

## **INSURANCE ACT, 2006 (ACT 724)**

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REPUBLIC OF GHANA

**THE SEVEN HUNDRED AND TWENTY-FOURTH  
ACT  
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA  
ENTITLED  
INSURANCE ACT, 2006**

**AN ACT** to revise the law relating to insurance in order to provide comprehensive provisions for the regulation of the insurance industry and for related matters.

**DATE OF ASSENT:** 29th December, 2006.

**ENACTED** by the President and Parliament

National Insurance Commission

Section 1—Establishment of the National Insurance Commission

- (1) There is established by this Act, the National Insurance Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Commission may for the performance of its functions acquire any movable and immovable property and may enter into any contract or other transaction.

Section 2—Object and functions of the Commission

- (1) The object of the Commission is to ensure effective administration, supervision, regulation, monitoring and control of the business of insurance to protect insurance policy holders and the insurance industry other than health insurance under the National Health Insurance Act, 2003 (Act 650).
- (2) For the attainment of its object under subsection (1) the Commission shall perform the following functions:
  - (a) license insurers and insurance intermediaries who transact insurance business in Ghana;

- (b) in consultation with relevant bodies approve and set standards for the conduct of insurance business and insurance intermediary business;
- (c) encourage the development of and compliance with the insurance industry's codes of conduct;
- (d) approve, where appropriate, the rate of insurance premiums and commissions in respect of any class of insurance;
- (e) provide a bureau to which complaints may be submitted by members of the public for resolution;
- (f) arbitrate insurance claims referred to the Commission by any party to an insurance contract;
- (g) recommend to the Minister proposals for the formulation of policies for the promotion of a sound and efficient insurance market in the country;
- (h) supervise and approve transactions between insurers and their re-insurers;
- (i) undertake sustained and methodical public education on insurance;
- (j) take action against any person carrying on insurance business or the business of insurance intermediaries without a licence;
- (k) maintain contact and develop relations with foreign insurance regulators and international associations of insurance supervisors and maintain a general review of internationally accepted standards for the supervision of insurers and insurance intermediaries;
- (l) supervise, regulate and control compliance with the provisions of this Act and Regulations made under it and any other enactment relating to insurance; and
- (m) perform other functions that are incidental to the carrying out of its functions under this Act.

(3) In performing its functions under this Act the Commission shall have regard to the protection of the public against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of insurers or insurance intermediaries.

### Section 3—Governing body of the Commission

- (1) The governing body of the Commission is a Board consisting of
  - (a) the chairperson,
  - (b) one representative of the Ministry of Finance and Economic Planning not below the rank of Principal Economic Officer;
  - (c) one person who is either an experienced chartered insurer or a qualified insurance practitioner nominated in consultation with the insurance industry bodies;
  - (d) one person with qualification and practice in finance;
  - (e) one practising lawyer nominated by the Ghana Bar Association;
  - (f) the Commissioner of Insurance appointed under section 12(1); and

(g) one other person nominated by the President.

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

#### Section 4—Responsibility of the Board

The Board shall monitor and oversee the operations of the Commission and ensure the effective implementation of the object and functions of the Commission.

#### Section 5—Tenure of office of members

(1) A member of the Board shall hold office for a period not exceeding three years and is eligible for re-appointment but a member, except the Commissioner, shall not be appointed for more than two terms in succession.

(2) Where a member of the Board resigns, dies, is removed from office or is for a sufficient reason unable to act as a member, the Minister shall notify the President of the vacancy and the President shall acting on the advice of the nominating authority, and in consultation with the Council of State appoint another person to hold office for the unexpired portion of the member's term of office.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause, ceases to be a member of the Board.

(5) The President may revoke the appointment of a member by a letter addressed to that member.

#### Section 6—Meetings of the Board

(1) The Board shall meet at least once every three months for the dispatch of business at times and in places determined by the chairperson.

(2) A special meeting of the Board shall be convened by the chairperson at the request of not less than one-third of the members of the Board.

(3) The quorum at a meeting of the Board is five members.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present.

(5) Matters before the Board shall be decided by the majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on the matter for decision at the meeting.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board shall determine the procedure for its meetings.

#### Section 7—Disclosure of interest

(1) A member of the Board who has an interest in a matter for the consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member.

#### Section 8—Establishment of committees

(1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

(2) A committee of the Board may be chaired by a member of the Board.

(3) The Board shall determine the functions of a committee it appoints.

#### Section 9—Allowances for members of the Board

Members of the Board and members of a Committee of the Board shall be paid the allowances determined by the Board with the approval of the Minister.

#### Section 10—Engagement of consultants and experts

The Board may engage the service of a consultant or other expert on terms and conditions determined by the Board.

#### Section 11—Ministerial directions

The Minister may give directives to the Board on matters of policy for the Commission in the performance of its functions.

#### Section 12—Appointment of Commissioner and Deputy Commissioner of Insurance and their functions

(1) The President shall in accordance with article 195 of the Constitution appoint a Commissioner of Insurance.

(2) The Commissioner shall be the chief executive of the Commission and shall be a person who has the qualification and experience in the insurance industry.

(3) The Commissioner shall, subject to the general directions of the Board be responsible for the day-to-day administration of the Commission.

(4) The Commissioner may in an emergency situation or for the protection of public interest, take enforcement action or other action and within fourteen days after the date of the action taken, inform the Board in writing for the Board's review of the action taken.

(5) The Commissioner may delegate the functions of office to an officer of the Commission but shall not be relieved from ultimate responsibility for the performance of the delegated function.

(6) The President shall in accordance with article 195 of the Constitution appoint a Deputy Commissioner of Insurance.

(7) The Deputy Commissioner shall perform functions as the Board or the Commissioner shall direct.

(8) The terms and conditions of the Commissioner and the Deputy Commissioner shall be specified in their letters of appointment.

#### Section 13—Secretary to the Board

(1) The Commission shall have an officer to be designated as Secretary to the Board.

(2) The Secretary shall perform functions assigned by the Commissioner and the Board.

#### Section 14—Appointment of other staff

(1) The President shall in accordance with article 195 of the Constitution appoint other staff of the Commission that are necessary for the proper and effective performance of its functions.

(2) Other public officers may be transferred or seconded to the Commission or may otherwise give assistance to it.

(3) The Commission may engage the services of advisers on the recommendation of the Board.

#### Section 15—Delegation of appointment

The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of public officers under this Act.

#### Section 16—Budget and work programme

(1) The Commissioner shall not later than three months before the commencement of each financial year prepare in respect of that financial year

(a) estimates of the Commission's

(i) expected expenditure, and

(ii) expected income, and

(b) a work programme containing a general description of the work and activities that the Commission plans to undertake.

(2) The estimated expenditure of the Commission shall include an amount for the reserves of the Commission.

(3) The Commissioner shall submit to the Board a copy of the estimates and work programme not less than two months prior to the commencement of the financial year.

(4) The Board shall consider the estimates and work programme and shall not later than one month before the commencement of the financial year, approve a budget and work programme for the Commission.

#### Section 17—Levies payable to Commission

(1) A person who holds an insurance licence or an insurance intermediary's licence during a financial year, shall pay a levy towards the expenses of the Commission in that financial year calculated by the Commission in consultation with the licensees.

(2) The total amount of levies imposed on licensees by the Commission under this section in a particular year shall not fall below the income of the Commission from levies during the preceeding year with an increase to accommodate the rate of inflation in that particular year.

(3) The rate of inflation in subsection (2) shall be the official rate of inflation.

(4) The Commission shall provide in writing

(a) the formula for calculating the levy,

(b) the time and method of payment, including instalment payments,

(c) the payment of interest on moneys over-due, and

(d) penalties for non-payment.

#### Section 18—Funds of the Commission

The sources of money for the performance of the functions of the Commission include

(a) levies payable to the Commission under section 17,

(b) grants from Government and from any other source approved by the Minister,

(c) loans contracted or guaranteed by Government, and

(d) donations,

(e) fees and other charges payable by insurance companies and intermediaries,

(f) fines imposed by a Court for breach of this Act and Regulations,

(g) motor contributions prescribed by Regulations, and

(h) any other income approved by the Board.

#### Section 19—Accounts and audit

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

(2) The accounts of the Commission shall be audited by the Auditor-General or an auditor appointed by the Auditor-General within three months after the end of each financial year.

(3) The Auditor-General shall, not later than three months after the end of each financial year, forward a copy of the audited accounts of the Commission for the preceding financial year to the Minister.

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

#### Section 20—Annual report and other reports

(1) The Commission shall as soon as practicable after the end of each financial year but within eight months after the end of the financial year submit an annual report to the Minister covering the activities and the operations of the Commission for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall within two months after the receipt of the annual report submit the report to Parliament with a statement that the Minister may consider necessary.

(4) The Commission shall also submit to the Minister other reports that the Minister may require in writing.

#### Licensing of insurers

##### Section 21—Application for insurer's licence

(1) A company incorporated in the country as a limited liability company may apply to the Commission for a licence to carry on insurance business.

(2) An application under subsection (1) shall be in writing and shall

(a) state the class of insurance business for which the applicant seeks authorisation to carry on business,

(b) contain the prescribed information and be in the prescribed form, and

(c) be accompanied with the prescribed documentation.

(3) The Commission shall require an applicant to furnish it with

(a) a business plan covering among others, the

(i) class of insurance business to be undertaken,

(ii) company's reinsurance programme,

(iii) estimated setting-up costs and how the cost will be financed, and

(iv) projected development of business shown by projected revenue account and the balance sheet,

(b) contract documents,

(i) regulating the applicants relationship with other companies,

(ii) transferring the applicants functions to other companies, and

(iii) the contents of which influence the financial situation of the company,

(c) its insurance products, including proposal forms and policy wording and rates, and

(d) its risk management systems.

(4) The Commission may require an applicant to furnish it with other documentation or information it considers necessary to determine the application.

(5) The applicant shall pay a fee determined by the Commission for the licence.

##### Section 22—Issue of insurer's licence

(1) The Commission may issue an insurer's licence to an applicant subject to conditions the Commission may determine.

(2) The Commission shall, in issuing a licence, be satisfied that

- (a) the applicant is qualified to carry on the class of insurance business for which the application is made,
- (b) each director and principal officer of the applicant and of any holding company of the applicant is qualified to be concerned with the management of the class of insurance business for which the application is made,
- (c) the applicant intends, to carry on the approved class of insurance business in this country if issued with a licence,
- (d) where the applicant is associated with one or more other persons, the relationship between the applicant and those persons will not prejudice the effective supervision of the insurance business to be carried on by the applicant or be contrary to the interests of policyholders,
- (e) the organisation, management and financial resources of the applicant are adequate for the carrying on of the class of insurance business for which the application is made,
- (f) the insurance business will be conducted in accordance with sound insurance principles,
- (g) issuing the licence is not against public interest, and
- (h) the applicant satisfies the requirements of this Act in respect of the application and will, upon issue of the licence, operate in compliance with this Act, Regulations, the Codes of Practice and where applicable, the Market Conduct Rules.

#### Section 23—Persons not qualified to be issued with insurance licence

An applicant does not qualify to be issued with a licence to carry on insurance business unless the Commission is satisfied that,

- (a) the applicant,
  - (b) a person who has a share or an interest in the applicant, whether legal or equitable, where the applicant is not a public company,
  - (c) a person associated with the applicant, and
  - (d) a principal member of the applicant, where the applicant is a mutual company
- is a fit and proper person to carry on insurance business.

#### Section 24—Commission may issue conditions

(1) Without limiting the scope of section 22, the Commission may by written notice require an applicant either prior to the issue of a licence or as a condition of granting the licence

- (a) to increase its capital to an amount greater than the minimum, or
- (b) to maintain a solvency margin greater than the minimum.

(2) A notice under subsection (1) takes effect as a direction under section 69 (2) or section 71 (2) as the case may be, upon the issue of a licence to the applicant.

#### Section 25—Form of insurer's licence

(1) An insurer's licence shall be in writing and shall specify



(a) the class of insurance business that the insurer is authorised to carry on, and

(b) the conditions to which the insurer is subject.

(2) The licence may

(a) be restricted to reinsurance business or

(b) stipulate that the insurer may not carry on reinsurance business.

#### Section 26—Restriction on licensing composite insurance companies and specialisation

(1) The Commission shall not issue a licence after the commencement of this Act that authorises the insurer to operate a composite insurance business.

(2) A company licensed to operate

(a) Life Assurance business as a speciality shall not be licensed subsequently to operate a Non-life Insurance business, and

(b) Non-life insurance business as a speciality shall not be licensed subsequently to operate Life Assurance business.

(3) Despite subsection (2), a company

(a) licensed to operate a Life Assurance business may acquire substantial shareholding in a Non-life Insurance company, and

(b) licensed to operate a Non-life Insurance may acquire substantial shareholding in a Life Assurance company.

#### Section 27—Submission of licence to Commission

(1) An insurer shall submit its licence to the Commission where

(a) the licence expires,

(b) the licence is suspended or revoked, or

(c) it is required by the Commission to do so for a stated reason.

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.

#### Section 28—Publication of issue of licence

Where the Commission issues a licence under section 22 it shall cause notice of the issue of the licence to be published in the Gazette and any newspaper of mass circulation that the Commission may determine.

#### Section 29—Duration of licence

(1) A licence issued by the Commission expires twelve months from the date of issue and may on application be renewed.

(2) Where an application for renewal of a licence is made on or before the date specified in section 34 (2) (d) but is not determined by the Board by the expiry date, the licence shall continue in force until the application for renewal is determined by the Board.

#### Section 30—Variation of conditions of licence

(1) The Commission may, on giving thirty days' written notice to an insurer

- (a) vary or revoke a condition for a licence, or
- (b) impose new conditions on the insurer.

(2) An insurer may apply to the Commission in writing for a licence condition to be revoked or varied.

(3) Where, on an application made under subsection (2), the Commission is satisfied that the condition for a licence is no longer necessary or should be varied, it may revoke or vary the condition.

(4) Where the Commission revokes or varies a condition for a licence or imposes a new condition, the insurer shall deliver its licence to the Commission for the licence to be varied accordingly.

#### Section 31—Refusal, suspension or revocation of licence

The Commission may

- (a) refuse to issue a licence,
- (b) issue a licence but refuse to authorise all the classes of insurance business requested in the application, or
- (c) suspend or revoke a licence

and it shall notify the applicant or the affected licence holder in writing of its decision, stating the reasons.

#### Section 32—Notice of refusal to grant application

Where the Commission refuses to grant an application for a licence the Commission shall notify the applicant in writing of its refusal to grant the application stating the reasons within thirty days.

#### Section 33—Appeal to the High Court

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

(2) Where the appeal is allowed the Commission shall license the applicant.

#### Section 34—Application for renewal

(1) An insurer may apply to the Commission for the renewal of its licence.

(2) An application under subsection (1) shall

- (a) be in writing,

- (b) contain the prescribed information and be in the prescribed form,
- (c) be accompanied with the prescribed documentation and renewal fee, and
- (d) be made not later than

- (i) three months before the date of expiry of the licence, or
- (ii) a later date the Commission permits.

(3) The Commission may require an insurer to furnish it with such other documentation and information as it considers necessary to determine the application for renewal of licence.

#### Section 35—Renewal of insurer's licence

(1) The Commission shall renew the licence of an insurer where the Commission is satisfied that the insurer

- (a) continues to meet the requirements for the issue of the licence, and
- (b) is in compliance with this Act and Regulations made under it.

(2) The renewal of a licence under this section is effective from the date when the licence renewed would have expired but for the renewal.

#### Section 36—Prohibition of unlicensed insurance business

(1) Subject to subsection (4), a person shall not carry on, or purport to carry on, a class of insurance business in the country unless that person holds a valid licence issued under section 22 authorising the person to carry on that class of insurance business.

(2) For the purposes of subsection (1), a company incorporated under the Companies Code, 1963 (Act 179) that carries on insurance business outside the country shall carry on insurance business from within the country.

(3) A person who carries on insurance business contrary to subsection (1) commits an offence.

(4) This section does not apply to an offshore insurer that enters into a reinsurance contract with an insurer where the reinsurance contract

(a) is entered into in accordance with reinsurance arrangements approved by the Commission under section 53 (1), or

(b) is exempted from approval by the Commission under section 53 (3).

(5) For the purposes of subsection (1), "person" includes an association of underwriters.

#### Section 37—Restriction on contract with offshore insurer

(1) Unless authorised by the Commission, a person shall not enter into a contract of insurance with an offshore insurer in respect of

- (a) property situate in the country,
- (b) liabilities arising in the country, or
- (c) goods, other than personal effects, being imported into the country.

- (2) A person who contravenes subsection (1) commits an offence.
- (3) Nothing in this section affects the validity or enforceability of a contract of insurance entered into in breach of subsection (1).
- (4) This section does not apply to an insurer that enters into a reinsurance contract with an offshore insurer where the reinsurance contract
  - (a) is entered into in accordance with reinsurance arrangements approved by the Commission under section 53 (1), or
  - (b) is exempted from approval by the Commission under section 53 (2).

