

SAMOA

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2007, No. 16

AN ACT to repeal the Insurance Act 1976 and to make comprehensive provision for the licensing of insurance businesses, and the supervision of the insurance industry in Samoa, and for related purposes. [29th March 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART I
PRELIMINARY

1. Short title and Commencement-(1) This Act may be cited as the Insurance Act 2007.

(2) This Act shall come into force on the date that it is assented to by the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation – In this Act, unless the context otherwise requires:

“agent” means a person who:

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

“annual fee” means the fee set by the Board of Directors, from time to time, as the annual fee for any class of licence issued under this Act;

“Central Bank” means the Central Bank of Samoa established by the Central Bank of Samoa Act 1984;

“Board of Directors” means the Board of Directors of the Central Bank;

“broker” means a person who:

(a) as representative of an insured, carries on the business of arranging contracts of insurance for or in expectation of payment by way of brokerage, commission, fee, allowance, return or otherwise; and

(b) is licensed under Part III to carry on such business;

“Governor” means the Governor of the Central Bank appointed under section 9 of the Central Bank of Samoa Act 1984;

“insurance business” includes every class of the business of undertaking liability by way of insurance or reinsurance:

(a) on or in respect of any life or personal injury;

(b) against or in respect of any liability to pay fees for the provision of any class of health or medical services;

(c) against or in respect of loss or damage of any kind, including liability to pay damages, compensation, or other amount contingent upon the happening of any event; and

(d) business relating to the continuance, renewal or revival of business referred to in paragraphs (a) - (c),

and includes business incidental to such business;

“Insurance Commissioner” means the person holding office, from time to time, as Insurance Commissioner in accordance with section 4;

“insurance licence” means a licence issued under Part III in respect of any class of insurance business;

“insurer” means:

(a) a company; or

(b) a body established by Act of Parliament and entitled to undertake insurance business, licensed under Part III to commence or carry on insurance business, and includes a reinsurer;

“intermediary” means a broker or an agent;

“licensee” means a person holding any class of licence under this Act;

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

(a) a policy which is subject to payment of premiums for a term dependent on the termination or continuance of human life;

(b) a policy securing the grant of an annuity for such a term;

(c) a continuous disability policy; and

(d) an investment-linked contract -

PROVIDED THAT a contract that provides for the payment of money on the death of a person is not a life policy if, by the terms of the policy, its duration is to be not more than one year;

“Minister” has the same meaning as in the Central Bank of Samoa Act 1984 (as amended); and

“Statutory Fund” means a statutory fund established, or required to be established under Part VII.

PART II

THE INSURANCE COMMISSIONER

3. The Office of Insurance Commissioner - The Office of the Insurance Commissioner is established as part of the Central Bank of Samoa, and shall comprise:

(a) the Insurance Commissioner; and

(b) such other officers and staff of the Central Bank as are determined to be necessary by the Governor, and approved from time to time by the Board of Directors of the Central Bank.

4. The Insurance Commissioner – The Insurance Commissioner shall be the person holding the office of Governor under the Central Bank of Samoa Act 1984 from time to time, and shall include any person lawfully acting in the capacity of Governor.

5. Functions of the Office of Insurance Commissioner – The functions of the Office of Insurance Commissioner shall include:

- (a) the implementation of this Act and the enforcement of its provisions in relation to persons licensed under this Act, or any persons in breach of its provisions;
- (b) the formulation and enforcement of standards, procedures, returns and other reporting requirements governing the conduct of insurers, brokers and agents undertaking business in Samoa;
- (c) the superintendence of the conduct of insurers, brokers and agents in Samoa;
- (d) reporting to the Board of Directors, as required, on the state of the insurance industry in Samoa, and in relation to the implementation of this Act and the enforcement of its requirements;
- (e) advising the Board of Directors and the Minister with regard to all matters concerning the provision of insurance in Samoa, the state of the insurance industry and the effectiveness of the supervision and regulation of the industry; and
- (f) such other functions, consistent with the provisions of this Act, relating to the licensing and supervision of the insurance business in Samoa, as are given to it by the Board of Directors, the Minister or the Cabinet.

6. Powers of the Insurance Commissioner-(1) The Insurance Commissioner may exercise any power given under this Act, including any power that is incidental thereto or that is

required to ensure the proper implementation of this Act, and the enforcement of its provisions.

(2) Without limiting the generality of subsection (1), the Insurance Commissioner shall have the power to:

- (a) approve forms and determine fees as provided by this Act;
- (b) receive and consider applications made under this Act;
- (c) require that information, details, particulars, statements and reports be provided in accordance with this Act, and to require that such matters be substantiated by any other appropriate proof;
- (d) approve or refuse the grant of a licence, and to cancel any licence in accordance with this Act;
- (e) impose licence conditions as provided for by this Act;
- (f) give any notice or direction in accordance with this Act;
- (g) require notification, or the provision of any information, statement, return, report or other documentation as provided by this Act;
- (h) require any actuarial report or investigation under this Act;
- (i) give any approval, permission or consent in accordance with this Act;
- (j) require any remedial action in accordance with this Act;
- (k) require the removal of a public officer, auditor or actuary as provided by this Act;
- (l) receive and retain any deposits or other moneys as provided for by this Act, and to make appropriate arrangements in relation to their banking or other safe-keeping;
- (m) grant any exemption or extension of time as provided for by this Act;

- (n) conduct inspections and investigations under this Act, and to exercise any powers in relation thereto, including the power to appoint inspectors, enter premises and require the provision of information;
 - (o) issue or revoke directions as provided by this Act;
 - (p) publish notices under this Act;
 - (q) refer any complaint about a licensee to the Fair Trading Division established under section 5 of the Fair Trading Act 1998, to be dealt with in accordance with that Act; and to make appropriate arrangements with the Fair Trading Division in relation to the investigation and resolution of such complaints, and the protection of the rights of customers of licensees;
 - (r) perform any duty or exercise any power as provided by any Regulation made under this Act; and
 - (s) liaise with, provide information to or request information from any other supervisory authority in a foreign country, in relation to any matter consistent with this Act.
- (3) The Insurance Commissioner may delegate in writing any power under this Act, save for this power of delegation.

7. Protection for official acts - No legal proceedings may be instituted against the Central Bank, the Insurance Commissioner or any officer or employee of the Office of Insurance Commissioner, for anything done or omitted to be done in good faith under this Act.

8. Annual Report-(1) On or before the 31st day of March of each year, the Insurance Commissioner shall furnish to the Board of Directors and the Minister a report relating to:

- (a) the operations of the Office of the Insurance Commissioner in the preceding year;
- (b) the implementation of this Act and any action taken in respect of the enforcement of its provisions;

- (c) the state of the insurance industry in Samoa, and any particulars relating to the operations of any business licensed under this Act that should be brought to the notice of the Government; and
 - (d) any other fact or matter considered appropriate by the Insurance Commissioner, or which has been directed by the Minister or the Board of directors to be reported on.
- (2) A copy of the report furnished under subsection (1) shall be laid before the Legislative Assembly by the Minister at its next session.

PART III **INSURANCE LICENCES**

9. Insurers and intermediaries to be licensed-(1) Only:

- (a) a company registered in Samoa; or
- (b) a body established by Act of Parliament and entitled to undertake insurance business,

which is licensed under this Part, may commence or carry on insurance business in Samoa.

(2) A company or body which contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding 500 penalty units and, in the case of a continuing offence, to a further fine of 100 penalty units for every day during which the offence continues.

(3) Only a person licensed under this Part may commence or carry on the business of an insurance broker or agent in Samoa.

(4) A person who contravenes subsection (3) commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units and, in the case of a continuing offence, to a further fine of 10 penalty units for every day during which the offence continues.

(5) The Insurance Commissioner may dispense with the requirement for certain agents to be licensed under this Act if a particular agent meets each of the following conditions:

- (a) the agent acts only as a sales agent and is not involved in the administration of policies such as the handling of claims and the making of payments related to a policy;
 - (b) the agent is identified by a licensed insurer or broker as being the sales agent of that insurer or broker; and
 - (c) the agent acts as agent for only one licensed insurer or broker, and is subject to its direction and control in the performance of his or her commercial activities.
- (6) A licensed financial institution which offers insurance services to its customers may be dispensed in accordance with subsection (5) if:
- (a) it meets the requirements of paragraphs (a) and (b) of subsection (5); and
 - (b) if the policies it offers are fully underwritten and administered by a licensed insurer.

10. General application requirements-(1) All applications for a licence under this Part shall:

- (a) be made to the Insurance Commissioner on a form approved for that purpose by the Insurance Commissioner;
- (b) be accompanied by the application fee set from time to time by the Board of Directors, which shall be stated on the form made available for the purpose of making an application under this Part;
- (c) identify the directors and shareholders of the applicant if it is a company, and the owners of the applicant if it is not a body corporate;
- (d) include a business plan providing details of the applicant's business relating to all aspects of its corporate ownership and structure, management, internal controls imposed by management, operations, products, qualifications of management and sales staff, customer service and any other matter required by the Insurance Commissioner;

- (e) identify a place in Samoa where the books and records of the business will be available for inspection in accordance with this Act;
 - (f) contain such other information and particulars as are required in accordance with the application form, and such further information or particulars as may be required by the Insurance Commissioner; and
 - (g) include evidence that the applicant holds a business licence under the Business Licences Act 1998; and if the applicant has foreign ownership, that the applicant has been registered under the Foreign Investment Act 2000.
- (2) Notwithstanding the requirements of subsection (1) or of sections 11 or 12, the Insurance Commissioner may determine an appropriate application form and procedure to be applied in respect of:
- (a) the Samoa Life Assurance Corporation established under the Life Assurance Corporation Act 1976; or
 - (b) any other body established by Act of Parliament and entitled to undertake insurance business, or the business of a broker or agent,
- and for that purpose may dispense with any requirement ordinarily applying to applications under this Part.

