.**

(1) A director of a licence holder has a duty to its policyholders to take reasonable care, and use due diligence, to see that the investment, administration and management of the licence holder -

- (a) complies with the provisions of this Act; and
- (b) complies with all relevant prudential standards issued by the Central Bank; and
- (c) gives priority to the interests of policyholders and prospective policyholders of the licence holder.

(2) In order to avoid doubt, it is declared that, in the event of conflict between the interests of policyholders and prospective policyholders and the interests of shareholders of a licence holder, a director's duty is to take reasonable care, and use due diligence, to ensure that the licence holder gives priority to the interests of policyholders and prospective policyholders over the interests of shareholders.

(3) A director of a licence holder does not commit a breach of duty because of the doing of an act by the licence holder where the licence holder is permitted by this Part to do the act.

(4) Where -

- (a) in respect of any act or omission of a licence holder, a director of the licence holder is guilty of a breach of the duty imposed by Subsection (1); and
- (b) the act or omission of the licence holder results in a loss to the licence holder,

the director is liable to pay the licence holder an amount equal to the amount of the loss, as determined by a court of competent jurisdiction.

(5) Where two or more persons are liable under Subsection (4) in relation to the same act or omission, the liability of those persons is joint and several.

(6) An action under Subsection (4) may be brought -

- (a) by the licence holder; or
- (b) by the policyholders or shareholders of the licence holder.

#### **56. LIABILITY OF DIRECTORS.**

Where -

- (a) the Central Bank has given a notice to a licence holder in respect of a contravention of this Act; and
- (b) the contravention has resulted in a loss to a statutory fund; and
- (c) the licence holder has failed to comply with the notice within the period specified in it,

the persons who were the directors of the licence holder when the contravention occurred are jointly and severally liable to pay the licence holder an amount equal to the amount of the loss as calculated by a court of competent jurisdiction.

#### **57. THE CENTRAL BANK'S POWER TO SUE IN THE NAME OF THE LICENCE HOLDERS.**

Where the Central Bank considers that it is in the interests of policyholders to do so, the Central Bank may bring an action against a director in the name of the licence holder in the interests and for the benefit of the policyholders, for the recovery of an amount that the licence holder is entitled to recover.

### **PART X. - LODGEMENT OF RETURNS AND REPORTS AND DUTY TO MAINTAIN INFORMATION.**

#### **58. LICENCE HOLDERS TO LODGE STATISTICAL RETURNS.**

(1) In this section "accounting period" in relation to a licence holder means the period that is the accounting period for the licence holder under the *Companies Act 1997*.

(2) A license holder shall, within five months after the end of its accounting period, give to the Central Bank in respect of that period -

- (a) returns, in a form in accordance with the relevant prudential standard; and
- (b) a certificate by the directors of a licence holder, in the prescribed form -

- (i) certifying the method used to value the property of the licence holder; and
- (ii) identifying the property vested in the licence holder and the various statutory funds at the end of that period; and
- (iii) certifying compliance or, as the case may be non-compliance, by the licence holder and any life insurance agents appointed by the licence holder with the applicable prudential standards and the licence holder's investment strategy.

(3) The Central Bank may, by written notice, require a licence holder to lodge with a return to be lodged under this section, a report by an approved auditor, or such other person of a specified class, on specified matters.

#### **59. LODGMENT OF ANNUAL STATISTICAL RETURNS.**

(1) A licence holder shall prepare and lodge statistical returns with the Central Bank in respect of its operations.

(2) Subject to Subsection (3), a statistical return, is to be lodged in the form approved and for the period specified by prudential standard (the "reporting period").

(3) Subject to Subsection (4), the licence holder shall lodge statistical returns within one month of the end of the reporting period.

(4) The Central Bank may extend the period of time for lodging the returns under this section by not more than two months.

#### **60. DISCLOSURE OF INFORMATION TO POLICYHOLDERS.**

(1) A licence holder shall provide to each of its policyholders, within five months of the end of the accounting period, information they reasonably require to enable them to make informed decisions to enter into, vary, continue or discontinue a life policy.

(2) Policyholder statements issued in accordance with prudential standards shall contain all information required, including, but not limited to, premiums paid by an individual policyholder.

- (3) A licence holder shall, on request from a policyholder, provide access to -
  - (a) reports or statements of any auditor; and
  - (b) reports or statements of any actuary; and
  - (c) written information on approved policies and procedures for the handling of policyholder inquiries, complaints and for the resolution of disputes; and
  - (d) details of insurance or other indemnity arrangements in relation to loss, theft and fraud; and
  - (e) an abridged version of the annual audit balance sheet and trading result; and
  - (f) a copy of the licence holder auditor statement, certification and any qualification made by the auditor.

(4) A person who fails to comply with this section is guilty of an offence.

## **61. PROTECTION OF INFORMATION.**

(1) A licence holder shall ensure that any service contract it enters into with a life insurance agent or another licence holder requires the agent or the licence holder, where applicable -

- (a) to provide appropriate information as to the making of, and return on, the investments of the licence holder; and
- (b) to provide such information as is necessary to enable the licence holder to assess the capability of the life insurance agent; and
- (c) any other information to enable the licence holder to fulfil its obligations under this Act.

(2) A service contract under Subsection (1) shall also provide that the life insurance agent shall, on termination of the contract, immediately hand to the licence holder all information and documentation in respect of policyholders.

(3) Where a licence holder terminates a service contract referred to in Subsection (1) it shall provide written notice of that action to the Central Bank.

(4) Any provision of a service contract between a licence holder and a life insurance agent that purports to exempt the life insurance agent from liability for negligence, or to limit that liability, is void.

(5) The provisions of this section apply to any service contract entered into between licence holders.

(6) An entity who intentionally or recklessly contravenes Subsection (1) or (2) is guilty of an offence.

## **62. ADMINISTRATION AND ACCOUNTING STANDARDS OF LICENCE HOLDERS.**

(1) Financial statements of a licence holder shall be prepared and audited by an approved auditor in accordance with the provisions of the *Companies Act 1997* as modified by prudential standard.

(2) A licence holder is not subject to audit by the Auditor General except in the exercise of the Auditor General's power under Section 3(3) of the *Audit Act 1989*.

(3) A licence holder shall maintain proper accounting and administrative systems and arrangements for the benefit of policyholders until entitlements are paid out to policyholders.

(4) In addition to any obligation to maintain records under any other law, a licence holder shall keep and maintain full and proper records relating to life insurance business including

- (a) minutes of meetings; and
- (b) changes to directors of licence holders and changes of names of licence holders; and

- (c) changes to life insurance agents and changes to names of life insurance agents; and
- (d) copies of all reports and disclosures to policyholder; and
- (e) copies of annual financial reports, which shall be produced in audited form within three months of the end of any financial year.

**63. ACTUARIAL INVESTIGATIONS.**

- (1) A licence holder shall ensure that its approved actuary -
  - (a) investigates the financial condition of the licence holder every two years, at the end of the licence holder's accounting period and at any time required by the Central Bank, by written notice; and
  - (b) gives to the licence holder a written financial condition report on the results of the investigation under Paragraph (a) within six months of the end of the investigation period.
- (2) The investigation under Subsection (1) shall include -
  - (a) the making of a valuation of a licence holder's policy liabilities; and
  - (b) an assessment, in relation to each statutory fund of a licence holder, of the extent to which a licence holder has complied, during the financial year concerned, with a solvency standard and with any directions given to a licence holder under this Act.

**PART XI. - POWER TO APPOINT STATUTORY MANAGER.**

**64. APPOINTMENT OF A STATUTORY MANAGER.**

Where -

- (a) a licence holder informs the Central Bank that it considers that it is likely to become unable to meet its obligations to policyholders or other liabilities as they become due or is about to suspend payments to policyholders; or
- (b) the Central Bank considers that the licence holder is likely to become unable to meet its obligations or is about to suspend payment of entitlements to policyholders; or
- (c) a licence holder becomes unable to meet its obligations or suspends payment of entitlements to policyholders; or
- (d) a licence holder fails to implement or observe or breaches a prudential standard or a condition imposed on its licence such that, in the opinion of the Central Bank, the interests of the policyholders are materially threatened,

the Central Bank may, by written notice, appoint a statutory manager to the licence holder.

**65. RESPONSIBILITIES OF STATUTORY MANAGER.**

(1) Where the Central Bank appoints a statutory manager the Central Bank will ensure that the statutory manager has control of the operations of the licence holder until -

- (a) the following conditions are satisfied:-
  - (i) that suitable provisions have been made for the payment of entitlements to policyholders;
  - (ii) the Central Bank considers that it is no longer necessary for the statutory manager to remain in control of the licence holder; or

- (b) the Central Bank determines in consultation with the statutory manager, if applicable, that the licence holder is insolvent and is unlikely to be returned to solvency within a reasonable time.

(2) On making a determination under Subsection (1)(b) the Central Bank shall request the statutory manager to -

- (a) arrange for the orderly transfer of the licence holder's property to another licence holder; and
- (b) apply to the court for the licence holder to be wound up under the ***Companies Act 1997***.

(3) Where the requirements under Subsections (1) and (2) are satisfied, the Central Bank may by instrument in writing terminate control of the licence holder by a statutory manager.

#### **66. POWERS AND FUNCTIONS OF STATUTORY MANAGER.**

(1) A statutory manager has the powers and functions of the licence holder to which it has been appointed.

(2) A statutory manager may for the purposes of this Part require the licence holder or a person who has at any time been an officer of the licence holder to give the statutory manager information relating to the licence holder that the statutory manager requires.

(3) A licence holder or any other person, who fails to comply with any requirement to provide information under Subsection (2), is guilty of an offence.

(4) A statutory manager may on any terms and conditions that he considers appropriate, sell or otherwise dispose of the whole or any part of the property of the licence holder to protect the entitlements of the policyholders of the licence holder.

#### **67. LIABILITIES AND DUTIES OF STATUTORY MANAGER.**

(1) Where a licence holder incurs any loss because of any fraud, dishonesty, gross negligence or wilful failure to comply with this Act by the statutory manager, the statutory manager is liable for the loss.

(2) A statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, gross negligence or wilful failure to comply with this Act.

(3) The statutory manager shall provide details of the loss in a written report to the Central Bank, but failure to do so does not make the statutory manager liable for the loss.

(4) A statutory manager is not to be taken to be a director for the purposes of the ***Companies Act 1997***.