#### Section 38—Authorisation to enter into contract of insurance with offshore insurer

- (1) A person may apply to the Commission, or through an insurance intermediary, for authorisation to enter into a contract of insurance of a type specified in section 37(1) with an offshore insurer.
- (2) The Commission may authorise the applicant to enter into a contract of insurance with an offshore insurer in respect of that risk subject to such conditions, as the Commission considers appropriate.
- (3) In determining whether to grant an authorisation under subsection (2), the Commission shall have regard to the local capacity available to insure the risk in respect of which the application is made.
- (4) Where the Commission issues an authorisation under subsection (2), the offshore insurer is considered not to be in breach of section 36.
- (5) A person who is issued an authorisation under subsection (2) shall pay a premium to be determined by the Commission.

#### Section 39—Restriction on contact office

- (1) An offshore insurer shall not establish, maintain or carry on insurance business through a representative, branch or contact office in the country unless it has obtained the prior written approval of the Commission.
- (2) A person shall not
  - (a) establish or maintain a place of business to solicit insurance business, or
  - (b) establish or maintain a representative, branch or contact office,in the country for an offshore insurer, unless the offshore insurer has obtained the written approval of the Commission under subsection (1).
- (3) An application for approval under subsection (1) shall
  - (a) contain the prescribed information and be in the prescribed form; and
  - (b) be accompanied with the prescribed documentation.

(4) The Commission may require an offshore insurer to furnish it with such other documentation and information as it considers necessary to determine an application for approval made under subsection (1).

#### Section 40—Conditions applicable to offshore insurer's licence

(1) The Commission may approve an application under section 39 subject to the conditions that it considers appropriate.

(2) The Commission may, vary or revoke any condition to which the licence is subject, or impose new conditions on an offshore insurer upon giving reasonable written notice to the offshore insurer.

#### Section 41—Offence for offshore insurer to carry on business without approval

An offshore insurer commits an offence where it

(a) carries on business contrary to section 39, or

(b) establishes, maintains or carries on business through a representative, branch or contact office contrary to conditions imposed by the Commission.

#### Insurance business

#### Section 42—Insurer to carry on insurance business only

(1) An insurer shall not carry on any business whether in the country or elsewhere, otherwise than for the purpose of its insurance business.

(2) Subsection (1) does not apply to a business specified in the Regulations made under this Act as business considered to be carried on in connection with or for the purposes of the insurance business of an insurer.

#### Section 43—Insurer to carry on business in accordance with business plan

(1) An insurer shall submit its business plan to the Commission for approval.

(2) An insurer shall carry on its business substantially in accordance with the recent business plan lodged with and approved by the Commission.

(3) An insurer may, at any time, submit an amended business plan to the Commission together with an application for the Commission to approve the amended business plan.

(4) On receipt of an application for approval of an amended business plan, the Commission may require the insurer to provide it with such further information or documentation as the Commission requires to determine the application.

(5) The Commission may refuse to approve an amended business plan or may approve it subject to conditions the Commission considers appropriate.

#### Section 44—Avoidance of contracts of insurance of unlimited amount

(1) Subject to subsection (2), a contract of insurance entered into by an insurer after the commencement date is void if it is a contract under which the insurer undertakes a liability the

amount, or maximum amount, of which is uncertain at the time when the contract is entered into.

(2) Regulations may prescribe contracts of insurance, or classes or descriptions of contracts of insurance, that are exempt from subsection (1).

(3) This section applies to motor insurance contracts despite anything to the contrary in the Motor Vehicles (Third Party Insurance) Act, 1958 (No. 42).

(4) The Commission in consultation with the insurance industry shall by Regulations prescribe a formula to compute the compensation in respect of injury and deceased claims arising out of a motor accident.

#### Section 45—Approval of insurance products

(1) An insurer shall not issue a new form of insurance product unless the Commission has given its prior written approval for the product.

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 46—Head office and registered office

(1) An insurer shall have its head office in Ghana and shall notify the Commission of the address of its head office and of its registered office.

(2) Where the address of the head office or the registered office of an insurer changes, the insurer shall notify the Commission of the new address within fourteen days of the change.

(3) An insurer who contravenes subsection (2) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 47—Authorisation to open an offshore office

(1) An insurer shall not open, maintain or carry on business through a representative, branch or contact office offshore unless it has obtained the prior written approval of the Commission.

(2) An insurer that contravenes subsection (1) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

#### Section 48—Approval required for disposal of interest

(1) A person who owns or holds a significant interest in an insurance business shall not sell, transfer, charge or otherwise dispose of the interest in the insurance business, or a part of the interest, except with the prior written approval of the Commission.

(2) A person shall not, whether directly or indirectly, acquire a significant interest in an insurance business except with the prior written approval of the Commission.

(3) An insurer shall not, unless with the prior written approval of the Commission

(a) cause, permit or acquiesce in the sale, transfer, charge or other disposal referred to in subsection (1), and

(b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in

(i) a person acquiring a significant interest in the insurance business, or

(ii) a person who already owns or holds a significant interest in the insurance business, increasing or decreasing the size of the interest.

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the insurer.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that a person who will acquire a significant interest as a result of the approval is qualified to have an interest in the insurer.

(6) An approval under subsections (1), (2) or (3) may be granted by the Commission on such terms and conditions as the Commission considers appropriate.

(7) A person who contravenes subsection (1) or (2) or an insurer that contravenes subsection (3) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

#### Section 49—Appointment of directors and principal officers of an insurer

(1) An insurer shall not appoint a director or a principal officer without the prior written approval of the Commission.

(2) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned is a qualified person to hold the proposed appointment.

(3) An approval under subsection (1) may be granted on terms and conditions the Commission considers appropriate.

(4) An insurer who contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 50—Termination of appointment of directors and principal officers of an insurer

(1) Where an insurer terminates the appointment of a director or a member of senior management staff, it shall, within fourteen days after the termination provide written notification to the Commission.

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 51—Publication of authorised and subscribed capital

(1) An insurer shall not publish or issue a document in which is printed a statement of

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

(b) of its subscribed capital, unless the statement also sets out the amount of its paid-up capital.

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.

#### Section 52—Prohibition on payment of commission to unlicensed insurance intermediary

(1) An insurer shall not pay any commission to an insurance intermediary that is not licensed under this Act.

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.

#### Section 53—Approval of reinsurance arrangements by Commission

(1) An insurer shall have arrangements approved by the Commission in accordance with the Regulations for the reinsurance of liabilities in respect of risks insured by the insurer in the course of its business as an insurer.

(2) An insurer or re-insurer shall utilise the local capacity available in insurance business originating from the local market before recourse to any overseas re-insurance.

(3) The Commission may, by written notice, exempt reinsurance contracts of a type specified in the notice from the requirements for approval under subsection (1).

(4) An insurer that contravenes subsection (1) is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.

#### Section 54—Reinsurance statements and documents to be filed

(1) The Commission shall examine the

(a) retention policy of insurance companies,

(b) securities of reinsurers, and

(c) appropriateness of reinsurance contracts.

(2) For purposes of subsection (1), an insurer shall, on or before a date each year determined by the Commission for that insurer, file with the Commission a statement setting out the details as to its reinsurance arrangements as may be prescribed.

(3) The statement filed under subsection (2) shall be accompanied with copies of every reinsurance agreement referred to in the statement.

(4) A person who contravenes this section is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.

#### Section 55—Reinsurance of risks outside the country

(1) An insurer shall not enter into a contract of reinsurance except in the case of a facultative reinsurance arrangement.

(2) Subsection (1) does not apply to an insurer whose licence is restricted to reinsurance business.

(3) An insurer that contravenes subsection (1) is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.



#### Section 56—Appointment of actuary

(1) A long term insurer shall have the services of an actuary at any time whose appointment has been approved by the Commission in writing.

(2) The Commission shall not approve the appointment of an actuary under subsection (1) unless it is satisfied that the individual concerned has sufficient experience and is competent to act as actuary of the insurer.

(3) A long term insurer shall, within fourteen days of

(a) the appointment of its actuary, or

(b) a person ceasing to be its actuary,

submit a notice in the prescribed form to the Commission.

(4) Where, for whatever reason, a person ceases to be the actuary of a long term insurer, the long term insurer is not in breach of subsection (1) if it appoints another qualified actuary within six weeks of the date the person who was previously appointed actuary ceases to hold that appointment.

(5) Subject to subsection (4), a long term insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 57—Powers of Commission with regard to appointment of actuary

(1) Where the Commission is satisfied that the actuary of a long term insurer has failed to fulfil[sic] obligations under this Act it may, revoke the approval of the appointment of the actuary by written notice to the long term insurer and the insurer shall appoint a new actuary.

(2) A notice revoking the appointment of an actuary under subsection (1) shall be sent to the actuary.

(3) Where a long term insurer fails to appoint an actuary, the Commission may appoint a qualified person to act as the actuary of the long term insurer.

(4) An actuary appointed under subsection (3) is considered for the purposes of this Act to have been appointed by the long term insurer.

#### Section 58—Powers of actuary

(1) The actuary of a long term insurer

(a) is entitled to have access to any information or document in the possession or under the control of the insurer where the actuary reasonably requires access for the proper performance of the actuary's functions and duties, and

(b) may require any director or employee of the insurer to answer questions or produce documents for the purpose of enabling the actuary to properly perform the actuary's functions and duties.

(2) A director or employee of a long term insurer shall not refuse or fail, without reasonable excuse, to comply with a requirement under subsection (1) (b).

## Section 59—Obligations of actuary

- (1) The actuary of a long term insurer shall report immediately to the Commission where
  - (a) there are reasonable grounds for believing that the insurer or a director of the insurer may have contravened this Act or any other enactment, and
  - (b) that the contravention is of such a nature that it may adversely affect the interests of policy holders of the insurer.
- (2) The actuary of a long term insurer shall report to the insurer any matter relating to the business of the insurer that the actuary has obtained in the course of acting as its actuary that, in the opinion of the actuary, requires action to be taken by the insurer, or its directors
  - (a) to avoid a contravention of this Act, or
  - (b) to avoid prejudice to the interests of policyholders of the insurer.
- (3) Where the actuary of a long term insurer reports to the insurer under subsection (2) and the insurer does not, within such time as the actuary considers reasonable, take the action required, the actuary shall report the matter to the Commission.
- (4) Where the appointment of an actuary of a long term insurer is terminated, the actuary shall
  - (a) immediately inform the Commission of the termination of appointment and disclose to the Commission the circumstances that gave rise to that termination, and
  - (b) report any information which but for the termination of appointment would have been reported to the Commission as if the appointment had not been terminated.
- (5) Where, in good faith, an actuary provides a report or information to the Commission under subsection (1), (2) or (4), the actuary is considered not to be in contravention of any enactment, rule of law or professional code of conduct to which the actuary is subject and no civil, criminal or disciplinary proceedings shall lie against the actuary in respect of it.
- (6) The failure, in good faith, of an actuary to provide a report or information to the Commission under subsection (1), (2) or (4) does not confer upon any other person a right of action against the actuary which, but for that failure, the person would not have had.
- (7) An actuary who contravenes subsection (1), (2), (3) or (4) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

## Section 60—Actuary to comply with prescribed standards

The actuary of a long term insurer, in the performance of functions and the exercise of power, shall comply with relevant actuarial standards.

## Section 61—Annual actuarial investigations

- (1) A long term insurer shall, at least once each year, cause an investigation to be made into its financial condition in respect of its long term insurance business by its actuary.
- (2) An investigation under subsection (1) shall comply with such requirements as may be prescribed.

(3) The actuary shall produce a report of the actuary's investigation under subsection (1) containing information and in a form that may be prescribed.

#### Section 62—Attendance of meetings by actuary

(1) The actuary of a long term insurer is entitled to attend meetings of the directors of the insurer and to speak on a matter being considered at the meeting

(a) that relates to, or may affect the adequacy of the capital of the insurer, its solvency, its reserves or its financial condition,

(b) that relates to advice given by the actuary to the directors, and

(c) that concerns a matter in relation to which the actuary is or will be required to investigate, report on or give advice.

(2) The actuary of a long term insurer is entitled to attend any general meeting of the insurer at which

(a) the insurer's accounts or financial statements are to be considered, or

(b) any matter in connection with the actuary's functions or duties is to be considered,

and to speak on the matter being considered at the meeting.

#### Section 63—Refusal to co-operate with actuary

Where, without reasonable excuse

(a) a long term insurer fails or refuses to provide its actuary with access to the documents and information specified in section 58(1) (a), or

(b) a director or employee of the insurer contravenes section 58 (1) (b),

the actuary may report the matter to the Commission.

#### Section 64—Actuarial investigation and report

(1) The Commission may at any time, by notice, direct an insurer to cause an actuary to investigate the aspects of its financial condition that the Commission may specify in the notice and to provide the Commission with the report prepared by the actuary.

(2) A report prepared under subsection (1) shall be at the cost of the insurer.

(3) The Commissioner may direct that the actuarial investigation is carried out by the actuary appointed by the insurer, if any, or by any other actuary the Commission specifies.

#### Section 65—Application for a scheme of transfer or amalgamation

(1) Subject to section 68, a part of an insurance business may not be

(a) transferred to another person, or

(b) amalgamated with the business of another person;

except under a scheme that complies with this section and sections 66 and 67 are approved by the Commission.

(2) Application to the Commission for the approval of a scheme shall be made jointly by or on behalf of the insurer and a person who is a party to the scheme.

(3) An application under subsection (2) shall be in a form, contain information and be accompanied with documentation that may be prescribed.

(4) Notice of the application shall be published in the Gazette and in a newspaper of mass circulation that the Commission may determine and notice of the application together with an approved summary of the scheme shall be sent to every policyholder affected by the scheme.

(5) The notice of the scheme shall contain a statement that representation may be made to the Commission concerning the scheme on or before a date not later than two months after the date of the publication in the Gazette.

(6) Before determining an application under this section, the Commission may

(a) at the cost of the insurer, undertake an investigation into the desirability or otherwise of the scheme, and

(b) require the insurer and each party to the scheme to provide the Commission with the documents and information it requires.

(7) An investigation under subsection (6) may be carried out by the Commission or by one or more persons appointed by the Commission to act on its behalf.

(8) A transaction to which an insurer is a party which has the effect of transferring a part of the business of an insurer to another person or amalgamating a part of the business of the insurer with the business of another person is void unless effected under a scheme approved by the Commission.

#### Section 66—Details of scheme

A scheme shall set out

(a) the terms of the agreement or deed under which the proposed transfer or amalgamation is to be carried out,

(b) particulars of other arrangements that are necessary to give effect to the scheme, and

(c) contain other information that may be prescribed.

#### Section 67—Commission may conduct hearing of application

(1) The Commission may, where it considers it necessary, conduct a hearing of the application at which the insurer, each party to the scheme and any interested person who has made representations to the Commission concerning the scheme are entitled to attend and be heard either in person, or in the case of a company through an officer, or a legal representative.

(2) At a hearing conducted under subsection (1), the Commission may consider evidence that it considers appropriate.

(3) Where the Commission confirms the scheme,

(a) it is binding on the parties to it, and

(b) it has effect despite anything to the contrary in the memorandum or articles of association of the insurer or of any company that is a party to the scheme.

[sic](3) A copy of the confirmed scheme shall be filed with the Registrar of Companies.

#### Section 68—Application of Part S of the Companies Code

(1) An insurer may effect an arrangement or amalgamation in accordance with Part S of the Companies Code subject to this section.

(2) An insurer shall not pass a special resolution under section 230 of the Companies Code putting the company into members' voluntary liquidation for the purposes of an arrangement or amalgamation unless the Commission has given its prior written consent to the resolution.

(3) A resolution passed by an insurer under section 230 of the Companies Code without the prior written consent of the Commission is void.

(4) An arrangement or amalgamation effected in respect of an insurer under Part S of the Companies Code is of no effect unless approved by the Court in accordance with sections 231 to 233 of the Companies Code.

(5) The Commission is entitled to appear and be heard at every hearing in respect of an arrangement or amalgamation under Part S of the Companies Code.

#### Capitalisation, solvency and financial provisions

#### Section 69—Maintenance of capital by insurer

(1) An insurer shall ensure that its capital is maintained in an amount which is not less than

(a) the minimum capital applicable to the insurer as stated in the Second Schedule, or

(b) the amount that the Commission may by notice direct under subsection (2).

(2) Where, having regard to the nature and extent of the insurance business carried on by the insurer, the Commission considers it appropriate, the Commission may by notice direct an insurer to increase its capital to an amount greater than the prescribed minimum capital applicable to the insurer.

(3) A direction issued under subsection (2) shall specify a reasonable time period for compliance with the direction.

(4) Where the capital of an insurer falls below the amount that it is required to maintain under subsection (1), it shall immediately notify the Commission in writing.

(5) An insurer is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule, where

(a) it knowingly causes or permits its capital to fall below the amount that it is required to maintain, or

(b) it does not inform the Commission immediately of the fall in its capital.