11. Specific requirements for insurance licences - An application for a licence to commence or carry out insurance business shall, in addition to the requirements of section 10:

- (a) provide documentary proof that the applicant is duly and currently incorporated as a company under the laws of Samoa;
- (b) state the paid up share capital of the company, and provide such proof of this as may be required by the Insurance Commissioner;
- (c) identify the assets of the company and the value of them, and provide such proof of these matters as may be required by the Insurance Commissioner;

- (d) provide a statement of the liabilities of the company;
- (e) provide details of the company's reinsurance arrangements;
- (f) satisfy the Insurance Commissioner that -
 - (i) the company has adequate technical knowledge and expertise in insurance matters;
 - (ii) the directors of the company and other persons associated with its management are fit and proper persons;
 - (iii) the company has appropriate accounting and reporting systems in place;
 - (iv) the name of the company is not likely to mislead the public; and
 - (v) the company is able to comply with any solvency margins required by this Act.

12. Specific requirements for broker or agent licences - An application for a licence to commence or carry out business as an insurance broker or agent shall, in addition to the requirements of section 10:

- (a) in the case of a broker, provide details of the current contract of professional indemnity insurance and contract of fidelity guarantee insurance held by the applicant in respect of the business;
- (b) describe the insurance products being offered by the applicant, and provide any information required by the Insurance Commissioner relating to the insurance companies providing those products;
- (c) provide documentary evidence that the applicant has been appointed by the identified insurance company or companies to offer the products described under paragraph (b); and
- (d) satisfy the Insurance Commissioner that -
 - (i) the applicant has adequate technical knowledge and expertise in insurance matters;

(ii) the owners of the business and other persons associated with its management are fit and proper persons;

(iii) the applicant has appropriate accounting and reporting systems in place;

(iv) the name of the applicant's business is not likely to mislead the public;

(v) the applicant is, and is likely to continue to be, able to comply with the provisions of this Act; and

(vi) the financial standing and general character of the applicant is sound.

13. Appointment of principal officer-(1) No insurer, broker or agent may commence or carry on its business unless it has notified the Insurance Commissioner in writing of the appointment of a principal officer for Samoa.

(2) A principal officer must be an individual who is resident in Samoa and is not a disqualified person as defined in section 14(2), and shall be responsible for the general supervision and control of the licensee's business, and for its compliance with this Act and the conditions of its licence.

(3) A principal officer may be removed and a new appointment made by giving written notice to that effect to the Insurance Commissioner.

(4) A principal officer shall be removed and a new appointment made if so directed by the Insurance Commissioner on the grounds that the principal officer has insufficient experience or qualifications, or has failed to adequately perform the responsibilities of the office, or is or has become a disqualified person.

14. Approval of Licences-(1) After considering an application made under this Part, the Insurance Commissioner may approve the grant of an insurance licence or a brokers or agents licence, if:

(a) the requirements of section 10 have been met;

(b) the requirements of section 11 or section 12, as the case may be, have been complied with;

- (c) he is satisfied that the requirements of Part IV will be met;
 - (d) in the case of an insurance licence, the requirements of section 29 in relation to reinsurance are approved;
 - (e) the applicant, and all persons associated with the applicant's business, are not disqualified persons;
 - (f) the grounds stated in section 17 for refusing to approve a licence do not apply;
 - (g) a principal officer has been appointed under section 13; and
 - (h) it is in the public interest that a licence is granted.
- (2) For the purposes of this section, a person is a disqualified person if, at any time:
- (a) the person has been convicted of an offence under this Act;
 - (b) the person has been convicted of an offence against any law of Samoa or elsewhere -
 - (i) in respect of conduct relating to insurance;
 - (ii) which involves an element of dishonesty; or
 - (iii) which involves a breach of any law relating to money laundering or the suppression of terrorism; or
 - (c) the person has -
 - (i) become bankrupt;
 - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with his creditors.

15. Classes of licences-(1) The classes of licence that may be issued under this Part are:

- (a) if it is an insurance licence -
 - (i) a general insurance licence; or
 - (ii) a life insurance licence;
- (b) a brokers licence; and
- (c) an agents licence.

(2) If any business carries on, or proposes to carry on the business of general insurance in Samoa, the business shall not be licensed to carry on life insurance business, and where a business carries on or proposes to carry on life insurance business, it shall not be licensed to carry on the business of general insurance.

(3) Any licence issued under this Part that may be construed as permitting the carrying on of business inconsistent with subsection (2), shall be deemed to be of no effect to the extent of its inconsistency with subsection (2).

16. Issue of licences-(1) Upon approving the grant of a licence under section 14 and upon the receipt of the annual fee, the Insurance Commissioner shall cause to be issued to the applicant a licence which shall contain the following particulars:

- (a) the name and the business address of the licensee;
- (b) the date of the licence;
- (c) the class of the licence; and
- (d) any other details or particulars that the Insurance Commissioner determines.

(2) The Insurance Commissioner shall cause to be published in the Savali a notice concerning the grant of a licence, but the failure to publish such a notice shall not affect the validity of the licence.

(3) The principal officer of a licensee shall ensure that a copy of the licence is prominently displayed at all times in a public place at each office in which the licensee operates the business to which the licence relates.

(4) The Insurance Commissioner may upon payment of a fee determined by him, issue a copy of the licence in the event that it is lost or destroyed, or in any other circumstances that he considers appropriate.

17. Refusal to approve a licence-(1) Without limiting the generality of the power of the Insurance Commissioner under section 14, an application for a licence shall be refused if:

- (a) if the applicant is an agent and seeks to be licensed to carry on the business of agent for more than one insurer in relation to any type of insurance product;
 - (b) if the applicant is a broker and any owner, director or manager of the business is a director, manager, employee or shareholder; of an insurer; and
 - (c) if the applicant is a broker and the Insurance Commissioner is not satisfied that the applicant has in force appropriate professional indemnity and a fidelity guarantee policies of insurance.
- (2) If the Insurance Commissioner refuses to approve the grant of a licence under this Part, the Insurance Commissioner shall record the reasons for the refusal and provide a copy of them to the applicant. .

18. Licence conditions-(1) Every licence issued under this Part shall be subject to the following conditions:

- (a) any conditions stated on the licence issued under section 6;
 - (b) where there is any change in the information or particulars provided in relation to an application for a licence under this Part, the licensee shall give written notice of those changes to the Insurance Commissioner; and
 - (c) any new or amended conditions imposed by the Insurance Commissioner from time to time by the giving of notice in writing to the licensee.
- (2) In addition to any condition imposed under subsection (1), the Insurance Commissioner may require that a licensed broker:
- (a) maintain a trust account for the purpose of holding monies received by the broker on behalf of an insurer or a policy-holder; or
 - (b) maintain such other separate account, to the satisfaction of the Insurance Commissioner, which protects the interests of an insurer and the relevant policy-holders in this regard.

(3) The holder of a brokers or agents licence may not describe or carry on the business in any way that would be likely to mislead a person into believing that the broker or agent is an insurer.

(4) The holder of an agent's licence may not describe or carry on the business in any way that would be likely to mislead a person into believing that the agent is a broker.

19. Term of licences and renewals-(1) Every licence issued under this Part shall expire on the 31st day of December in the year it was issued, and each renewed licence shall expire on the 31st day of December next following.

(2) A licence shall be deemed to be renewed if:

- (a) the licensee gives notice in writing to the Insurance Commissioner of its intention to seek renewal, such notice to be given before the 30th day of November preceding the date of expiry;
- (b) the annual fee is paid for the next year;
- (c) the arrangements relating to reinsurance required by section 29 are approved;
- (d) the requirements of Part IV have been complied with; and
- (e) the Insurance Commissioner does not give notice in writing to the licensee of his intention to defer the renewal of the licence on the grounds that -
 - (i) he believes that the licensee may be in breach of this Act or any condition applying to the licence;
 - (ii) any person associated with the licensee's business is or may have become a disqualified person as defined under section 14(2);
 - (iii) there are unresolved complaints made about the licensee that have been referred under paragraph 6(2)(q) and are of a nature that justify the deferral of the renewal;

(iv) the licensee has been consistently in breach of any obligation to pay tax, duties or other monies due to Government under any Act; or

(v) any other circumstances exist that warrant further investigation or justification before a licence is renewed.

(3) A notice given under subsection 2(e) may specify a period not exceeding three months in which the licence is deemed to be extended in order that the licensee can:

(a) rectify any breach, or possible breach, as directed by the Insurance Commissioner; or

(b) provide any information required by the Insurance Commissioner to determine whether it is appropriate for the licence to be renewed.

PART IV

DEPOSITS AND CAPITAL REQUIREMENTS ETC.

20. Deposits by brokers and agents - A broker or agent licensed under this Act shall make and maintain a deposit, or provide a guarantee, which:

(a) is of a nature or in a form acceptable to the Insurance Commissioner; and

(b) is in an amount -

(i) of \$50,000; or

(ii) in the case of a broker, equivalent to the deductible or excess amount applicable to the professional indemnity and fidelity guarantee insurance policies required to be held by the broker,

whichever is the greater.

