



## **INSURANCE MODEL LAW, 2023**

**A Model Law to provide for the harmonisation of licensing, regulation and supervision of persons carrying on insurance business in Southern Africa Development Community member states; and to provide for matters connected with or incidental to the foregoing.**

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## PART I

## PRELIMINARY

**1. Short title**

This Model Law may be cited as the Insurance Model Law, 2023.

**2. Definitions**

“Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing” shall have the meaning as defined in the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing matters and Financial Action Task Force standards;

“auditor” means a person registered and certified to practise as an auditor in terms of the domestic law;

“Committee of Insurance, Securities, and Non-Banking Financial Authorities” means a committee of authorities responsible for the supervision of insurance, securities, and non-banking financial institutions in Southern African Development Community member states, which was established under the Protocol on Finance and Investment of the Southern African Development Community;

“curator” means a person appointed to manage the affairs of a licensed person where the circumstances referred to in section 46 have arisen;

“domestic law” means a law prevailing in a respective member state;

“intermediary” includes an insurance agent, an insurance broker or any person licensed by a regulatory authority who does activities that include the following—

- (a) initiates insurance activities;
- (b) does any act in relation to the receiving of proposals for insurance;
- (c) the issue of policies or the collection of premiums;
- (d) policy and claims management; or
- (e) any such other activity as may be permitted in terms of the domestic law;

[ ]

“insurance agent” means a person who, on behalf of one or more licensed insurers, sells, markets, distributes, an insurer’s insurance products or does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;

“insurance broker” means a person licensed as such in terms of the domestic law, who, on behalf of any other person, negotiates insurance business with insurers, and includes a person who negotiates reinsurance business on behalf of any other person;

“insurance business” means the business of assuming the obligations of an insurer in any class or type of insurance business, including what each member state shall mean as insurance business in terms of its domestic law;

[ ]

“insurance-related business” means the business of an intermediary, risk consultant, loss adjuster, insurance surveyor or claims settlement agent or any other person that may be prescribed;

“insurance surveyor” means a person who carries on the business of surveying risks and advising on the rates, terms and conditions of premiums;

“insurer” means a person that carries on insurance business;

“key responsible person” means—

- (a) any person that manages, controls, formulates the policy and strategy, directs the affairs of a licensed person or has the authority to exercise the powers and perform such functions;
- (b) any person other than a person referred in (a) who makes or participates in making decisions that affects the whole or substantial part of the business of the

licensed person or has the capacity to affect significantly the financial standing of the licensed person; and

- (c) any person in charge of a control function including compliance, internal audit or risk management;

“licensed person” means a person who has been licensed by a regulatory authority to conduct business as an insurer, intermediary, insurance surveyor, agent, risk consultant, loss adjuster, mutual insurance society and any other person that may be licensed by the regulatory authority in terms of the domestic law;

“life insurance business” means the business of assuming the obligations of an insurer in any class or type of insurance business, including what each member state shall mean as life insurance business in terms of its domestic law;

“life policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, a contingent obligation dependent on human life, and includes any contract of insurance customarily regarded as a life insurance contract, but does not include a funeral policy, a personal accident policy, a sinking fund policy or any insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy;

“loss adjuster” means a person who carries on the business of assessing and investigating losses on behalf of insurers or insured persons;

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“mutual insurance society” or “society” means an association of persons formed in pursuance of any law and by whatever name it may be called that is established solely or principally for the purpose of carrying on any class of insurance business in which—

- (a) all members of the society—

- (i) qualify as such by virtue of their being owners of policies issued by the society as an insurer; and

- (ii) are entitled to participate at general meetings for the control of the society and in the election or appointment of the directors of the society;

and

- (b) the profits of the business of the society are distributed to owners of policies issued by the society as an insurer;

“non-life insurance business” means all types of insurance business other than life insurance business;

“holder” in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

“person” includes an individual, a body corporate, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

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“policy” means an insurance contract, whatever the form in which the rights and obligations of the parties to the contract are expressed or created, and includes a sinking fund policy;

“premium” means the consideration given or to be given in return for an undertaking to provide benefits under a policy;

[ ]

“regulatory authority” means a body responsible for the regulation and supervision of licensed persons;

“reinsurance” means the business of insuring any insurer or reinsurer in respect of the insurer's or reinsurer's contractual obligation under any policy or reinsurance contract and includes a retrocession;

“reinsurer” means a licensed person who only conducts reinsurance business;

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“senior management” means the—

- (a) chief executive officer of or the person in charge of the licensed person; or
- (b) a person, other than a head of a control function—
  - (i) who makes or participates in making decisions that—
    - A. affect the whole or a substantial part of the business of a licensed person; or
    - B. have the capacity to significantly affect the financial standing of the licensed person;
  - or
  - (ii) who oversees the enforcement of policies and the implementation of strategies approved, or adopted, by the board of directors.

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### **3. Application of the Model Law**

Southern African Development Community member states are required to benchmark their domestic laws governing the regulation and supervision of persons carrying on insurance business to meet the minimum requirements as set out in this Model Law.

### **4. Objective of the Model Law**

The objective of this Model Law is to—

- (a) promote harmonisation of laws governing licensed persons across Southern African Development Community members states;
- (b) promote a fair, safe and stable insurance industry;
- (c) promote prudent management of licensed persons;
- (d) provide for the licensing and winding up of licensed persons; and
- (e) to provide for matters connected therein inclusive of consumer protection principles, as prescribed in the domestic law.

### **5. Objectives, responsibilities and powers of regulatory authority**

(1) The objective of a regulatory authority shall be to—

- (a) promote the maintenance of a fair, safe and stable insurance market;

- (b) promote and enhance the safety and soundness of insurers;
  - (c) contribute to financial stability;
  - (d) protect the rights and interests of policyholders.
- (2) The regulatory authority shall have the responsibility for the following—
- (a) licensing;
  - (b) market conduct supervision;
  - (c) prudential supervision;
  - (d) Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing supervision;
  - (e) group wide supervision.
- (3) The regulatory authority shall have powers to—
- (a) issue rules, standards and guidelines by administrative means;
  - (b) enforce rules, standards and guidelines by administrative means;
  - (c) take immediate and/or adequate actions;
  - (d) initiate and propose amendments to legislation; and
  - (e) subject to domestic law, regulate and supervise for Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing purposes.
- (4) The regulatory authority shall ensure that—
- (a) licensed persons have effective measures to deter, prevent and detect fraud in the insurance industry; and
  - (b) effective reporting systems for fraud insurance are put in place.

## **6. Functions of the regulatory authority**

- (1) The regulatory authority shall perform the following functions—
- (a) to issue licences to licensed persons and regulate and supervise their business, or as may be applicable in the respective jurisdiction;
  - (b) to monitor the activities of licenced persons to ensure that they maintain set standards and ensure compliance with the insurance law and any other applicable law, or as may be applicable in the respective jurisdiction.
  - (c) to provide information to the public on matters relating to insurance and to encourage and promote insurance and investment;
  - (d) to promote the maintenance of a fair, safe and stable insurance industry for the benefit and protection of policyholders;
  - (e) to research on international best practices for the insurance industry; and
  - (f) to supervise or monitor, and ensure compliance by insurance players with requirements to combat Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing, including the authority to conduct inspections.
- (2) In exercising the functions set out under in this Model Law, the regulatory authority shall—

- (a) protect the rights, benefits and interests of policyholders and of any beneficiaries under any issued policy;
- (b) ensure that the business of an insurer is operated in a financially sound manner;
- (c) ensure the observance of sound insurance principles and practices in the conduct of insurance business;
- (d) foster and strengthen the insurance market; and
- (e) align the activities of insurance companies with the economic, financial and social policies, objectives and interests of the member state and the Southern African Development Community regional market.