#### Section 70—Shares to be fully paid for in cash

(1) A share of an insurer issued on or after the commencement date shall be fully paid for in cash.

(2) For the purposes of subsection (1), "paid for in cash" has the meaning specified in section 45 of the Companies Code.

(3) The Commission may, on the application of an insurer, authorise the insurer to issue one or more shares otherwise than in accordance with subsection (1).

(4) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 71—Solvency margin

(1) An insurer shall ensure that at all times it maintains a solvency margin not less than

(a) the solvency margin calculated in accordance with Regulations or

(b) the solvency margin that the Commission may direct under subsection (2).

(2) Where, having regard to the nature and extent of the insurance business carried on by the insurer, the Commission considers it appropriate, it may by notice direct an insurer to maintain a larger solvency margin than that prescribed.

(3) A direction issued under subsection (2) shall specify a reasonable time period for compliance with the direction.

(4) Where the solvency margin of an insurer falls below the amount that it is required to maintain under subsection (1), the insurer shall immediately notify the Commission in writing.

(5) An insurer that contravenes subsection (4) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 72—Reserves

(1) An insurer shall ensure that it maintains reserves in an amount equal to or greater than that prescribed in Regulations in respect of the insurance business which it is authorised to carry on.

(2) Where the amount of reserves maintained by an insurer falls below the amount that it is required to maintain under subsection (1), it shall immediately notify the Commission in writing.

(3) An insurer that contravenes subsection (2) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

(4) Where the amount of reserves maintained by an insurer falls below the amount the insurer is required to maintain in accordance with Regulations made under subsection (1), the Commission shall by notice direct the insurer to increase the reserves to the required level.

(5) An insurer who does not comply with a directive issued by the Commission under subsection (4) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 73—Deposit

(1) The Commission shall, by notice require an insurer or reinsurer to deposit ten percent of its minimum capital with the Bank of Ghana in Government securities.

(2) The Commission may, by notice at any time increase the deposit to be provided by an insurer or reinsurer.

(3) A notice issued under subsection (1) or (2) shall specify a reasonable period within which the deposit, or increased deposit, shall be made.

(4) An insurer that is required by a notice issued under subsection (1) to make a deposit with the Bank of Ghana is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule if it does not make the deposit within the time period specified in the notice.

#### Section 74—Return of deposit

(1) Where the Commission is satisfied that there is good reason for some or all of a deposit made under section 73 to be returned to an insurer, the Commission may by notice authorise the return of the deposit to the insurer.

(2) Subject to subsection (3), a deposit made by an insurer under section 73 shall not be returned to the insurer unless the Commission has issued a notice authorising the return under subsection (1).

(3) Despite subsection (2), where an insurer is in liquidation or in judicial management, the court may order that a deposit made under section 73 shall be returned to the liquidator or judicial manager subject to such conditions as the court considers appropriate.

#### Section 75—Distribution

(1) An insurer shall not make a distribution to a shareholder unless, after the distribution

(a) its capital equals or exceeds the capital that it is required to maintain under section 69 (1),

(b) its solvency margin equals or exceeds the solvency margin that it is required to maintain under section 71 (1), and

(c) its reserves equal or exceed the reserves that it is required to maintain under section 72 (1)

(2) An insurer that contravenes subsection (1) is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.

(3) For the purposes of this section, "distribution", in relation to a distribution by a company to a shareholder means,

(a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder, or

(b) the incurring of a debt to or for the benefit of a shareholder in relation to shares held by that shareholder and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness or by some other means;

and includes a dividend.

#### Section 76—Prohibition relating to advances and loans

- (1) An insurer shall not after the commencement of this Act
  - (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares,
  - (b) lend any of its funds to a connected person,
  - (c) grant unsecured credit to a person except, in the case of a short term insurer, for temporary cover not exceeding the prescribed period, or
  - (d) enter into a guarantee or provide a security in connection with a loan by another person to a connected person.
- (2) The Regulations shall specify persons who are connected persons for the purposes of subsection (1).
- (3) Subsection (1) does not apply to a distribution permitted under section 75.
- (4) An insurer that contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 77—Approval of premium and rates by Commission

- (1) The Commission may, by notice, approve minimum rates of premium and commission to be charged by an insurer for any insurance policy issued in respect of a class of insurance business specified in the notice.
- (2) A notice may be limited to certain specified types of policy within the class of insurance business specified in the notice.
- (3) The notice
  - (a) takes effect from the date of its issue or such later date as may be specified in the notice, and
  - (b) remains in effect until revoked by the Commission by the issue of a revocation notice.
- (4) The Commission shall, within fourteen days after the date of issuing a notice or revoking a notice, send a copy of the notice to each insurer authorised to carry on business of the class specified in the notice.
- (5) Where the notice is in effect, an insurer who issues a policy of insurance at a rate of premium lower than that specified in the notice despite having received the notice proof of which shall be on the insurer is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.
- (6) An insurer may offer to an insured, a policy which makes the insurer liable to compensate the insured on the occurrence of an event covered by the policy, within ninety days of the insured's default in paying the premium.
- (7) An insurer shall after ninety days of an insured's premium payable becoming accrued, charge interest on the accrued sum from the date of the insured's default, at a rate determined by the Commission in consultation with the Minister for Finance.

#### Accounts and audit of insurers



#### Section 78—Accounts record

(1) An insurer shall keep accounting records

(a) that are sufficient to explain its transactions and financial position with respect to its insurance business and any other business that it carries on,

(b) that enable it to prepare the accounts and make the returns required by this Act and Regulations, and

(c) that enable its accounts to be audited in accordance with this Act and Regulations.

(2) An insurer shall retain accounting records for a period of at least six years after the completion of the transaction to which they relate.

(3) An insurer shall

(a) keep its accounting records in the country, and

(b) notify the Commission in writing of the place in the country where its accounting records are kept.

(4) An insurer that contravenes this section is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 79—Financial year of insurer

The financial year of an insurer shall be the same as the financial year of Government.

#### Section 80—Preparation and lodgement of accounts of insurer

(1) An insurer shall, in respect of each financial year, prepare

(a) a revenue account for the year,

(b) a balance sheet as at the last day of the year,

(c) a profit and loss account for the year, and

(d) any other accounts and financial statements that may be directed by the Commission.

(2) The accounts and statements specified in subsection (1) shall be lodged with the Commission within four months after the end of the financial year to which the accounts and statements relate and shall be accompanied with

(a) a director's certificate,

(b) an auditor's report,

(c) in the case of an insurer authorised to carry on long term business, a report in respect of the financial year prepared by the actuary appointed by the insurer under section 56,

(d) any report on the affairs of the insurer made to the members or policyholders of the insurer in respect of the relevant financial year, and

(e) the other documents that may be prescribed,

in each case, containing such information and in the form that may be prescribed.

(3) Unless accompanied by the certificates, reports and documents specified in subsection (2), the accounts and statements referred to in subsection (1) are considered not to have been lodged with the Commission.

(4) An insurer that contravenes subsection (1) or (2) is liable to pay to the Commission the percuniary [sic] penalty stated in the First Schedule.

#### Section 81—Lodgement of quarterly accounts and report

(1) An insurer shall, in respect of each quarter, lodge with the Commission

(a) a revenue account for the quarter,

(b) a balance sheet as at the last day of the quarter,

(c) a profit and loss account for the quarter, and

(d) the other reports, accounts and financial statements that may be prescribed.

(2) The reports, accounts and financial statements specified in subsection (1) shall be lodged with the Commission within six weeks after the end of the quarter accompanied by a director's certificate containing the information and in the form prescribed.

(3) Unless they are accompanied with a directors' certificate complying with the Regulations, the reports, accounts and financial statements referred to in subsection (1) are considered not to have been lodged with the Commission.

(4) An insurer that contravenes this section is liable to pay to the Commission percuniary [sic] penalty stated in the First Schedule.

#### Section 82—Extension of time

(1) The Commission may, on the application of an insurer, extend the time for compliance with section 80 (2), section 81 (2) or section 56 (4) for a period of one month, or where it grants more than one extension for an aggregate period not exceeding three months.

(2) An extension under subsection (1) may be granted subject to any condition the Commission considers appropriate.

#### Section 83—Amendment of accounts

(1) Where the Commission considers that a document lodged by an insurer under section 80 or section 81 is inaccurate or incomplete or is not prepared in accordance with this Act and Regulations, the Commission may by notice require the insurer to amend the document or lodge a replacement document.

(2) Where an insurer fails to comply with a notice under subsection (1), the Commission may amend the document itself or reject the document.

(3) A document amended by the Commission or by the insurer is considered as having been lodged in its amended form.

#### Section 84—Group accounts

- (1) Where an insurer is a member of a group of companies, the Commission may require the insurer to lodge group accounts.
- (2) The Commission may require that the group accounts are audited by the auditor of the insurer or by another auditor approved by the Commission.
- (3) Regulations may provide for the form and content of group accounts to be lodged under this section.

#### Section 85—Insurer to appoint an auditor

- (1) An insurer shall appoint an auditor for the purposes of auditing
  - (a) the accounts referred to in paragraphs (a) to (c) of section 80 (1), and
  - (b) the accounts and statements referred to in section 80(1)(d) that the Regulations made under this Act specify shall be audited.
- (2) An auditor shall not be appointed under subsection (1) unless
  - (a) the auditor is qualified under Regulations to act as the auditor of an insurer, and
  - (b) the Commission has given its approval in writing to the auditor's appointment.
- (3) The Commission shall approve the appointment of an auditor where it is satisfied that the auditor has sufficient experience and is competent to audit the accounts of the insurer.
- (4) An insurer shall make the arrangements that are necessary to enable its auditor to audit its accounts and financial statements in accordance with this Act.
- (5) Despite subsection (2), the approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the insurer in the previous financial year.
- (6) An insurer that fails to appoint an auditor in accordance with subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.
- (7) An insurer shall, within fourteen days of the appointment of its auditor, submit a notice of appointment in the prescribed form to the Commission; failure to notify the Commission attracts the pecuniary [sic] penalty stated in the First Schedule and payable to the Commission.

#### Section 86—Audit report

- (1) Upon completion of the audit of the accounts and financial statements referred to in section 85(1), the auditor of an insurer shall submit an audit report to the insurer.
- (2) The Commission may at any time, by notice in writing, direct an insurer to supply the Commission with a report, prepared by its auditor or other person nominated by the Commission, on such matters as the Commission may determine which may include an opinion on asset quality, adequacy of provisions for losses and the adequacy of the accounting and control systems.
- (3) A report prepared under subsection (2) shall be at the cost of the insurer.

#### Section 87—Obligations and termination of appointment of auditors

- (1) Despite anything to the contrary in any other enactment, the auditor of an insurer shall
  - (a) provide the Commission with a copy of the audit report submitted to the insurer under section 86(1), and
  - (b) report immediately to the Commission any information that relates to the affairs of the insurer that has been obtained and which in the opinion of the auditor, suggests that
    - (i) the insurer is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations,
    - (ii) a criminal offence has been or is being committed by the insurer in connection with its business,
    - (iii) the insurer is in breach of section 69, 70, or 72, or
    - (iv) serious breaches of this Act, Regulations, the Code of Practice or the Market Conduct Rules have occurred in respect of the insurer or its insurance business.
- (2) Where the appointment of an auditor is terminated, that auditor shall
  - (a) immediately inform the Commission of the termination of the auditor's appointment and disclose to the Commission the circumstances that gave rise to such termination, and
  - (b) where, but for the termination of the auditor's appointment, the auditor would have
    - (i) sent an audit report to the Commission under subsection (1) (a), or
    - (ii) reported information to the Commission under subsection (1) (b),the auditor shall send a copy of the report to the Commission, or report the information concerned to the Commission, as if the appointment had not been terminated.
- (3) The Commission may require an auditor of an insurer to discuss an audit the auditor has conducted or commenced with, or provide additional information regarding the audit to the Commission.
- (4) Where, in good faith, an auditor provides a report or an information to the Commission under subsections (1), (2) or (3), the auditor is not considered to be in contravention of any enactment, rule of law or professional code of conduct to which the auditor is subject and civil, criminal or disciplinary proceedings shall not lie against the auditor in respect of the report or information.
- (5) The failure, in good faith, of an auditor to provide a report or information to the Commission under subsection (1), (2) or (3) shall not confer upon any other person a right of action against the auditor which, but for that failure, the person would not have had.
- (6) An auditor or former auditor who contravenes subsection (1) or (2) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.
- (7) For the purposes of subsection (1), an insurer is considered to be insolvent where the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 71 (1).

Section 88—Powers of Commission with regard to appointment of auditor

(1) Where the Commission is satisfied that the auditor of an insurer has failed to fulfil an auditor's obligations under this Act or is otherwise disqualified to act as the auditor of an insurer, the Commission may, by written notice to the insurer, revoke the approval of the appointment of the auditor and the insurer shall appoint a new auditor in accordance with section 85.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) Where an insurer fails to appoint an auditor, the Commission may appoint a person qualified under the Regulations to act as the auditor of the insurer.

#### Section 89—Auditor may rely on actuarial valuations

(1) The auditor of a long term insurer may accept, for the purposes of an audit under this Act, a valuation by the actuary appointed by the insurer of

(a) the policy liabilities of the company as at the end of the financial year of the insurer, or

(b) a change, during a financial year, in the policy liabilities of the insurer in relation to a particular fund.

(2) Without limiting to subsection (1), an external auditor shall not rely solely on the valuations of the actuary but shall carry out an independent review and examination to express an opinion on the financial statement.

#### Section 90—Provisions do not limit Companies Code

Sections 78 to 89 does not limit the application of the accounts and audits provisions of the Companies Code to an insurer that is subject to that Code and, unless this Act or the Regulations provide otherwise, the accounts and financial statements of an insurer lodged with the Commission, including any group accounts, shall be prepared in accordance with the Code.

#### Liquidation and judicial management of insurance companies

##### Section 91—Insurer not to be wound up by private liquidation

(1) An insurer shall not be wound up by a private liquidation under the Companies Code.

(2) A resolution of an insurer to be wound up by private liquidation under the Companies Code is void.

##### Section 92—Modification of Act 180

The provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) relating to the official liquidation of companies are modified in respect of insurers and companies carrying on unlicensed insurance business to the extent specified in section 91 to 113

##### Section 93—Commencement of proceedings

(1) The official winding up of a long term insurer may only be commenced by a petition to the Court.

(2) The official winding up of a short term insurer may be commenced by a special resolution of the company where the Commission has given its prior written consent to the passing of the resolution.

(3) A resolution

(a) of a long term insurer to appoint a liquidator in contravention of subsection (1), or

(b) of a short term insurer to appoint a liquidator in contravention of subsection (2),

is void.

(4) Where the members of a short term insurer appoint a liquidator in accordance with this section, the Commission may by notice direct the liquidator to publish the appointment in a manner that is specified in the notice.

(5) A liquidator who fails to publish its appointment in accordance with a direction of the Commission issued under subsection (4) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.

#### Section 94—Application for liquidation by Commission

(1) For the purposes of Act 180, an insurer is considered to be insolvent where the total value of the insurer's assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is, or was, required to maintain under section 71 (1).

(2) The Commission may pursuant to Act 180, present an application or petition to the Court for official liquidation of an insurer or a company that is carrying on or has carried on, unlicensed insurance business.

(3) On a petition presented under subsection (2), the Court may make an order for the official liquidation of the insurer

(a) on any ground specified in Act 180,

(b) where the Court is satisfied that it is in the public interest that the company be wound up, or

(c) in the case of an insurer, where the insurer has failed to lodge with the Commission, within the period specified, the documents specified in section 80 (2).

(4) On the hearing of a petition for the official liquidation of an insurer, evidence that the insurer has, at any time prior to the date of the presentation of the petition been insolvent is, unless the contrary is proved, evidence that it continues to be insolvent.

#### Section 95—Service on Commission

A petition for the official liquidation of an insurer shall, where presented by a person other than the Commission, be served on the Commission and the Commission is entitled to appear and be heard at the hearing of the petition.

#### Section 96—Reduction of contracts as alternative to official liquidation

Where on the hearing of a petition for the official liquidation of an insurer, the Court is satisfied that the insurer is insolvent, it may reduce the amount of the insurer's contracts on conditions

that the Court considers just, instead of making an order for the official liquidation of the insurer.

#### Section 97—Continuation of long term business by liquidator

(1) The liquidator of a long term insurer shall, unless the Court otherwise orders, carry on the long term business of the insurer with a view to it being transferred as a going concern to another insurer, whether in existence or to be incorporated for the purpose.

(2) In carrying on the insurer's long term business under subsection (1), the liquidator may agree to the variation of any contracts of insurance at the commencement of the official liquidation, but the insurer shall not effect a new contract of insurance.

(3) On the application of the liquidator of a long term insurer, the Court may by order reduce the amounts of the contracts made by the company in the course of carrying on its long term business.