21. Deposits by insurers-(1) An insurer licensed under this Act shall make and maintain a deposit which:

(a) is of a nature or in a form acceptable to the Insurance Commissioner; and

(b) is in an amount of -

(i) \$100,000; or

(ii) not less than the surplus of assets over liabilities that may be required to be maintained by the insurer under section 25(b),

whichever is the greater.

(2) The amount of a deposit maintained by an insurer under subsection (1) must be adjusted annually by the 31st day of March to ensure that paragraph (b) is complied with.

22. General provisions relating to deposits-(1) All income accruing in respect of a deposit is payable to the insurer or broker making the deposit.

(2) Where a deposit is made in the form of a Samoan Government security, the value of such security for the purposes of this Act shall be deemed to be the current market value of the security.

(3) A deposit made by an insurer shall be deemed to be part of the assets of the insurer, and is not:

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

23. Return of deposits-(1) A deposit made under section 21 by an insurer shall be retained by the Insurance Commissioner until he is satisfied that the insurer has ceased to carry on insurance business in Samoa and that all liabilities in respect of that business have been satisfied, whereupon the deposit may be returned to the insurer.

(2) A deposit made under section 20 by a broker or agent shall be retained by the Insurance Commissioner until such time as the relevant licence has ceased to be effective and the Insurance Commissioner is satisfied that there has been no breach of this law so as to warrant the retention of the deposit, whereupon the deposit shall be returned to the broker or agent.

24. Minimum capital requirements - An insurer licensed under this Act shall maintain at all times paid up capital of \$1,000,000.

25. Additional solvency requirements - In addition to the requirement stated in section 24, an insurer licensed under this Act shall comply with any solvency requirements:

- (a) imposed in relation to the insurer under the Financial Institutions Act 1996 (as amended); and;
- (b) provided for by a Regulation made under section 26.

26. Regulations - The Head of State, acting on the advice of Cabinet, may make Regulations relating to the payment and holding of deposits, and the capital and solvency requirements of licensed insurers, including Regulations:

- (a) amending the amount of the deposits required by section 20(b) and section 21(b);
- (b) prescribing the nature and form of deposits;
- (c) prescribing matters relating to the return of deposits;
- (d) prescribing any matter related to the imposition of solvency requirements under section 25(b); and
- (e) prescribing matters in relation to the adjustment of deposits as may be required by section 21(2).

PART V

OTHER OBLIGATIONS OF LICENSEES;

27. Payments and gifts to brokers from insurers-(1) A broker must not receive from an insurer, or from a person acting on behalf of an insurer, a gift, benefit or other reward (however described) except as remuneration for services rendered to the insurer:

- (a) in arranging or effecting a particular contract of insurance; or
 - (b) in connection with dealing with or settling a claim under a particular contract of insurance.
- (2) An insurer must not pay to a broker, and a broker must not receive from an insurer, in respect of the arranging or effecting of contracts of insurance by that broker with the insurer, remuneration at a rate or on a basis that has been varied from the normal rate or basis, having regard to anyone or more of the following:
- (a) the number of contracts so arranged or effected;
 - (b) the total amount of premiums paid or payable under such contracts; or
 - (c) the total amount of sums insured under such contracts.
- (3) An insurer or broker who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units, or to imprisonment for a term not exceeding 6 months, or both.

28. Insurer not to appoint unlicensed agent - An insurer shall not cause or permit a person to arrange, or hold himself out as entitled to arrange, a contract of insurance as agent for that insurer unless the person is licensed under this Act as the agent of the insurer.

29. Reinsurance arrangements to be approved-(1) An insurer shall at all times have in place arrangements approved by the Insurance Commissioner for reinsurance of liabilities in respect of risks against which persons are, or are to be insured by the insurer in the course of carrying on its insurance business in Samoa.

(2) An insurer shall submit details of its reinsurance arrangements to the Insurance Commissioner as soon as possible after the commencement of the period of cover provided by the arrangements.

(3) In determining whether an insurer's arrangements for reinsurance are satisfactory, the Insurance Commissioner may have regard to any relevant matter, including:

- (a) the class of insurance business carried on or proposed to be carried on by the insurer;
- (b) the amount of premiums retained by the insurer during its last preceding financial year;
- (c) the amount of premiums expected to be retained by the insurer during the next financial year;
- (d) the insurer's exposure to catastrophic loss;
- (e) the amount of the insurer's capital and free reserves;
- (f) the nature and value of the assets of the insurer; and
- (g) the person or persons by whom the reinsurance is or is proposed to be undertaken.

30. Premium rates for life insurance-(1) An insurer licensed to carry on life insurance business shall not issue any policy of life insurance unless the rate of premium chargeable under the policy is a rate which has been approved by the directors of the insurer, having regard to written advice from an actuary, as reasonable for the type of policy.

(2) The Insurance Commissioner may, at any time, by written notice require any insurer carrying life insurance business to obtain and furnish to the Insurance Commissioner a report by an actuary as to the suitability of the rates of premium chargeable under such a policy and, if the actuary considers that the rates are not suitable, a report as to the rates of premium which the actuary considers to be suitable.

(3) On the basis of a report received under subsection (2), the Insurance Commissioner may direct an insurer as to the rate of premium chargeable in respect of the relevant policy.

PART VI
ACCOUNTS, RECORDS, AUDIT AND ACTUARIAL
MATTERS

Division 1 – General

31. Accounting records to be kept – Each insurer and broker shall keep books and records in Samoa that correctly record and reveal the transactions of the insurer or broker and its financial position, and which:

- (a) are kept so that the insurer's or broker's accounts can be properly prepared and audited;
- (b) are kept in the English language, or so that they can be readily convertible into writing in the English language; and
- (c) are retained in Samoa for at least seven years after the transaction to which they relate.

32. Audit-(1) The accounts and statements required to be prepared under Division 2 and Division 3 of this Part, shall be audited each year and as otherwise required by the Insurance Commissioner, and the insurer or broker shall make all necessary arrangements to facilitate the conduct of the audit.

(2) Any auditor appointed by an insurer or broker must be approved by the Insurance Commissioner in writing and any such approval shall only be given if the proposed auditor:

- (a) has a place of business in Samoa;
- (b) is not an owner, director, principal officer, manager, employee, or agent of the insurer or broker;
- (c) is qualified and registered to act as an accountant in Samoa;
- (d) has had experience in relation to the audit of accounts of insurance business; and
- (e) is competent to audit such accounts.

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

33. Audit report-(1) Any audit report prepared for an insurer or broker under section 32 shall be furnished to the insurer and broker who shall provide a copy of the report, and the accounts and statements to which it relates, to the Insurance Commissioner.

(2) Each audit report shall:

- (a) state whether the accounts and statements are, in the opinion of the auditor, in accordance with the provisions of this Act and with the best accounting practices, and give particulars of any matters that are considered not to be;
- (b) state whether the accounts and statements have been properly kept and correctly record the transactions and financial position of the business, and give particulars of any deficiencies in this regard;
- (c) state whether the auditor has obtained the information and explanations that the auditor has requested, and give particulars of any failings in this regard; and
- (d) state whether the accounts and statements kept and provided in accordance with the requirements of this Part agree with the accounting records of the insurer or broker, and give particulars of any discrepancies identified by the auditor.

34. Disclosure of information by auditors-(1) If an auditor, in the course of performing his duties as an auditor as provided by this Act, is of the opinion that grounds exist for believing that:

- (a) there has been a contravention of this Act;
- (b) a criminal offence involving fraud or dishonesty has been committed;
- (c) any transaction or dispute has taken place which will have a material effect on the solvency of the insurer or broker, or statutory fund;
- (d) serious irregularities, or any irregularities that jeopardise the interests of insured persons, have occurred; or

(e) the insurer or broker is unable, or is likely to become unable, to meet its liabilities,
the auditor shall immediately report the matters to the insurer and broker, and any directors of them, and to the Insurance Commissioner.

(2) An auditor who fails to comply with subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty, or to a term of imprisonment for a term not exceeding 6 months, or both.

35. Other reports required by the Insurance Commissioner-(1) The Insurance Commissioner may, by notice in writing to an insurer or broker, require that a report prepared by an auditor or actuary, or some other person approved by the Insurance Commissioner:

- (a) be provided to the Insurance Commissioner within a time specified in the notice;
- (b) address such matters as are specified in the notice; and
- (c) include a statement of opinion by the auditor or actuary, or other approved person, on the insurer's or broker's liquidity, liabilities under life policies, solvency and as to its compliance with statutory provisions, or in relation to its accounting systems and internal controls.

(2) An insurer or broker shall, if required by the Insurance Commissioner in writing, provide within a specified time, any further returns, abstracts, statements or other information that is specified in the notice.

Division 2 - Requirements relating to insurers

36. Policy and claims register-(1) Each insurer licensed under this Act shall keep:

- (a) a register of policies, showing for every policy issued by the insurer -
 - (i) the name and address of the insured;
 - (ii) the policy number;
 - (iii) the date of inception of the policy;

- (iv) the term of the policy;
- (v) the premium relating to the policy;
- (vi) for life policies, the sum insured and bonuses and a record of any transfer, assignment or nomination of which the insurer has notice; and :

- (b) a register of claims, showing for every claim made -
 - (i) the name and address of the claimant;
 - (ii) the claim number;
 - (iii) the policy number to which it relates;
 - (iv) the date of the claim;
 - (v) the amount of the claim;
 - (vi) any amount paid on the claim and the date of payment; and
 - (vii) in the case of a claim that is rejected, the date of rejection.