## **7. General requirements for regulatory authority**

(1) In executing its mandate, the regulatory authority must be operationally independent, accountable and transparent.

(2) The regulatory authority—

- (a) shall have a clearly defined governance structure that promotes effectiveness and efficiency of the regulatory authority;
- (b) shall put in place measures that promotes protection of data in the possession of the regulatory authority and in the custody of its licensed persons;
- (c) and its staff must act with integrity and observe the highest professional standards, including observing conflict of interest rules, and must be protected against costs of defending their actions while lawfully and in good faith discharging their duties;
- (d) must have adequate resources, financial or otherwise, sufficient to enable it to effectively and efficiently conduct its regulatory function.

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## **PART II**

### **LICENSING OF REGULATED ENTITIES**

## **8. Classification of insurance business**

The regulatory authority shall classify insurance business and each class shall clearly indicate the nature of the policy under that class and whether it is a life insurance business or a non-life insurance business.

## **9. Licensing**

(1) No person shall carry any insurance business unless such person is licensed in the relevant class of insurance business.

(2) The regulatory authority shall prescribe the licensing requirements and procedures.

(3) The licensing requirements and procedures prescribed in terms of subsection (2) shall—

- (a) be clear, objective and accessible to the public, and be consistently applied;
- (b) include the following—
  - (i) capital requirements;
  - (ii) corporate governance requirements;
  - (iii) qualifications of the directors and key responsible persons;



- (iv) fit and probity requirements of directors and key responsible persons;
- (v) the institutional structure of the applicant;
- (vi) internal control requirements;
- (vii) sound business and financial plans;
- (viii) Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing requirements and other best practice applicable to the insurance business;

(ix) any other requirements as may be prescribed by the regulatory authority.

(4) The regulatory authority shall prescribe timelines on which an application for licensing made in terms of this section is supposed to be processed and licensing of an applicant finalised.

(5) An issued licence shall clearly state its scope and shall provide sufficient information to identify the types and classes of insurance business under which the licence is to be used.

(6) Where an application for licensing is rejected, the regulatory authority shall, within a prescribed period, notify the applicant of such rejection and the reasons for it.

(7) Before licensing any person to conduct insurance business, the regulatory authority shall take effective measures to combat money laundering and the financing of terrorism, as guided by the domestic law on Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing.

(8) The regulatory authority shall, in a media with wide circulation, periodically publish an updated and complete list of licensed entities and the scope of the licences granted.

(9) In deciding whether and if so, on what basis, to license or continue to license a branch or subsidiary of a foreign insurer in its jurisdiction, the regulatory authority shall consult with the relevant regulatory authority(s) as necessary to determine the fitness of the foreign applicant to be issued with an operating licence.

(10) Where a licensed person intends to have a commercial presence in the jurisdiction of the host regulatory authority, the host regulatory authority concerned shall consult with the home regulatory authority, as necessary, before such licensed person conducts the cross-border insurance activity.

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## **10. Amendment of licence**

(1) The regulatory authority must have the power to alter the licence or any term or condition of the licence—

- (a) to correct any error in the licensing;
- (b) if the licensed person requests the amendment; or
- (c) if the regulatory authority considers the amendment necessary or desirable in the public interest.

(2) The domestic law shall prescribe the following—

- (a) procedures to be followed before amending a licence, including providing the licensed person the right to make representations where the amendment is not at the request of the licensed person;
- (b) timelines on which a request for an amendment may be processed and finalised.

(3) Where the regulatory authority refuses to alter a licence at the request of a licensed person, the regulatory authority shall notify the licensed person in writing and within a prescribed period after reaching its decision, of the decision and of the reasons for it.

### **11. Suspension of licence**

(1) The regulatory authority may, with or without conditions, suspend a licence in full or in part, if it appears to the regulatory authority, on the basis of available information, that the licenced person—

- (a) no longer meets a licence condition under which it is licensed;
- (b) failed to comply with any provision of the domestic law;
- (c) failed to make arrangements to the satisfaction of the regulatory authority to address any non-compliance of a key responsible person with the fit and proper requirements prescribed, or a responsibility, function or requirement imposed on that person under the domestic law; or
- (d) failed to meet any regulatory requirements set out by the regulatory authority.

(2) The regulatory authority may revoke any suspension made in terms of subsection (1), if satisfied that the licensed person has remedied the non-compliance and complied with all the conditions to which the suspension was made subject.

(3) The regulatory authority shall publish a notice—

- (a) of any suspension, the reasons therefor, and any terms attached thereto;
- (b) of any revocation of a suspension and the reasons therefor;

in a media to be prescribed by the regulatory authority.

(4) From the date on which a suspension becomes effective, the regulatory authority shall take necessary measures to safeguard the interests of policyholders.

(5) Where the licenced person fails to remedy the circumstances that informed the suspension, the regulatory authority may—

- (a) revoke the suspension and, if appropriate, vary the licence conditions of the licensed person; or
- (b) cancel the licence.

### **12. Validity and renewal of licence**

(1) A licence issued by the regulatory authority shall remain valid unless it is suspended, withdrawn or cancelled or expires.

(2) Upon expiry of a licence issued to a licenced person, the regulatory authority may renew such a licence.

(3) An applicant for renewal of a licence shall comply with the application requirements as shall be prescribed in the domestic law.

### **13. Cancellation and withdrawal of licence**

(1) The regulatory authority shall cancel or withdraw a licensed person's licence where—

- (a) the licensed person has ceased to carry on business;

- (b) the licence was granted in error or through fraud or the misrepresentation or wilful non-disclosure of a material fact by the licensed person;
  - (c) the licensed person has contravened any provision of the domestic law or any term or condition of the licence;
  - (d) the licensed person misrepresents the services offered to the public;
  - (e) the licensed person has become disqualified as required by the domestic law;
  - (f) the licensed person no longer meets any prescribed financial requirements for carrying on any activity that the person is licensed for;
  - (g) the licensed person, or any key responsible person or representative of the licensed person, has been guilty of any act or omission in the conduct of the licensed person's business that has resulted or is likely to result in prejudice to members of the public;
  - (h) any key responsible person or representative of the licensed person no longer meets the fit and probity requirement, whether the cause arose prior to or after granting of the licence;
  - (i) where the licensed person is an individual, the licensed person—
    - (i) has become mentally or physically incapable of carrying on business and has been certified as such by a certifying authority; or
    - (ii) has committed an act of insolvency prescribed in the relevant insolvency laws; or;
  - (j) where the licensed person is a company or body corporate, proceedings have been instituted for the licensed person's winding up or dissolution; or
  - (k) where the licensed person contravenes laws relating to Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing issues.
- (2) The regulatory authority may withdraw a licence in part or in full, where the licensed person—
- (a) notifies the regulatory authority of its intention to cease to continue conducting the insurance business under which the licence was issued; or
  - (b) failed to commence conducting insurance business within a period prescribed in the domestic law;
- (3) The regulatory authority shall ensure that before cancelling or withdrawing a licence, the licensed person is notified and given an opportunity to make representation regarding the proposed cancellation or withdrawal of the licence.
- (4) Where the licence is to be cancelled or withdrawn, the regulatory authority shall put measures to protect policyholders with running policies.
- (5) Notwithstanding the generality of subsection (4), the regulatory authority, prior to cancellation or withdrawal of a licence of any licensed person, in the circumstances referred to under subsection (1) or (2), direct the licensed person—
- (a) not to dispose of or encumber any assets, or incur any additional liability, without the approval of the regulatory authority;
  - (b) not to enter into any new insurance policies from a date specified; and
  - (c) to make arrangements to the satisfaction of the regulatory authority to—

- (i) discharge its obligations under all insurance policies entered into before the date referred to in paragraph (b);
- (ii) ensure the orderly resolution of the business of the licensed person.