(4) An order under subsection (3) may be made subject to conditions that the Court considers appropriate.

(5) The liquidator of a long term insurer,

(a) may appoint an actuary to investigate and report to the insurer on the long term business of the insurer and, where appropriate, to conduct actuarial valuations of the business, and

(b) may apply to the Court for the appointment of a special manager to manage the business of the insurer.

(6) A special manager appointed by the Court

(a) shall act in accordance with such directions that may be given to it by the court,

(b) shall give security and account in the manner that the Court may direct, and

(c) is entitled to be paid such remuneration as may be determined by the Court.

#### Section 98—Protection of segregated funds and assets

(1) Despite Act 180, in the official liquidation of a long term insurer, the assets of the funds maintained by the insurer in respect of its long term business shall first be applied to meet the insurer's long term liabilities attributable to the funds.

(2) Where the value of the assets referred to in subsection (1) exceeds the amount of the long term liabilities of the insurer attributable to the funds, the excess is an asset of the insurer available for distribution in accordance with Act 180.

(3) Where the Court makes an order under Act 180 in respect of a long term insurer requiring a person to repay, restore or account for money or other assets, to pay compensation to the insurer or to pay interest to the insurer, the court shall, insofar as the delinquency relates to assets belonging to the insurer's long term funds, order that the money, assets or contribution is to be treated for the purposes of subsection (1) as assets of those funds.

#### Section 99—Judicial management order

(1) A judicial management order is an order directing that, during the period for which the order is in force, an insurer, or the part of the business of an insurer that is specified in the order, be managed by a judicial manager appointed by and under the control of the court.

(2) The Court may make a judicial management order in respect of an insurer where it is satisfied that it is in the interests of the insurer's policyholders to do so.

(3) The judicial management of an insurer commences on the date of the judicial management order, or the later date that may be specified in the order and terminates when the judicial management order is discharged under section 109.

#### Section 100—Application for judicial management order

(1) Application for a judicial management order may be made by the insurer or by the Commission.

(2) An application for a judicial manager shall be served

(a) where application is made by the insurer, on the Commission not later than thirty days before the date fixed for the hearing of the application, or

(b) where application is made by the Commission, on the insurer not later than five days before the date fixed for the hearing of the application.

(3) The insurer and the Commission are both entitled to appear and be heard on an application for a judicial management order.

(4) Where it is satisfied that the application is urgent, the Court may reduce the time for service specified in subsection (2).

#### Section 101—Moratorium

During the period in which a judicial management order is in force in respect of an insurer, except with the leave of the Court or with the consent of the judicial manager

(a) steps shall not be taken to enforce any security over the insurer's assets,

(b) steps shall not be taken to repossess assets that are being used or occupied by or are in the possession of the insurer,

(c) proceedings, execution or other legal process shall not be commenced or continued or distress levied against the insurer or its assets,

(d) a share shall not be transferred and an alteration shall not be made in the status of the members of the insurer, whether by an amendment of the memorandum or articles or in any shareholders' or members' agreement or otherwise, and

(e) a resolution of the members of the insurer shall not be passed.

#### Section 102—Duties of judicial manager

(1) On making a judicial management order, the Court shall appoint a suitably qualified and experienced person to be the judicial manager.

(2) The judicial manager shall



(a) manage the business, assets and affairs of the insurer, or that part of the business, assets and affairs of the insurer in respect of which the judicial manager has been appointed, and

(b) take into custody and control the assets of the insurer or, where the judicial manager has been appointed in respect of only part of the business of the insurer, those assets necessary to enable the judicial manager perform the function.

(3) A person who, immediately before the commencement of the judicial management of the insurer, is vested with the management of the insurer, or that part of the business of the insurer in respect of which the judicial management order is made, is divested of that management.

#### Section 103—Additional duties of judicial manager

(1) The court may, on the application of the judicial manager or of the Commission at any time as it considers appropriate,

(a) give the judicial manager any additional duties, and

(b) give the judicial manager any directions concerning its duties and powers or in relation to any matter arising in the course of the judicial management.

(2) A judicial manager shall not issue or enter into any policies except with the leave of the Court.

#### Section 104—Powers of judicial manager

Unless and to the extent that the Court otherwise orders, a judicial manager has the following powers:

(a) to bring or defend any legal proceedings in the name and on behalf of the company,

(b) to appoint a legal practitioner to help it in the performance of its functions,

(c) to appoint an actuary to assist it in the performance of its functions,

(d) to sell or otherwise dispose of any of the property of the company,

(e) to do all acts and execute in the name and on behalf of the company deeds, receipts and other documents,

(f) for the purpose of paragraph (d), to use the company's common seal,

(g) to prove in the bankruptcy of any debtor of the company or under any deed executed under that Act,

(h) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company,

(i) to obtain credit, whether on the security of the company or otherwise,

(j) to take letters of administration of the estate of a deceased debtor, and to do anything necessary for obtaining payment of any money due from a debtor, or his or her estate, that cannot conveniently be done in the name of the company,

(k) to appoint an agent to do anything that it is not practicable for the judicial manager to do personally or that it is unreasonable to expect him or her to do personally, and

(l) the other powers that the court directs.

#### Section 105—Information and notice of judicial manager

The judicial manager shall give the Commission

- (a) the information that it may from time to time require, and
- (b) notice of any application made to the court.

#### Section 106—Appearance in Court

The Commission and the judicial manager are both entitled to appear and be heard on any application to the Court concerning the judicial management of an insurer, including an application for the discharge of the order.

#### Section 107—Remuneration of judicial manager

- (1) The judicial manager is entitled to be paid remuneration for services as judicial manager and to be reimbursed reasonable costs and expenses.
- (2) The remuneration payable to the judicial manager, and the costs and expenses to be reimbursed shall be fixed by the court.
- (3) Unless the Court otherwise orders,
  - (a) the remuneration, costs and expenses of the judicial manager are payable out of the assets of the insurer in respect of which the judicial manager is appointed, and
  - (b) the judicial manager has a charge over the assets of the insurer for remuneration, costs and expenses.
- (4) Unless the Court otherwise orders, the charge specified in subsection
  - (a) ranks in priority to any floating charge to which the assets of the insurer may be subject, and
  - (b) continues to subsist after the discharge of the judicial management order.

#### Section 108—Removal of judicial manager and filling of vacancy

The Court, on the application of the insurer or the Commission may

- (a) remove the judicial manager, and
- (b) appoint another suitably qualified and experienced person as judicial manager in place of the judicial manager removed under paragraph (a) or fill a vacancy.

#### Section 109—Discharge of judicial management order

- (1) Application may be made to the court for the discharge of a judicial management order by the judicial manager, the Commission or by any other interested person.
- (2) On an application under subsection (1), the court may discharge the judicial management order where it is satisfied that
  - (a) the purpose of the order has been fulfilled, or

(b) for a reason it is undesirable that the order should remain in force.

(3) An application under subsection (1) shall be served within the period before the date of the hearing as the court may direct where an application is made

(a) by an interested person, on the judicial manager and the Commission,

(b) by the Commission, on the judicial manager, and

(c) by the judicial manager, on the Commission.

(4) On the discharge of a judicial management order,

(a) the judicial manager is divested of the management of the insurer, or that part of its business in respect of which the judicial manager was appointed, and

(b) the management of the insurer or of its business re-vests in its directors.

#### Section 110—Report of judicial manager

(1) As soon as practicable after appointment, a judicial manager shall file with the court a report recommending which of the following courses is in its opinion most advantageous to the general interests of the policy-holders of the insurer:

(a) the transfer of the business, or part of the business, of the insurer to some other insurer,

(b) the carrying on by the insurer of its business,

(c) the official liquidation of the insurer, or

(d) such other course of action as the judicial manager considers appropriate.

(2) In the report, the judicial manager

(a) may recommend different courses of action in respect of different parts of the insurer's business, and

(b) shall set out the reasons for any recommendations made in the report.

(3) The judicial manager shall as soon as possible after filing the report

(a) provide a copy to the Commission, and

(b) apply to the Court for an order to give effect to the recommendations within the report.

(4) The report is a document to which the public may have access.

#### Section 111—Order of Court on report of judicial manager

(1) On an application under 110 (3)(b), the Court may make an order giving effect to such course of action as it considers to be most advantageous to the interests of the policyholders of the insurer.

(2) An order under subsection (1) is binding and takes effect despite anything in the memorandum or articles of association of the insurer.

#### Section 112—Transfer of business to another company

Where the Court makes an order for the transfer of the business, or part of the business of an insurer to another insurer, the judicial manager shall prepare a scheme for the transfer in accordance with this Act and until the scheme is confirmed by the Court, the management of the insurer, or that part of the insurer as the case may be, continues to be vested in the judicial manager.

#### Section 113—Indemnity of judicial manager

A judicial manager is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith in the exercise of powers, functions performance or discharge of duties conferred or imposed on the judicial manager by this Act or by the court.

#### Insurance intermediaries

##### Section 114—Application for insurance intermediary licence

(1) A person may apply to the Commission for an insurance intermediary's licence in one of the following categories:

- (a) insurance broker;
- (b) insurance agent;
- (c) insurance sub-agent; or
- (d) insurance loss adjuster.

(2) An application under subsection (1) shall be in writing and shall

- (a) state the category of licence for which the application is made,
- (b) where the application is for a licence to act as an insurance broker or an insurance loss adjuster, state the type and the class of business in respect of which the applicant seeks to be authorised,
- (c) contain the prescribed information and be in the prescribed form, and
- (d) be accompanied with the prescribed documentation.

(3) An application for a licence to act as an insurance agent or an insurance sub-agent shall be supported by the insurer with which the applicant is or will be contracted.

(4) The Commission may require an applicant under section 114-151 to furnish it with any other documentation or information it considers necessary to the application.

(5) The applicant shall pay a fee determined by the Commission for the licence.

##### Section 115—Issue of insurance intermediary's licence

(1) The Commission may issue an insurance intermediary's licence to an applicant subject to any conditions the Commission may determine.

(2) An applicant does not qualify to be issued a licence unless the Commission is satisfied that in the category applied for,

- (a) the applicant is a fit and proper person to act as an insurance intermediary,

(b) in the case of an applicant that is a body corporate

(i) each person having a share or other interest in the applicant, whether legal or equitable is a fit and proper person to have an interest in the intermediary insurance business applied for, and

(ii) each director and principal officer of the applicant and of any holding company of the applicant is a fit and proper person to be concerned with the management of the category of intermediary insurance business applied for,

(c) the applicant intends, if issued with a licence, to act as an insurance intermediary in the country,

(d) the applicant satisfies the requirements of this Act in respect of the application and will, upon the issue of the licence, be in compliance with this Act, the Regulations, the Codes of Practice and, where appropriate, the Market Conduct Rules,

(e) the organisation, management and financial resources of the applicant are adequate for an insurance intermediary in the category applied for, and

(f) the name of the applicant suggests that the applicant is carrying on insurance business, or acting as an insurance intermediary in the category that is being applied for.

(2) The Commission may issue a licence to the applicant subject to the other conditions that the Commission considers appropriate.

#### Section 116—Insurance intermediary's licence

A licence issued under subsection (1) shall be in writing and shall specify

(a) the category in respect of which the licence is issued,

(b) the conditions to which the licence is subject,

(c) where the category of the licence is insurance broker or insurance loss adjuster, the class of insurance business in respect of which the insurance intermediary is authorised to operate, and

(d) where the category of the licence is insurance agent or insurance sub-agent, the insurer by which the insurance intermediary is or will be appointed.

#### Section 117—Restrictions on persons who may be licensed

(1) A licence as an insurance broker or an insurance loss adjuster shall only be granted to a company or a partnership.

(2) A director, officer or employee of a company holding a licence as an insurance broker, a partner or employee of a partnership holding a licence as an insurance broker or a person holding a significant interest in an insurance broker shall not be granted a licence as an insurance agent, an insurance sub-agent or an insurance loss adjuster.

(3) A director, officer or employee of an insurer and a person holding a significant interest in an insurer shall not be granted a licence as an insurance broker and shall not be a director, officer or employee of a person holding a licence as an insurance broker.

(4) A person holding a licence as an insurance agent or sub-agent shall not hold a licence as an insurance broker.

(5) A person holding a licence as an insurance broker shall not hold a licence as an insurance agent or sub-agent.

(6) A person holding a licence as an insurance loss adjuster shall not hold a licence as an insurance broker or an insurance agent or sub-agent.

#### Section 118—Submission of licence to Commission

(1) An insurance intermediary shall submit its licence to the Commission where

(a) the licence is suspended or revoked, or

(b) it is required by the Commission to do so for a stated reason.

(2) An insurance intermediary that contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

(3) In this section "insurance intermediary" includes a former insurance intermediary whose licence has expired or has been revoked.

#### Section 119—Publication of issue of licence

Where the Commission issues a licence under section 116, it shall cause notice of the issue to be published in the Gazette and any newspaper of mass circulation that the Commission may determine.

#### Section 120—Variation of conditions of licence

(1) The Commission may, upon giving reasonable written notice to an insurance intermediary,

(a) vary or revoke any licence conditions, or

(b) impose new conditions on the insurance intermediary.

(2) An insurance intermediary may apply to the Commission in writing for a condition to which its licence is subject to be revoked or varied.

(3) Where on an application made under subsection (2), the Commission is satisfied that the condition is no longer necessary or should be varied, it may revoke or vary the condition.

(4) Where the Commission revokes or varies a condition or issues a new condition, the insurance intermediary shall deliver its licence to the Commission which shall issue a replacement licence.

#### Section 121—Duration of licence

(1) A licence expires twelve months from the date of its issue or of its last renewal.

(2) Where application for the renewal of a licence is made on or before the date specified in section 124 (2)(d) but has not been determined by the Commission when the licence is due to expire, the licence continues in force until the application for renewal is determined by the Commission and a renewal is considered to take effect from the date when the licence would have expired but for the renewal.

#### Section 122—Refusal of application

Where the Commission

(a) refuses to issue a licence, or

(b) issues a licence but, in the case of an insurance broker or an insurance loss adjuster, refuses to authorise all the classes of insurance business,[sic] specified in the application,

it shall notify the applicant in writing of its refusal, stating the reasons within thirty days.

Section 123—Appeal to High Court

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

(2) Where the appeal is allowed the Commission shall license the insurance intermediary.

Section 124—Application for renewal of insurance intermediary's licence

(1) An insurance intermediary may apply to the Commission for the renewal of its licence.

(2) An application under subsection (1) shall

(a) be in writing,

(b) contain the prescribed information and be in the prescribed form;

(c) be accompanied with the prescribed documentation, and

(d) be made no later than

(i) three months before the expiry of the licence, or

(ii) subject to subsection (3), the later date that the Commission may allow.

(3) Despite subsection (2)(d)(ii), application for the renewal of a licence shall be made prior to the expiry of the licence.

(4) The Commission may require an insurance intermediary to furnish it with such other documentation and information that it considers necessary to determine the application for renewal of the licence.

Section 125—Renewal of insurance intermediary's licence

(1) The Commission shall renew the licence of an insurance intermediary where it is satisfied the insurance intermediary

(a) continues to meet the requirements for the issue of a licence, and

(b) is in compliance with this Act, Regulations[sic] the Code of Practice and, where applicable, the Market Conduct Rules.

(2) The renewal of a licence under this section is effective from the date when the licence renewed would have expired but for the renewal.

Section 126—Prohibition on unlicensed business as an insurance intermediary

(1) A person shall not carry on business as, or purport to carry on business as, an insurance intermediary in or from within the country unless

(a) the person holds a licence issued under sections 115 and 116 in the appropriate category, and

(b) the licence has not been suspended under section 176.

(2) For the purposes of subsection (1), a company incorporated under the Companies Code or a person resident in the country that carries on business as an insurance intermediary outside the country carries on the business of an insurance intermediary from within the Republic.

(3) A person who carries on or purports to carry on business as an insurance intermediary contrary to subsection (1) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

#### Section 127—Restriction on contact office

(1) An offshore insurance intermediary shall not open, maintain or carry on business through a representative, branch or contact office in the country unless it has obtained the prior written approval of the Commission.

(2) A person shall not

(a) establish or maintain a place of business to solicit insurance intermediary's business, or

(b) establish or maintain a representative, branch or contact office in the country,

for an offshore insurance intermediary, unless the offshore insurance intermediary has obtained the written approval of the Commission under subsection (1).

(3) In this section "off shore insurance intermediary" means an insurance intermediary incorporated, constituted or formed with its main place of business outside the country.

#### Section 128—Application for approval to establish contact office

(1) An application for approval under section 127 shall

(a) contain the prescribed information and be in the prescribed form, and

(b) be accompanied with the prescribed documentation.

(2) The Commission may require an offshore insurance intermediary to furnish it with such other documentation and information as it considers necessary to determine an application.

(3) The Commission may approve an application subject to the conditions that it considers appropriate.