(2) If an insurer licensed under this Act carries on any insurance business outside of Samoa, the insurer shall keep separate registers for its Samoan business and its non-Samoan business.

37. Statements by insurers-(1) An insurer shall prepare, with reference to each calendar year, and each part of a calendar year:

- (a) any statements of account required under the Financial Institutions Act 1996;
- (b) any statements of account or other statements required by the Insurance Commissioner by the giving of written notice to the insurer.

(2) The statements required to be prepared and provided under subsection (1) shall be forwarded to the Insurance Commissioner within the time specified under the Financial Institutions Act 1996 or by the Insurance Commissioner, as the case may be, or any extended time (not exceeding 1 month) permitted by the Insurance Commissioner.

(3) Copies of all accounts, statements and reports laid before shareholders of the insurer at its annual general meeting shall be provided to the Insurance Commissioner, as soon as practicable after the meeting.

(4) A licensed insurer which is incorporated outside of Samoa shall, within 6 months after the end of each year, send to the Insurance Commissioner:

- (a) a copy of all accounts and statements which have been prepared for the purpose of any law of any country in which the insurer is incorporated; and
- (b) a statement duly signed by directors of the insurer stating whether the insurer contravened any law in any country outside of Samoa where the insurer was incorporated or carried on business.

38. Appointment of actuary-(1) An insurer licensed under this Act to carry on life insurance business shall appoint an actuary to carry out any actuarial functions required by this Act or any other law.

(2) An insurer shall within 14 days of making an appointment under subsection (1) notify the Insurance Commissioner of:

- (a) the name of the actuary;
- (b) the actuary's experience and qualifications;
- (c) the date of appointment;
- (d) any other particulars required by the Insurance Commissioner.

(3) If the Insurance Commissioner considers that a person appointed under this section has insufficient experience or qualifications, or has failed to perform adequately and properly his functions and duties, the Insurance Commissioner may by notice in writing direct the insurer to make another appointment under this section.

39. Actuarial investigations-(1) An insurer licensed under this Act to carry on life insurance business shall at the end of each calendar year, or at any other time as the Insurance Commissioner may direct by written notice, cause an investigation to be made by its actuary into the financial affairs of the business, including a valuation of liabilities under life policies of every statutory fund established under this Act, and shall cause an abstract of the investigation to be made to the satisfaction of the Insurance Commissioner.

(2) An abstract shall be made to the satisfaction of the Insurance Commissioner in relation to any actuarial investigation with a view to the declaration of or distribution of any surplus, and to any actuarial investigation the results of which are to be made public.

(3) Each abstract made under this section shall have appended to it:

- (a) a certificate signed by the principal officer of the insurer stating that full and accurate particulars of every policy under which there is liability (either existing or contingent) have been furnished to the actuary; and
- (b) a statement to the satisfaction of the Insurance Commissioner, of the life business subsisting at the date to which the accounts of the insurer are made up for the purposes of the abstract.

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

40. Disclosure of information by an actuary-(1) If an actuary, in the course of performing his duties, is of the opinion that grounds exist for believing that:

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

the actuary shall immediately report the matter to the directors of the insurer and to the Insurance Commissioner.

(2) An actuary who fails to comply with subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units, or to a term of imprisonment not exceeding 6 months, or both.

Division 3 - Requirements relating to brokers and agents

41. Register to be kept - An intermediary licensed under this Act shall maintain and make available to the Insurance Commissioner, or a person authorised by him, on demand:

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

42. Broker's bank account-(1) Upon being licensed under this Act, a broker shall establish and maintain with a bank in Samoa, an account to be kept solely for the purposes of this section.

(2) A broker shall pay into the account established under subsection (1), all moneys received by the broker:

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

(3) Each account maintained under this section shall be called “Insurance Broking Account”, with or without other words of description.

(4) Except with the written consent of the Insurance Commissioner, a broker may withdraw moneys from an account maintained under this section only for the purposes of:

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

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

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

(7) Nothing in subsection (6) prevents moneys being attached, taken in execution or made the subject of a set-off, charge, or charging or similar order, at the suit of any person for whom or on whose account moneys have been paid into the relevant account, and to whom or on whose account payment in respect of those moneys has not been made.

(8) A broker who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding 6 months, or both.

43. Returns by brokers-(1) A broker shall for each calendar year prepare and forward to the Insurance Commissioner:

- (a) statements of account, including any details required by the Insurance Commissioner as notified in writing; and
- (b) any other return required by the Insurance Commissioner.

(2) The Insurance Commissioner may require that statements and returns, as determined by him, be furnished by brokers within 4 weeks after each 31st March, 30th June, 30th September and 31st December.

PART VII **STATUTORY FUNDS**

44. Establishment of statutory funds-(1) Subject to this section, an insurer who carries on life insurance business shall at all times:

- (a) have at least one statutory fund;
- (b) maintain a separate statutory fund in respect of any life insurance business consisting of the provision of investment-linked benefits;
- (c) maintain a separate statutory fund in respect of any life insurance business carried on outside of Samoa; and
- (d) maintain such other statutory funds as may be directed in writing by the Insurance Commissioner.

(2) If the only type of life insurance business carried on by an insurer is term life business where the period of cover under policies is of no more than 3 years duration, the Insurance Commissioner may grant the insurer exemption from subsection (1).

45. Notice when funds are established-(1) An insurer must give notice to the Insurance Commissioner in relation to every statutory fund that it establishes, and shall provide the

date of its establishment and identify the name of the insurance business to which the fund relates.

(2) The Insurance Commissioner may request in writing that further information in relation to the establishment of any fund be provided by the insurer.

(3) An insurer who establishes a fund shall, for all business written after the commencement of this Act, give to the owner of every policy referable to the fund, written notice of the establishment of the fund.

46. Identification of policies referable to a fund-(1)

Every policy document shall specify the statutory fund or funds to which the policy is referable.

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

(a) the benefits under the policy that are to be provided out of each fund; and

(b) either -

(i) the proportion of the premium that is related to the benefits to be provided out of each fund and is to be credited to the said fund; or

(ii) the way in which that proportion is calculated.

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

48. Assets of statutory funds to be kept separate - An insurer shall keep the assets of a statutory fund distinct and separate from assets of other statutory funds and from all money, assets or investments of the insurer.

49. Application of statutory fund-(1) An insurer shall not apply, or deal with, the assets of a statutory fund, either directly or indirectly, except in accordance with this section.

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

- (a) to meet liabilities (including policy liabilities) or expenses incurred for the purposes of the business of the fund;
- (b) for the purpose of making investments of the fund; or
- (c) for the purposes of allocating a surplus in accordance with section 53.

(3) Prior written approval of the Insurance Commissioner is required before:

- (a) the assets of a statutory fund may be invested directly or indirectly in any share or interest in any other insurer; or
- (b) the assets of a statutory fund may be mortgaged or made subject to any charge.

50. Statutory fund accounts and records-(1) An insurer shall maintain for each statutory fund:

- (a) records of the income and expenditure of the fund which properly record the affairs and transactions of the insurer in respect of -
 - (i) participating business; and
 - (ii) non-participating business, for each class of business to which the fund relates;and
- (b) records which enable assets and liabilities of the fund to be identified.

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

51. Prohibition of reinsurance between funds-(1) An insurer shall not engage in the practice of reinsurance between its statutory funds.

(2) For the purposes of subsection (1) the practice of reinsurance between funds consists of the following elements:

- (a) part of the premium payable under a policy referable to one statutory fund is credited to another statutory fund to which the policy is not referable;
- (b) a corresponding proportion of the liability under the policy is treated as a liability for the discharge of which the assets of the reinsuring fund are available.

52. Division or amalgamation of funds-(1) An insurer shall not divide an existing statutory fund or amalgamate two or more statutory funds, unless the division or amalgamation has been approved in writing by the Insurance Commissioner.

(2) An insurer who divides a statutory fund or amalgamates two or more statutory funds shall give to the owner of every policy referable to any of the funds, written notice of the division or amalgamation.

53. Allocation of surplus-(1) If an actuarial investigation has been carried out in accordance with section 39 and it is established that a fund has assets surplus to those required to satisfy the sum of liabilities of the fund and the margin of solvency required in accordance with the provisions of Part IV, the insurer may allocate the surplus, or part of it, to policy holders and shareholders in accordance with the instruments constituting the insurer and its articles of association or any other rule of the insurer.

(2) An allocation may only be made under subsection (1) if the relevant articles of association or other rule of the insurer, and the applicable parts of the instruments constituting the insurer, have been approved by the Insurance Commissioner.

54. Insurance Commissioner may give notice-(1) If an insurer contravenes a provision of this Part, the Insurance Commissioner may give notice in writing to the insurer requiring that remedial action be taken within a specified time, or any extended time authorised by the Insurance Commissioner.

(2) The Insurance Commissioner may require that any action be taken that will rectify the contravention.

55. Liability of directors etc.-(1) If a contravention of this Part results in a loss to a statutory fund, any person who at the time that the contravention occurred, was a director, general manager, secretary or similar officer of the insurer, or was purporting to act in such a capacity, shall be jointly and severally liable to pay into the statutory fund an amount equivalent to the loss.