(6) Where a licensed person fails to comply with a directive under subsection (5), the regulatory authority shall initiate measures that ensure that the requirements of subsection (5) are complied with.

(7) The regulatory authority shall publish a notice of cancellation or withdrawal of the licence and the reasons thereof in a media to be prescribed in the domestic law.

(8) The notice referred to in subsection (7) shall specify the date on which the cancellation becomes effective.

### PART III

#### CONDUCTING INSURANCE BUSINESS

#### **14. Pre commencements requirements**

The regulatory authority shall ensure that before a licensed person commences business—

- (a) the licensed person's management systems and procedures, including its internal controls, are adequate and in line with the insurance laws and any regulatory requirements; and
- (b) the persons who are entrusted with overseeing and operating the systems and procedures are fit and proper to do so.

#### **15. Notification by insurer on changes of particulars**

(1) Every licensed person must, in writing, notify the regulatory authority where there are any changes in the circumstances and particulars of the licensed person.

(2) The changed circumstances and particulars referred to in subsection (1) shall include the following—

- (a) the licensed person ceases to carry on the activity to which the licensing relates or materially alters the nature of that activity;
- (b) there is a material change in the shareholding, membership, management or control of the licensed person; or
- (c) there is a change in any of the particulars recorded in the licence register kept by the regulatory authority in relation to the licensed person.

#### **16. Principal administrative office of a licensed person**

(1) A licensed person must have and be able to maintain the operational ability to fulfil its responsibilities as a licensed person, and to meet the requirements of all other applicable domestic laws, including but not limited to the following—

- (a) a fixed physical business address or principal office;
- (b) adequate access to communication facilities including at least a telephone, electronic mail service, and typing and document duplication facilities;
- (c) adequate storage and filing systems for the safe-keeping of records, business communications and correspondences.

(2) Every licensed person shall notify policyholders and stakeholders of any changes on the physical address or principal office of the licensed person prior to such change.

### **17. Display of name and licence**

Every licensed person shall display clearly, in easily legible letters and in the official languages, as may be prescribed in the domestic law, its name and a statement of the fact that it is licensed in a category of a specified licence as the case may be—

- (a) at the entrance to every place where the licensed person conducts its business; and
- (b) on every letter, advertisement or other communication published or issued by or on behalf of the licensed person.

### **18. Change of name of licensed person**

(1) The regulatory authority shall set the procedure to be followed by licensed persons where the licensed person intends to change the name under which the licence was issued.

(2) Every licensed person shall make public of any changes on the name of the licensed person, through publication in a media prescribed in the domestic law.

### **19. Conduct of licensed persons**

(1) Every licensed person shall—

- (a) conduct insurance business in accordance with sound administrative and accounting practices and procedures;
- (b) adhere to effective systems of internal controls, compliance, actuarial matters and internal audit and international best practice.
- (c) subject to the domestic law, have a framework to provide for cybersecurity and data protection matters;

(2) The regulatory authority shall take effective measures to combat money laundering and the financing of terrorism as defined in the domestic laws and international standards.

(3) Any licensed person who receives premiums on behalf of an insurer shall forward the premiums within timelines prescribed in the domestic law.

(4) Subject to subsection (3), in Member States where collection of premiums by intermediaries is permissible, every licensed person who receives premiums on behalf of an insurer shall open and keep an account at a bank as a separate trust account in which he shall deposit all premiums received.

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(5) A bank or financial institution at which a licensed person keeps a trust account or policyholder funds, may, whenever so required by the regulatory authority, furnish to the regulatory authority a signed certificate of account statement or balance certifying the amount(s), if any, standing to the credit or debit of that trust account or policyholder funds account as at such dates as may be specified by the regulatory authority:

Provided that the regulatory authority may directly request the information from the bank or financial institution or the authority responsible for the regulation of the bank or financial institution in question.

## **20. Licensed persons to submit annual returns**

The regulatory authority shall prescribe the period on which the licensed persons shall submit annual returns and the format in which the returns shall be prepared and submitted.

## **21. Corporate Governance**

(1) Every licensed person shall establish and implement a corporate governance framework that provides for sound and prudent management and oversight of the licensed person's business and adequately recognises and protects the interests of policyholders.

(2) Every licenced person shall review the effectiveness of the corporate governance framework referred to in subsection (1).

(3) Notwithstanding the generality of subsection (1), the corporate governance framework referred to in subsection (1) must provide for the following—

- (a) promoting accountability of key responsible persons and address roles, responsibilities and duties of the board and key responsible persons;
- (b) ensuring that key responsible persons possess the necessary skills, knowledge and expertise, and have appropriate resources, to fulfil their functions;
- (c) providing for mechanisms to identify and, where appropriate, remove practices that, or persons whose, conduct materially increases the risk of the licensed person not complying with legislative requirements;
- (d) providing for management processes and responsibilities and the establishment, implementation and management of a system of effective controls within the licensed person;
- (e) demonstrating how the licensed person will comply with the legislative requirements; and
- (f) addressing and providing for any additional matters relating to governance arrangements required in terms of the domestic law.

(4) The corporate governance framework shall be proportionate to the nature, size, scale and complexity of the risks or business model of, and activities performed by, the licensed person.

(5) The licenced person's governing board shall—

- (a) ensure that the roles and responsibilities allocated to the board, senior management and key responsible persons in control functions are clearly defined to promote an appropriate separation of the oversight function from the management responsibilities; and
- (b) provide oversight of the senior management.

(7) The board of a licensed person shall set and oversee the implementation of the corporate culture, business objectives and strategies for achieving those objectives, in line with the long-term interests and viability.

(8) The regulatory authority shall put in place mechanisms that enable it to assess the performance of a licensed person's board in setting and overseeing the implementation of the licensed person's corporate culture, business objectives and strategies for achieving those objectives, in line with the licenced person's long-term interests and viability.

(9) The regulatory authority shall require the licensed person to demonstrate the adequacy and effectiveness of its corporate governance framework, and shall put in place mechanisms that enable the regulatory authority to assess such adequacy and effectiveness.

## **22. Board of licensed person**

(1) The board of a licensed person shall be accountable for—

- (a) compliance with the legislative requirements specified in the domestic law;
- (b) the approval of the governance arrangements of the licensed person;
- (c) overseeing the establishment, implementation, subsequent review of, and continued compliance with, the governance arrangements.