#### **68. EXTERNAL ADMINISTRATOR IN CONTROL – ADDITIONAL DUTIES.**

(1) A person who is an external administrator of a licence holder shall give to the Central Bank a written report showing how the control of the licence holder is being carried out where the Central Bank requests that such a report be provided to it.



(2) A person who is an external administrator of a licence holder shall on termination of his appointment, give to the Central Bank a written report showing how the control of the licence holder was carried out over the period of the external administrator's appointment.

(3) The Central Bank may give an external administrator of a licence holder a direction relating to the control of the licence holder and may alter such direction and where a direction (including an altered direction) is given to an external administrator, the external administrator shall -

- (a) act in accordance with the direction; or
- (b) immediately provide to the Central Bank information relating to the control of a licence holder and request the Central Bank to alter the direction.

(4) Where an external administrator of a licence holder requests the Central Bank to alter a direction and the Central Bank after considering the request confirms the direction, the external administrator shall act in accordance with the direction.

#### **69. TERMINATION OF APPOINTMENT OF EXTERNAL ADMINISTRATOR.**

(1) Where an external administrator of a licence holder contravenes a requirement under this Act, the Central Bank may terminate the appointment of the external administrator.

(2) The terms and conditions of the appointment of the external administrator may provide for termination in circumstances in addition to those mentioned in Subsection (1).

#### **70. EFFECT ON EXTERNAL ADMINISTRATOR OF APPOINTMENT OF STATUTORY MANAGER.**

(1) The appointment of an external administrator of a licence holder is terminated when a statutory manager takes control of a licence holder.

(2) An external administrator of a licence holder shall not be appointed while a statutory manager is in control of a licence holder unless the Central Bank approves the appointment.

(3) Where a person purports to act as an external administrator of a licence holder after the appointment of a statutory manager to that licence holder the acts of the external administrator are invalid and of no effect.

(4) The Central Bank will inform the external administrator of a licence holder that a statutory manager will take control of the licence holder as soon as possible after the decision that a statutory manager will take control of a licence holder is made, but failure to inform the external administrator does not affect the operation of this section.

#### **71. EFFECT OF LEGAL PROCEEDINGS OF STATUTORY MANAGER.**

(1) A person cannot begin or continue a proceeding in a court against a licence holder while a statutory manager is in control of a licence holder unless -

- (a) the court grants leave on the ground that the person would be caused hardship if leave were not granted; or
- (b) the Central Bank consents to the proceedings beginning or continuing.

(2) A person intending to apply for leave of the court under Subsection (1) shall give the Central Bank at least 10 days notice of the intention to apply, and the Central Bank may apply to the court to be joined as a party to the proceedings for leave.

(3) In this section, a reference to a proceeding against a licence holder includes a reference to a cross claim or third party claim against a licence holder.

**72. STATUTORY MANAGER IN CONTROL NOT GROUNDS FOR DENIAL OF OBLIGATIONS.**

(1) Subject to Subsection (2), the fact that a statutory manager has been appointed to a licence holder is not a ground for any other party to a contract to which the licence holder is a party -

- (a) to deny any obligations under that contract; or
- (b) to accelerate any debt under that contract; or
- (c) to close out any transaction relating to that contract.

(2) Regulations may prescribe circumstances under which Subsection (1) does not apply.

**73. COSTS OF STATUTORY MANAGER.**

The costs incurred by the Central Bank (including costs in the nature of remuneration and expenses) of appointing a statutory manager to control a licence holder are payable from the funds of the licensed holder and are a debt due to the Central Bank.

**74. CENTRAL BANK TO GIVE NOTICE OF STATUTORY MANAGEMENT.**

Where the Central Bank appoints a statutory manager or terminates his appointment the Central Bank shall cause a notice of the appointment or termination to be published in the National Gazette.

**PART XII. - PROVISIONS RELATING TO STATUTORY FUNDS OF LICENCE HOLDERS.**

**75. REQUIREMENT THAT LICENCE HOLDERS HAVE STATUTORY FUNDS.**

(1) A licence holder shall -

- (a) at all times have at least one statutory fund in respect of its life insurance business but may have more statutory funds if it chooses to do so, subject to Subsection (3); and
- (b) if it carries on life insurance business outside Papua New Guinea, have at least one statutory fund exclusively in respect of that business.

(2) Each statutory fund shall relate to only one type of life policy.

(3) A licence holder shall obtain the approval of the Central Bank to establish a new statutory fund.

**76. DUTY OF A LICENCE HOLDER IN RELATION TO STATUTORY FUNDS.**

(1) In the investment, administration and management of the property of a statutory fund, a licence holder -

- (a) shall comply with this Act; and
- (b) shall give priority to the interests of policyholders of a statutory fund.

(2) An act or decision of a licence holder in relation to a statutory fund does not contravene Subsection 1(b) where, having regard to the circumstances existing at the time of the act or decision, it is reasonable to believe that the act or decision gives priority to the interests of policyholders of a statutory fund.

(3) An investment by a licence holder is not ineffective merely because it is made in contravention of the Subsection 1(b).

(4) A reference in Subsection (1) or (2) to the interests of policyholders of a statutory fund is a reference to the interests of such persons viewed as a group.

(5) Nothing in Subsection (1) prevents a licence holder doing anything that a licence holder is permitted to do by this Act.

#### **77. NOTICE TO THE CENTRAL BANK WHEN FUND ESTABLISHED.**

(1) Whenever a licence holder establishes a statutory fund otherwise than under this Act the licence holder shall give the Central Bank written notice of -

- (a) the establishment of the statutory fund; and
- (b) the date on which the statutory fund was established; and
- (c) the nature of the life insurance business of a licence holder to which the statutory fund relates; and
- (d) such other matters as are prescribed.

(2) A notice under Subsection (1) shall be given in accordance with the regulations.

#### **78. PROPERTY OF STATUTORY FUND.**

(1) For the purposes of this Act, the property of a statutory fund at a particular time are the following:-

- (a) the balance of money represented by amounts credited to the statutory fund in accordance with Section 80;
- (b) the property of the licence holder obtained as a result of the expenditure or application of money credited to the statutory fund;
- (c) the investments held by the licence holder as a result of the expenditure or application of money credited to the statutory fund;
- (d) other money, property or investments of the licence holder transferred to the statutory fund, whether under this Act or otherwise.

(2) Property or investments obtained by the application of property (other than money) of a statutory fund are themselves property of the statutory fund.

(3) Subject to Subsection (4), a licence holder shall keep property of a statutory fund distinct and separate from property of other statutory funds and from all other money, property or investments of the licence holder.

(4) A licence holder may maintain a single bank account for money that constitutes property of two or more statutory funds where the account is maintained in accordance with the prudential standards.

(5) Nothing in this Act is intended to constitute a licence holder or the directors of a licence holder as a trustee or trustees of the property of the statutory funds of the licence holder.

**79. IDENTIFICATION OF POLICIES REFERABLE TO STATUTORY FUND.**

(1) A policy shall specify the statutory fund or statutory funds to which the policy is referable.

(2) A policy document shall not make provision inconsistent with Subsection (1).

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

- (a) the benefits under the policy that are to be provided out of each statutory 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 fund; or
  - (ii) the way in which that proportion is to be calculated.

(4) Subsection (1) does not prevent a policy document being endorsed so as to change the statutory fund or funds to which the policy is referable, provided the written consent of the Central Bank is first obtained.

(5) Where the statutory fund or funds to which a policy is referable is changed in accordance with Subsection (4), Section 82 shall be complied with.

(6) Any consent granted by the Central Bank under Subsection (3) may be subject to such conditions as considered appropriate by the Central Bank in its absolute discretion.

**80. PAYMENTS TO STATUTORY FUND.**

The following amounts shall be credited by a licence holder to a statutory fund:-

- (a) premiums payable under life policies referable solely to the statutory fund;
- (b) in the case of a policy that is referable to the statutory fund and one or more other statutory funds, the proportion of the premium that, by virtue of a provision in the policy document, is to be credited to the statutory fund;
- (c) amounts paid to a licence holder in relation to a liability under this Act in relation to the statutory fund;
- (d) income from the investment of property of the statutory fund;
- (e) money paid to or by a licence holder under a judgement of a court relating to any matter concerning the business of the statutory fund or any failure to comply with this Part in relation to the statutory fund;
- (f) any other money received by a licence holder in connection with its conduct of the business of the statutory fund.

**81. CAPITAL PAYMENTS TO STATUTORY FUNDS.**

(1) Nothing in this Act prevents a licence holder from making a capital payment to a statutory fund.

(2) For the purposes of this Act, a licence holder makes a capital payment to a statutory fund where it credits to the fund an amount that -

- (a) is not required to be credited to the statutory fund; and
- (b) does not represent any part of the property of another statutory fund.

**82. EXPENDITURE AND APPLICATION OF STATUTORY FUND.**

(1) A licence holder shall not apply, or deal with, property of a statutory fund, whether directly or indirectly, except in accordance with this section.

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

- (a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the statutory fund; or
- (b) for the making of investments in accordance with this Act; or
- (c) for the purposes of a distribution under Part XIII.

(3) Except as permitted under this Act or regulation, a licence holder shall not mortgage or charge any of the property of a statutory fund -

- (a) to obtain financial accommodation; or
- (b) or for any other purposes.

(4) Except as permitted under this Act, a licence holder shall not obtain financial accommodation, for the purposes of the business of a statutory fund.

(5) The property of a statutory fund is not available to meet a liability of a licence holder under a contract of guarantee unless -

- (a) the contract of guarantee was entered into by a licence holder in connection with an investment by the licence holder of property of the statutory fund; and
- (b) the investment was made in accordance with this Part.

(6) Unless otherwise approved by the Central Bank nothing in this section applies to the transfer of property from one statutory fund to another.

**83. PROHIBITION OF REINSURANCE BETWEEN FUNDS.**

(1) In order to avoid doubt, it is declared that a licence holder contravenes this Part where it engages in the practice of reinsurance between statutory funds of a licence holder.

(2) For the purposes 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 (“the reinsuring fund”);

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

**84. EFFECT OF NON-COMPLIANCE WITH SECTION 82..**

(1) Subject to Subsection (2) a transaction entered into in contravention of Section 82 is of no effect.

(2) The Court, on application by a party to the transaction, may make an order declaring that the transaction is effective, and is to be taken always to have been effective, for all purposes.

**85. INVESTMENT OF STATUTORY FUNDS.**

(1) The general rule regarding investment of property of a statutory fund is that a licence holder may invest such property in any way that is likely to further the business of the statutory fund.