#### Section 129—Variation of condition of offshore insurance intermediary

(1) The Commission may, upon giving reasonable written notice to an offshore insurance intermediary

(a) vary or revoke any condition to which the offshore insurance intermediary is subject, or

(b) impose new conditions on an offshore insurance intermediary.

#### Section 130—Offence for maintaining an office without approval



An offshore insurance intermediary who contravenes section 127 commits an offence is liable on summary conviction to the penalty stated in the First Schedule.

#### Section 131—Maintenance of capital by insurance intermediary

(1) A company that holds a licence as an insurance broker or an insurance loss adjuster shall ensure that its capital is maintained in an amount not less than the prescribed minimum capital applicable to its licence.

(2) Where the capital of an insurance intermediary falls below the amount that it is required to maintain under subsection (1), it shall immediately notify the Commission in writing.

(3) An insurance intermediary that contravenes subsection (1) or subsection (2) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 132—Deposits by insurance intermediary

(1) The Commission may, by notice require a person holding a licence as an insurance broker or an insurance loss adjuster to deposit a sum specified in the notice with the Bank of Ghana.

(2) The Commission may, by notice at any time increase the deposit to be provided by such a person.

(3) A notice issued under subsection (1) or (2) shall specify a reasonable period within which the deposit, or increased deposit, shall be made.

#### Section 133—Return of deposit

(1) Where the Commission is satisfied that there is good reason for a deposit made under section 132 to be returned to the insurance intermediary, it may by notice authorise the return of the deposit, and a deposit made by an insurance intermediary under section 132 shall not be returned to the insurance intermediary unless the Commission has issued a notice authorising the return.

#### Section 134—Restrictions on insurance intermediary, their directors, officers and employees

(1) A director, officer or employee of a person holding a licence as an insurance broker shall not be a director of an insurer.

(2) A person holding a licence as an insurance loss adjuster shall not be a director, officer or employee of a company holding a licence as an insurance broker.

#### Section 135—Prohibition to deal with unlicensed insurer

(1) An insurance intermediary shall not act in relation to a policy of an insurance to be effected by or with an insurer that does not hold a licence issued under section 38 or that has not been suspended, unless the insurer is an offshore insurer that has been authorised in respect of the policy under section 38.

(2) Subsection (1) does not apply where the insurance intermediary is acting in relation to a policy of reinsurance that, under this Act or the Regulations, is permitted to be effected with an offshore insurer.

#### Section 136—Collection of premiums by insurance intermediary

An insurance intermediary shall not receive, hold or in any way deal with a premium payable under an insurance policy entered into or to be entered into with an insurer, unless the insurance intermediary receives, holds or deals with the premium in accordance with rules or guidelines of the Commission.

#### Section 137—Accounts records

(1) An insurance intermediary whether a company, a partnership or an individual, shall keep records of accounts,

(a) that are sufficient to record and explain its transactions and financial position with respect to its business as an insurance intermediary and any other business that it may carry on,

(b) that enable it to prepare the accounts and make the returns required under this Act and Regulations, and

(c) in the case of a company or partnership licensed as an insurance broker or an insurance loss adjuster, that enables its accounts to be audited in accordance with this Act and Regulations.

(2) An insurance intermediary shall retain accounting records for a period of at least six years after the completion of the transaction to which they relate.

(3) An insurance intermediary shall

(a) keep its accounting records in the country, and

(b) notify the Commission in writing of the place in the country where accounting records are kept.

(4) An insurance intermediary that contravenes this section is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 138—Financial year of insurance intermediary

The financial year of an insurance intermediary shall be the same as the financial year of Government.

#### Section 139—Preparation and lodgement of accounts

(1) A company or partnership holding a licence as an insurance broker or an insurance loss adjuster shall, in respect of each financial year, prepare

(a) a revenue account for the year,

(b) a balance sheet as at the last day of the year,

(c) a profit and loss account for the year, and

(d) other accounts and financial statements that may be prescribed.

(2) The accounts and statements specified in subsection (1) shall be lodged with the Commission within four months after the end of the financial year to which they relate accompanied with

(a) a directors' certificate,

- (b) an auditor's report, and
- (c) any other prescribed document

in each case, containing the information in a prescribed form.

(3) Unless accompanied by the certificates, reports and documents specified in subsection (2), the accounts and statements referred to in subsection (1) are not considered to have been lodged with the Commission.

(4) A company or partnership holding a licence as an insurance broker or an insurance loss adjuster that contravenes subsection (1) or (2) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 140—Extension of time

(1) The Commission may, on the application of an insurance intermediary, extend the time for compliance with section 139 (2) for a period of one month or where it grants more than one extension for an aggregate period, not exceeding three months.

(2) An extension may be granted subject to such conditions as the Commission considers appropriate.

#### Section 141—Lodgement of quarterly accounts and returns

(1) A company or partnership holding a licence as an insurance broker or a loss adjuster shall, in respect of each quarter, lodge with the Commission the accounts, financial statements and reports that may be prescribed.

(2) The reports, accounts and statements specified in subsection (1) shall be lodged with the Commission within six weeks after the end of the quarter to which they relate accompanied with a certificate containing the information and in the form prescribed.

(3) Unless they are accompanied by a certificate complying with the Regulations, the reports, accounts and financial statements referred to in subsection (1) are not considered to have been lodged with the Commission.

(4) The Commission may, on the application of a licensee under this Part, extend the time for compliance with subsection (2) for a period of one month or where it grants more than one extension for an aggregate period not exceeding three months.

(5) An extension under subsection (4) may be granted subject to the conditions that the Commission considers appropriate.

(6) An insurance intermediary that contravenes this section is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 142—Amendment of accounts

(1) Where the Commission considers that any document lodged by an insurance intermediary under section 139 is inaccurate or incomplete or is not prepared in accordance with this Act, Regulations, or the Code of Practice, it may by notice require the insurance intermediary to amend the document or to lodge a replacement document.

(2) Where an insurance intermediary fails to comply with a notice under subsection (1), the Commission may itself amend the document or reject the document.

(3) A document amended by the Commission or by the insurance intermediary is treated as having been lodged in its amended form.

#### Section 143—Insurance intermediary to appoint an auditor

(1) A company or partnership holding a licence as an insurance broker or an insurance loss adjuster shall appoint an auditor for the purposes of auditing the accounts referred to in paragraphs (a) to (c) of section 139 (1), and the accounts and statements referred to in section 139 (1)(d) that the Regulations specify shall be audited.

(2) An auditor shall not be appointed under subsection (1) unless

(a) the auditor is qualified under the Regulations to act as the auditor of an insurance broker or an insurance loss adjuster, and

(b) the Commission has given its approval in writing to the appointment.

(3) The Commission shall not approve the appointment of an auditor unless it is satisfied that the auditor has sufficient experience and is competent to audit the accounts of the insurance broker or insurance loss adjuster concerned.

(4) A company or partnership which holds a licence as an insurance broker or an insurance loss adjuster shall make such arrangements as are necessary to enable its auditor to audit its accounts and financial statements in accordance with this Act.

(5) Despite subsection (2), the approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the company or partnership in the previous financial year.

(6) A company or partnership which holds a licence as an insurance broker or an insurance loss adjuster shall, within fourteen days of the appointment of its auditor, submit a notice of the appointment in the prescribed form to the Commission.

(7) A company or partnership holding a licence as an insurance broker or an insurance loss adjuster that contravenes subsection (1) or subsection (6) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 144—Audit report

(1) Upon completion of the audit of the accounts and financial statements referred to in section 143(1), the auditor shall provide an audit report that complies with the Regulations to the insurance intermediary.

(2) The Commission may at any time, by notice, direct a company or partnership which holds a licence as an insurance broker or an insurance loss adjuster to supply the Commission with a report, prepared by its auditor or other person nominated by the Commission, on such matters as the Board may determine which may include an opinion on the adequacy of the accounting and control systems of the company.

(3) A report prepared under subsection (2) shall be at the cost of the insurance intermediary.

## Section 145—Obligations of auditors

(1) Despite anything to the contrary in any other enactment, the auditor of a company or partnership holding a licence as an insurance broker or an insurance loss adjuster shall

(a) provide the Commission with a copy of the audit report provided to an insurance intermediary;

(b) report immediately to the Commission any information relating to the affairs of the company that the auditor has obtained in the course of acting as its auditor that, in the opinion of the auditor, suggests

(i) that the insurance intermediary is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations,

(ii) that a criminal offence has been or is being committed by the insurance intermediary or in connection with its business,

(iii) that the insurance intermediary, if a company, is in breach of section 131, or

(iv) that serious breaches of this Act or Regulations have occurred in respect of the company or partnership or its business as an insurance intermediary.

(2) Where the appointment of an auditor is terminated, the auditor shall

(a) immediately inform the Commission of the termination of the appointment and disclose to the Commission the circumstances that gave rise to the termination, and

(b) where, but for the termination of the appointment, the auditor would have

(i) sent an auditor's report to the Commission under subsection (1) (a), or

(ii) report[sic] information to the Commission under subsection (1)(b),

the auditor shall send a copy of the report to the Commission, or report the information conducted to the Commission, as if the appointment had not been terminated.

(3) The Commission may require an auditor of a company or partnership holding a licence as an insurance broker or an insurance loss adjuster to discuss an audit the auditor has conducted or commenced with, or provide additional information regarding the audit to the Commission.

(4) Where, in good faith, an auditor provides a report, certificate or information to the Commission under subsections (1), (2) or (3), the auditor is not considered to be in contravention of an enactment, rule of law or professional code of conduct to which the auditor is subject and no civil, criminal or disciplinary proceedings shall lie against the auditor in respect of it.

(5) The failure, in good faith, of an auditor to provide a report, certificate or information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, the person would not have had.

(6) An auditor who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

## Section 146—Powers of Commission with regard to appointment of auditor

(1) Where the Commission is satisfied that the auditor of a company or partnership holding a licence as an insurance broker or an insurance loss adjuster has failed to fulfil an auditor's obligations under this Act or is otherwise not qualified to act as the auditor of an insurance broker or an insurance loss adjuster, it may, by written notice to the insurance intermediary, revoke the approval of the appointment of the auditor and the insurance intermediary shall appoint a new auditor.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) Where a company or partnership holding a licence as an insurance broker or an insurance loss adjuster fails to appoint an auditor, the Commission may appoint a person qualified under the Regulations to act as the auditor of the insurance intermediary.

(4) An auditor appointed under subsection (3) is considered for the purposes of this Act to have been appointed by the insurance intermediary.

#### Section 147—Insurance intermediary not to be wound up by private liquidation

(1) A company that holds or at any time has held a licence as an insurance broker or as an insurance loss adjuster referred to in this Part as a relevant company shall not be wound up by a private liquidation under the Companies Code.

(2) Any resolution of a relevant company to be wound up by private liquidation under the Companies Code is of no effect.

#### Section 148—Further modification of Act 180

The provisions of Bodies Corporate (Official liquidations) Act, 1963 (Act 180) as modified in section 92 is further modified relating to the official liquidation of companies in respect of relevant companies and companies that are carrying on or have carried on business as an insurance intermediary without a licence.

#### Section 149—Commencement of proceedings

(1) The official winding up of a relevant company may be commenced by a special resolution of the company where the Commission has given its prior written consent to the passing of the resolution.

(2) A resolution of a relevant company to appoint a liquidator in contravention of subsection (1) is void.

(3) Where the members of a relevant company appoint a liquidator in accordance with this section, the Commission may by notice in writing direct the liquidator to advertise his or her appointment in such manner as is specified in the notice.

(4) A liquidator who fails to advertise his or her appointment in accordance with a directive of the Commission issued under subsection (3) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 150—Commission may present petition to wind up insurance intermediary

(1) The Commission may present a petition to the court for official liquidation under Act 180 of

(a) a relevant company, or

(b) a company that is carrying on or has carried on business as an insurance intermediary without a licence.

(2) On a petition presented under subsection (2), the Court may make an order for the official liquidation of the company

(a) on a ground specified in Act 180,

(b) where the Court is satisfied that it is in the public interest that the company be wound up, or

(c) in the case of a relevant company, if the company has failed to lodge with the Commission, within the time period specified, the documents specified in section 139 (2).

(3) For the purposes of subsection (2) (b), the public interest includes the interests of the customers of a relevant company.

(4) On the hearing of a petition for the official liquidation of a relevant company presented by the Commission under this section, evidence that the company has, at any time prior to the date of the presentation of the petition been insolvent is, unless the contrary is proved, evidence that it continues to be insolvent.

#### Section 151—Service on Commission

A petition for the official liquidation of a relevant company shall, where presented by a person other than the Commission, be served on the Commission and the Commission is entitled to appear and be heard at the hearing of the petition.

#### General provisions on licensing

#### Section 152—Monitoring of advertisements

(1) An insurer or insurance intermediary shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) Where the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of an insurer or an insurance intermediary is misleading, contains an incorrect statement of fact or is contrary to the public interest, it may

(a) direct the insurer or insurance intermediary in writing not to issue the document or to withdraw it, or

(b) authorise the insurer or insurance intermediary in writing to issue the document with such changes as the Commission may specify.

(3) An insurer or insurance intermediary that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or

knowing that it contains an incorrect statement of fact, commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

(4) An insurer or insurance intermediary that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document contrary to a directive of the Commission under subsection (2) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

#### Section 153—Commission may request change of name

(1) The Commission may, by written notice, require an insurer or insurance intermediary who carries on insurance business or the business of acting as an insurance intermediary under a name that is

(a) identical to that of any other person, whether within or outside the country, or which so nearly resembles that name as to be likely to deceive,

(b) likely to suggest falsely the patronage of or connection with some person whether within or outside the country,

(c) likely to suggest falsely that the person has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials, or

(d) is otherwise misleading or undesirable, [sic]

to immediately change its name,

(2) A person who fails to change the name under which business is carried on within seven days of the date of receipt of a written notice under subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 154—Commission shall approve change of name

(1) An insurer or insurance intermediary shall not, without the prior written approval of the Commission

(a) change the name under which it carries on business, and

(b) in the case of a corporate body, change its name.

(2) An insurer or insurance intermediary who contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 155—Filing of returns and submission of information to Commission

(1) An insurer or insurance intermediary shall submit, report any information or furnish any returns or documentation prescribed by the Regulations or required by the Code of Practice or the Market Conduct Rules to the Commission within such time and verified in such form and manner as is prescribed or required by the Regulations, the Code of Practice or the Market Conduct Rules.

(2) An insurer or insurance intermediary who contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.



(3) A person who in submitting a report required under subsection (1) makes a false statement of a material fact or omits to state a material fact required to be provided by the Commission or necessary to avoid the report being materially misleading commits an offence.

(4) A person does not commit an offence under subsection (3) if the person did not know and with the exercise of reasonable diligence could not have known that the report contained a false statement or omitted a material fact.

#### Section 156—Defective returns

(1) Where the Commission considers that any document furnished by an insurer or insurance intermediary under section 155 is inaccurate or incomplete or is not prepared in accordance with this Act, Regulations, the Code of Practice or the Market Conduct Rules, it may by written notice require the insurer or insurance intermediary to amend the document or to lodge a replacement document.

(2) Where an insurer or insurance intermediary fails to comply with a notice under subsection (1), the Commission may itself amend the document or reject the document.

(3) A document amended by the Commission or by the insurer or insurance intermediary is considered as having been lodged in its amended form.

#### Section 157—Notification to Commission of any judgement

An insurer or insurance intermediary shall notify the Commission of a judgement obtained against it and shall provide the Commission with evidence as to whether or not the judgement has been satisfied.

#### Section 158—Fees payable to Commission

A fee, charge or contribution which is owed to the Commission under this Act or the Regulations may be recovered as a debt due to the Commission.

#### Section 159—Restrictions on disclosure of information

(1) Subject to subsection (2), the Commission and a person acting under the Commission's authority shall not disclose to any person information concerning the affairs of a protected person that the person has acquired in the discharge of duties or performance of functions under this Act or under any other enactment.

(2) Subsection (1) does not apply to a disclosure

(a) required or permitted by a Court of competent jurisdiction in the country,

(b) to any person for the purpose of discharging a duty or exercising a power under this Act,

(c) in respect of the affairs of a protected person made with the consent of that protected person,

(d) if the information disclosed is or has been available to the public from any other source,

(e) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of the protected person to whom the information relates to be determined, or

(f) made by the Commission to a foreign regulatory authority upon the written request of that authority in accordance with section 171.

(3) For the purposes of this section, "protected person" means

(a) a person who has applied for an insurer or insurance intermediary licence, or

(b) a policyholder or a former policyholder of an insurer.

(4) A person who contravenes this section commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

(5) For the purposes of this section, "licence made under this Act" includes a person who has at any time been licensed under this Act but who has since ceased to be a licensee under this Act.

#### Section 160—Display of licence

(1) An insurer or insurance intermediary shall prominently display a copy of its licence at each of the premises where the business is carried on.

(2) An insurer or insurance intermediary who contravenes subsection (1) is liable to pay to the Commission the pecuniary penalty stated in the First Schedule.