(3) The licensed person's governing board shall, on an on-going basis, have—

- (a) an appropriate number and mix of individuals to ensure that there is an overall adequate level of competence at the board level commensurate with the governance structure;
- (b) appropriate internal governance practices and procedures to support the work of the board in a manner that promotes the efficient, objective and independent judgement and decision making by the board;
- (c) adequate powers and resources to be able to discharge its duties fully and effectively; and
- (d) an appropriate number of committees commensurate with the nature, size and complexity of the licensed person.

(3) The regulatory authority shall put in place mechanisms to assess the on-going operation of a licensed person's board with respect to the overall adequacy of its level of competence, internal governance practices and procedures, and powers and resources.

(4) An individual member of the board of the licensed person shall be required to—

- (a) act in good faith, honestly and reasonably;
- (b) exercise due care and diligence;
- (c) act in the best interests of the licensed person, insured and policyholders, putting those interests ahead of his own interests;
- (d) exercise independent judgement and objectivity in his decision making, taking due account of the interests of the licensed person and policyholders; and
- (e) not use his position to gain undue personal advantage or cause any detriment to the licensed person.

(5) Where the regulatory authority establishes that the board of a licensed person has acted contrary to the provisions of subsection (3), liability of the licensed person shall be extended to the board of such person individually, jointly and severally as the case may be.

(6) The licensed person's board shall provide oversight in respect of the design and implementation of risk management and internal controls.

(7) The board of a licensed person shall—

- (a) adopt and oversee the effective implementation of a written remuneration policy for the licensed person, which does not induce excessive or inappropriate risk taking,

which is in line with the corporate culture, objectives, strategies, identified risk appetite, and long term interests of the licensed person, and has proper regard to the interests of its policyholders and other stakeholders;

- (b) ensure that such a remuneration policy, at a minimum, covers those individuals who are members of the board, senior management, key responsible persons in control functions and other employees whose actions may have a material impact on the risk exposure of the licensed person;
- (c) ensure that—
  - (i) there is a reliable financial reporting process for—
    - A. public reporting purposes;
    - B. supervisory reporting purposes;
  - (ii) the financial reporting process includes clearly defined roles and responsibilities for—
    - A. the board;
    - B. senior management;
    - C. the external auditor;
  - (iii) there is adequate governance and oversight of the external audit process;

and
- (d) have systems and controls to ensure appropriate, timely and effective communications with the regulatory authority on the governance of the licensed person.

### **23. Senior management of licensed person**

- (1) The licensed person shall ensure that its senior management—
  - (a) carries out the day-to-day operations of the licensed person effectively and in accordance with its corporate culture, business objectives and strategies for achieving those objectives in line with its long-term interests and viability;
  - (b) promotes sound risk management, compliance and fair treatment of customers;
  - (c) provides the board with adequate and timely information to enable the board to carry out its duties and functions including the monitoring and review of the performance and risk exposures of the licensed person, and the performance of senior management;
  - (d) maintains adequate and orderly records of the licensed person;
  - (e) ensure implementation of the governance framework.
- (2) Every member of the licensed person's senior management shall be required to—
  - (a) act in good faith, honestly and reasonably;
  - (b) exercise due care and diligence;
  - (c) act in the best interests of the licensed person and policyholders, putting those interests ahead of his own interests;
  - (d) exercise independent judgement and objectivity in his decision making, taking due account of the interests of the licensed person and policyholders; and



- (e) not use his position to gain undue personal advantage or cause any detriment to the licensed person.

(3) Where the regulatory authority establishes that the board of a licensed person has acted contrary to the provisions of subsection (2), liability of the licensed person shall be extended to the board of such person individually, jointly and severally as the case may be.

#### **24. Shareholding of a licensed person**

(1) The domestic law shall prescribe the shareholding structure, thresholds and requirements of a licensed person.

(2) The shareholding structure of a licensed person shall ensure sustainability of its business.

(3) The shareholders shall not be prohibited persons in terms of the laws on money laundering and financing of terrorism and any other applicable law.

#### **25. Internal controls**

(1) A licensed person shall have, as part of its overall corporate governance framework, effective internal controls, including effective functions for risk management, compliance, actuarial matters, and internal audit.

(2) The licensed person shall—

[ ]

- (a) establish, and operate within, an effective system of internal controls;
- (b) have effective control functions with the necessary authority, independence, and resources which control functions shall include the following—
  - (i) a risk management function;
  - (ii) a compliance function;
  - (iii) an actuarial function;
  - (iv) an internal audit function.

(3) The licensed person shall have an effective risk management function capable of assisting the licensed person to—

- (a) carry out own risk and solvency assessment regularly to assess the adequacy of its risk management and current, and likely future, solvency position; and
- (b) promote and sustain a sound risk management culture.

(4) The licensed person shall have an effective compliance function capable of assisting the licensed person to—

- (a) meet its legal, regulatory and supervisory obligations; and
- (b) promote and sustain a compliance culture, including through the monitoring of related internal policies.

(5) The licensed person shall have an effective actuarial function capable of—

- (a) evaluating and providing advice regarding—
  - (i) technical provisions and compliance with related statutory and regulatory requirements;

- (ii) premium and pricing activities and compliance with related statutory and regulatory requirements;
- (iii) capital adequacy and compliance with related statutory and regulatory requirements;
- (iv) reinsurance and compliance with related statutory and regulatory requirements;
- (b) performing functions as may be set by the regulatory authority.

(6) The licensed person shall have an effective internal audit function capable of providing the board with independent assurance in respect of the quality and effectiveness of the licensed person's corporate governance framework.

(7) Where a licensed person outsources any of the material activity or function, the licensed person shall retain at least the same degree of oversight of, and accountability for, any outsourced material activity or function as applies to non-outsourced activities or functions.

## **26. Establishment of branches outside the country by licensed persons**

(1) The regulatory authority shall prescribe the requirements to be met by a licensed person if a licensed person intends to establish a branch or subsidiary outside the country's jurisdiction.

(2) In determining if a licensed person can establish a branch or subsidiary out of the country, the regulatory authority shall ensure that the policyholder funds are not transferred to that other branch.

## **27. Reinsurance and other forms of risk transfer**

(1) A licensed insurer may reinsure part of the risks it has accepted in any class of insurance business.

(2) The regulatory authority shall prescribe the terms and conditions under which the reinsurance arrangements shall be done.

(3) The assignment of risks in reinsurance shall respect the limits established in the specific legislation of the cedant's country.

(4) Where risk transfer to the capital markets is permitted, the regulatory authority shall understand and assess the structure and operation of such risk transfer arrangements and address any issues that may arise.

## **28. Amalgamation or transfer of insurance business**

(1) No insurer shall, without the approval of the regulatory authority—

- (a) amalgamate with one or more other insurers or financial institution;
- (b) transfer its insurance business or any part thereof to another insurer or financial institution; or
- (c) take transfer from an insurer or financial institution of the whole or part of any of its business.

(2) The application procedure to be complied with the applicant for an amalgamation or transfer shall be as prescribed in the domestic law.

(3) The application procedure referred to in subsection (2) shall include matters relating to—

- (a) publication of a notice of the proposed amalgamation or transfer using a media with wide circulation;

(b) lodging of objections or representations in regard to the application within such period as may be specified in the notice.