- (2) The general rule stated in Subsection (1) is subject to the following qualifications:-
- (a) all investments of statutory funds shall be conducted at arm's length;
  - (b) all property of a licence holder shall remain unencumbered; and
  - (c) prudential standards may prescribe restrictions on investments.

(3) Nothing in this Act -

- (a) authorizes a licence holder to make an investment a licence holder would otherwise be prohibited from making; or
- (b) authorizes a licence holder to make an investment a licence holder would not otherwise have power to make; or
- (c) except with the approval of the Central Bank, authorizes a licence holder to invest property of a statutory fund in a related company that is not a subsidiary of a licence holder; or
- (d) authorizes a licence holder to invest property of a statutory fund, or keep such property invested, in a subsidiary of a licence holder where the investment, or the retention of the investment, as applicable, is prohibited by this Act.

(4) Nothing in Subsection (3)(c) or (d) prevents a licence holder investing property of a statutory fund, or keeping such property invested, in ordinary voting shares of listed corporations related to a licence holder (whether or not they are subsidiaries) where the total value of the property of the statutory fund so invested does not exceed the percentage provided under a prudential standard.

(5) A transaction is not ineffective merely because it involves a contravention of Subsection (3)(c) or (d).

(6) Nothing in this section -

- (a) prevents a licence holder from investing money of a statutory fund by way of deposit with a bank; or
- (b) requires the approval of the Central Bank for such an investment.

(8) For the purposes of this Part, an investment by way of a loan is to be taken to be made when the loan agreement is entered into.

**86. REPORTING OF RESTRICTED INVESTMENTS.**

(1) Every licence holder shall give the Central Bank a restricted investments return in relation to each half-year.

(2) A restricted investment is an investment in a related company.

(3) A half-year, in relation to a licence holder is -

- (a) a period of six months that commences on the first day of a financial year of a licence holder; or
- (b) a period of six months that immediately follows a period referred to in Paragraph (a).

(4) A restricted investments return is a return setting out the particulars as required by prudential standards of each restricted investment -

- (a) current at the end of the half-year to which the return relates; or
- (b) made by a licence holder during that half-year but not current at the end of the half-year.

(5) A restricted investments return shall -

- (a) be in accordance with the form prescribed by prudential standards; and
- (b) be given to the Central Bank within such time as is fixed by prudential standards.

**87. TRANSFER OF PROPERTY BETWEEN FUNDS.**

(1) A licence holder shall not transfer property from one statutory fund to another statutory fund or to itself except in accordance with this Act.

(2) A licence holder may transfer property from one statutory fund (“the losing fund”) to another statutory fund (“the gaining fund”) where -

- (a) a licence holder transfers from the gaining fund to the losing fund an amount equal to the fair value of the property; and
- (b) in relation to the owners of policies referable to the losing fund and the gaining fund, the transfer is fair and reasonable in all the circumstances.

(3) For the purposes of Subsection (2), the fair value of property is the price a person could reasonably be expected to pay for the property on a sale in which the seller and buyer were dealing with each other at arm’s length.

(4) Subsection (1) does not prevent a liquidator doing anything authorized or required by or under this Act or any other law of Papua New Guinea.

(5) Any transfer allowed under this section can only be made on prior approval from the Central Bank.

**88. RESTRICTION ON RESTRUCTURE OR TERMINATION OF STATUTORY FUNDS.**

- (1) A licence holder shall not -
- (a) change the statutory fund or funds to which a policy is referable; or
  - (b) terminate a statutory fund except in accordance with this Act.

(2) Subsection (1) does not prevent a liquidator doing anything authorized or required by or under this Act or any other law of Papua New Guinea.

**89. ASCERTAINMENT OF INCOME AND OUTGOINGS OF A STATUTORY FUND.**

The Central Bank may issue a prudential standard in respect to -

- (a) what constitutes income of a statutory fund; and
- (b) what constitutes outgoings of a statutory fund.

**90. RESTRUCTURE OF STATUTORY FUNDS.**

(1) Where a licence holder wishes to restructure its statutory funds by making one or more policies that are referable to a statutory fund or funds (transferring fund or funds) become referable to another, whether existing or proposed (receiving fund or funds), it shall apply to the Central Bank for approval, and such application shall be in accordance with prudential standards.

(2) The Central Bank shall not approve an application under Subsection (1) where it considers the restructure will result in -

- (a) any transferring or receiving fund not satisfying the solvency standard; or
- (b) unfairness to the policyholders, considered as a group, referable to a transferring fund or a receiving fund.

(3) Where, as a result of the restructure, one or more of a licence holder's existing statutory funds is proposed to be terminated, the Central Bank shall ensure that all liabilities of the fund or funds are settled and that all property are distributed from the fund or funds and are applied fairly.

(4) The Central Bank shall not approve an application for a restructure of a licence holder's statutory funds where a licence holder is being wound up when the application is made.

**91. ADDITIONAL REQUIREMENTS FOR TRANSFER OF POLICIES BETWEEN STATUTORY FUNDS BY ENDORSEMENT.**

(1) In this section, "liabilities", in relation to a licence holder, means -

- (a) policy liabilities; and
- (b) reserves; and
- (c) any other liabilities of a licence holder.

(2) Where -

- (a) a licence holder has more than one statutory fund in respect of its life insurance business; and
- (b) because of an endorsement, either -
  - (i) a policy has ceased to be referable to one of those funds and becomes referable to another fund; or



- (ii) a policy referable to one or more of those funds had become referable to a further fund or funds,

a licence holder shall transfer to each fund to which the policy has become referable property of a value equivalent to such part of the liabilities (including policy liabilities) of a licence holder as is ascertained in accordance with prudential standards.

- (3) Where, because of an endorsement as referred in Subsection (2) -

- (a) a policy that is referable to a statutory fund becomes referable to another statutory fund; or
- (b) a policy that is referable to one statutory fund becomes referable to two or more statutory funds,

a licence holder concerned must give notice to the owner of the policy in accordance with prudential standards.

### **PART XIII. – FINANCIAL MANAGEMENT OF LICENCE HOLDERS.**

#### **92. TREATMENT OF INCOME OR OUTGOINGS RELATING TO TWO OR MORE STATUTORY FUNDS.**

Where an amount of income or outgoings of a licence holder relates to the business of two or more statutory funds, a licence holder shall -

- (a) apportion the amount so as to determine what part of the amount relates to each fund; and
- (b) include in its records relating to each fund the part of the amount that relates to that fund.

#### **93. BASIS OF APPORTIONMENT.**

An apportionment for the purposes of Section 92 shall be made -

- (a) on an equitable basis; and
- (b) according to generally accepted accounting principles; and
- (c) after the appointed actuary's written advice that the basis of the proposed apportionment is appropriate, has been obtained; and
- (d) supported by the report given by the approved auditor stating that the apportionment has been made equitably and in accordance with generally accepted accounting principles.

#### **94. TREATMENT OF APPRECIATION AND DEPRECIATION OF PROPERTY.**

Where a licence holder treats property as having appreciated or depreciated, a licence holder shall, for the purposes of this Part, treat the amount of the appreciation or depreciation as an amount of income or outgoing, as the case may be.

#### **95. OBLIGATION TO ALLOCATE SURPLUS.**

Where financial statements given by a licence holder to the Central Bank under this Act disclose the business of a statutory fund has a surplus for the period to which the statements relate, a licence holder shall allocate the surplus.

#### **96. SURPLUS.**

(1) Where the statutory fund supports participating business, the full value of the surplus shall be distributed to policyholders and any shareholder capital account on a *pari passu* basis.

(2) Where the statutory fund supports non-participating business, the full value of the surplus must be allocated to an unappropriated surplus account.

#### **97. DISTRIBUTION OF UNAPPROPRIATED SURPLUS.**

(1) The distribution of unappropriated surplus of a statutory fund that supports non-participating policies shall be in accordance with the following rule that unappropriated surplus accounts may be -

- (a) transferred to shareholders' funds; or
- (b) transferred to another statutory fund of a licence holder.

(2) A distribution of unappropriated surplus of a statutory fund may only be made after the directors of a licence holder have received the appointed actuary's written advice as to the likely consequences of the proposed distribution.

(3) A distribution of unappropriated surplus of a statutory fund shall not be made where -

- (a) the distribution would have the result that the solvency and capital adequacy prudential standards would not be satisfied in relation to the fund; or
- (b) the distribution would involve a contravention of a direction given by the Central Bank under this Act; or
- (c) in the case of a distribution of unappropriated surplus account, the distribution would involve a contravention of regulations made for the purposes of Subsection (4).

(4) Regulations may prohibit the distribution of unappropriated surplus unless the distribution is in accordance with specified requirements relating to the distribution of unappropriated surplus accounts.

#### **98. DISTRIBUTION OF SHAREHOLDERS CAPITAL.**

A distribution of shareholders capital in relation to a statutory fund -

- (a) may only be made after the directors of a licence holder concerned have received the appointed actuary's written advice as to the likely consequence of the proposed distribution; and
- (b) shall not be made where -
  - (i) the distribution would have the result that the solvency and capital adequacy prudential standards would not be satisfied in relation to the fund; or
  - (ii) the distribution would involve a contravention of a direction given by the Central Bank under this Act.

### **PART XIV. – APPOINTMENT, DUTIES AND LIABILITIES OF AUDITORS AND ACTUARIES OF LICENCE HOLDERS.**

**99. APPOINTMENT.**

(1) Subject to Subsection (2), a licence holder shall have an appointed actuary.

(2) Within 30 days after a person ceases to be the appointed actuary of a licence holder, a licence holder shall appoint another person to be the appointed actuary of the licence holder.

(3) Only a person eligible for appointment as the appointed actuary of a licence holder may hold such an appointment.

(4) A person is eligible for appointment as the appointed actuary of a licence holder where that person is -

- (a) a Fellow (or the equivalent senior class of fellowship) of a prescribed Association of Actuaries; and
- (b) has been such a Fellow for at least five years; and
- (c) is not less than 30 years of age.

(5) An appointment of a person as appointed actuary of a licence holder cannot take effect while there is in force an appointment of another person as the appointed actuary of that licence holder.

**100. CESSATION OF APPOINTMENT.**

(1) A person ceases to hold an appointment as the appointed actuary of a licence holder where -

- (a) the person ceases to be eligible for such an appointment; or
- (b) the person gives a licence holder a written notice of resignation of the appointment; or
- (c) a licence holder gives the person written notice that the appointment is terminated.