(2) A person shall not be liable under subsection (1) if the person can prove that the contravention occurred without his consent or involvement, and that he used due diligence to prevent the contravention.

56. Insurance Commissioner may sue - If the Insurance Commissioner considers that it is in the interests of the owners of policies subject to a statutory fund to do so, the Insurance Commissioner may take action, in the name and for the benefit of the insurer, against any person liable under section 55.

PART VIII **CHANGES IN OWNERSHIP OR CONTROL OF INSURERS**

57. Interpretation - In this Part -
“controlling interest” in respect of an insurer, means an interest held by a person:

- (a) by whom more than 20 percent of the -
 - (i) shares;
 - (ii) nominal capital;
 - (iii) paid up capital; or

- (iv) voting power, is held; or
- (b) who has control of the insurer by other means, including directorship.

58. Approved scheme required-(1) An insurer who is licensed under this Act shall not:

- (a) sell or transfer any part of its insurance business to another insurer;
 - (b) buy or otherwise acquire any part of the insurance business of another insurer; or
 - (c) amalgamate any part of its insurance business with the insurance business of any other insurer,
- except under a scheme approved by the Insurance Commissioner under this Part.

(2) A person who has a controlling interest in an insurer licensed under this Part shall not transfer that interest through sale or otherwise to another person except under a scheme approved by the Insurance Commissioner under this Part.

(3) No person may acquire a controlling interest in an insurer licensed under this Act except under a scheme approved by the Insurance Commissioner under this Part.

(4) A proposed scheme shall set out:

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

(5) An insurer who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 1000 penalty units.

59. Application for approval of a scheme-(1) An insurer, or other person who is a party to a deed or agreement by which the transfer, amalgamation, acquisition or sale is to be effected, may apply to the Insurance Commissioner for approval of a scheme.

(2) An application under subsection (1) shall be accompanied by the following documents:

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

(3) The Insurance Commissioner may require that any other report, abstract or information, oral or written, be provided.

60. Actuarial report on the scheme-(1) The Insurance Commissioner may arrange for an independent actuary to make a written report on a proposed scheme at the expense of the applicant.

(2) A copy of any report prepared under subsection (1) shall be given to each insurer concerned with the scheme.

61. Approval of a scheme-(1) In relation to an application made under section 59, the Insurance Commissioner may:

- (a) approve the scheme without modification;
- (b) approve the scheme subject to any modification being made to it, or subject to any conditions that the Insurance Commissioner imposes; or
- (c) refuse to approve the scheme.

(2) If the Insurance Commissioner refuses to approve a scheme he shall record the reasons for the decision and provide a copy of the reasons to the applicant.

(3) Within 30 days after an approved scheme has taken effect the applicant shall lodge with the Insurance Commissioner written confirmation that the scheme has been

implemented and shall furnish to the Insurance Commissioner any report, abstract or information that he requires.

PART IX
CONTROLS OVER INSURERS, BROKERS AND
AGENTS

Division 1 – General Powers of the Insurance Commissioner

62. Requirement to give information or produce records-

(1) For the purpose of securing compliance with any provision of this Act, the Insurance Commissioner may by notice in writing, require a licensee to provide any of the following:

- (a) written information concerning any matter relating to the business of the licensee;
- (b) written information concerning any matter related to a subsidiary or related company of the licensee, or any business supplying insurance products to the licensee;
- (c) any document, or copy document, relating to any matter referred to in paragraphs (a) or (b); and
- (d) any record related to the business of the licensee.

PROVIDED THAT where any information or document relates to a matter in dispute between a licensee and any other person, the information or document may be provided on the basis that it will not be disclosed to the other party.

(2) A notice given under subsection (1) shall specify the time and place at which the information, document or record is to be provided.

(3) The Insurance Commissioner may inspect any document or record provided under this section, and make copies.

(4) Where any document or record is stored in electronic form the licensee shall be required to produce a copy in comprehensible written form.

(5) Any person who complies with a requirement of the Insurance Commissioner under this section shall not incur any liability to any other person by reason only of that compliance.

63. Access to premises – For the purposes of ascertaining whether a licensee has contravened this Act, the Insurance Commissioner, or any employee of the Office of Insurance Commissioner authorising by him, may enter any premises for the purposes of searching for, inspecting, taking extracts and making copies of any records or documents of the licensee, if:

- (a) the occupier of the premises consents to the entry; or
- (b) otherwise in pursuance of an order of the District Court or Supreme Court authorising the entry.

Division 2 – Investigations

64. Investigation of licensees-(1) Subject to this section, if:

- (a) the Insurance Commissioner has reason to believe that –

- (i) an insurer is, or is likely to become, unable to meet its policy or other liabilities as they fall due; or

- (ii) a licensee has contravened a provision of this Act or a direction given under this Act, or a condition of its licence; or

- (b) a licensee has not complied with a requirement of a notice given under section 62,

the Insurance Commissioner may investigate, or order an investigation by an inspector into, the business of the licence.

(2) Unless the Insurance Commissioner is of the opinion that matters of urgency exist, or that there is a possibility that documents or records may be lost or destroyed by reason of any delay, an investigation conducted under subsection (1) shall only take place after the licensee has been given an opportunity to make representations in relation to the matters to be investigated.

65. Appointment of inspectors-(1) The Insurance Commissioner may appoint, by notice in writing, any person he considers to have the relevant experience, knowledge and qualification, to be an inspector to carry out an investigation

under this Part, but such person must not be employed, or in any way related to, the business to be investigated.

(2) A copy of the written notice of appointment of the inspector shall be given to the insurer to be investigated, and shall include details of the matters under investigation.

66. Access to premises - For the purposes of conducting an investigation under this Part, the Insurance Commissioner and an inspector appointed under section 65 shall have the same right to gain access to the premises of a licensee as is provided for in section 63.

67. Powers of inspectors-(1) In this section -

“prescribed person” means a person who:

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

(2) The Insurance Commissioner or an inspector appointed under section 65, may by notice in writing require a prescribed person to:

- (a) produce all or any of the records relevant to, or in respect of, the business of the licensee under investigation and which are in the custody of, or under the control of the prescribed person;
- (b) give all reasonable and necessary assistance in connection with an investigation under this Part;
- or
- (c) answer any questions concerning matters relevant to an investigation under this Part.

(3) In relation to any records produced under this section, the Insurance Commissioner or an inspector appointed under section 65:

- (a) may take possession of the records for as long as is necessary for the purposes of the investigation;
 - (b) may make copies of and take extracts from the records; and
 - (c) shall permit any person who would be entitled to inspect any of the records if they were not in the possession of the Insurance Commissioner, or an inspector, to inspect such of the records as the person is entitled to inspect.
- (4) Where any document or record is required to be produced under this section is stored in electronic form, the prescribed person shall produce a copy in comprehensible written form.
- (5) Any person who complies with a requirement of the Insurance Commissioner or an inspector under this section, shall not incur any liability to any other person by reason only of that compliance.

68. Compliance with the requirements of an inspector-(1) A prescribed person shall not:

- (a) refuse or fail to comply with a requirement made under section 67;
 - (b) in purported compliance with a requirement made under section 67, furnish information or make a statement that the person knows or suspects to be false or misleading.
- (2) Any prescribed person who:
- (a) fails to comply with a notice given under section 67;
 - (b) obstructs or hinders the Insurance Commissioner or an inspector in the course of exercising a power under section 67;
 - (c) fails to comply with any other requirement of section 67; or
 - (d) contravenes subsection (1)(b),
- commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

*Division 3 - Directions***69. Insurance Commissioner may issue directions-(1)**

Subject to this section, if the Insurance Commissioner is satisfied that a licensee:

- (a) is, or is likely to become, unable to meet its liabilities;
 - (b) is carrying on its business in a manner detrimental to its interests, or those of any of its policy holders, or to the public interest;
 - (c) has contravened a provision of this Act; or
 - (d) has breached any condition of its licence,
- the Insurance Commissioner may issue written directions to the licensee that he considers necessary.

(2) Without limiting the generality of subsection (1), directions given under this section may direct that an insurer:

- (a) shall not issue policies or undertake liability under contracts of insurance;
- (b) shall not issue policies in respect of, or undertake liability under contracts of insurance included in, any specified type of insurance product;
- (c) shall not renew policies of any specified type of insurance product;
- (d) shall institute any necessary internal control mechanism, through its Board of Directors or otherwise;
- (e) shall not dispose of, or otherwise deal with or remove from Samoa, any specified asset or assets;
- (f) shall make arrangements with respect to reinsurance to the satisfaction of the Insurance Commissioner;
- (g) shall not, except with the written consent of the Insurance Commissioner -
 - (i) enter into an arrangement or agreement for the sale or disposal of its business by amalgamation or otherwise, or for the carrying on of its business in partnership with another company; or

(ii) effect a reconstruction of the insurer.

(3) Except as provided for in subsection (4), the Insurance Commissioner shall not issue a direction under this section to a licensee without giving the licensee a reasonable opportunity to make representations to the Insurance Commissioner in relation to his proposed action, and any matter prompting the action.

(4) If the Insurance Commissioner is of the opinion that the immediate issue of directions is required in the public interest, he may dispense with the requirement of subsection (3).

(5) The Insurance Commissioner may revoke a direction given under this section at any time.