(4) If the regulatory authority is of the opinion that the amalgamation or transfer will not prejudice the interests of policyholders concerned or the public interest, it shall approve it subject to such conditions as regulatory authority thinks fit:

Provided that the regulatory authority shall ensure that objections raised are addressed before approving the amalgamation or transfer.

(5) Where an amalgamation or transfer has been approved by the regulatory authority in terms of subsection (4), it shall cause a notice to be published in a media with wide circulation stating that the amalgamation or transfer has been approved.

(6) If a transaction referred to in subsection (1) has taken place, the holder of a policy shall no longer have a claim against the original insurer but, instead, his or her claim shall be against the insurer with whom the business has been amalgamated or to whom the business has been transferred or into which the original insurer has been converted, as the case may be.

(7) The merging insurers or transferee and transferor insurers shall ensure member data is transferred to the insurer or transferee insurer after an amalgamation and that data is not lost during the transfer or merging process.

(8) The new insurer shall not, without the consent of the policyholder, change the rights and obligations provided for in the transferred policies.

(9) The domestic law shall prescribe the obligations of the insurers after the amalgamation or transfer, which shall include submission of the following to the regulatory authority—

- (a) certified copies of statements of the assets and liabilities of the insurers concerned in the transaction, together with a statement of the nature and terms of the transaction;
- (b) a certified copy of the agreement or deed under which the transaction was effected;
- (c) certified copies of the actuarial reports in the case of a life insurance business or other reports upon which the agreement or deed was founded; and
- (d) any other as may be prescribed in the domestic law.

(10) This section shall apply, with necessary changes, to an insurance broker.

(11) This section shall not apply to the transfer of insurance business through reinsurance.

## **29. Record keeping**

(1) Subject to the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, every licensed person shall maintain, in a safe place, all records pertaining to the licensed person's operations, both domestic and international, which may be in physical or electronic form, for a period of not less than five years following completion of the transaction or termination of the business relationship.

(2) The licensed person's records maintained in terms of subsection (1) must be sufficient in such nature as to—

- (a) reveal clearly and correctly the licensed person's state of the business affairs and financial condition;

- (b) explain the transactions so as to enable the regulatory authority to determine whether the licensed person has complied with the prescribed requirements;
- (c) clearly identify assets and financial products held on behalf of the policyholders or any other person; and
- (d) reconstruct in detail all transactions undertaken on behalf of policyholders.

(3) Where practicable, original or copies of documents relating to transactions shall be kept and shall be maintained in a medium that allows the storage of information so that—

- (a) the regulatory authority can access them readily and reconstitute each material stage of each transaction;
- (b) any corrections or other amendments to the records, and the contents of the records prior to such corrections or amendments, can be easily ascertained; and
- (c) except as provided in paragraph (b), the records cannot be manipulated or altered.

[ ]

## PART IV FINANCIAL REQUIREMENTS

### **30. Margin of solvency to be maintained by licensed persons**

(1) Every licensed person, where applicable, shall maintain a level of solvency capital as shall be prescribed in the domestic law.

(2) In prescribing levels of solvency, the regulatory authority shall consider the following—

- (a) class of insurance business;
- (b) risk profile for the particular type of business;
- (c) the proportion between admitted assets and liabilities;
- (d) the need to ensure that the licensed person maintains the required capital adequacy;
- (e) the development of capital markets and its impact on the ability of licensed persons to raise capital;
- (f) the balance to be struck between protecting policyholders and the impact on the effective operation of the insurance sector and considerations around unduly onerous levels and costs of regulatory capital requirements;
- (g) the need to establish quality risk management and governance frameworks in the insurance sector; and
- (h) international best practices;

(3) Every insurance broker or any other licensed person conducting insurance business as may be prescribed shall maintain a prescribe level of professional indemnity.

(4) The assets that are admissible for purposes of calculating a licensed person's insolvency shall be as prescribed in the domestic law.

(5) The regulatory authority shall prescribe what constitutes the licensed person's liabilities which shall include all the liabilities of the licensed person that are shown or, in proper accounting practice, ought to be shown as current, contingent or prospective liabilities in the licensed person's books of account.

(6) The regulatory authority shall review an insurer's implementation of and compliance with valuation requirements set out in subsection (1) and (3) and take corrective action where there is non-compliance.

(7) The regulatory authority shall specify other matters relating to valuation requirements on insurance groups.

[ ]

### **31. Insurance funds**

(1) Every insurer that carry on two or more classes of insurance business shall—

- (a) establish and maintain separate funds;
- (b) establish and maintain separate bank accounts; and
- (c) keep a separate account of all receipts;

in respect of each such class of insurance business.

(2) The regulatory authority shall prescribe how monies in the insurance funds established for each class of insurance business shall be held and used which may include prescribing investments that shall be held and the relative amounts for each class of investments including prescribed securities that may be held.

### **32. Annual financial statements of licensed persons**

(1) Every licensed person required in terms of the domestic law to submit financial statements shall as prescribed in the domestic law after the end of each financial year cause financial statements for that financial year to be prepared in accordance with International Financial Reporting Standards or any other international standards as may be prescribed in the domestic law.

(2) The financial statements shall be prepared in accordance with such requirements and standards as may be prescribed in the domestic law to present, in conformity with generally accepted international accounting standards, a true and fair view of the state of affairs of such licensed person and its business as at the end of the financial year concerned.

(3) The licensed persons referred to in subsection (1) shall—

- (a) submit the audited financial statements to the regulatory authority within the timelines prescribed in the domestic law;
- (b) publish its financial statement in a media approved by the regulatory authority.

### **33. Appointment of an auditor**

(1) Subject to domestic law, every licensed person required to be audited in terms of the domestic law shall appoint an auditor, registered and certified by the relevant authority.

(2) The regulatory authority shall approve the auditor appointed in terms of subsection (1).

(3) The regulatory authority may prescribe—

- (a) specific time for which certain disqualified persons may not hold office as auditors in the insurance industry;
- (b) grounds for readmission in the insurance industry;
- (c) application procedure for readmission in the insurance industry.

### **34. Powers and responsibilities of an auditor of licensed persons**

- (1) Subject to the domestic law, every auditor of a licensed person shall—
- (a) have a right of access at all reasonable times to the licensed person's books/documents, records, accounts, vouchers and financial products; and
  - (b) be entitled to require such information and explanations from any key responsible person or representative of the licensed person; as is, in his or her opinion, necessary to perform his duties as an auditor.
- (2) Notwithstanding subsection (1) the domestic law may prescribe more powers that may be conferred on an auditor.
- (3) No person shall without just cause—
- (a) refuse an auditor access to the required information or documents; or
  - (b) refuses to comply with a requirement in terms of subsection (1) (b).
- (4) An auditor of a licensed person shall be responsible for—
- (a) auditing the financial statements of the licensed person and reporting on the same;
  - (b) planning and carrying out audit procedures designed to detect irregularities and illegal activities in the conduct of the business of the licensed person;
  - (c) communicating to the audit committee any evidence he may have that irregularities or illegal activities have been committed in the course of the business of the licensed person, whether or not they may have led to material misstatements in the accounts or records for the licensed person; and
  - (d) communicating to the regulatory authority any evidence he may have that irregularities or illegal acts have been committed by—
    - (i) any director of the licensed person;
    - (ii) any person, if there is a reasonable possibility that they may cause prejudice to policyholders or significant damage to the financial stability of the licensed person.
- (5) The regulatory authority may prescribe on the nature of reports an auditor shall produce.