(2) A person who, apart from this subsection, would be eligible for appointment as a licence holder's appointed actuary is not so eligible where there is in force a declaration by the Central Bank under Subsection (3).

(3) The Central Bank may, in writing, declare that a person is not eligible for appointment as a licence holder's appointed actuary where the person has failed to perform adequately and properly the functions and duties of an appointed actuary under this Act.

(4) A declaration under Subsection (3) takes effect on the day specified in the declaration, which day shall be not later than 30 days after the date of the declaration.

(5) The Central Bank shall give a copy of a declaration under Subsection (3) to the person to whom it relates.

**101. NOTIFICATION OF APPOINTMENT ETC.,**

(1) A licence holder that appoints a person under Section 99 shall give the Central Bank written notice of -

- (a) the name of the person; and

- (b) details of the actuarial qualifications and experience of the applicant; and
- (c) the date of the appointment; and
- (d) any other matter prescribed by the regulations.

(2) Notice under Subsection (1) shall be given within 14 days after the day of the appointment.

(3) Where a person ceases to be the appointed actuary of a licence holder, a licence holder shall give the Central Bank written notice, within 14 days after the day on which the person ceased to be the appointed actuary, that the person has so ceased and of the date on which he so ceased.

## **102. DUTIES OF THE APPOINTED ACTUARY.**

(1) The appointed actuary of a licence holder shall, without limiting the functions he might be called upon by a licence holder to perform -

- (a) undertake the annual actuarial investigations and any additional actuarial valuations and provide financial condition reports as required by this Act; and
- (b) provide advice to the directors of a licence holder regarding distribution of unappropriated surpluses and shareholders' capital as required by this Act; and
- (c) provide advice to the directors of a licence holder regarding the appropriateness of the apportionment of certain income and outgoings as required by this Act; and
- (d) provide actuarial advice to a licence holder regarding policies to be issued by a licence holder as required by this Act; and
- (e) any other requirements necessary or convenient for giving effect to this Act.

(2) The appointed actuary of a licence holder, in the performance of his duties and the exercise of his powers, shall comply with the generally accepted actuarial standards and principles.

## **103. POWERS OF APPOINTED ACTUARY.**

(1) The appointed actuary of a licence holder is entitled to have access to any information or document in the possession, or under the control, of a licence holder where such access is reasonably necessary for the proper performance of the functions and duties of the appointed actuary.

(2) The appointed actuary of a licence holder may require any officer or employee of a licence holder to answer questions or produce documents for the purpose of enabling the appointed actuary to have the access to information and documents provided for by Subsection (1).

(3) An officer or employee of a licence holder shall not refuse or fail, without reasonable excuse, to comply with a requirement under Subsection (2).

- (4) The appointed actuary of a licence holder is entitled to attend a meeting of the directors of a licence holder and to speak on any matter being considered at the meeting -
- (a) that relates to, or may affect the solvency of a licence holder; or
  - (b) that relates to advice given by the appointed actuary to the directors; and
  - (c) that concerns a matter in relation to which the appointed actuary will be required to give advice.
- (5) The appointed actuary of a licence holder is entitled to attend -
- (a) any annual general meeting of policyholders of a licence holder; and
  - (b) any other meeting of policyholders of a licence holder at which a licence holder's annual account or financial statements are to be considered or at which any matter in connection with which the appointed actuary is or has been subject to a duty under this Act is to be considered.

#### **104. ACTUARY'S OBLIGATION TO REPORT TO THE CENTRAL BANK.**

(1) The appointed actuary of a licence holder shall draw to the attention of a licence holder, or of the directors or an officer of a licence holder, any matter that comes to the attention of the actuary and that the actuary thinks requires action to be taken by a licence holder or its directors -

- (a) to avoid a contravention of this Act; or
- (b) to avoid prejudice to the interests of the owners of policies issued by a licence holder.

(2) Where the appointed actuary of a licence holder is of the opinion -

- (a) that there are reasonable grounds for believing that a licence holder or a director of a licence holder may have contravened this Act or any other law; and
- (b) that the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by a licence holder,

the appointed actuary shall inform the Central Bank in writing of -

- (c) his opinion; and
- (d) the information on which it is based.

(3) Where -

- (a) the appointed actuary of a licence holder has drawn to the attention of a licence holder, or of the directors or an officer of a licence holder, a matter that the actuary is of the opinion requires action to be taken by a licence holder or its directors -
  - (i) to avoid a contravention of this Act; or
  - (ii) to avoid prejudice to the interests of owners of policies issued by a licence holder; and
- (b) the appointed actuary is satisfied that there has been reasonable time for the taking of the action but the action has not been taken,

the appointed actuary shall inform the Central Bank in writing of the matter referred to in Paragraph (a).

(4) Where the appointed actuary of a licence holder is of the opinion that -

- (a) the directors of a licence holder have failed to take such action as is reasonably necessary to enable the actuary to exercise his right under this Act; and
- (b) an officer or employee of a licence holder has engaged in conduct calculated to prevent the appointed actuary exercising his rights under this Act,

the appointed actuary shall inform the Central Bank in writing of -

- (c) his opinion; and
- (d) the information on which it is based.

(5) Where -

- (a) a person becomes subject to an obligation under Subsection (2) or (3) to inform the Central Bank of anything; and
- (b) before the person informs the Central Bank, the person ceases to be the appointed actuary of a licence holder concerned,

the person remains subject to the obligation as if he were still the appointed actuary of a licence holder.

#### **105. QUALIFIED PRIVILEGE OF APPOINTED ACTUARY.**

(1) A person who is, or has been, the appointed actuary of a licence holder has qualified privilege in respect of any statement, whether written or oral, made by him for the purpose of the performance of his functions as appointed actuary of a licence holder.

(2) In particular (and without limiting Subsection (1)), a person who is or has been the appointed actuary of a licence holder has qualified privilege in respect of -

- (a) any statement, written or oral, made by him under, or for the purposes of, a provision of this Act; and
- (b) the answer to any question he is required by the Board of a licence holder to answer.

(3) The privilege conferred by this section is in addition to any privilege conferred on a person by any other law.

### **PART XV. – PROVISIONS AND CONTRACTUAL CONDITIONS RELATING TO LIFE POLICIES.**

#### **106. INSURABLE INTEREST NOT REQUIRED.**

A contract of life insurance is not void by reason only that the insured did not have, at the time when the contract was entered into, an interest in the subject matter of the contract.

#### **107. EFFECT OF SUICIDE ON POLICY.**

A licence holder may only avoid a life policy on the ground that the person whose life is insured by the policy committed suicide where the policy expressly excludes liability in case of suicide.

#### **108. CONDITION AS TO WAR RISK VOID.**

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

(2) Subsection (1) does not apply where there is written in the policy document an acknowledgment signed by the person to whom the policy was issued that the policy is subject to the term or condition.

#### **109. THE INSURED'S DUTY OF DISCLOSURE.**

An insured has a duty to disclose to a licence holder, before a life contract is entered into, every matter known to the insured that he knows to be relevant to the decision of a licence holder whether to accept the risk and if so on what terms.

#### **110. LICENCE HOLDER TO INFORM OF DUTY OF DISCLOSURE.**

(1) A licence holder shall, before a life contract is entered into, inform the insured of the general nature and effect of the duty of the disclosure by the insured.

(2) Regulations may prescribe how a licence holder is to comply with Subsection (1).

#### **111. REMEDIES FOR NON DISCLOSURE OR MISREPRESENTATION.**

Where an insured under a life contract failed to comply with the duty of disclosure or made a misrepresentation to a licence holder before the contract was entered into, a licence holder may -

- (a) where the failure was fraudulent or misrepresentation made fraudulently, avoid the contract; or
- (b) where a licence holder would not have been prepared to enter into a life contract on any terms if the duty of disclosure had been complied with or the misrepresentation not made, avoid the contract; or
- (c) where a licence holder has not avoided the life contract within three years after the contract was entered into, vary the contract by substituting for the sum insured including bonuses of an amount which a licence holder would have provided under the contract had it been prepared to enter into the contract on different terms.

#### **112. INTEREST ON CLAIMS.**

(1) Where a licence holder is liable to pay an amount under a life contract, it is also liable to pay interest on that amount for the period between the day it became unreasonable for it not to have paid the amount to the day it made the payment.

(2) The amount of interest payable is to be determined in accordance with the regulations.

#### **113. COOLING OFF PERIOD.**

An insured has the right within 14 days of receiving a policy document to cancel the contract and a licence holder is liable to repay to the insured all amounts paid by the insured to a licence holder under the contract, subject to deducting the amount of any tax paid or payable by a licence holder under that contract.

**114. REASONS FOR NON ACCEPTANCE TO BE GIVEN.**

(1) Where a licence holder declines an offer by a prospective insured to enter into a life contract or offers life insurance cover to the insured on terms that are less advantageous to the insured by the reason of some special risk -

- (a) relating to the insured or to the subject matter of the contract; or
- (b) relating to the life to be insured,

the licence holder shall, where requested to do so in writing, give a statement of reason in writing for its decision.

(2) Where the insured is not the life insured -

- (a) Subsection (1) does not apply if the only reason for the decision of a licence holder is related to the state of health of the life insured; or
- (b) no reference to the state of health of the life insured may be given in any statement under Subsection (1) where the decision of a licence holder was not solely related to the state of health of the life insured.

**115. SURRENDER VALUES.**

(1) A policyholder may request, in writing to the licence holder, that a life policy be surrendered where the life policy -

- (a) does not include a contractual obligation for payment of any premiums after the first year; or
- (b) has been in force for at least three years; or
- (c) is not a policy of a class of policies declared by the regulations as exempt; or
- (d) is not a policy of a class of policies subject to specified modifications as declared by the regulations.

(2) A licence holder which has received a request under Subsection (1) shall pay to the policyholder, the surrender value of the policy less the amount of any debt owed to a licence holder under, or secured by, the policy.

(3) The surrender value of a life policy at a particular time is the amount calculated in accordance with the regulations.

**116. RELAXATION OF A LICENCE HOLDER'S OBLIGATION TO SURRENDER.**

(1) A licence holder may apply to the Central Bank for the suspension or variation of its obligation to make payments under Section 115.