#### Section 161—Service of notice to policy holder

(1) Where a notice is required by this Act or the Regulations to be sent by an insurer or insurance intermediary to a policyholder, it may be sent to the last address of the policyholder notified by the policyholder to the insurer or insurance intermediary.

(2) Where a person who claims to be interested in a policy has given notice of that interest to an insurer or insurance intermediary, a notice required to be sent by the insurer or insurance intermediary to a policyholder shall also be sent to the person claiming interest at the address specified by that person in the notice to the insurer or insurance intermediary.

#### Section 162—Change in circumstances relating to application to Commission

(1) Where, before the determination by the Commission of any application made under this Act, whether by an insurer or insurance intermediary or otherwise, there is a material change in information or particulars provided by the applicant to the Commission in connection with the application, the applicant shall immediately give the Commission written particulars of the change.

(2) A person who contravenes subsection (1) is liable to pay to the Commission the pecuniary [sic] penalty stated in the First Schedule.

#### Section 163—Limitation of section 261 of the Companies Code

(1) The Registrar of Companies shall send to the Commission a copy of any notice that is sent to an insurance company under section 261 of the Companies Code with evidence of despatch.

(2) The Registrar shall not strike out the name of a company that holds, or has held a licence from the register of companies under section 261 of the Companies Code without the prior written consent of the Commission.

Section 164—Restriction on the use of the words "insurance", "assurance" and "underwrite"

- (1) A person other than an insurer or insurance intermediary licensed under this Act shall not
- (a) use the words "insurance", "assurance" or "underwrite" or any combination or derivative as part of the business name, style or title of that person,
  - (b) use a word that in the opinion of the Commission connotes an insurance business or the business of an insurance intermediary, or
  - (c) make a representation in a document or in a manner that is likely to suggest that the person is an insurer or insurance intermediary licensed under this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

Inspection and enforcement

Section 165—Inspections

- (1) The Commission may, at any time, for the purposes of supervision of insurers and insurance intermediaries
- (a) inspect the premises, business and affairs, including the procedures, systems and controls, of a person, whether in or outside Ghana,
  - (b) inspect the assets, including cash, belonging to or in the possession or control of any person, and
  - (c) examine and make copies of documents, including accounting records, belonging to or in the possession or control of a person who in the opinion of the Commission, relate to the carrying on by the person of insurance business or the business of an insurance intermediary.
- (2) When undertaking an inspection, the Commission may have regard to matters which, in its opinion, are relevant to the supervision of insurers and insurance intermediaries including
- (a) verifying the capital and, in the case of an insurer, the solvency margin and reserves,
  - (b) satisfying itself that the insurer or insurance intermediary is in compliance with this Act, Regulations, the Code of Practice, the Market Conduct Rules, any conditions to which its licence is subject and any directives that the Commission may have issued to an insurer or insurance intermediary, and
  - (c) satisfying itself that the insurer or insurance intermediary has adequate procedures in place to prevent it from being used for the purposes of money laundering or for terrorist funding.
- (3) The Commission shall give reasonable notice to an insurer or insurance intermediary of its intention to exercise its powers under subsection (1).
- (4) Without limiting the scope of subsection (1), the Commission shall ensure that an inspection is carried out in respect of an insurer or insurance intermediary not less than once in every two years.
- (5) In undertaking an inspection, the Commission shall exercise reasonable care to avoid hindrance to the day to day activities of the insurer or insurance intermediary.

## Section 166—Duties of directors, officers and managers in relation to inspection

(1) Where the Commission is undertaking an inspection in relation to an insurer or insurance intermediary that insurer or insurance intermediary shall

(a) give the Commission access to its premises and to the assets that the Commission, in the opinion of the insurer or insurance intermediary needs access to for the purposes of the inspection,

(b) give the Commission access to all documents, including accounting records, and produce to the Commission any documents the Commission requires, and

(c) provide the Commission with information and explanations that the Commission may reasonably require.

(2) Where documents required by the Commission for the purposes of an inspection are held by a person other than the insurer or insurance intermediary the Commission shall ensure that the person concerned produces those documents to the Commission and provides the Commission with the information and explanations that the Commission requires.

(3) When undertaking an inspection, the Commission may, by written notice, require a director, officer or manager of the insurer or insurance intermediary to provide it with any information and explanations it reasonably requires.

(4) An insurer or insurance intermediary who contravenes subsection (1) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

(5) A director, officer or manager of an insurer or insurance intermediary commits an offence if, having received a written notice under subsection (2), and without reasonable excuse fails or refuses to provide the Commission with the information and explanations that the Commission requires and is liable on summary conviction to the penalty stated in the First Schedule.

## Section 167—Report on inspection

(1) The Commission shall, within six weeks after completing an inspection, forward a report to the insurer or insurance intermediary concerned setting out a summary of its findings.

(2) The report issued

(a) may contain any recommendations to the insurer or insurance intermediary concerning the conduct of its business, its systems, procedures or controls or concerning such other matters as the Commission considers appropriate, and

(b) shall specify whether or not the Commission requires a response from the insurer or insurance intermediary concerning the report and, if it does require a response, may indicate particular aspects of the report or particular recommendations in respect of which a response is required.

(3) Where the Commission specifies in its report that it requires a response to the report, the insurer or insurance intermediary concerned shall provide a response to the Commission within fourteen days of receiving the report, or within such longer period as may be specified in the report.

(4) An insurer or insurance intermediary who fails to comply with subsection (3) commits an offence and is liable on summary conviction to the penalty stated in the First Schedule.

#### Section 168—Power of Commission to gather information

(1) Where reasonably required by the Commission for the performance of its functions under this Act or any other enactment or, subject to section 171 on the written request of a foreign regulatory authority, the Commission may, by notice given to a person specified in subsection (2), require that person to submit specified information or documentation.

(2) A notice under subsection (1) may be issued to

(i) an insurer or insurance intermediary,

(ii) a person connected with an insurer or insurance intermediary,

(iii) a person carrying on insurance business or the business of an insurance intermediary, or

(iv) a person reasonably believed to have the information or documentation to which the notice relates; and

(3) The notice shall specify the place where and the period within which the information or documents shall be submitted.

(4) The Commission may request that

(a) information submitted under this section to be provided shall be in the form that the Commission may request,

(b) information submitted is authenticated in the manner that the Commission may reasonably request, and

(c) the person to whom the notice is issued, or a person who is or has been a director, auditor or actuary of that person, provide such explanations relating to the information submitted as the Commission requests.

(5) The Commission may take copies or extracts of any documents produced under this section.

(6) Where a person claims a lien on a document, its production under this section is without prejudice to the person's lien.

#### Section 169—Privileged document and information

(1) A person is not required to disclose information under section 168 if that person would be entitled to refuse to disclose the information or to produce the document on the grounds of legal professional privilege in legal proceedings.

(2) For the purposes of this section, information comes to a lawyer in privileged circumstances if it is communicated or given to the lawyer

(a) by a client or by a representative of the client in connection with the giving by the lawyer of legal advice to the client,

(b) by a person or that person's representative seeking legal advice from the lawyer, or

(c) by a person in contemplation of, or in connection with, legal proceedings, or for the purposes of those proceedings.

(3) Information shall not be treated as coming to a lawyer in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(4) Despite subsection (1), a lawyer may be required under section 168 to provide the name and address of the client.

#### Section 170—Examination under oath

(1) Where, in connection with a direction given under section 168, the Commission considers it necessary to examine a person on oath, the Commission may apply to the court to have that person examined by the court and to have the results of that examination transmitted to the Commission.

(2) On an application under subsection (1), the court may order the examination of a person under oath on such terms and conditions as the court considers fit.

#### Section 171—Assistance to foreign regulatory authorities

(1) Where a foreign regulatory authority requests the Commission in writing to provide it with assistance in connection with the exercise of its regulatory functions, the Commission may disclose information, or provide documentation, in its possession to the foreign regulatory authority in accordance with this section.

(2) The Commission shall not

(a) issue a notice under section 168 on the request of a foreign regulatory authority, or

(b) disclose information or provide documentation to a foreign regulatory authority under subsection (1)

unless it is satisfied that the information or documentation to which the request relates is reasonably required by the foreign regulatory authority for the purposes of its regulatory functions.

(3) In deciding whether or not to issue a notice on the request of a foreign regulatory authority or to disclose information or provide documentation to a foreign regulatory authority under subsection (1), the Commission may take into account, in particular

(a) whether reciprocal treatment would be given to the Commission in the country or territory of the foreign regulatory authority,

(b) whether the request relates to the breach of a law, or other requirement, which has no close parallel in the country or involves the assertion of a jurisdiction not recognised by the country,

(c) the seriousness of the case and its importance to persons in Ghana, and

(d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(4) For the purposes of subsection (3) (a), the Commission may request the foreign regulatory authority making the request to give a written undertaking, in the form that the Commission may require to provide corresponding assistance to the Commission.

(5) Where a foreign regulatory authority fails to comply with a requirement of the Commission made under subsection (4), the Commission may refuse to provide the assistance sought by the foreign regulatory authority.

(6) The Commission may decide that it will not, on the request of a foreign regulatory authority, exercise its powers unless,

(a) it is satisfied that any information provided to the foreign regulatory authority will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence under section 168 or for an offence of perjury or any like offence, and

(b) the foreign regulatory authority undertakes to make contribution towards the cost of exercising the Commission's powers that the Commission considers appropriate.

(7) The Commission shall not exercise its powers under subsection (1) unless it is satisfied that the information or documentation provided to a foreign regulatory authority will be subject to safeguards equivalent to those contained in section 169.

#### Section 172—Search warrant

(1) A magistrate may issue a search warrant under this section where the magistrate is satisfied on information on oath or affirmation given on behalf of the Commission that there are reasonable grounds for believing that the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are

(a) that a person has failed to comply with a notice of the Commission issued under section 168(1) within the time period specified in the notice and that on the premises specified in the warrant

(i) there are documents that have been required to be produced, or

(ii) there is information that has been required to be provided,

(b) that a notice could be issued by the Commission under section 168

(1) against a person, and

(i) there are documents, or there is information, on the premises specified in the warrant in respect of which a notice under section 168(1) could be issued, and

(ii) if a notice under section 168(1) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed, or

(c) that

(i) a relevant offence has been, or is being, committed by a person, and

(ii) there are documents, or there is information, on the premises specified in the warrant that evidence the commission of the offence, and

(iii) if a notice under section 168(1) was to be issued, it would not be complied with or the documents or information to which the notice related would be removed, tampered with or destroyed.

(3) A warrant issued under this section shall authorise a named representative of the Commission, together with a police officer and any other person named in the warrant,

(a) to enter the premises specified in the warrant at any time within seven days from the date of the warrant,

(b) to search the premises and take possession of a documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them,

(c) to take copies of, or extracts from documents or information appearing to be documents or information of a type in respect of which the warrant was issued,

(d) to require a person on the premises to provide an explanation of a document or information appearing to be a document or information of a type in respect of which the warrant was issued or to state where such documents or information may be found; and

(e) to use the force that may be reasonably necessary.

(4) Unless a Court, on the application of the Commission, otherwise orders, a document of which possession is taken under this section may be retained

(a) for a period of three months, or

(b) if within that period, proceedings for a criminal offence to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

(5) In this section, "premises" includes a vehicle, vessel or aircraft.

#### Section 173—Appointment of examiner

(1) Where the Commission is entitled to take enforcement action against an insurer or insurance intermediary under section 175 it may appoint one or more competent persons as examiners to conduct an investigation on its behalf.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following:

(a) the nature, conduct or state of the business of the insurer or insurance intermediary;

(b) a particular aspect of the business of the insurer or insurance intermediary; and

(c) the ownership or control of the insurer or insurance intermediary.

(3) An examiner appointed under subsection (1) may, also investigate the business of any person who is, or at any time has been

(a) a member of the group of which the person under investigation is a part, or



(b) a partnership of which the person under investigation is a member where necessary for the purposes of the investigation.

(4) The appointment of an examiner shall be made on the terms and conditions that the Commission considers appropriate.

#### Section 174—Order of Court

(1) Where a person fails to comply with a notice issued by the Commission, the Commission may apply to the Court for an order requiring that the person comply with the notice.

(2) On an application by the Commission under subsection (1), the Court may order the person to whom the notice was issued

(a) to comply with the notice, or

(b) to comply with a part of the notice as it considers appropriate.

(3) A person who fails to comply with an order of the Court made under subsection (2) without reasonable excuse, commits an offence.

(4) A person who in purported compliance with a notice issued by the Commission or an order of the Court

(a) provides information which the person knows to be false or misleading in a material respect, or

(b) recklessly provides information which is false or misleading in a material respect, commits an offence.

(5) A person who, for the purpose of obstructing or frustrating compliance with a notice issued by the Commission or compliance with an order of the Court destroys, mutilates, defaces, hides or removes a document commits an offence.

#### Section 175—Enforcement

(1) The Commission may take enforcement action against an insurer or, insurance intermediary where in the opinion of the Commission the insurer or insurance intermediary

(a) has contravened or is in contravention of this Act, the Regulations, the Code of Practice or the Market Conduct Rules,

(b) is carrying on business in a manner detrimental to the public interest or to the interest of any of its policyholders or creditors, customers or in the case of an insurance agent or the insurers on whose behalf the insurer or insurance intermediary acts,

(c) is or is likely to become insolvent,

(d) has failed to comply with a directive given to it by the Commission under section 181, in the case of an insurer or section 182 in the case of an insurance intermediary,

(e) is in breach of any condition of its licence,

(f) is not qualified to hold a licence, or

(g) has provided the Commission with false, inaccurate or misleading information, whether on making application for a licence or subsequence to the issue of the licence.

(2) The Commission may also take enforcement action where

(a) the insurer or insurance intermediary that is a company proposes to make or has made a composition or arrangement with its creditors, is wound up, passes a resolution for winding up or is dissolved,

(b) a receiver and manager has been appointed in respect of the insurance business or insurance intermediary business carried on by the insurer or insurance intermediary or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge,

(c) in the opinion of the Commission

(i) a person who has a share or interest in the insurer or insurance intermediary, whether equitable or legal, or any director or principal officer of the insurer, is not a qualified person to have an interest in the management of the business of an insurance company or insurance intermediary, as the case maybe,

(ii) a part of the business of the insurer, is not being carried on in accordance with sound insurance principles,

(iii) the insurer or any other person has refused or failed to co-operate with the Commission on an inspection conducted by the Commission,

(iv) adequate arrangements have not been made, or will not be made, for the reinsurance of risks against which persons are insured by the insurer,

(v) there has been a substantial departure from any business plan submitted to the Commission, or

(d) the Commission is entitled to take enforcement action under a provision in any other enactment.

(2) For the purposes of subsection (1)(c), an insurer is considered to be insolvent where the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 71(1).

(3) Where the Commission is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers:

(a) revoke or suspend the insurer's or insurance intermediary's licence under section 176,

(b) appoint an examiner to conduct an investigation under section 173,

(c) appoint a qualified person to advise the insurer or insurance intermediary on the proper conduct of its business, or

(d) issue a directive under sections 181 or 182.

Section 176—Revocation or suspension of licence

(1) The Commission may at any time revoke or suspend the licence of an insurer or insurance intermediary where

(a) the Commission is entitled to take enforcement action against the insurer or insurance intermediary under section 175,

(b) the insurer or insurance intermediary fails to commence the business for which it was licensed within six months of the licence being issued or ceases to carry on the insurance business for which it was licensed, or

(c) the insurer or insurance intermediary fails to pay the renewal fee for the licence within two months of the date upon which it is due for payment.

(2) The Commission may revoke the licence of an insurer or insurance intermediary where it is requested to do so by the insurer or insurance intermediary.

(3) Subject to subsection (4), the period of suspension of a licence under subsection (1) shall not exceed thirty days.

(4) Where it is satisfied that it is in the public interest to do so, a Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding thirty days each.

(5) Before suspending or revoking a licence under paragraph (a) or (b) of subsection (1), the Commission shall give written notice to the insurer or insurance intermediary stating

(a) the grounds upon which the Commission intends to revoke or suspend the licence, and

(b) that unless the insurer or insurance intermediary, by written notice filed with the Commission, shows good reason why its licence should not be revoked or suspended, as the case may be, on a date not later than fourteen days after the date of the notice.

(6) Where the Commission revokes or suspends a licence under this section, the Commission shall send a written notice to the insurer or insurance intermediary stating

(a) that the licence has been revoked or suspended, and

(b) the grounds upon which and the date from which the licence has been revoked or suspended.

(7) Where the Commission revokes or suspends a licence under this section, it shall cause notice of the revocation or suspension to be published in the Gazette and any newspaper of mass circulation that the Commission may determine.

#### Section 177—Effect of revocation or suspension of licence

(1) Where the licence of an insurer or insurance intermediary is suspended or revoked, the insurer or insurance intermediary shall not after the date upon which an insurer or insurance intermediary receives notice of the suspension or revocation

(a) enter into a new contract of insurance, or

(b) renew or vary a contract of insurance entered into before the commencement date.