### **35. Actuarial valuation into financial position of insurer or reinsurer**

- (1) Every insurer and reinsurer shall cause an actuarial valuation to be periodically conducted on its insurance business.
- (2) The actuarial valuation shall be conducted by an actuary who, in addition to being registered and certified to practise as such in terms of the domestic law, has been approved by the regulatory authority.
- (3) The regulatory authority shall prescribe the periods in which the actuarial valuation shall be done.
- (4) Every insurer and reinsurer shall submit the actuarial valuation to the regulatory authority within the timelines prescribed in the domestic law.
- (5) The actuary shall communicate to the regulatory authority any evidence he may have that irregularities or illegal acts have been committed by—
- (a) insurer or reinsurer;
  - (b) any director of the insurer or reinsurer;
  - (c) any person;

if there is a reasonable possibility that they may cause prejudice to policyholders or significant damage to the financial stability of the insurer or reinsurer.

### **36. Investments**

(1) The regulatory authority shall establish requirements for solvency purposes on the investment activities of licensed persons in order to address the risks faced by licensed persons, and the requirements shall be applicable to the investment activities of the licensed person.

(2) The regulatory investment requirements that apply shall be transparent and the regulatory authority shall be explicit about the objectives of those requirements.

(3) The regulatory investment requirements shall at a minimum address the following—

(a) security of the—

- (i) value of individual investments;
- (ii) value of the portfolio of investments as a whole;
- (iii) safekeeping of investments;

(b) liquidity of—

- (i) individual investments;
- (ii) the portfolio of investments as a whole;

(c) diversification of—

- (i) investments within a risk category;
- (ii) investments among risk categories;
- (iii) investment across different markets.

(4) The regulatory authority shall require a licensed person to invest —

- (a) in a manner that is appropriate to the nature of its liabilities;
- (b) only in assets whose risks the licensed person can properly assess and manage.

(5) The regulatory authority shall establish quantitative and qualitative requirements, where appropriate, on the use of more complex and less transparent classes of assets and investment in markets or instruments that are subject to less governance or regulation.

(6) The regulatory authority shall periodically review a licensed person's implementation of and compliance with investment requirements.

(7) The investment requirements shall address insurance groups.

## **PART V**

### **CO-OPERATION AND COORDINATION**

### **37. Supervisory co-operation and coordination**

(1) Subject to the domestic law and confidentiality requirements set out in this Model Law, the regulatory authority shall co-operate and coordinate with other relevant regulatory authorities.

(2) The regulatory authority shall take steps to create adequate coordination arrangements which involve regulatory authorities on cross-border issues on a legal entity and a group-wide basis, in order to facilitate the comprehensive oversight of these legal entities and groups.

(3) Coordination arrangements referred to in this section shall include establishing effective procedures for—

- (a) information flows between involved regulatory authorities;
- (b) communication with the head of the group;
- (c) convening periodic meetings of involved regulatory authorities; and
- (d) conducting a comprehensive assessment of the group.

## PART VI

### MARKET CONDUCT

#### **38. Treating customers fairly**

(1) The regulatory authority shall ensure that—

- (a) policyholders are treated fairly;
- (b) insurance consumers are given products that meet their needs;
- (c) the integrity of the insurance industry is protected and enhanced; and
- (d) markets are competitive.

(4) The regulatory authority shall ensure that the following outcomes be the benchmark for licensed persons' good conduct—

- (a) insurance consumers must be confident that they are dealing with licensed persons where the fair treatment of customers is central to the corporate culture;
- (b) insurance products are designed in a manner that ensures fair treatment of customers and interests of customers are taken into account when developing insurance products;
- (c) the marketing and promotion of insurance products is done in a clear manner which is not misleading;
- (d) products and services marketed and sold are designed to meet the needs of identified insurance consumer groups and are targeted accordingly;
- (e) insurance consumers are provided with adequate, clear information in a timely manner and are kept appropriately informed before, during and after the point of sale;
- (f) where insurance consumers receive advice, the advice is suitable and takes account of their circumstances;
- (g) insurance consumers are provided with products that perform as the licensed persons have led them to expect, and the associated service is of an acceptable standard as they have been led to expect;
- (h) insurance consumers do not face unreasonable post-sale barriers imposed by licensed persons to change product, switch provider, submit a claim or make a complaint.

(3) Every licensed person shall—

- (a) act with due skill, care and diligence when dealing with customers;
- (b) establish and implement policies and processes on the fair treatment of customers, as an integral part of their business culture;



- (c) avoid or properly manage any potential conflicts of interest;
- (d) have arrangements in place with their service providers to ensure the fair treatment of customers.

### **39. Licensed persons' obligations**

(1) To ensure that risks of insurance consumer detriment are measured and monitored, every licensed person must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

(2) Every licensed person must—

- (a) pay due regard to the interests of its customers and treat them fairly;
- (b) pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading;
- (c) take reasonable care to ensure the suitability of its advice and discretionary decisions for any insurance customer who is entitled to rely upon its judgment;
- (d) ensure that the distribution methods to be used are appropriate for the product and target market.

### **40. Complaints handling mechanism**

(1) Subject to the domestic law, every licensed person shall have a robust and effective complaints handling mechanism, which shall facilitate resolution of complaints within a shortest period.

(2) Notwithstanding the generality of subsection (1), every licensed person shall establish and maintain an adequate and effective complaints management framework to ensure the fair treatment of complainants that—

- (a) is proportionate to the nature, scale and complexity of the licensed person's business;
- (b) is appropriate for the business model, products, services, members, and policyholders of the licensed person;
- (c) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants;
- (d) enables smooth resolution of complaints.

(3) The complaints management framework must at least, provide for—

- (a) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the licensed person;
- (b) appropriate performance standards and remuneration and reward strategies (internally and where any functions are outsourced) for complaints management to ensure objectivity and impartiality;
- (c) documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended;

- (d) documented procedures which clearly define the escalation, decision-making, monitoring and oversight and review processes within the complaints management framework;
- (e) appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and *ad hoc*) to executive management, the board of directors and any relevant committee of the board on—
  - (i) identified risks, trends and actions taken in response thereto; and
  - (ii) the effectiveness and outcomes of the complaints management framework;
- (e) appropriate communication with complainants and their authorised representatives on the complaints and the complaints processes and procedures;
- (f) meeting requirements for reporting to the authority and public reporting;
- (g) processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint; and
- (h) regular monitoring of the complaints management framework generally.

(4) Every licensed person shall regularly review its complaints management framework and document any changes thereto.

(5) Subject to the domestic law, every licensed person shall establish and maintain a clear whistle blowing mechanism.

#### **41. Provisions relating to insurance policies generally**

(1) Subject to the domestic law, the regulatory authority shall prescribe the structure of the policies, in a manner and form as may be determined by the regulatory authority.

(2) The regulatory authority shall ensure that licensed persons disclose in an insurance policy all the pertinent information that enables the insurance customers to make an informed decision before entering into an insurance contract.

(3) The regulatory authority may prescribe the disclosure requirements licensed persons must comply with.