(2) Where the Central Bank thinks that such payments would prejudice -

- (a) the financial stability of a licence holder; or
- (b) the interests of the policyholders of a licence holder,

the Central Bank may, in writing, suspend or vary a licence holder's obligation to pay the surrender values for such period as the Central Bank thinks fit.

(3) A suspension or variation may be subject to such conditions as the Central Bank thinks fit.

**117. PAID-UP POLICIES.**



(1) Where the premiums under a policy have been paid in respect of a period of at least three years, the policyholder may request, in writing, a licence holder concerned -

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

(2) On receiving a request under Subsection (1), a licence holder shall vary the policy by reducing the amount payable under the policy to an amount calculated in accordance with the regulations.

(3) Where at the time of a request under Subsection (1), there is a debt owed by the policyholder to a licence holder under the policy or secured by the policy, a licence holder may either -

- (a) treat the debt as a debt secured by the paid-up policy; or
- (b) discharge the debt by calculating the reduced amount payable under the policy by taking the debt into account in accordance with the regulations.

#### **118. NON-FORFEITURE OF POLICIES IN CERTAIN CASES FOR NON-PAYMENT OF PREMIUMS.**

(1) A policy is not liable to be forfeited only because of the non-payment of a premium (the overdue premium) where -

- (a) at least three years' premiums have been paid on the policy; and
- (b) the surrender value of the policy, calculated as at the day before the overdue premium is due, exceeds the total of -
  - (i) the amount of the overdue premium; and
  - (ii) the total of any other amounts owed to a licence holder under, or secured by, the policy.

(2) An overdue premium is a debt owing to a licence holder under the policy and until it is paid, a licence holder may charge interest on it on terms not less favourable to the policyholder than such terms (if any) as are prescribed by the regulations.

(3) A licence holder may only forfeit a policy because of the non-payment of a premium where -

- (a) a licence holder has given the policyholder 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 30 days after the giving of the notice or 30 days after the day on which the premium became, or will become, due, whichever is the later if the amount due to a licence holder has not been paid; and
- (b) at least 30 days have elapsed since:
  - (i) the day on which the notice was given; or
  - (ii) the day on which the premium became due,

whichever is the later.

#### **119. ASSIGNMENT OF POLICY.**

(1) The rights of a person as owner of a life policy may only be assigned at law under this section.

(2) An assignment is not effective at law unless the following requirements have been satisfied:-

- (a) the assignment shall be by memorandum of transfer in accordance with, or substantially in accordance with, the form prescribed by the regulations;
- (b) the memorandum shall be endorsed on the life policy document or on an annexure to the life policy document that is referred to in the policy document or in another annexure to the life policy document;
- (c) the memorandum shall be signed by the transferor and the transferee;
- (d) the assignment shall be registered in a register of assignments kept by the licence holder concerned;
- (e) the date of registration shall be inserted in the memorandum;
- (f) the memorandum shall be signed by the principal executive officer of the licence holder or by a person authorised by the principal executive officer to sign such memoranda.

(3) Where all the requirements of Subsection (2) are satisfied, an assignment has the following effects at law:-

- (a) the transferee has all the rights and powers, and is subject to all the liabilities, of the transferor under the life policy;
- (b) the transferee may sue in his own name on the life policy;
- (c) payment to the transferee of money due under the life policy discharges the licence holder from all liability under the life policy in respect of the money;
- (d) the memorandum of transfer is conclusively presumed to have been registered in accordance with Subsection (2) on the date shown in the memorandum;
- (e) as between the licence holder 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 licence holder, 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;
- (i) subject to Section 121, the licence holder, 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.

(4) An assignment under this section does not -

- (a) make the transferee a policyholder of the licence holder; or
- (b) deprive the transferor of membership of the licence holder in respect of the policy,

except in accordance with the licensed holder's constitution.

(5) The rights and liabilities under a 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 licence holder that issued the policy.

(6) A licence holder is not obliged to register an assignment under Subsection (2)(d) where the licence holder is required or permitted, by another law of Papua New Guinea, to refuse to register the assignment.

(7) This section does not prejudice the effect in equity of an assignment of the rights of a person as owner of a policy that is made otherwise than under this section.

#### **120. PROTECTION OF INTEREST OF INSURED.**

(1) The rights and interests of a person under -  
(a) a life policy effected on his 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 judgment, 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.

#### **121. PROTECTION OF POLICY MONEY ON PERSON'S DEATH.**

(1) Where, on the death of a person, 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 -  
(i) under any judgment, order or process of a court; or  
(ii) 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 where -  
(i) the person had entered into a contract that provided expressly for the money to be so applied; or  
(ii) the person had charged the money with the payment of the debt; or  
(iii) the person gave an express direction, in his 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;  
(iii) the creation of a trust for the payment of debts.

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

**122. PROBATE OR ADMINISTRATION NOT NECESSARY IN CERTAIN CASES.**

(1) Where -

- (a) there is only a single policy under which money is payable by a particular licence holder to the personal representative of a deceased person; or
- (b) there are two or more policies under which money is payable by a particular licence holder to the personal representative of a deceased person; and
- (c) the total of the money payable under the policy or policies does not exceed K20,000.00 or such other amount as is prescribed by regulation for the purposes of this Paragraph,

the licence holder may pay the money to -

- (d) a relative of the deceased person; or
- (e) a person who satisfies the licence holder that he is entitled to the property of the deceased person -
  - (i) under the deceased person's will; or
  - (ii) under the law relating to the disposition of the property of deceased persons; or
- (f) a person who satisfies the licence holder that he is entitled to obtain probate of the will of the deceased person or to take out letters of administration of the deceased person's estate; or
- (g) a person who satisfies the licence holder that he is entitled to the property of the deceased in accordance with custom.

(2) A licence holder may pay the money without requiring the production of any probate or letter of administration.

(3) A licence holder that makes a payment under this section is discharged from all further liability in respect of the money payable under the policy or policies.

(4) A person to whom a licence holder makes a payment under this section shall apply the money in the due course of administration.

(5) In this section "money", in relation to a policy, means the total of the money payable under the policy, less any debt due to the licence holder under, or secured by, the policy.

**123. DEATH OF POLICY OWNER WHO IS NOT THE LIFE INSURED.**

(1) This section applies -

- (a) where the owner of a life policy dies before the person whose life is insured by the policy; and
- (b) either -
  - (i) the adjusted surrender value of the policy is less than the prescribed amount; or
  - (ii) the policy is one of two or more policies owned by the deceased owner and issued by the licence holder the total adjusted surrender values of which are less than the prescribed amount.

(2) Where a person (the "applicant") satisfied the licence holder that issued the policy -

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

the licence holder may endorse on the policy a declaration that the applicant has so satisfied the licence holder and is the owner of the policy.

(3) The licence holder may endorse the policy without requiring the production of any probate or letters of administration.

(4) Where Subsection (2) applies, the applicant becomes, subject to Subsection (5), the owner of the policy.

(5) Subsection (4) does not -

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

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

(7) In this section “prescribed amount” means K20,000.00 or such other amount as is prescribed by the regulations for the purpose of this section.

#### **124. LICENCE HOLDER NOT BOUND TO SEE TO THE APPLICATION OF MONEY PAID BY IT.**

A licence holder is not in any circumstances bound to see to the application of any money it pays in respect of a policy.

#### **125. NO DEDUCTION IN RESPECT OF OTHER POLICIES.**

(1) Subject to Subsection (2), where a claim arising under a policy is paid, no deductions are to be made on account of premiums or debts due to the licence holder under any other policy, except with the written consent of the claimant.

(2) The claimant may give written consent to any deductions.

#### **126. LOST OR DESTROYED POLICY – ISSUE OF REPLACEMENT POLICY DOCUMENT.**

(1) This section applies where -

- (a) the owner of a policy; or
- (b) a person claiming the benefit in respect of a policy,

claims that the policy document is lost or has been destroyed.

(2) A person referred to in Subsection (1) may request the licence holder liable under the policy to issue to the person a replacement policy document in substitution for the lost document.

(3) The licence holder may issue a replacement policy document to the policy owner where it is satisfied that there is sufficient evidence of the loss or destruction of the original policy document.

(4) The licence holder may only issue a replacement policy document to a person referred to in Subsection (1)(b) where the licence holder is satisfied that the provisions of this Act should be applied in favour of the person in relation to the policy.

(5) Where the licence holder does not issue a replacement policy document within six months after it receives a request from a policy owner, the policy owner may apply for an order under Subsection (6).

(6) Where, on an application under Subsection (5), a court is satisfied that an original policy document is lost or has been destroyed, the court may order the licence holder concerned to issue a replacement policy document to the applicant on such terms (if any), and within such period, as the court thinks fit.

(7) A request under Subsection (2) shall be in writing.

#### **127. FORM OF REPLACEMENT POLICY DOCUMENT.**

A replacement policy document -

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

#### **128. APPLICATION TO REPLACEMENT POLICY DOCUMENT.**

Where the owner of a policy or a person claiming the benefit of Section 126 in respect of a policy claims that a replacement policy document is lost or has been destroyed, Section 126 applies to the replacement policy document as if it were an original policy document.

#### **129. POLICIES NOT INVALIDATED BY CONTRAVENTIONS OF THE ACT.**

A licence holder's failure to comply with this Act does not invalidate any policy issued by the licence holder.

#### **130. NOTICE BEFORE ISSUING REPLACEMENT POLICY DOCUMENT.**

(1) This section applies where the amount of the net claim value of a policy at the date the replacement policy document is issued is more than the amount as is prescribed.

(2) For the purposes of Subsection (1), the net claim value of a policy at a particular time is the amount calculated according to the regulations.

(3) At least 10 days before issuing the replacement policy document, the licence holder shall give notice of its intention to do so -

- (a) in a newspaper circulating in the district in which the owner of the policy resides; or

- (b) where a person claiming the benefit of Section 128 applies for the replacement policy document, in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he died; or
- (c) in a newspaper circulating in the district in which the licence holder considers the original policy document to have been lost or destroyed.

(4) An applicant for a replacement policy document shall meet all the expenses of the advertisement and of the issue of the replacement policy document, and such expenses shall be paid at the time the person asks the licence holder to issue the replacement policy document.