(6) A licensee who has been given a direction under this section may apply in writing to the Board of Directors, stating full particulars in support of the application, for a direction to be revoked or varied, and the Board of Directors shall:

- (a) confirm the direction given; or
- (b) if it considers that the direction is not appropriate or no longer necessary, revoke or vary the direction; and
- (c) in either case give the licensee written notice of the decision.

(7) A direction given under this section shall cease to have effect if an order is made for the winding up of the licensee.

(8) Any contravention of a direction given under this section does not affect the validity of a transaction involved in the contravening act.

Division 4 - Official Management and Winding-Up

70. Regulations - The Head of State, acting on the advice of Cabinet, may make Regulations in relation to the official management and winding up of licensees who are in breach of this Act or who are, or are likely to become, unable to meet their policy or other liabilities, including Regulations that provide for:

- (a) the grounds upon which action in relation to official management may be taken in respect of a licensee;

- (b) the appointment of official management of a licensee;
- (c) the objectives and purposes of placing a licensee under official management;
- (d) the duration of official management;
- (e) cancellation of official management;
- (f) the powers and obligations of persons appointed as official managers;
- (g) the powers of the Insurance Commissioner and official managers in relation to official management;
- (h) restrictions on the business of licensees placed under official management;
- (i) duties applying to licensees placed under official management;
- (j) offences in relation to official management, including a power to prescribe penalties being fines not exceeding 500 penalty units or imprisonment for terms not exceeding 12 months, or both;
- (k) the sale, transfer or other dealing with the business of a licensee under official management;
- (l) the stay of proceedings against a licensee under official management;
- (m) the payment of remuneration to persons appointed as official managers, and of other expenses of an official management;
- (n) indemnities for persons acting in relation to the official management of a licensee;
- (o) the voluntary winding up of licensees, or winding up pursuant to court order;
- (p) the rights and powers of the Insurance Commissioner in relation to petitions for winding up a licensee;
- (q) the valuation of assets and liabilities of an insurer for the purposes of a winding up;
- (r) the determination of policy values; and
- (s) the liability of directors of insurers in relation to the losses of statutory funds.

Division 5 - Cancellation of Licences

71. Cancellation of an insurer's licence-(1) The Insurance Commissioner may cancel the licence held by an insurer if requested to do so in writing by its principal officer, and if the Insurance Commissioner is satisfied that the insurer has no liabilities in respect of its insurance business.

(2) The Insurance Commissioner may, by notice in writing, cancel the licence of an insurer:

- (a) if the insurer fails to commence its business within 6 months of the issue of its licence;
- (b) if the Insurance Commissioner is satisfied that an insurer has not during the preceding 12 months carried on insurance business in Samoa or elsewhere, and has not had, during that period, liabilities in respect of its insurance business; or
- (c) if the insurer goes into liquidation, commences to be wound up, or is otherwise dissolved.

(3) The Insurance Commissioner shall give notice in writing to an insurer of his intention to cancel its licence, which shall:

- (a) state the grounds upon which the action to cancel the licence is based; and
- (b) notify the insurer that it has 14 days within which to show cause why its licence should not be cancelled.

(4) The cancellation of an insurer's licence shall take effect on a date determined by the Insurance Commissioner and notified to the insurer.

(5) The Insurance Commissioner shall publish a notice of the cancellation of any licence in the Savali, and in a newspaper circulating in Samoa.

(6) A reference in this section to an insurer having no liabilities in respect of its insurance business, includes a reference to an insurer that has, under Part VIII, transferred or assigned to another company licensed under this Act the whole of its interests (including rights and benefits), under all contract of insurance in respect of its insurance business.

(7) Within 7 days after the cancellation of an insurer's licence takes effect, the insurer shall return its licence to the Office of the Insurance Commissioner.

72. Cancellation of a broker or agents licence-(1) The Insurance Commissioner may at any time cancel the licence of a broker or agent if he considers that he has reasonable grounds to do so.

(2) Without limiting the generality of subsection (1), there are reasonable grounds to cancel a licence if:

- (a) the broker or agent fails to comply with -
 - (i) this Act or any Regulation made under it;
 - (ii) any condition of its licence; or
 - (iii) any notice or direction issued or applying to it under this Act;
- (b) the broker or agent -
 - (i) becomes bankrupt or insolvent; or
 - (ii) is convicted, in Samoa or elsewhere, of an offence involving dishonesty, money laundering or the funding of terrorism;
- (c) the Insurance Commissioner is satisfied that the business of the broker or agent -
 - (i) is not being conducted in accordance with sound insurance, accounting or commercial practices or principles; or
 - (ii) is being conducted in a manner detrimental to the interests of its policy holders, insurers, the insurance industry or the public interest;
- (d) the Insurance Commissioner is satisfied the broker or agent has ceased to carry on the business for which it was licensed; or
- (e) the broker or agent goes into liquidation, commences to be wound up or is otherwise dissolved.

(3) Within 7 days after the cancellation of a licence takes effect under this section, the broker or agent shall return the licence to the Insurance Commissioner.

73. Continuing the business of broker after cancellation -

The Insurance Commissioner may by notice in writing:

- (a) direct that a broker whose licence has been cancelled, carry on its business for a period specified by the Insurance Commissioner for the purpose of concluding or disposing of transaction commenced but not concluded on behalf of its customers; and
- (b) impose any directions on the broker that the Insurance Commissioner thinks fit as to the manner in which the business is to be concluded, or as to any other matter relating to the cessation of the business in order to protect customers and the general public.

PART X

RIGHTS OF POLICY HOLDERS

Division 1 - Obligations of licensees to customers'

74. Liability for conduct of agents and employees-(1)

This section applies to the conduct of an employee or agent of an insurer:

- (a) on which a person in the circumstances of the insured could be reasonably expected to rely; and
 - (b) on which the insured in fact relied in good faith.
- (2) An insurer is responsible, as between the insurer and the insured, for the conduct of an employee of the insurer in relation to any matter relating to insurance, whether or not the employee acted within the scope of his employment.
- (3) If a person is the agent of one insurer only, the insurer is responsible, as between the insurer and the insured, for the conduct of an agent of the insurer in relation to any matter relating to insurance, whether or not the agent acted within the scope of the authority granted by the insurer.

(4) The responsibility of an insurer under this section extends so as to make the insurer liable in respect of any loss or damage suffered by the insured as a result of the conduct of the agent or employee, but this does not affect the liability of the agent or employee of an insurer to an insured.

(5) Any provision of an agreement that purports to alter or restrict the operation of this section shall be void.

(6) An insurer who makes or offers to make an agreement in respect of which subsection (5) applies commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units.

75. Payments to intermediaries-(1) If a contract of insurance is arranged or affected by an intermediary, payment to the intermediary of moneys payable by an insured (or intending insured) to the insurer in relation to the contract, whether in respect of a premium or otherwise, is a discharge, as between the insured and the insurer, of the liability of the insured to the insurer in respect of those moneys.

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

(3) An agreement, in so far as it purports to alter or restrict the operation of this section, is void.

76. Intermediaries to give certain information-(1) An intermediary who arranges or effects a contract of insurance shall, before arranging or effecting the contract, or as soon as possible after the contract is effected:

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

(2) If the contract of insurance is one of a number of contracts arranged by an intermediary for the insured, it is sufficient compliance with subsection (1) if the intermediary gives the required particulars as they relate to the package of contracts.

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

77. Duty of intermediary to remit premiums-(1) In this section -

“insurer” means a person who carries on insurance business in Samoa or elsewhere, whether licensed under this Act or not.

(2) If:

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

the intermediary shall pay such money to the insurer within 30 days after the receipt of the money by the intermediary.

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

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

78. Intermediary to explain proposals and policies-(1)

An intermediary shall:

- (a) provide a reasonable explanation to a person proposing to enter into or renew a contract of insurance, of the contents of all documents required to be signed by that person;
- (b) communicate to the insurer all information of which the intermediary is aware at the time negotiating a contract of insurance, or a renewal, and which is likely to affect the contract; and
- (c) provide a reasonable explanation to the insured of the contents of the insurance policy, the extent of cover under it and any exclusions applying to the policy.

(2) An intermediary who contravenes this section is liable to the insurer and the insured for any loss resulting from the contravention.

(3) The obligations imposed by this section are in addition to, and do not derogate from, from any obligations or liabilities of an intermediary under any other law.

79. Disclosure by broker acting under binder-(1) In this section:

“binder” means an authority given by an insurer to an intermediary:

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

but does not include an authority of the kind referred to in paragraph (a) that is limited to effecting contracts of insurance by way of interim cover.

“insurer” means a person who carries on insurance business in Samoa or elsewhere, whether licensed under this Act or not.