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## PART VII

### SUPERVISION AND INVESTIGATION OF LICENSED PERSONS

#### **42. Inspection and investigation by regulatory authority**

- (1) The regulatory authority shall—
  - (a) be responsible for continuously monitoring and supervising licensed persons to ensure that they comply with the insurance laws and any other applicable domestic laws;
  - (b) as part of its supervisory approach, have the power to conduct on-site and off-site inspections into the affairs of a licensed person.
  - (c) have the power to conduct investigations into the affairs of any particular licensed person, where the regulatory authority considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of the insurance laws or any other applicable domestic law;

(d) have the power to appoint inspectors who may assist the regulatory authority to conduct inspections or investigations and to ensure compliance with the law.

(2) Subject to the domestic law, the regulatory authority or any person authorised or appointed by the regulatory authority, may at any time inspect the licensed person's documents and accounts at any place where the licensed person conducts its business or any other place where the books and accounts may be placed.

(3) The licensed person shall cause its books and accounts to be produced to an inspector and shall ensure that its employees furnish such information as the inspector may reasonably require for the purposes of the inspection or investigation.

(4) No person must obstruct or hinder an inspector or inspection of a licensed person or its books and accounts.

(5) The powers of an inspector shall be as prescribed in the domestic law.

(6) The regulatory authority may recover the costs of the investigation from the licensed person.

#### **43. Regulatory authority's actions in case of non-compliance**

(1) If, in the opinion of the regulatory authority, it would be in the interests of existing and prospective policyholders to do so, the regulatory authority may, for the period of an investigation, do one or more of the following necessary measures to a licensed person being investigated—

- (a) prohibiting the licensed person from initiating any new insurance business or class of insurance business as the regulatory authority shall specify;
- (b) prohibiting the licensed person from issuing new policies;
- (c) withholding approval for new business activities or acquisitions;
- (d) restricting the transfer of assets;
- (e) restricting the ownership of subsidiaries;
- (f) restricting activities of a subsidiary where, in its opinion, such activities jeopardise the financial situation of the licensed person;
- (g) requiring measures that reduce or mitigate risks;
- (h) requiring an increase in capital;
- (i) restricting or suspending dividend or other payments to shareholders;
- (j) restricting purchase of the licensed person's own shares and other assets;
- (k) arranging for the transfer of obligations under the policies from a failing licensed person to another licensed person that accepts this transfer;
- (l) barring individuals acting in responsible capacities from performing such roles;
- (m) prohibiting and prevent the licensed person from disposing of any property connected with the insurance business concerned, for which purpose the regulatory authority or inspector may, to such extent as the regulatory authority shall specify;
- (n) prevent the licensed person from operating any account with any bank, building society or financial institution;
- (o) any other as may be prescribed in the domestic law.

(2) If, following a report by an inspector and, where appropriate, after considering any representations made by the licensed person concerned, the regulatory authority is satisfied that a licensed person has contravened any term or condition of his licence or any provision of the

insurance laws, any applicable law or any directive, requirement or order made by the regulatory authority, the regulatory authority may, subject to this section, do any one or more of the following—

- (a) require the licensed person to appoint a person who, in the regulatory authority's opinion, is qualified to advise the licensed person on the proper conduct of his or her business;
- (b) issue a written instruction to the licensed person to undertake remedial action specified in the instruction;
- (c) convene a meeting of the shareholders or other owners of the licensed person to discuss the remedial measures to be taken;
- (d) issue a warning to the licensed person;
- (e) instruct the licensed person to suspend or remove any of his or her directors or employees;
- (f) direct the licensed person to suspend all or any of his or her insurance or insurance-related business;
- (g) appoint a person to monitor the licensed person's affairs;
- (h) place or cause the licensed person to be under the management of a curator;
- (i) impose a penalty on the licensed person; or
- (j) subject to requirements of the domestic law, amend or cancel the licensed person's licence;
- (k) any other as may be prescribed in the domestic law.

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#### **44. Procedure on completion of investigation**

(1) On completion of an investigation, an inspector shall forward his or her report thereon to the regulatory authority.

(2) On receipt of a report in terms of subsection (1), the regulatory authority shall, subject to the domestic law and as may be determined by the regulatory authority—

- (a) communicate the findings of the inspection to the person who was the subject of the investigation; and
- (b) invite the licensed person to make representations on the contents of the report.

(3) A licensed person to whom a report has been sent in terms of subsection (2) may, if he so wishes, submit to the regulatory authority representations on any of the contents of the report, within the time set by the regulatory authority.

#### **45. Action by regulatory authority following investigation**

If, after considering an inspector's report sent to it by an inspector, together with any representations made by the licensed person concerned, the regulatory authority is satisfied that the licensed person has contravened any provision of the law or any directive, requirement or order, the regulatory authority shall within a period specified by the regulatory authority take any action referred to in section 43 (2).

#### **46. Curatorship and winding up of licensed persons**

(1) The regulatory authority may place a licensed person under curatorship or causing the winding up of a licensed person where—

- (a) a licensed person is in an unsound financial condition;

- (b) a licensed person is not operating in accordance with sound administrative and accounting practices and procedures, and not adhering to proper internal controls systems;
- (c) a licensed person failing to comply with the prescribed minimum financial requirements and the regulatory authority considers that it is unlikely to comply with them unless it is placed in curatorship; or
- (d) the licensed person fails to meet any requirement as may be prescribed in the domestic law.

(2) The domestic law shall prescribe the procedure the regulatory authority shall follow when placing the licensed person under curatorship, causing the winding up of a licensed person or for voluntary winding up of a licensed person.

(3) The domestic law shall clearly state the effect of placing a licensed person under curatorship.

(4) The duties of curator shall include the following—

- (a) taking over and assuming the management of the insurance or insurance-related business of the licensed person concerned;
  - (b) managing the insurance or insurance-related business of the licensed person concerned in such manner as he considers prudent and most likely to promote the interests of the licensed person and licensed person's creditors;
  - (c) ensuring proper compliance with the insurance laws by the licensed person concerned;
  - (d) ensuring that proper accounting records are kept, and proper annual financial statements are prepared in relation to the insurance or insurance-related business of the licensed person concerned;
  - (e) preparing reports for the regulatory authority showing the assets and liabilities of the licensed person concerned and his debts and obligations, verified by the licensed person's auditor, and all such information as may be necessary to enable the regulatory authority to become fully acquainted with the licensed person's financial position;
  - (f) examining the affairs and transactions of the licensed person concerned before he was placed under curatorship, in order to ascertain whether any past or present director or employee of the licensed person—
    - (i) has contravened or appears to have contravened any provision of the law;
    - (ii) has committed or appears to have committed any offence; or
    - (iii) is or appears to be personally liable to pay damages or compensation to the licensed person or is personally liable for any of the licensed person's liabilities; and submit to the regulatory authority a report containing full particulars of any such contravention, offence or liability;
- and
- (g) report to the regulatory authority as to whether or not, in his opinion, it is in the interests of the licensed person's policyholders and creditors that the licensed person should remain under curatorship.