(5) After a replacement policy document has been issued, the licence holder shall arrange for the following details to be entered in the appropriate register kept under this Act:

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

**131. CLAIM UNDER POLICY WHERE POLICY DOCUMENT LOST OR DESTROYED.**

(1) Where -

- (a) a person claiming to be the owner of a policy or claiming the benefit of Section 126 in respect of a policy -
  - (i) claims that the original policy document is lost or has been destroyed; and
  - (ii) gives to the licence holder evidence of the loss or destruction that the licence holder considers sufficient; and
  - (iii) makes a claim under the policy or makes any other request or claim in respect of it that would result in the termination of the policy; and
- (b) the licence holder liable under the policy -
  - (i) has given at least 10 days' notice of its intention to satisfy the claim or comply with the request; and
  - (ii) after giving notice, satisfies the claim or complies with the request,

the licence holder is discharged from all liability to any person under the policy.

(2) A notice under Subsection (1)(b)(i) is to be given -

- (a) where the person who made the claim or request referred to in Subsection (1)(a)(iii) claims to be the owner of the policy – in a newspaper circulating in the area in which the person resides; or
- (b) where the person who made the claim or request referred to in Subsection (1)(a)(iii) claims the benefit of Section 128 in respect of the policy – in a newspaper circulating in the area in which the deceased policy owner ordinarily resided at the time he died; or
- (c) in a newspaper circulating in the area in which the licence holder considers the original policy to have been lost or destroyed.

(3) The expenses of an advertisement are to be paid by the person who made the claim or the request referred to in Subsection (1)(a)(iii).

**PART XVI. – MISCELLANEOUS.**

**132. CENTRAL BANK NOT TO ACT AS BANKER.**

(1) The Central Bank shall not act as banker for any licence holder or life insurance agent.

(2) The Central Bank shall not, under any circumstances provide financial accommodation to a licence holder or life insurance agent, whether solvent or not, unless in the ordinary course of business.

**133. PROTECTION FROM LIABILITY AND INDEMNITY.**

(1) The Central Bank, every member of its Board and every officer of the Central Bank nominated by the Central Bank for the purposes of this Act, is not subject to any liability to any entity in respect of anything done or omitted to be done, in the exercise or performance or the purported exercise or performance of powers, functions or duties conferred or imposed on the Central Bank, its Board or its officers by or under this Act.

(2) The Central Bank shall not be liable for the operations or viability of a licence holder or life insurance agent, or for any loss suffered by policyholders as a result of the operations or viability of a licence holder or life insurance agent.

(3) The Central Bank shall not be liable for any impact on the operations or viability of a licence holder or life insurance agent as a consequence of any investment guidelines or prudential standards issued from time to time.

(4) Subsections (1), (2) and (3) do not apply to an act or omission in bad faith.

(5) An officer, delegate of, and every member, of the Board of the Central Bank will be indemnified by the Central Bank in respect of any liability arising from the exercise or purported exercise, or omission to exercise, of any power conferred by this Act unless it is shown that the exercise or purported exercise, or omission to exercise, of the power was in bad faith.

(6) The indemnity conferred by Subsection (5) extends to legal costs incurred in defending a proceeding.

**134. POWER TO PAY MONEY INTO COURT.**

(1) A licence holder may pay into the Court any money payable by the licence holder in respect of a policy for which, in the licence holder's opinion, no sufficient discharge can otherwise be obtained.

(2) Payment of the money into the Court discharges the licence holder from any liability under the policy in relation to the money.

(3) Any money paid into the Court under this section is to be dealt with according to the order of the Court.

(4) This section has effect subject to the Rules of the Court.



### 135. TREATMENT OF UNCLAIMED MONEYS.

(1) In the event that the whereabouts of a policyholder becomes unknown entitlements credited and properly available to that policyholder shall remain in the policyholder's name and shall continue to have earnings dividends, bonuses and other entitlements credited to the policyholder's benefit.

(2) A licence holder shall maintain a register of all missing policyholders, which shall be available for inspection or use by the Central Bank at all times, including, to be used to formulate and maintain a central registry of missing policyholder accounts.

(3) Each licence holder shall, within three months after 31 December in each year, deliver to the Governor a statement of all unclaimed money in its hands as at that 31 December.

(4) A statement under Subsection (3) shall specify -

- (a) the name, and the last-known address, of each policyholder to whom an amount of unclaimed money is payable, or the owner of each account, as the case may be; and
- (b) where the person concerned is known to the licence holder to be dead, the names and addresses, so far as they are known to the licence holder, of the policyholder's nominee or legal representative.

(5) The total amount shown in a statement under Subsection (3) shall -

- (a) be paid by the licence holder to the State at the time of the delivery of the statement; and
- (b) be credited to the Unclaimed Money Fund kept under the *Unclaimed Moneys Act* (Chapter 326); and
- (c) subject to Subsection (7), be paid into the Consolidated Revenue Fund after payment to the State.

(6) Subject to Subsection (7), on payment to the State of an amount of unclaimed money under this section a licence holder is discharged from further liability in respect of that amount.

(7) Where an amount of unclaimed money has been paid to the State under this section and the Governor or an authorized officer is satisfied that, but for Subsection (6), a person would be paid the amount that was paid to the State, the amount will be paid to the licence holder and the licence holder shall then pay the amount to that person, and the Public Account is, to the necessary extent, appropriated for the purposes of any payment under this Subsection.

(8) A licence holder that contravenes this section or fails to comply with this section is guilty of an offence.

(9) The Central Bank or a licence holder may apply to the National Court for a declaration that any moneys are not unclaimed moneys within the meaning of this section.

### 136. CODE OF CONDUCT.

(1) In this section:

“industry code” means a code regulating the conduct of participants in the life

insurance industry towards other participants in the life insurance industry;  
“mandatory industry code” means an industry code that is prescribed by regulation to be mandatory;  
“voluntary industry code” means an industry code that is prescribed by regulation to be voluntary.

(2) For the purposes of this section, a voluntary industry code binds an entity which has agreed, as prescribed to be bound by the industry code and who has not subsequently ceased, as prescribed, to be bound by it.

(3) The Central Bank may direct licence holders to develop, in co-operation with each other, an industry code for the approval of the Central Bank.

(4) The industry code shall address, but not be limited to, the following:-

- (a) best practice procedures;
- (b) full disclosure to policyholders;
- (c) internal dispute resolution procedures;
- (d) external dispute resolution procedures.

(5) An entity shall not, while conducting life insurance business, contravene the industry code.

(6) Regulations may -

- (a) prescribe an industry code, or specified provisions of an industry code, for the purposes of this Act; and
- (b) declare the industry code to be a mandatory industry code or a voluntary industry code; and
- (c) for a voluntary industry code, specify the method by which an entity agrees to be bound by the code and the method by which it ceases to be so bound.

(7) Every entity that contravenes a provision of this section or a mandatory industry code shall be guilty of an offence.

### **137. SECRECY.**

(1) In this section -

“officer” means -

- (a) the Governor, the Deputy Governor or any other member of the Board; or
- (b) an employee of the Central Bank; or
- (c) any other person engaged by the Central Bank to perform services for the Central Bank; or
- (d) any other person, who because of his employment, or in the course of that employment -
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents.

“produce” includes permit access to;

“protected document” means a document given or produced (whether before or after the commencement of this Act) under or for the purposes of this Act

and containing information relating to the affairs of any person other than a document that has already been lawfully made available to the public; “protected information” means information data or forecasts disclosed or obtained (whether before or after the commencement of this Act) under, or for the purposes of, this Act and relating to the affairs of any person other than information that has already been lawfully made available to the public.

(2) Subject to this section, an officer shall not, except for the purposes of this Act, directly or indirectly disclose to any person, any protected information or protected document.

(3) Subsection (2) does not prohibit a person from disclosing protected information or producing a protected document where the person to whose affairs the information or document relates and where different the person from whom the information or documents was received agrees in writing to the disclosure of the information or the production of the document as the case may be.

(4) It is not an offence under this section where the disclosure of protected information or the production of a protected document by a person occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the Central Bank to perform its functions or exercise its powers.

(5) It is not an offence where the disclosure of protected information or the production of information of a protected document by the Central Bank occurs when the Central Bank is satisfied that the disclosure of the information -

- (a) will assist the Central Bank to perform its functions or exercise its powers; or
- (b) is to the Minister or the relevant Department; or
- (c) will assist another supervisory agent, whether in Papua New Guinea or elsewhere, to perform its functions or exercise its powers, provided that the Central Bank is satisfied that the information or document is subject to a secrecy provision no less stringent than that set out in this Act.

(6) It is not an offence where the disclosure of protected information or the production of a protected document is under compulsion or obligation of law.

(7) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document to the Central Bank.

(8) Subsection (2) does not prohibit a person from disclosing information, or producing a document, where the information, or the information contained in the document, as the case may be, is in the form of a statistical summary or collection of information that is prepared so that information relating to any particular person cannot be found from it.

(9) Every person who contravenes this section is guilty of an offence under the Act.

### **138. PAYMENT OF FEES.**

(1) Each licence holder shall pay an application fee to the Central Bank in the amount, at the time and in the manner prescribed by the regulations.

(2) Each licence holder will pay to the Central Bank on or before 1 January in each year the prescribed annual licence fee.

(3) Fees payable under this section are a debt due to the Central Bank and where not paid within 14 days of the due date the Central Bank may take whatever recovery steps are considered appropriate to ensure the fees are paid.

(4) An entity which fails to comply with this section is guilty of an offence under this Act.

### **139. AUTHORIZATIONS AND APPROVALS.**

(1) The Central Bank may, by writing, authorize an officer of the Central Bank to exercise a power of the Central Bank under this Act.

(2) The Central Bank may, by writing, approve an auditor for the purposes of this Act.

(3) The Central Bank may, by writing, approve an actuary for the purposes of the Act.

(4) An authorization or approval under this section may be made by name or office.

### **140. SERVICE OF NOTICES.**

Where this Act requires or permits a document to be given to an entity, the document may be given -

(a) by service in person; or

(b) by post, facsimile or email at the last-known address of the person.

### **141. EXERCISE OF POWERS OF CENTRAL BANK AND DELEGATION.**

(1) The Governor may exercise the powers of the Central Bank under this Act to facilitate the performance of its functions under this Act.

(2) The Governor, by writing, may delegate to an officer of the Central Bank all or any of the powers of the Central Bank under this Act (other than this power of delegation).

(3) A power exercised by a delegate under Subsection (2) shall for all purposes be taken to have been exercised by the Central Bank.

### **142. FAILURE TO PUBLISH CERTAIN NOTICES.**

(1) Subject to Subsection (2), where a provision of this Act requires the Central Bank to publish a notice of an act or thing in the National Gazette, failure to publish the notice does not affect the validity of the act or thing.