(2) A broker who intends to act under binder in arranging a contract of insurance or settling a claim shall, before arranging the contract or dealing with or settling a claim, notify the intending insured in writing that:

- (a) the broker will be acting under the authority given by the insurer to do so; and
 - (b) the broker will be acting as agent of the insurer and not of the intending insured.
- (3) A contract arranged, or a claim dealt with or settled in contravention of this section is voidable at the option of the insured, subject to:
- (a) the rights of the parties acquired without notice and for good and valuable consideration; and
 - (b) compliance with the principles of common law and equity relating to the avoidance of contracts.
- (4) A broker shall not enter into a binder arrangement with an insurer without the prior written approval of the Insurance Commissioner.
- (5) A broker who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

Division 2 - General provisions applying to policies

80. General requirements of policies - In relation to every policy of insurance applying in Samoa, the following principles and conditions shall apply:

- (a) no insurance policy shall be invalidated by reason of the non-compliance with any provision of this Act, including a requirement that a licence be held;
 - (b) the sum insured, premium and every other amount of money mentioned in a policy issued in Samoa, or renewed after this Act has come into effect, shall be expressed in Samoan tala -
- PROVIDED THAT** the Insurance Commissioner may give approval in writing for a policy to be stated in a foreign currency if all parties to the policy agree to it and if the permission given by the Insurance Commissioner is endorsed on the policy;
- (c) nothing in a proposal for insurance, a policy document or any endorsement of a policy document, or any material issued by the insurer

to explain the terms of a policy, may be inaccurate or likely to mislead an insured, and the Insurance Commissioner may –

- (i) require that an insurer provide a copy of any document that may be in breach of this provision;
 - (ii) direct an insurer to amend the terms of any document that are considered to be in breach of this provision;
- (d) at least 14 days notice shall be given to an insured of the expiration of a policy that is provided for a stated time or is of a type that it is usual for renewal to be negotiated, and any such policy shall not expire until the expiration of 14 days from the date on which notice is given under this section –

PROVIDED THAT this requirement does not apply to a life insurance policy which expires or matures on a date specified in the policy document; and

- (e) an insurer who wishes to exercise a right to cancel a contract of insurance shall give written notice to the insured of the proposed cancellation, and the cancellation shall take effect at the latest of the following times –
 - (i) 4 o'clock in the afternoon of the 14th day, or in the case of a life policy midnight on the 28th day, after the day on which the notice is given;
 - (ii) any time specified in the contract of insurance; or
 - (iii) any time specified in the notice.

81. Insured's right to decline policy-(1) Within 28 days of entering into a life policy or any other type of policy that may be prescribed by regulation made under this Act, if an insured:

- (a) objects to any term or condition of the policy;
- (b) decides that the policy is not required by him; or
- (c) decides that the premiums are in excess of his ability to pay and maintain,

the insured may by writing advise the insurer of his decision to decline to proceed with the contract, and may return the policy.

PROVIDED THAT the Insurance Commissioner may approve a time period that it is different to that prescribed in this section if -

(i) the period is not less than 20 days from the date of receipt of a policy; and

(ii) the period is stated in the policy document and was brought to the attention of the policy holder at the time that the agreement to acquire the policy was made.

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

(3) For the purpose of this section, if a policy or written advice is sent by registered post, the next day after the date of sending shall be deemed to be the date receipt of receipt of the policy or advice.

(4) Every policy to which this section applies, issued on or after the commencement of this Act, shall have printed on it or attached to it, a notice informing the insured of the rights conferred by this section.

Division 3 - Specific requirements relating to life policies

82. Provisions applying to life policies - The following provisions apply to all life policies issued in Samoa after the commencement of this Act (except in relation to paragraph (f) which applies regardless of when the policy was issued):

(a) a life policy may not be avoided on the ground that the person whose life is insured committed suicide or suffered capital punishment, unless the policy expressly excludes liability for such events;

(b) any term of a life policy is void if it limits, to an amount less than the total sum insured and bonuses, the amount payable under the policy in

the event of death on war service, unless the person to whom the policy is issued has signed a specific acknowledgement of such a term or condition;

- (c) a minor aged 10 years or more who has not attained the age of 21 years may, with the written consent of a parent or guardian -
 - (i) enter into a life policy on his own life or on another life; or
 - (ii) take an assignment of a life policy,and, subject to paragraph (d), is competent in all respects to have and exercise the powers and privileges of an insured in relation to the policy;
- (d) a minor who has not attained the age of 21 years is not competent to assign or mortgage a policy except with the consent in writing of his parent or guardian;
- (e) subject to any law relating to bankruptcy, the rights and interests of a person under -
 - (i) a life policy effected on his own life; or
 - (ii) a life policy effected on the life of the person's spouse,are not liable to be applied or made available by any judgment, order or process of a court in discharge of a debt owed by a person, regardless of when a policy was issued and whether or not a policy is owned by the person;
- (f) subject to any law relating to bankruptcy, if money becomes payable on the death of a person after the commencement of this Act under a policy effected on the person's life, the following provisions apply -
 - (i) except as permitted by sub-paragraph
 - (ii), the money is not liable to be applied or made available under any judgement, order, process of the court, or in any other manner whatsoever in payment of the person's debts;

(ii) the money may be applied in payment of a debt of the person if the person expressly contracted for the money to be so applied, or charged the money with payment of the debt (including by way of an assignment of the policy) or gave an express direction in a will for the money to be so applied;

(iii) a mere direction to pay debts, or a charge of debts on the whole of a person's estate, or a creation of a trust for the payment of debts do not constitute a direction for the purposes of sub-paragraph (ii);

- (g) all payments under a life policy shall be paid within a reasonable time after receipt of a claim, and all supporting documentation, by an insurer, and if any payment is not made within a reasonable time the insurer shall pay compound interest at the maximum rate permissible under the Penalty Interest Rates Act 1998 on the amount unpaid;
- (h) an insurer is not, in any circumstances, bound to see to the application of any money it pays in respect of a life policy;
- (i) an insurer may, subject to the Rules of the Supreme Court, pay into court any money payable by the insurer in respect of a policy for which, in the insurer's opinion, no sufficient discharge can otherwise be obtained, and such payment discharges the insurer from any liability under the policy in relation to that money;
- (j) an insurer shall within 3 months after the end of each calendar year, provide to the Insurance Commissioner a statement of unclaimed monies as at the end of that year, and shall at that time pay to the Insurance Commissioner an amount equal to the amount of unclaimed monies shown in the statement; and
- (k) if a claim arising under a life policy is paid, no deductions are to be made on account of premiums or debts due to the insurer under any

other policy, except with the written consent of the claimant.

83. Regulations relating to life insurance policies - The Head of State, acting on the advice of Cabinet, may make Regulations in relation to policies of life insurance and the rights and interests of persons in relation to them, including Regulations that make provision in relation to:

- (a) restrictions on the forfeiture of other types of life insurance policies such as industrial life policies;
- (b) the assignment or mortgage of life policies, and the vesting of life policies in trusts;
- (c) the payment of moneys under life policies and the application of those monies without the production of letters of administration;
- (d) dealing with life policies where the owner of the policy dies before the person whose life is insured;
- (e) the replacement of lost policy documents;
- (f) the nomination of persons to receive monies due under life policies where the owner of the policy insures his own life; and
- (g) any matter that clarifies or assists in the implementation of any of the matters referred to in section 82.

PART XI **OFFENCES AND PENALTIES**

84. Offences by unlicensed persons-(1) A person who holds himself out to be licensed under this Act to commence or carry on any business for which a licence is required by this Act, when that person is not licensed, commits an offence and is liable upon conviction:

- (a) in the case of holding out as a licensed insurer, to a fine not exceeding 200 penalty units or to a term of imprisonment for a term not exceeding 1 year, or both, and in the case of a continuing offence, to a further fine not exceeding 20 penalty units

for every day during which the offence continues;
and

- (b) in the case of holding out as a licensed intermediary, to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 6 months, or both, and in the case of a continuing offence, to a further fine not exceeding 10 penalty units for every day during which the offence continues.

(2) Any person whom the Insurance Commissioner suspects is carrying on any business for which a licence is required by this Act and who is not so licensed, shall comply with a request made by the Insurance Commissioner for his books, accounts and records to be made available for inspection, and, any person who fails to comply with a request so made commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units, and in the case of a continuing offence, to a further fine of 5 penalty units for each day during which the offence continues.

85. General offences by licensees-(1) Any licensee who:

- (a) fails to comply with a requirement of section. 13 in relation to the appointment or removal of a principal officer;
 - (b) fails to display a copy of its licence as required by section 16(3); or
 - (c) fails to comply with any requirement imposed by this Act for which no other penalty is prescribed,
- commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

(2) A licensee who:

- (a) fails to comply with any condition applying to a licence under subsection 18(1);
- (b) fails to keep books and records as required by section 31;
- (c) in relation to the audit requirements of section 32 -
 - (i) fails to appoint an approved auditor;
 - (ii) appoints an auditor who is not approved under section 32; or

(iii) fails to remove an auditor when required to do so:

- (d) fails to provide a copy of an audit report and the accounts and statements required by section 33;
 - (e) fails to comply with section 35 in relation to a requirement made by the Insurance Commissioner that a report be prepared, or that any document required under section 35(2) be provided;
 - (f) fails to comply with section 62 in relation to a requirement that any information, document or record be provided, or that it be provided in any required form;
 - (g) obstructs or hinders the Insurance Commissioner, or any person authorised by him, in relation to any inspection of documents or records under section 62;
 - (h) obstructs or hinders the Insurance Commissioner, or any person authorised by him, from entering any premises in pursuance of a court order issued under paragraph 63(b);
 - (i) obstructs or hinders the Insurance Commissioner or an inspector in the course of an investigation under section 64;
 - (j) obstructs or hinders the Insurance Commissioner or an inspector from entering any premises in pursuance of a court order as provided by section 66; or
 - (k) fails to comply with a direction given under section 69,
- commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

86. Offences by insurers - An insurer who:

- (a) fails to maintain the paid up capital required by section 24;
- (b) fails to comply with any solvency requirements under section 25;
- (c) contravenes section 28;

- (d) fails to have in place approved arrangements for reinsurance as required by section 29;
 - (e) contravenes section 30;
 - (f) fails to comply with section 36 concerning the maintenance of a register of policies;
 - (g) fails to comply with section 37 concerning the preparation of statements, and the provision of the statements and other documents to the Insurance Commissioner;
 - (h) fails to comply with section 38 concerning the appointment or removal of an actuary;
 - (i) fails to comply with section 39 concerning the requirement for an actuarial investigation;
 - (j) fails to comply with any requirement under Part VII in relation to the establishment, accounting requirement or operation of a statutory fund, or dealing with its assets or monies, including the allocation of a surplus; or
 - (k) fails to take any remedial action in relation to a statutory fund as required under section 54,
- commits an offence and is liable upon conviction to a fine not exceeding 200 penalty units.