(2) Where the licence of an insurer or insurance intermediary is suspended or revoked, so long as the insurer or insurance intermediary remains under any liability in respect of any insurance

policies, the insurer or insurance intermediary shall take such action as it considers necessary or as may be required by the Commission to ensure that reasonable provision has been or will be made for that liability and that adequate arrangements exist or will exist for payment of reasonable premiums and expenses on those policies.

(3) An insurer or insurance intermediary that contravenes subsection (2) commits an offence.

#### Section 178—Representation to the Commission

(1) An applicant who receives a notice of suspension, revocation or refusal may make a representation to the Commission within twenty-one days from the date of receipt of the notice of suspension, revocation or refusal.

(2) Where a representation is not made under subsection (1), the Commission may uphold the revocation or refusal to renew the licence.

(3) The Commission shall within fourteen days of the receipt of a representation under subsection (1) take a decision on the representation and inform the applicant of its decision within seven days of the date of the decision.

#### Section 179—Appeal to High Court

A person aggrieved by a decision of the Commission may within sixty days of notification of the decision appeal to the High Court.

#### Section 180—Protection order

(1) Where a licence of either an insurer or insurance intermediary expires or is about to be revoked or suspended, the Commission may apply to the Court for a protection order.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the insurer or insurance intermediary, or the interests of its policyholders, creditors, customers or the public including

(a) an order preventing the insurer or insurance intermediary or any other person from transferring, disposing of or otherwise dealing with property in the insurer's or insurance intermediary's custody or control,

(b) an order appointing an administrator to take over and manage the business then carried on by the insurer or insurance intermediary immediately before the revocation or suspension of the licence, as the case may be,

(c) in the case of a company, an order that the insurer or insurance intermediary be wound up by the court subject to the supervision of the court under the Companies Code, or

(d) an order granting the Commission a search warrant.

(3) An order made under subsection (2) (b) may

(a) specify the powers of an administrator, which may include the powers of an insurer under this Act or of a liquidator under the Companies Code,

(b) require the administrator to provide security to the satisfaction of the Court,

(c) determine the remuneration of the administrator, or

(d) require a person it considers necessary to appear before the court for the purposes of giving information or producing records concerning the insurer or insurance intermediary or the business carried on by the insurer or insurance intermediary.

(4) An order made under subsection (2) (b) shall make provision for reports to be submitted by the administrator to the court and to the Commission.

(5) The court may on its own motion or on the application of the Commission or the administrator,

(a) give directions to the administrator concerning the exercise of the administrator's powers;

(b) vary the powers of the administrator, or

(c) terminate the appointment of the administrator.

(6) An application under subsection (1) may be made

(a) by one party or upon the notice that the Court may require, and

(b) before the Commission has given notice of intention to suspend or revoke a licence under section 176 in the case of either an insurer or insurance intermediary.

#### Section 181—Directives to insurer

(1) Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a written directive to the insurer ordering the insurer

(a) to cease to engage in any class of insurance business,

(b) not to enter into any new contracts for any class of insurance business,

(c) not to vary any existing contracts of insurance,

(d) to limit to a specified amount the aggregate premiums to be received by the insurer, whether before or after the deduction of reinsurance premiums payable by the insurer for reinsuring the liabilities in respect of which premiums are to be received,

(e) to refrain from making investments of a specified class or description,

(f) to realise, before the date that may be specified in the directive, the whole or a specified portion of investments of a specified type or description held by the insurer,

(g) cause an actuary or the other person that may be specified by the Commission to undertake an investigation into its financial position in respect of its business or any part of its business and to submit a report of the investigation to the Commission,

(h) to provide any return or other document it is obliged to file under this Act within a shorter period of time than that permitted under this Act, and

(i) to take the other action that the Commission considers may be necessary to protect the assets of the insurer or to protect, policyholders or potential policyholders of the insurer.

(2) Unless the Commission otherwise directs

(a) an investigation under subsection (1)(g) shall comply with the requirements that may be prescribed for an investigation under section 61(2), and

(b) the report of an investigation under subsection (1)(g) shall contain the information and be in a form that may be prescribed for a report prepared under section 61(3);

with the modifications that may be appropriate where the insurer carries on short term insurance business.

(3) An insurer that fails to comply with, or carries on business in contravention of, a directive issued by the Commission under this section commits an offence.

#### Section 182—Directives to insurance intermediary

(1) Where the Commission is entitled to take enforcement action against an insurance intermediary, the Commission may issue a directive ordering that the insurance intermediary

(a) cease to act as an insurance intermediary,

(b) cease accepting particular types of business, or

(c) take other action that the Commission considers may be necessary to protect the interests of the insurance intermediary's customers or, in the case of an insurance agent or sub agent, the insurer on whose behalf the agent or sub agent acts.

(2) An insurance intermediary that carries on business in contravention of a directive issued by the Commission under this section commits an offence.

#### Insurance of commercial building under construction

##### Section 183—Insurance of commercial building under construction

(1) A person shall not construct or cause to be constructed a commercial building without insuring with a registered insurer the liability in respect of construction risks caused by negligence or the negligence of servants, agents or consultants which may result in bodily injury or loss of life to or damage to property of any workman on the site or of any member of the public.

(2) A person who contravenes subsection (1) commits an offence.

##### Section 184—Insurance of commercial buildings

(1) Every commercial building shall be insured with an insurer against the hazards of collapse, fire, earthquake, storm and flood, and an insurance policy issued for it.

(2) The insurance policy shall cover the legal liabilities of an owner or occupier of premises in respect of loss of or damage to property, bodily injury or death suffered by any user of the premises and third parties.

(3) For the purposes of this section, "commercial building" means a privately owned building to which members of the public have ingress and egress for the purpose of obtaining educational or medical service, engaging in a commercial activity for the purpose of recreation or transaction of business.

#### Establishment of a Fire Service Maintenance Fund

### Section 185—Establishment of Fire Service Maintenance Fund

There is hereby established a Fire Service Maintenance Fund in this Act referred to as the Fire Maintenance Fund.

### Section 186—Object of the Fire Maintenance Fund

The object of the Fire Maintenance Fund is to provide funds and equipment to state institutions assigned with fire fighting functions and such other organisations as the Commission may determine for the purpose of fighting fires.

### Section 187—Source of money for the Fund

The Commission shall in consultation with insurance associations prescribe in Regulations a percentage of the gross premium received by each direct insurer on policies issued in respect of commercial buildings under sections 183(1) and 184(1) to be paid into the Fire Maintenance Fund.

### Section 188—Management of the Fire Maintenance Fund

- (1) The Fire Maintenance Fund shall be under the management of the Commission.
- (2) The contributions shall be paid to the Commission.
- (3) For the purposes of management of the Fire Maintenance Fund, the Commission shall open a bank account into which the contributions shall be paid.

### Section 189—Conditions for providing grants from the Fund

The Commission shall in consultation with representatives of licensed insurers and the Chief Fire Officer of the Ghana Fire Service provide conditions in writing for providing grants from the Fire Maintenance Fund.

### Section 190—Accounts, auditing and annual report

The provisions in sections 19 and 20 on keeping of accounts, auditing and annual report to Parliament shall apply to the Fire Maintenance Fund.

### Section 191—Penalty for non compliance by an insurer

Where an insurer fails or refuses to pay towards the Fire Maintenance Fund, the Commission shall take action as the Commission considers appropriate including revocation of the insurance licence.

### Establishment of a Motor Compensation Fund

### Section 192—Establishment of the Motor Compensation Fund

There is hereby established a Motor Compensation Fund.

### Section 193—Object of the Compensation Fund

The Fund is to be used to

- (a) compensate persons who suffer injury or death through a motor accident and who are unable to obtain compensation from an insurance company, and

(b) promote public education on motor insurance in particular and insurance business in general,

#### Section 194—Source of money for the Fund

The Commission shall in consultation with the insurers associations, allocate a percentage of the motor contributions received by the Commission on every sticker issued by a motor underwriting company to an insured, into the Fund.

#### Section 195—Management of the Fund

- (1) The Fund shall be managed by the Commission.
- (2) For purposes of management of the Fund, the Commission shall open a bank account into which the contributions shall be paid.
- (3) The Commission shall set up a committee comprising of representatives of motor underwriting companies to assist with the making of awards under the Fund.

#### Section 196—Conditions for providing grants from the Fund

The Commission in consultation with the insurers associations shall establish in writing the conditions for providing grants from the Fund.

#### Miscellaneous provisions

#### Section 197—Establishment of a Client Rescue Fund

- (1) There is established by this Act a Client Rescue Fund.
- (2) The Fund is to be used to compensate clients of insurance companies that become bankrupt.
- (3) The Commission shall by Regulations allocate a percentage of the gross premium received by each direct insurer to be paid into the Fund.
- (4) The Fund shall be managed by the Commission.
- (5) The Commission shall open a bank account for purposes of managing the Fund into which the contributions shall be paid.
- (6) The Commission shall establish a committee to assist with the making of awards under the Fund.

#### Section 198—Emergency treatment for road traffic accident victims

A percentage of the emergency motor insurance premium to be jointly agreed by the Commission, motor insurer and the National Health Insurance Council shall be paid to the National Health Insurance Fund by motor insurers to cover the cost of emergency treatment of road accident victims.

#### Section 199—Registers

- (1) The Commission shall maintain
  - (a) a Register of Insurance Companies,
  - (b) a Register of Insurance Intermediaries, and



(c) other registers that may be appropriate,

in which shall be recorded the information that the Board may determine.

(2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers appropriate including, either wholly or partly, by means of a device or facility

(a) that records or stores information in magnetic or electronic form, and

(b) that permits the information to be inspected and reproduced in legible and useable form.

#### Section 200—Inspection of registers and information held by Commission

(1) Subject to subsection (2), a person may, on payment of the prescribed fee during normal business hours

(a) inspect the registers and any records kept by the Commission that are designated as public records, and

(b) request to be furnished by the Commission with a copy or certified copy of, or extract from, any document that the person would be entitled to inspect under paragraph (a).

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in the manner that the Commission considers appropriate.

(3) A copy or reproduction of, or extract from any document or record that is kept by the Commission and certified by it is admissible in evidence in legal proceedings to the same extent as the original document.

#### Section 201—Electronic filing of documents

(1) Regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act, or Regulations to be filed in electronic form.

(2) A system for the filing of documents, in electronic form shall provide for

(a) the criteria for authorising persons to file documents in electronic form, and

(b) the security and authentication of the documents filed.

#### Section 202—Regulations

(1) The Minister may on the recommendation of the Commission by legislative instrument make Regulations for the effective implementation of the provisions of this Act.

(2) Without limiting the scope of subsection (1) Regulations may be made prescribing:

(a) the valuation and admissibility of assets and the valuation of liabilities;

(b) persons qualified to act as an auditor or an actuary of an insurer;

(c) the segregation, control, allocation and application of the funds of an insurer;

(d) requirements for the receipt and holding of insurance premiums by insurance intermediaries and the manner in which they must be dealt with;

- (e) the form and contents of accounts, including group accounts, which may be specified by reference to Generally Accepted Accounting Practice;
- (f) procedures for the arbitration of such insurance claims as may be submitted to the Commission;
- (g) arrangements, schemes or procedures for the provision of security by offshore insurers which, without limiting this paragraph, may include provision for the making of deposits by offshore insurers and the establishment of a scheme for the provision of letters of credit by offshore insurers;
- (h) the factors to be taken into account by the Commission in considering whether to approve the reinsurance arrangements of a licensed insurer;
- (i) obligations of offshore insurers opening, maintaining or carrying on business through a branch, representative or contact office;
- (j) rules and procedures for the liquidation and judicial management of insurers and for the liquidation of insurance intermediaries which may modify or exclude the provisions of Act 180 in relation to insurers and insurance intermediaries;
- (k) actuarial standards and valuations and the duties of an actuary;
- (l) the consideration that may be offered or provided directly or indirectly to an insurance intermediary from or by
  - (i) a licensed insurer, or
  - (ii) any other person,
 including circumstances in which commission may not be paid by an insurer to an insurance intermediary;
- (m) records to be maintained by insurer and insurance intermediaries;
- (n) the investment of assets by insurers, which may specify permitted and non-permitted investments;
- (o) the duties of an auditor;
- (p) the application and treatment of deposits made by insurers and insurance intermediaries under this Act;
- (q) the run-off of the insurance business of an insurer that, for whatever reason, ceases to carry on business;
- (r) the margin of solvency to be maintained by an insurer in respect of particular funds;
- (s) motor contributions to be paid into the Motor Compensation Fund; and
- (t) compensation in respect of injury and deceased claims arising out of a motor accident.

Section 203—Code of Practice

The Commission shall within six months after the commencement of this Act issue a Code of Practice which sets out procedures to be followed by and the conduct of an insurer and an insurance intermediary.

#### Section 204—Market Conduct Rules

The Commission shall issue Market Conduct Rules within six months after the commencement of this Act.

#### Section 205—Penalties for contraventions and offences

A person who contravenes a provision of this Act or commits an offence under a section specified in column 1 of the First Schedule is liable on summary conviction or by way of a pecuniary [sic] penalty

(a) where an individual, to the penalty stated in relation to the offence in column 4 of the First Schedule, or

(b) where a body corporate, to the penalty stated in relation to the contravention or offence in column 3 of the First Schedule,

and in either case to the daily default fine stated in relation to the contravention or offence in column 5 of the First Schedule for each day during which the default continues.

#### Section 206—Offences by bodies of persons

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

(a) in the case of a body corporate, other than a partnership, each director or officer of that body shall be considered to have contravened that provision or committed that offence, or

(b) in the case of a partnership, each partner or officer of that body shall be considered to have contravened that provision or committed that offence

and is liable on summary conviction to the penalty set out in relation to the contravention or offence in column 4 of the First Schedule and to the daily default fine set out for the contravention or offence in column 5 of the First Schedule for each day during which the default continues.

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

#### Section 207—General penalty

A person who contravenes a provision of this Act for which a penalty is not provided is liable on summary conviction to a fine not exceeding one thousand penalty units.

#### Section 208—Order to comply

Where a person is convicted of an offence under this Act or the Regulations, the Court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that

person to comply with the provision of this Act or the Regulations for the contravention of which that person has been convicted.

#### Section 209—General indemnity

Neither the Commission nor a Board member, employee or agent of the Commission is liable for anything done or omitted to be done in the discharge or purported discharge of a duty, the exercise of a power or the performance of a function under this Act or any other enactment that assigns function to the Commission unless it is shown that the act or omission was in bad faith.

#### Section 210—Insurance agents to be agents of insurers

(1) Despite anything to the contrary contained in a contract of insurance, an insurance agent or sub-agent who completes an insurance form or a similar document on behalf of a person is deemed to be the agent of the insurer and not the agent of the person on whose behalf the agent completes the proposal form.

(2) Knowledge acquired by an insurance agent or a sub-agent in the course of completing an insurance proposal or a similar document under subsection (1), is deemed to be knowledge acquired by the insurer.

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

#### Section 211—Interpretation

In this Act, unless the context otherwise requires

"accounting records" includes books, vouchers, invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up and other documents as may be prescribed;

"actuary" means a person qualified under this Act to act as an actuary;

"associated person" means a person associated with a body corporate such that the person:

(a) has a significant interest in the body corporate,

(b) is a subsidiary of the body corporate,

(c) is a holding company of the body corporate, or

(d) is another body corporate having a person associated with it who is also associated with the first body corporate;

"Board" means the Board of the Commission provided for under section 3;

"capital" means

(a) in the case of a body corporate with share capital, its fully paid-up share capital, and

(b) in the case of a mutual company, its uncommitted reserves;

"Code of Practice" means the Code of Practice as issued by the Commission under section 196 of this Act;

"Commission" means the National Insurance Commission established under section 1 of this Act;

"Commissioner" means the chief executive of the National Insurance Commission appointed under section 12 (1);

"Companies Code" means the Companies Code, 1963 (Act 179);

"Court" means a court of competent jurisdiction;

"document" includes

(a) any writing or printing on any material,

(b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes,

(c) books and drawings, and

(d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied and are capable with or without the aid of equipment of being reproduced, any application to or order of a court or tribunal and other legal process and notice;

"electronic form" means a computer processable message format that is capable of being transmitted electronically;

"fit and proper person" means a person with appropriate integrity, competency, experience and qualification determined by the Commission;

"foreign regulatory body" means an authority in a jurisdiction outside the country which performs functions corresponding or similar to those performed by the Commission.