(5) The curator may exercise the following powers—

- (a) to suspend or reduce, as from the date on which the licensed person concerned was placed under curatorship or any subsequent date, the right of creditors to claim or receive interest on any money owing to them by the licensed person;
- (b) to make payments, whether in respect of capital or interest, to any creditor of the licensed person concerned at such time, in such order and in such manner as he thinks fit;
- (c) to cancel any agreement between the licensed person concerned and any other party to advance moneys due after the date on which the licensed person was placed under curatorship or to extend any existing credit facility after that date, if in his or her opinion—
  - (i) such advance or any loan under such facility would not be adequately secured or would not be repayable on satisfactory terms; or
  - (ii) the licensed person lacks the necessary funds to meet his obligations under the agreement; or
  - (iii) it would not otherwise be in the interests of the licensed person to abide by the agreement.
- (d) to convene from time to time, in such manner as he thinks fit, a meeting of creditors of the licensed person concerned for the purpose of establishing the nature and extent of the licensed person's indebtedness to them and consulting them on decisions taken by him in the course of managing the licensed person's affairs, to the extent that the creditors' interests may be affected by those decisions;
- (e) to negotiate with any individual creditor of the licensed person concerned with a view to a final settlement of the creditor's affairs with the licensed person;
- (f) during the period of curatorship, to determine on the viability of the licensed person's business and if it prudent to continue operations.
- (g) generally, to take any action necessary for the administration or operation of the insurance or insurance-related business of the licensed person concerned, including the sale or closure of any branch, agency, or other office of the licensed person and, subject to any other law, the dismissal of any of his employees.

(6) Subject to the provisions of other applicable domestic laws, the regulatory authority may have the right to apply to a court of competent jurisdiction for the winding up of the licensed person if the regulatory authority is satisfied that the licensed person has solvency challenges or other challenges that may be prescribed in the domestic law which makes it difficult for the licensed person to meet its liabilities and continue with the insurance business or for any other reason which is appropriate and in the public interest.

(7) The domestic law shall provide for the procedures to be followed by the regulatory authority before applying to court for the winding up of the licensed person.

[ ]

## PART VIII

## GENERAL

**47. Policyholder protection fund**

Subject to domestic law, the regulatory authority may set up a policyholder protection fund in a manner and form as determined by the regulatory authority.

**48. New products and technologies**

The regulatory authority shall set a clear and transparent regulatory framework for the regulation of technology-based products and technology-based distribution channels.

(2) Regulatory measures referred to in subsection (1) shall ensure that the rights and interests of policyholders are protected.

[ ]

**49. Indemnity of licensed person and staff**

(1) The licensed person and its staff shall—

- (a) act with integrity and observe the highest professional standards, including observing conflict of interest rules;
- (b) have the necessary legal protection against lawsuits for actions taken lawfully and in good faith while discharging their duties;
- (c) be adequately protected against the costs of defending their actions while lawfully and in good faith discharging their duties.

(2) Where applicable, the licensed person shall take insurance cover against any loss because of negligence or dishonesty of any of its staff and other personnel.

**50. Register of licensed persons**

(1) Every regulatory authority shall maintain a register which shall record the following—

- (a) name of the licensed person;
- (b) class of insurance business;
- (c) physical address of the principal office of the licensed person;
- (d) name and contact details of the key responsible persons;
- (e) terms and conditions of the licence; and
- (f) such other information as may be required.

(2) The register shall be open to members of the public under such terms and conditions as may be set by the regulatory authority.

(3) The register may be disclosed on the regulatory authority's website.

**51. Exemptions**

(1) Subject to domestic law, the regulatory authority may exempt certain licensed persons from complying with certain sections of this Model Law as shall be specified in the domestic law

(2) The exemptions referred to in subsection (1) shall be exercised depending on the nature, size and complexity of the licensed person.

## 52. Preventive measures, corrective measures and sanctions

- (1) The regulatory authority shall—
- (a) take prompt and effective action to deal with cases of non-compliance with measures designed to prevent a breach of the legislation from occurring, where such non-compliance could put policyholders at risk or impinge on any other regulatory objectives;
  - (b) quickly enforce corrective action where problems involving licensed persons are identified;
  - (c) issue formal directions to licensed persons to take particular actions or to desist from taking particular actions to address problems identified;
  - (d) impose restrictions on the business activities of a licensed person;
  - (e) take measures, or to require others to take measures, to reinforce the financial position of a licensed person;
  - (f) have mechanisms in place to check compliance by the licensed person once corrective action has been taken or remedial measures, directions or sanctions have been imposed;
  - (g) have mechanisms in place to assess effectiveness of the corrective action taken or remedial measures, directions or sanctions imposed on a licensed person.
- (2) The regulatory authority may replace or restrict the power of the following persons as a means of addressing management and governance problems—
- (a) board members;
  - (b) senior management;
  - (c) appointed actuary;
  - (d) external auditor;
  - (e) key responsible persons in control functions;
  - (f) significant owners.
- (3) The regulatory authority may, in extreme cases where a licensed person is failing to meet prudential or other requirements, take the following actions—
- (a) impose curatorship over a licensed person;
  - (b) take control of a licensed person;
  - (c) appoint other specified officials or receivers to take control of a licensed person;
  - (d) make other arrangements for the benefit of the policyholders;
  - (e) a fine;
  - (f) suspension of a licence;
  - (g) cancellation of a licence.
- (4) The regulatory authority shall have the power to enforce preventive and corrective measures and impose sanctions which are timely, necessary to achieve the objectives of insurance supervision, and based on clear, objective, consistent, and publicly disclosed general criteria.
- (5) The regulatory authority may take action against individuals or entities that—
- (a) conduct insurance activities without the necessary licence;
  - (b) fails to operate in accordance with the law;



- (c) fails to operate in accordance with supervisory guidelines;
- (d) fails to operate in accordance with sound business practices;
- (e) is considered at risk of failing to operate in accordance with legislation;
- (f) is considered at risk of failing to operate in accordance with supervisory guidelines;
- (g) is considered at risk of failing to operate in accordance with sound business practices;
- (h) fails to operate in a manner that is consistent with regulatory requirements.

(6) The regulatory authority shall ensure that there is a progressive escalation in actions or remedial measures that are to be taken if the problems become worse or a licensed person ignores requests from the regulatory authority to take preventive and corrective action.

(7) The regulatory authority shall—

- (a) require the licensed person to take actions that address the regulatory authority's identified concerns;
- (b) have the power to require a licensed person to develop an acceptable plan for prevention and correction of problems;
- (c) periodically check that the licensed person is taking action and assesses the effectiveness of the licensed person's actions.

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### **53. General offences and penalties**

(1) The regulatory authority shall have the power to impose penalties and sanctions on licensed persons and individuals proportionate to the breach of regulatory requirements or other misconduct.

(2) The sanctions and penalties the regulatory authority may impose on a licensed person and individuals and the circumstances under which the sanctions may be imposed shall be clearly defined in the domestic law.

(3) The domestic law shall set out the procedures to be followed by the regulatory authority in imposing sanctions and penalties.

(4) The procedures set out in subsection (3) shall take into account the right of the alleged defaulting person to be heard before a penalty or sanction is imposed against such person.

### **54. Appeals**

(1) Any person aggrieved by the regulatory authority's decision may appeal to the relevant authority as set out in the domestic law.

(2) The appeal body must be independent and effective.

(3) The procedures an aggrieved person may follow to lodge an appeal against a regulatory authority's decisions shall be as set out in the domestic law.

(4) The procedures referred to in subsection (3) shall—

- (c) be specific and balanced to preserve supervisory independence and effectiveness;
- (d) not unduly impede the ability of the regulatory authority to make timely interventions in order to protect policyholders' interests.