(2) Subsection (1) does not apply to a provision which provides for the thing to take effect on a date specified in the notice.

### **143. POWER TO MAKE REGULATIONS.**

(1) The Head of State, acting on advice, may make, amend or vary regulations which -

- (a) are not inconsistent with this Act; and
- (b) prescribe all matters that by this Act are -
  - (i) required or permitted to be prescribed; or
  - (ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act; and,
- (c) provide that an offence may be prosecuted either summarily or on indictment;
- (d) provide penalties for offences against the regulations, not exceeding -
  - (i) K100,000.00; or
  - (ii) imprisonment for a term not exceeding two years; or
  - (iii) both such fine and imprisonment.

#### **144. SCOPE OF REGULATION AND INSTRUMENT-MAKING POWER.**

(1) Power given under this Act to do something by regulation or in writing (whether or not described as an instrument) under or for the purposes of a provision of this Act includes power -

- (a) to make a regulation or instrument dealing with some only of the matters referred to in that provision; and
- (b) to make different provision with respect to different matters or different classes of matters; and
- (c) to make a regulation or instrument that applies differently by reference to stated exceptions or factors.

(2) Without limiting Subsection (1), a power under this Act to make a regulation or instrument about particular matters (however described) includes power to make a regulation or instrument about one or more of those matters or a particular class of those matters.

(3) For the purposes of this section, a class may consist of a single matter.

(4) In this section, “matter” includes circumstances, place and person.

#### **145. OFFENCES AND PENALTIES.**

(1) An entity convicted of an offence against any of the sections listed in Part 1 of Schedule 3 is liable to a fine or imprisonment of both as listed in that Schedule.

(2) An entity convicted of an offence against any of the sections listed in Part 2 of Schedule 3 is liable to a fine or imprisonment or both as listed in Part 2 of that Schedule.

(3) An entity who contravenes any other provision of this Act is liable to a fine or imprisonment or both as listed in Part 3 of Schedule 3.

#### **146. POWER TO AMEND SCHEDULES ETC.,**

The Head of State, acting on advice, may, by regulation, amend the monetary amounts specified in the Schedules.

#### **147. PROSECUTIONS AND OTHER ACTIONS.**

(1) The Central Bank may -

- (a) prosecute any offence by a person under this Act, by summary prosecution or by prosecution as an indictable offence as the case may be; and
- (b) commence a civil action against a person for any form of civil relief which is available in respect to the matters constituting the offence.

(2) Any prosecution or action commenced by the Central Bank in relation to an offence committed under this Act will be heard by the National Court.

(3) Notwithstanding Section 524 of the *Criminal Code* (Chapter 262) following a committal for an offence under this Act the Central Bank is authorized to present an indictment against the accused, and a copy of such indictment will be served on the Public Prosecutor and the Public Prosecutor may withdraw the indictment within 14 days of service of the indictment on him.

(4) In any prosecution or action brought under this Act by the Central Bank, the Court may award costs against any party or claimant other than the Central Bank which costs may be recovered as a debt to the Central Bank.

(5) In any action brought under this Act the Court may on application, whether as interlocutory or final relief, order a person to cease any activity until further order.

(6) Any order made by the Court under Subsection (5) shall be made on condition that the Central Bank is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.

(7) Any fine, to be paid by a person as a result of an action or prosecution by the Central Bank will be paid to the Central Bank and, in addition to any other remedy, may be recovered by the Central Bank as a debt to the Central Bank.

#### **148. INJUNCTIONS AND OTHER ORDERS.**

(1) Where, on the application of Central Bank or the Public Prosecutor, the National Court is satisfied -

- (a) that there is a reasonable likelihood that a person will contravene this Act; and
- (b) that any person has been guilty of any such contravention and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining and/or prohibiting the contravention as the Court considers appropriate.

(2) Where on the application of the Central Bank or the Public Prosecutor, it appears to the National Court that a person may have been guilty of such a contravention as is mentioned in Subsection (1) the Court may grant an injunction restraining the person from disposing of or otherwise dealing with any of the persons property while the suspected contravention is investigated.

#### **149. RESTRICTION ON USE OF CERTAIN WORDS AND EXPRESSIONS.**

(1) Subject to this section, an entity shall not, without the consent of the Central

Bank -

- (a) use the words “life insurance company”, “life insurance”, “life insurance broker”, “life office” or any derivatives thereof, or any other word indicating the transaction of a licensed holder (whether in the English language or in any other language), in the name, description or title under which that entity carries on business in Papua New Guinea; or
- (b) make any representation that it is, or hold itself out to be, a licence holder.

(2) Except with the consent in writing of the Central Bank, a licence holder or life insurance agent may not use the expression “National”, “Papua”, “New Guinea”, “Papua and New Guinea”, “Papua New Guinea” or “State”, or an expression of a similar meaning (whether in the English language or in any other language) in the name, description or title under which it carries on business in Papua New Guinea.

(3) Subsection (1) does not affect the operation of the *Central Banking Act 2000*.

(4) Where the Central Bank for any reason considers that the use of a name or description by a licence holder or life insurance agent carrying on business in Papua New Guinea is undesirable or misleading, the Central Bank may prohibit the use of that name or description by notice in the National Gazette.

(5) Where an entity applies for a licence or authorization under this Act it shall give notice to the Central Bank of any name it is using or proposes to use for the purposes of or in connection with any business carried on by it for the Central Bank’s consent.

(5) Any entity that uses an expression name or description in contravention of this section is guilty of an offence under this Act.

#### **150. RESTRICTION ON ESTABLISHMENT OR MAINTENANCE OF BRANCH OFFICES.**

- (1) An entity is guilty of an offence where -
  - (a) the entity carries on a life insurance business in a foreign country; and
  - (b) the entity establishes or maintains an office in Papua New Guinea wholly or partly in connection with the carrying on of that business outside Papua New Guinea without first incorporating a subsidiary under the *Companies Act 1997* and obtaining all necessary licences under this Act.
- (2) A licence holder is guilty of an offence where it undertakes any of the following:-
  - (a) opens or establishes, whether on its own account or in conjunction with others, a branch or representative office;
  - (b) incorporates or establishes an interest in any business, whether on its own account or in conjunction with others.

### **PART XVII. – REPEAL, AMENDMENT, SAVING AND TRANSITIONAL PROVISIONS.**

#### ***Division 1 – Repeal, Amendment, Savings and Transitional Provisions.***

## 151. DEFINITIONS.

In this Part -

- “Change Date” means each date on which a New Licence Holder is appointed to replace an Existing Entity;
- “Cut-off Date” means the day one year from the commencement of this Act;
- “End Date” means 18 months from the commencement of this act;
- “Existing Entity” means any entity that is operating at the commencement of this Act, which has as part or all of its functions, a Life Insurance Business;
- "Existing Entity instrument" means an instrument (including a legislative instrument other than this Act) subsisting immediately before the appointment of a New Licence Holder -
- (a) to which an Existing Entity was a party; or
  - (b) that was given to or in favour of an Existing Entity; or
  - (c) that refers to an Existing Entity; or
  - (d) under which money is, or may become, payable to or by an Existing Entity; or
  - (e) under which other property is to be, or may become liable to be, transferred to or by an Existing Entity;
- “Insurance Corporation Act” means the *Insurance Corporation Act* (Chapter 366);
- “liabilities” means all liabilities, duties and obligations, whether actual, contingent or prospective;
- “New Licence Holder” means a licensed licence holder appointed either by -
- (a) the Existing Entity prior to the Cut-off Date; or
  - (b) the Central Bank by notice in the National Gazette on or after the Cut-off Date;
- “rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;
- “transferred employee” means a person who, was an employee of an Existing Entity appointed by the New Licence Holder;
- “Transition Period” means the period beginning on the commencement of this Act and ending on the End Date.

## 152. AMENDMENTS TO *INSURANCE ACT 1995*.

On and from the commencement of this Act the *Insurance Act 1995* is amended in accordance with Schedule 5 of this Act.

## 153. ACTS IN SCHEDULE.

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to this Act has effect according to its terms.

## 154. SAVING OF REGULATIONS.

Regulations made under the *Insurance Corporation Act*, to the extent that they -

- (a) were in operation immediately before the coming into operation of this Act; and
- (b) are not inconsistent with this Act,



are on that coming into operation, saved and continue in operation and may be amended or repealed.

**155. POLICY RIGHTS AND ENTITLEMENTS.**

All policies or rights under the policies of an Existing Entity, and in force immediately before the commencement of this Act, will continue to have effect after that time as if it had been made under this Act.

**156. EXEMPTION FOR EXISTING ENTITIES.**

An Existing Entity will not contravene the requirements of Part III of this Act by accepting premiums during the period from the commencement of this Act until the Change Date.

*Division 2. – Transitional Period.*

**157. DIFFICULTIES WITH SAVING OR TRANSITIONAL PROVISIONS.**

(1) Where a difficulty arises in respect of the saving or transitional provisions in this part, regulations may make such modifications to those provisions or incidental, consequential and supplementary provisions during the transition period as may be necessary or expedient for the purpose of giving full effect to the transitional provisions of this act.

(2) Any modifications or provisions referred to in Subsection (1) made by the Head of State, acting on advice, have and are deemed always to have had the same force and effect as if they had been enacted by way of an amendment to this Act, and on publication of the regulation in the National Gazette, this Division is amended accordingly.

*Division 3. – Cut-off Date for an Existing Entity.*

**158. DEADLINE FOR TRANSITION OF EXISTING ENTITIES.**

By no later than the Cut-off Date each Existing Entity shall have -

- (a) made an application to the Central Bank for a licence under this Act; or
- (b) appointed a New Licence Holder.

**159. APPOINTMENT OF A NEW LICENCE HOLDER.**

Where, on the Cut-off Date an Existing Entity -

- (a) has not made an application for a licence under this Act, or where such an application has been made that application has been refused; or
  - (b) has not appointed a New Licence Holder in accordance with this Act,
- the Central Bank shall make an application to the court to have the Existing Entity wound up.

**160. OBLIGATIONS OF THE CENTRAL BANK DURING TRANSITION.**

The Central Bank shall fulfil its obligations under Section 159 on or before the End Date.