"insurance agent" includes a person appointed and authorised by an insurer to solicit applications for insurance or negotiate for insurance business on behalf of the insurer and to perform the other functions that may be assigned to the agent by the insurer but does not include an individual who is a salaried employee of the insurer;

"insurance broker" means a person who acts as an independent contractor or consultant who for commission or other compensation and, not being an agent of the insurer, carries out any of the following activities;

(a) the soliciting or negotiating of insurance business, including the renewal and continuance of such business, on behalf of an insurer or a prospective insured other than himself,

(b) the bringing together, either directly or through the agency of a third party, with a view to the insurance of risks, of persons seeking insurance and insurers, and carries out work preparatory to the conclusion of contracts of insurance;

"insurance business" means the business of undertaking liability to indemnify a person in respect of loss or damage, and the liability to pay damages or compensation contingent upon the happening of a specified event and any business incidental to insurance business and reinsurance business;

"insurance intermediary" means an insurance broker, an insurance agent, an insurance sub-agent and an insurance loss adjuster;

"insurance loss adjuster" includes a person who, for commission or other compensation, including a salary, investigates and negotiates the settlement of claims under insurance contracts solely on behalf of either the insurer or the insured but does not include

(a) an individual who is an employee of an insurer or an insurance agent while acting on behalf of the insurer or insurance agent, or

(b) an insurance agent who is authorised to settle claims on behalf of the insurer for whom the insurance agent acts as agent;

"insurance sub-agent" includes a person appointed by an insurance agent or another insurance sub-agent to solicit applications for insurance or negotiate for insurance business through the insurance agent or sub-agent who appointed that person but does not include an individual who is a salaried employee of the insurance agent or sub-agent;

"insurer" includes a person licenced under this Act to carry on insurance business and an association of underwriters, but does not include an insurance intermediary;

"licensee" means a person issued a licence under this Act,

"long term business" means insurance business prescribed in Regulations as long term business;

"long term insurer" means an insurer authorised by its licence to carry on class of long term business;

"Market Conduct Rules" means the Market Conduct Rules, issued by the Commission under section 197;

"Minister" means the Minister responsible for Finance;

"mutual company" means a company whose capital is owned by the policyholders of the company;

"notice" means notice in writing;

"offshore insurer" means an insurer incorporated, constituted or formed or having its main place of business outside the country;

"public interest" includes a right or advantage which enures or is intended to enure to the general benefit of the people of this country and the interest of policy holders;

"recognised representative body" means an association or body recognised in the Regulations as representing insurers or insurance intermediaries, or a category of insurers or insurance intermediaries;

"register" means a register required to be maintained by the Commission under section 192;

"Regulations" means Regulations made under this Act;

"reinsurer" means a person whose licence is restricted to reinsurance business;

"reinsurance business" means the business of insuring insurers;

"short term insurance business" means insurance business prescribed in Regulations as short term business;

"significant interest", in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly

(a) to control ten per cent or more of the voting rights of that company at a general meeting of the company,

(b) to a share of ten per cent or more in dividends declared and paid by the licensee, or

(c) to a share of ten per cent or more in any distribution of the surplus assets of the company;  
and

"subsidiary company" has the meaning provided in the Companies Code;

"unlicensed insurance business" means insurance business carried on by an insurer in the country who does not have a licence authorising it to carry on that kind of insurance business and who has not been suspended.

#### Section 212—Transitional provisions

(1) The rights, assets, liabilities of and property vested in the Commission established under the Insurance Law, 1989 (P.N.D.C.L. 227) immediately before the commencement of this Act and the persons employed by the Commission are transferred to the Commission established under this Act, and accordingly proceedings taken by or against the former Commission may be continued by or against the Commission.

(2) A contract subsisting between the Commission established under the Insurance Law, 1989 (P.N.D.C.L. 227) as amended and any other person and in force immediately before the commencement of this Act shall subsist between the Commission established under this Act and that other person.

(3) Pursuant to section 26 which restricts the licensing of composite insurance companies after the commencement of this Act, existing composite companies shall separate their business into long-term and short-term companies within twelve months after the commencement of this Act.

(4) Insurers and insurance intermediaries shall bring their minimum capital levels up to the levels stated in the Second Schedule, within a period of twelve months after the commencement of this Act.

#### Section 213—Repeal and savings

(1) The following are repealed by this Act

(a) the Insurance Law, 1989 (P.N.D.C.L. 227);

(b) the Insurance (Amendment) Law 1991 (P.N.D.C.L. 260);

(c) the Insurance (Amendment) Law 1993 (P.N.D.C.L. 316).

(2) The Ghana Reinsurance Organisation Law 1984 (P.N.D.C.L. 79) and the Ghana Reinsurance Organisation (Amendment) Law 1987 (P.N.D.C.L. 169) are hereby repealed.

(3) Despite the repeal of the enactments specified in subsection (1), Regulations, bye-laws, notices, orders, directions, appointments or other act lawfully made or done under the repealed enactments and in force immediately before the commencement of this Act shall subject to modifications made to them by this Act be considered to have been made or done under this Act and shall until reviewed, cancelled, withdrawn or terminated continue to have effect.

(4) Despite the repeal of the Ghana Reinsurance Organisation Law, 1984 (P.N.D.C.L. 79) and the Ghana Reinsurance Organisation (Amendment) Law, 1987 (P.N.D.C.L. 169) the Ghana Reinsurance Company Ltd. shall continue to enjoy the compulsory reinsurance cessing provided for under section 5 of P.N.D.C.L. 78 for a transitional period of two years after the commencement of this Act, after which two year period the compulsory reinsurance cessing shall cease.

#### Section 214—Consequential amendment

(1) Section 45 of the National Health Insurance Act 2003 (Act 650) is hereby repealed.

(2) Sections 22, 23, 44, 49, 50, 52, 71, 72, 75, 77, 78, 91 to 113 and 193 of this Act apply to private commercial health insurance schemes under the National Health Insurance Act 2003 (Act 650).

(3) For purposes of the National Health Insurance Act 2003 (Act 650),

(a) an insurer shall at all times in respect of the insurance transacted by it in the country invest and hold assets equivalent to not less than the amount of the funds in the insurance business as shown in its balance sheet;

(b) the investment of insurance funds referred to in paragraph (a) shall in respect of a non-life insurance fund be made up of

(i) twenty-five per cent in Government securities, and

(ii) seventy-five per cent in other investments approved by the Commission;

(c) a party to a contract of insurance shall not be obliged to disclose a fact about which a question is not asked by the insurer or the insurer's agent;

(d) a party to a contract of insurance may despite paragraph (c), rescind the contract where the other party, with the intent to avoid the rejection of the risk by the insurer or the payment of a higher premium, conceals from, or fails to disclose to the party to the contract, a fact which that other party knows or believes or has reasons to believe to be material to the contract;

(e) a fact is to be considered as material if in the circumstances it would be considered material by a reasonable person;

(f) a defence to a claim shall not be maintained by reason of a misstatement of fact by the insured, where the



(i) insured can prove that the statement was true to the best of the insured's knowledge or belief, or

(ii) fact mis-stated is not material to the risk,

subject to paragraphs (a) and (b) and despite anything contained in the contract of insurance;

(g) a person holding five per cent or more of the proprietary interests in an insurance company shall not serve as a management personnel or a principal officer of an insurance intermediary firm registered under the Act; and

(h) a person holding five per cent or more of the proprietary interest of an insurance company shall own more than fifty per cent of the equity share of an insurance brokerage or intermediary firm registered under the Act.

## SCHEDULES

### FIRST SCHEDULE

(sections 205 and 206)

### OFFENCES AND PENALTIES

#### COLUMN

1 COLUMN

2 COLUMN

3 COLUMN

4 COLUMN

5

Section of Act creating offence or contravention	General nature of offence or contravention	Fine (in penalty units) (corporate body)	Fine (in penalty units) (individual)
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Daily default fine (in penalty units)

27(2)	Insurer failing to submit its licence to Commission	250	250 25
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36(3)	Person carrying on or purporting to carry on insurance business without a licence	2500	2500, five years imprisonment or to both 100
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37(2)	Person entering into a contract of insurance with an offshore insurer without the authorisation of the Commission.	250	250
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39	Offshore insurer opening, maintaining or carrying on business through a representative, branch or contact office in Ghana without the prior written approval of the Commission	500	500, two years imprisonment or to both 25
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41	Offshore insurer opening, maintaining or carrying on business through a representative, branch or contact office contrary to conditions imposed by the Commission	500	500, two years imprisonment or to both
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- 45(2) Long term insurer issuing a new form of insurance policy without the prior written approval of the Commission. 250 250
- 46(3) Insurer failing to notify Commission of change of address of its head office or registered office within fourteen days of the change. 100 100 25
- 47(2) Insurer opening, maintaining or carrying on business through a representative, branch or contact office outside Ghana without the prior written approval of the Commission 500  
500, two years imprisonment or to both
- 48(7) Person selling, transferring, charging or otherwise disposing of a significant interest in a licensee, or any part, without the prior written approval of the Co 250 250
- 48(7) Person acquiring a significant interest in insurer without the prior written approval of the Commission. 250 250
- 49(4) Insurer appointing a director or principal officer without the prior written approval of the Commission. 250 250 25
- 50(2) Insurer failing to provide written notice to Commission of termination of appointment of a director or principal officer within 14 days. 100 100
- 51(2) Insurer publishing or issuing a document in which is printed a statement of its authorized capital or its subscribed capital in contravention of section 4 (1). 250 250
- 52(2) Insurer paying commission to unlicensed insurance intermediary. 250 250
- 53(3) Insurer failing to have reinsurance arrangements approved by the Commission in accordance with the Regulations. 500 500 25
- 54 Insurer failing to file statement setting out details of its reinsurance arrangements as required by section 5(1). 250 250
- 55(3) Insurer entering into contract of reinsurance, as the reinsurer, with a person other than another insurer. 500 500 25
- 56(5) Long term insurer failing to appoint and have an actuary whose appointment has been approved by the Commission in writing. 250 250
- 59(7) Actuary or former actuary failing to comply with obligations of section 59(1), (2), (3) or (4). 250
- 69(5) Insurer causing or permitting its capital to fall below the amount that it is required to maintain under section 69(1). 500 500 25
- 69(5) Insurer failing to notify Commission that its capital has fallen below the amount that it is required to maintain under section 69(1). 250 250
- 70(4) Insurer issuing a share on or a after the commencement date not fully paid for in cash. 250 250 25
- 71(5) Insurer failing to notify Commission that its solvency margin has fallen below the amount that it is required to maintain under section 71(1). 250 250 25

- 72(3) Insurer failing to notify Commission that its reserves have fallen below the amount that it is required to maintain under section 72 (1). 250 250 250
- 73(4) Insurer not complying with a directive issued by the Commission under section 72 (4) 250 250
- 75(2) Insurer or reinsurer failing to make deposit in accordance with notice issued under section 73(1). 250 500, two years imprisonment or to both
- 76(4) Insurer making distribution to shareholder in contravention of section 75(1). 500 500, two years imprisonment or to both
- 77(5) Insurer undertakes a transaction prohibited by section 76(1). 500 250
- 78(4) Insurer issuing a policy of insurance at a rate of premium lower than that specified in a notice issued under 77(1). 250 500
- 78(4) Insurer failing to keep or maintain accounting records in accordance with section 78(1) 500 100 25
- 80(4) Insurer failing to notify Commission of place in the Republic where its accounting records are kept. 100 500 25
- 80(4) Insurer failing to prepare accounts and statements required by section 80(1). 500 250
- 81(4) Insurer failing to lodge accounts and statements and accompanying documents with Commission in accordance with section 80(2) 250 250 25
- 85(6) Insurer contravening section 81 (Lodgement of quarterly accounts and returns) 250 100 25
- 85(7) Insurer failing to submit notice of appointment of auditor to Commission in accordance with section 85(6). 100 500 25
- 87(6) Insurer failing to appoint an auditor in accordance with section 85 (1). 500 250 25
- 93(5) Auditor or former auditor contravening section 87 (1) or (2) 250 25
- 118(2) Liquidator failing to advertise his appointment in accordance with a directive of the Commission issued under section 93(4) 250 250 25
- 127(3) Insurance intermediary failing to submit its licence to the Commission in accordance with section 118(1). 2500 2500, three years imprisonment or to both 25
- 130 Person carrying on or purporting to carry on business as an insurance intermediary without a licence in the appropriate category. 250 500, three years imprisonment or to both
- 131(3) Offshore insurance intermediary that contravenes section 127. 250 250
- 131(3) Insurance intermediary failing to ensure that its capital does not fall below the amount that it is required to maintain under section 131(1). 500 250 25

137(4) Insurance intermediary failing to notify Commission that its capital has fallen below the amount that it is required to maintain under section 131(2). 100 500 25

137(4) Insurance intermediary failing to keep or maintain accounting records in accordance with section 137. 500 100 25

139(4) Insurance intermediary failing to notify Commission of place in the Republic where its accounting records are kept. 250 500 25

139(4) Insurance intermediary failing to prepare accounts and statements required by section 139(1) 500 250 25

141(6) Insurance intermediary failing to lodge accounts and statements and accompanying documents with Commission in accordance with section 139(2) 250 250 25

143(7) Insurance intermediary contravening section 141 (Lodgement of quarterly accounts and returns) 100 250 25

143(7) Insurance intermediary failing to appoint an auditor in accordance with section 143(1) 100

145(6) Insurance intermediary failing to submit notice of appointment of auditor to Commission in accordance with section 143(6) 500, two years imprisonment or to both 25

149(4) Auditor contravening section 145 (1) or (2). 2500 100 25

152(3) Liquidator failing to advertise appointment in accordance with a directive of the Commission issued under section 149(3). 500 2500, five years imprisonment or to both

152(4) Insurer or insurance intermediary issuing or causing or permitting to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact. 250 500, two years imprisonment or to both

153(2) Insurer or insurance intermediary issuing or causing or permitting to be issued an advertisement, statement, brochure or other similar document contrary to a directive or authorisation of the Commission under section 152(2) 250 250 25

154(2) Insurer or insurance intermediary failing to change the name under which business is carried within seven days of the date of receipt of a written notice under section 153(1). 250 250 25

155(2) Insurer or insurance intermediary contravening section 154(1) (change of name) 2500 250

155(3) Insurer or insurance intermediary failing to report any information or furnish any returns or documentation in contravention of section 155(1) 500 2500, five years imprisonment or to both

159(4) Person making or assisting in making false or misleading representation, statement, report or return. 250 500, two years imprisonment or to both

- 160(2) Person contravening section 159(1) Restrictions on disclosure of information). 250  
250
- 162(2) Insurer or insurance intermediary failing to prominently display a copy of licence at every premises where licensed business is carried on. 500 250 25
- 164(2) Person contravening section 162(1) (applications to Commission) 500 500, two years imprisonment or to both
- 166(4) Person contravening section 164 (Restriction on use of certain terms). 500  
500, two years imprisonment or to both
- 166(5) Person contravening section 166(1) (duties in relation to inspection) 500  
500, two years imprisonment or to both
- 169(4) Director, officer or manager having received a notice under section 166 (3) failing or refusing to provide Commission with the information and explanation that it requires.  
2500 500, two years imprisonment or to both
- 175(3) Relevant person failing to provide a response to the Commission in respect of a report issued under section 169. 2500 2500, five years imprisonment or to both 100
- 174(4)(a) Person failing, without reasonable excuse, to comply with an order of the Court made under section 174 (2). 2500[sic], five years imprisonment or to both 2500, five years imprisonment or to both
- 174(4)(b) Person providing information, in purported compliance with an order under section 174 (3) which he or she knows to be false or misleading in a material respect.  
2500 2500, five years imprisonment or to both
- 175(5) Person recklessly providing information in purported compliance with an order under section 174 (4) information which is false or misleading in a material respect. 2500  
2500, two years imprisonment or to both 25
- 177(3) Person, for the purpose of obstructing or frustrating compliance with a notice issued by the Commission under section 160 or compliance with an order of the Court under section 174(2) destroying, mutilating, defacing, hiding or removing a document. 500 500, two years imprisonment or to both 25
- 181(3) Insurer/insurance intermediary undertaking transaction specified in section 177(2) when its licence is suspended or revoked. 500 500, two years imprisonment or to both
- 182(2) Insurer failing to comply with, or carrying on business in contravention of, a directive issued by the Commission under section 181 500

## SECOND SCHEDULE

(section 69)

### MINIMUM CAPITAL REQUIREMENTS

Maintenance of capital by an insurer

1. Pursuant to section 69, the capital required to be maintained by an insurer after the commencement of this Act shall be, in the case of

(a) a company limited by shares that is a direct insurer, the Cedi equivalent of one million dollars irrespective of whether the company is into long-term or short-term business,

(b) a company limited by shares that is a reinsurer, the cedi equivalent of two million five hundred thousand dollars, and

(c) a mutual company, an amount equal to the value of its liabilities plus fifteen percent of its assets.

Maintenance of capital by an insurance intermediary

2. Pursuant to section 131, the capital requirement to be maintained by a company holding an insurance intermediary's licence after the commencement of this Act shall be, in the case of

(a) an insurance broker, the cedi equivalent of twenty-five thousand dollars, and

(b) an insurance loss adjuster, the cedi equivalent of twenty-five thousand dollars.

**Date of Gazette Notification: 29th December, 2006.**