87. Offences by intermediaries-(1) A broker or agent who:

- (a) contravenes subsection 18(2) or subsection 18(3);
- (b) fails to comply with section 41 concerning the maintenance of a register or policies;
- (c) fails to comply with section 42 concerning the establishment and operation of a broker's bank account;
- (d) fails to comply with section 43 concerning the preparation and provision of accounts or other returns;
- (e) fails to comply with a direction made under section 73;
- (f) contravenes section 76;
- (g) fails to comply with section 77 concerning the payment of monies received; or

(h) fails to comply with a duty under section 78 to explain proposals and policies, commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units.

(2) A broker shall not commit an offence under subsection (1) if the section of the Act relating to that offence applies only to agents, and an agent shall not commit an offence under subsection (1) if the section of the Act relating to that offence applies only to brokers.

PART XII **MISCELLANEOUS**

88. Service of notices etc.-(1) Any notice, direction or other document that may be given under this Act by the Insurance Commissioner or by any other person so authorised under this Act, may be served or given:

- (a) in the case of a person who is not licensed under this Act, by delivering it to that person or by sending it by registered post to the person at the usual or last known place of business or abode of that person; or
- (b) in the case of a licensee, by delivering it to the person or its principal officer, or by sending it by registered post to the person at the address given in the application for a licence, or any amended address notified to the Insurance Commissioner.

(2) Any notice delivered by registered post within Samoa shall be deemed to have been received by the person to whom it was addressed on the day following the day that it was posted.

89. Confidentiality-(1) No information, return or data relating to the business of a licensed person and acquired in the performance of duties under this Act, may be published or disclosed by the Office of Insurance Commissioner, except:

- (a) for the purpose of the performance or exercise of a function or power under this Act;

- (b) when lawfully required to do so by any court, or in connection with proceedings for any criminal offence;
 - (c) when the information is required to be disclosed by any law relating to money laundering or the suppression of terrorism;
 - (d) with the consent of the person to whom the information relates -
PROVIDED THAT where the information, return or data relates to a matter in dispute between a licensee and its customer, it shall only be provided to any other person in accordance with an order of the relevant court;
 - (e) to the extent that the information is available under any other Act or in public document;
 - (f) in aggregated or summary form, in a manner which prevents any information being disclosed from being identified as relating to a particular person;
 - (g) by the Insurance Commissioner in confidence to a supervisory authority in any other country for the purpose of the exercise of functions corresponding to or similar to those conferred on the Office of Insurance Commissioner under this Act; or
 - (h) where the information has been received from a supervisory authority in another country, in accordance with any restriction or approval made by that authority.
- (2) No person to whom any information is disclosed under subsection (1) may disclose or use the information, except:
- (a) in accordance with any conditions specified by the Insurance Commissioner; or
 - (b) as necessary or desirable in connection with the performance of any function under law.
- (3) A person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding 200 penalty units.

90. Insured's right to select insurer-(1) No bank, financial institution or other body or person whose business involves the lending of money, may require, as a condition for making a loan, that a person applying for a loan must insure against risk with a particular insurer.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 200 penalty units.

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

91. Liability of directors and employees - A director of a company, and any officer, employee or agent (whether of a company or of an individual), who aids, abets, counsels or procures the commission of an offence against this Act by the company or individual, as the case may be, commits an offence and is liable to the penalty applying in relation to the commission of the original offence.

92. Registers to be kept by the Insurance Commissioner-

(1) The Office of Insurance Commissioner shall keep and maintain the following registers:

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

in a form and manner determined by the Insurance Commissioner.

(2) All registers maintained under this section shall be kept current and may be inspected at such times, at the place and upon payment of a fee, as are determined by the Insurance Commissioner.

93. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make Regulations that:

- (a) are provided for by this Act;
- (b) relate to any function, power or duty under this Act;

- (c) protect the rights of insured persons, policy holders and prospective customers of licensees, or which regulate the relationship between insurers and intermediaries; or
- (d) are necessary for, or incidental to, the implementation of the provisions of this Act and the proper supervision of the insurance industry in Samoa.

(2) Regulations made under this Act may prescribe offences and may impose penalties in respect of the commission of any offence, being fines not exceeding 100 penalty units or imprisonment for terms not exceeding 6 months, or both.

PART XIII
REPEAL, SAVINGS AND TRANSITIONAL
ARRANGEMENTS

94. Repeal of the Insurance Act 1976 - The Insurance Act 1976 is hereby repealed.

95. Savings of licences etc-(1) Subject to section 96, all licences issued under the Insurance Act 1976 in force on the date of commencement of this Act shall remain in force for their current term, or until cancelled under section 71.

(2) All legal proceedings, investigations, notices and directions issued under the Insurance Act 1976 and not yet concluded at the date of commencement of this Act, shall continue as if taken or made under the authority of the Insurance Commissioner under this Act.

96. Transitional arrangements-(1) Subject to subsection (2), all licences saved by reason of subsection 95(1) shall remain in force for a period of 6 months or until they next fall due for renewal under section 6(2) of the repealed Act, whichever is the later, and a licensee shall thereafter be required to be in full compliance with this Act, but a licenses saved shall be subject to the following provisions from the date of its commencement:

- (a) sections 13, 27, 28, 30;
- (b) Divisions 1 and 2 of Part VI;
- (c) Part VII;
- (d) Part VIII;
- (e) Divisions 1, 2 and 3 of Part IX; and
- (f) Parts X -

Provided that where compliance is dispensed with under subsection 98(2) during this transition period, this operates to dispense with the requirement to comply with any of the provisions referred to in this subsection.

(2) If the Insurance Commissioner is satisfied that circumstance exist that justify the further extension of a licence saved by section 95, he may by notice in writing approve the extension of that licence for a period not exceeding 12 months from the date of commencement of this Act, and the extension shall apply, subject to any conditions imposed by the Insurance Commissioner, notwithstanding that the current term of the licence has expired.

(3) All brokers and agents carrying out business as at the commencement of this Act shall be required to be licensed and otherwise in full compliance with this Act no later than 6 months after its date of commencement, but shall be subject to the following provisions of this Act from the date of its commencement:

- (a) sections 13, 27, 41, 42, 43;
- (b) Divisions 1, 2 and 3 of Part IX; and
- (c) Division 1 of Part X.

97. Transfer of funds held under the repealed Act-(1)

Any deposits or other monies held by or on behalf of the Government under the Insurance Act 1976 shall be transferred to an account established by the Insurance Commissioner for the purpose of holding the deposits of licensees required by this Act.

(2) Any monies transferred under subsection (1) that are a deposit made under the repealed Act by a licensee under this Act, shall be held for the purposes of this Act as payment or part payment of the deposit required from the licensee under this Act.

(3) Any other transferred monies not referred to in subsection (2) shall be dealt with by the Insurance Commissioner in a manner that is consistent with this Act.

98. Approval of arrangements for insurers opting to seek no further business in Samoa-(1) Notwithstanding the provisions of Parts III and IV, the Insurance Commissioner may approve the licensing of an insurer under this Act which is not able to comply with each and every obligation of those Parts if that insurer:

- (a) holds a licence under the Insurance Act 1976 at the time this Act comes into force and at the time of seeking a determination from the Insurance Commissioner under this section has a satisfactory record in the industry prior to the coming into force of this law; and
 - (b) at the time of seeking a determination under this section gives an undertaking that it shall not seek new business or issue new policies in Samoa; and
 - (c) agrees to be bound by any requirement imposed by the Insurance Commissioner under this section.
- (2) In making a determination under subsection (1), the Insurance Commissioner may:
- (a) dispense with compliance with any requirement imposed under Parts III and IV, VI and VII; and
 - (b) impose any other condition or requirement that is considered necessary to achieve the objects of this Act, preserve the integrity of the insurance industry in Samoa and protect the interests of existing policy-holders.
- (3) A determination made under this section shall cease to have effect upon a breach of the undertaking given under subsection (1)(b) or of any condition or requirement imposed under subsection (2)(c), and from that date all the requirements of Parts III, IV, VI and VII must be met.

(4) Notwithstanding any other provision of this Act, while compliance is dispensed with under this section is current, the insurer shall not be liable for conviction for an offence under this Act if the exemption has dispensed with compliance with the matter to which the offence relates.

99. Amendment to the Central Bank of Samoa Act 1984
– Section 4 of the Central Bank of Samoa Act 1984 is amended by adding paragraph (g) as follows:

“(g) to regulate the insurance industry in Samoa, and other financial institutions, in accordance with any Act making provision in that regard.”

The Insurance Act 2007 is administered by the Central Bank of Samoa.