*Division 4. – Transition Issues on and from the Change Date.*

**161. VESTING OF RIGHTS AND LIABILITIES IN THE NEW LICENCE HOLDER.**

On and from the Change Date -

- (a) all property and rights of an Existing Entity wherever located, vest in the New Licence Holder; and

- (b) all property and liabilities of an Existing Entity, wherever located, become property and liabilities of the New Licence Holder; and
- (c) the New Licence Holder becomes the successor in law to an Existing Entity,

unless otherwise prescribed by regulation made under this Part.

**162. EFFECT OF CHANGE OF ENTITY ON DOCUMENTS ETC.,**

- (1) On and from the Change Date, a document -
  - (a) to which an Existing Entity is a party, in which a reference is made to an Existing Entity, or under which an Existing Entity has acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained; and
  - (b) that is capable of having effect after the appointment of a New Licence Holder;

has effect as if the New Licence Holder (and not an Existing Entity) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

(2) Subsection (1) does not apply to any right, obligation or liability of an Existing Entity that arises out of a contract or Agreement which has not been entered into in good faith.

**163. NO STAMP DUTY ON TRANSFER OF PROPERTY AND LIABILITIES OF THE EXISTING ENTITY.**

No stamp duty is payable under a law of Papua New Guinea in respect of any transfer of property or liabilities pursuant to any section in this Part of the Act.

**164. EXISTING ENTITY INSTRUMENTS.**

An Existing Entity instrument continues to have effect according to its tenor on and after the Change Date as if a reference in the instrument to an Existing Entity were a reference to the New Licence Holder.

**165. PENDING PROCEEDINGS.**

Where immediately before the Change Date, proceedings (including arbitration proceedings) to which an Existing Entity was a party were pending or existing in any court or tribunal, then, on and after the Change date, the New Licence Holder is substituted for an Existing Entity as a party to the proceedings and has the same rights in the proceedings as the Existing Entity had.

**166. REGISTRATION OF INTERESTS IN LAND.**

Where -

- (a) land that is situated in any geographical area of Papua New Guinea, or an interest in such land, becomes land, or an interest in land of the New Licence Holder; and
- (b) there is lodged with the Registrar of Titles a copy of the instrument appointing a New Licence Holder or if the appointment of the New Licence Holder is by the Central Bank exercising its powers under this Act, a copy of the notice published in the National Gazette,

the officer with whom the instrument is lodged may register the change of ownership of the land in the manner in which dealings in land or interests in land of that kind are registered.

**167. TRANSFER OF EXISTING ENTITY STAFF TO NEW LICENCE HOLDER.**

(1) Provided that the person who was an officer of an Existing Entity immediately before the Change Date, if applicable, satisfies the “fit and proper” criteria in this Act, the New Licence Holder may engage that employee with effect from the Change Date -

- (a) on the same terms and conditions as those that applied to the person, immediately before the Change Date, as an employee of an Existing Entity; and
- (b) taking into account the employees entitlement to benefits, in connection with that engagement by the New Licence Holder, that is equivalent to the entitlement that the person had accrued, as an employee of an Existing Entity, immediately before the Change Date.

(2) The service of a transferred employee as an officer of the New Licence Holder is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the Change Date, as an employee of an Existing Entity.

(3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of an Existing Entity because of this Act.

(4) A director, secretary or auditor of an Existing Entity does not, because of the operation of this Act, become a director, secretary or auditor of the New Licence Holder.

(5) In this section -  
“employee” means a person engaged or employed by the Existing Entity.

**SCHEDULE 1.**

**Documents to be produced for Application.**

**Life Insurance Company.**

1. Investment strategy to be implemented by the applicant for the proposed licence holder detailing the proposed property allocation, hedging and investment diversification.
2. The applicant’s plan of operations including all computer software programmes and equipment utilised by the applicant, its staffing and its means of implementing it.
3. The names and curriculum vitae of the applicant’s shareholder controllers, indirect controllers and officers.
4. Particulars of the applicant’s arrangements for the management of the business.
5. A copy of the act, charter, deed of settlement or constitution of the applicant which must be in compliance with this act, or other document by which the body corporate is or is to be constituted.
6. Any other documentation required under standard or requested by the Central Bank.

## **Life Insurance Broker.**

1. The applicant's plan of operations including all computer software programmes and equipment utilised by the applicant, its staffing and its means of implementing it.
2. The names and curriculum vitae of the applicant's shareholder controllers, indirect controllers and officers.
3. Particulars of the applicant's arrangements for the management of the business.
4. A copy of the act, charter, deed of settlement or constitution of the applicant which must be in compliance with this Act, or other document by which the body corporate is or is to be constituted.
5. Any other documentation required under standard or requested by the Central Bank.

## **SCHEDULE 2.**

### **Fit and Proper Criteria.**

1. Every person who is, or is to be, an officer of a licence holder or a life insurance agent must be a fit and proper person to hold the particular position which he holds or is to hold.
2. In determining whether a person is a fit and proper person to hold any particular position, regard will be had to -
  - (a) his probity;
  - (b) his competence and soundness of judgment for fulfilling the responsibilities of that position;
  - (c) the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
  - (d) whether the interests of policyholders are, or are likely to be, in any way threatened by his holding that position.
3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has -
  - (a) committed an offence involving fraud or other dishonesty or violence; or
  - (b) been engaged in or been associated with any financial loss due to dishonesty, incompetence or malpractice in the provision of superannuation products, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts; or
  - (c) been engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not or which otherwise reflect discredit on his method of conducting superannuation funds, companies, investments and other financial services; or
  - (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

***Business to be Conducted in a Prudent Manner.***

4. Every licence holder and life insurance agent must or, as the case may be, will conduct its business in a prudent manner.
5. A licence holder or life insurance agent will not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain capital resources of such nature and amount as are considered appropriate by the Central Bank, and which are sufficient to safeguard the interests of policyholders, and commensurate with the nature, scale and risks of the licence holder's operations as determined by the Central Bank.
6. A licence holder will not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its property mature, and to any other factors appearing to the Central Bank to be relevant.
7. For the purposes of Section 3 above the Central Bank may, to such extent as it thinks appropriate, take into account as property of the licence holder or life insurance agent and any facilities available to it which are capable of providing liquidity within a reasonable period.
8. A licence holder will not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provisions for depreciation or diminution in the value of its property (including provisions for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.
9. A licence holder will not be regarded as conducting its business in a prudent manner unless it limits or, as the case may be, proposes to limit, its exposure, direct and indirect, to the risk of loss, as may be defined by the Central Bank, to any person and such limit will be no more than will be prescribed by the Central Bank.
10. A licence holder will not be regarded as conducting its business in a prudent manner unless it limits or, as the case may be, proposes to limit, its exposure, direct and indirect, to risk of loss to persons who are related to the licence holder in such a manner that they may be in a position to influence the licence holder and such risk and such relationship may be defined by the Central Bank, and such limit will be no more than will be prescribed by the Central Bank.
11. For the purposes of determining the amount of the risk of loss to the person referred to in Sections 9 and 10, account must also be taken of any exposure to the risk of loss to any other person, where the financial soundness of the first person may be linked to that of the other, as may be further prescribed by the Central Bank.
12. A licence holder or life insurance agent will not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate

accounting and other records of its business and adequate systems of control of its business and records.

13. Those records and systems will not be regarded as adequate unless they are such as to enable the business of the licence holder or life insurance agent to be prudently managed and the licence holder or life insurance agent to comply with the duties imposed on it by or under this Act and in determining whether those systems are adequate the Central Bank will have regard to the functions and responsibilities in respect of them of any of the directors of the life insurance agent.

***Integrity and Skill.***

14. The business of the life insurance agent must be carried on with integrity and the professional skills appropriate to the nature, scale and risks inherent in its activities.

**SCHEDULE 3.**

**Financial Requirements.**

**Life Insurance Company.**

Amount prescribed by regulation.

**Life Insurance Broker.**

Amount prescribed by regulation.

**SCHEDULE 4.**

**Penalties for Offences against this Act.**

**Part 1.**

Sections which carry a fine not exceeding K100,000.00 or imprisonment for a term not exceeding two years or both.

Section 29	Failure to comply with a notice or direction
Section 30	Failure to comply with a direction by officer
Section 32	Central Bank to be supplied with certain documents
Section 33	Power to obtain information
Section 39	Action as result of investigation
Section 41	Duty to notify of adverse events
Section 45	Contravention by shareholder controllers and indirect controllers
Section 47	Restructuring of licence holders
Section 60	Disclosure of information
Section 61	Protection of information

Section 62	Duty to give information
Section 66	Powers and functions of Statutory Manager
Section 134	Code of Conduct
Section 140	Secrecy
Section 141	Payment of levy
Section 152	Restriction on use of certain words and expressions
Section 153	Restriction on establishing branch offices

## **Part 2.**

Sections which carry a fine not exceeding K500,000.00 or imprisonment for a term not exceeding 10 years or both.

Section 13	Unauthorized operations
Section 15	False or misleading application
Section 35	Investigations on behalf of the Central Bank
Section 37	Obstruction of investigations
Section 38	False and misleading information

## **Part 3 – General penalty.**

A person who contravenes any provision of this Act is guilty of an offence.

A person who commits an offence against this Act for which there is no specific penalty provided, is liable to a penalty of:

- (a) a fine not exceeding K500,000.00; or
- (b) a term of imprisonment not exceeding five years; or
- (c) both a fine not exceeding the amount specified in subsection (a) and a term of imprisonment not exceeding the term specified in subsection (b).

Where an offence against this Act is of a continuing nature a person who is found guilty of that continuing offence is liable to a further default penalty of a fine, in addition to that prescribed in section 2, not exceeding K5,000.00 per day for each day after conviction that the person continues to commit the offence.

## **SCHEDULE 5.**

### **Amendments to the *Insurance Act 1995*.**

- (1) Section 2 of the *Insurance Act 1995* is amended -
  - (a) by repealing the definition of “continuous disability insurance business”; and
  - (b) by inserting in the appropriate alphabetical position, determined on a letter-by letter-basis the following new definitions:-
 

“continuous disability policy” has the same meaning as in the Life Insurance Act;

“Life Insurance Act” means the *Life Insurance Act 2000* .

“life insurance business” has the same meaning as in the Life Insurance Act.
- (2) Section 4 of the *Insurance Act 1995* is amended by adding the following new

subsection:-

“(3) The requirements of this Act in relation to corporations are in addition to and not in derogation of or substitution for the requirements of the Life Insurance Act and in the case of a conflict or inconsistency between the provisions of this Act and the provisions of the Life Insurance Act, the provisions of the Life Insurance Act prevail”.