

Insurance Ordinance 2000

Insurance Ordinance

Table of Contents

Insurance Ordinance 2000 – Text

INSURANCE ORDINANCE, 2000

TABLE OF CONTENTS

PART I

PRELIMINARY

1. Short title, extent and commencement
2. Definitions
3. Division of insurance business into life and non-life
4. Classes of life and non-life business

PART II

PROVISIONS APPLICABLE TO INSURERS

5. Persons eligible to transact insurance business
6. Registration of insurers
7. Commission may register insurer upon satisfaction
8. Inspection and supply of copies filed with Commission
9. Duration and revocation of registration
10. Notification of grant or revocation of registration
11. Conditions imposed on registered insurers
12. Criteria for sound and prudent management
13. Restriction on issue of certain life policies

PART III

STATUTORY FUNDS OF AND

OTHER SPECIAL REQUIREMENTS FOR LIFE INSURANCE COMPANIES

14. Statutory and other funds of life insurance companies
15. Establishment of statutory fund
16. Policies to be referable to specific statutory funds
17. Assets, liabilities, revenues and expenses of funds
18. Disposition of assets of statutory funds
19. Prohibition on reinsurance between statutory funds
20. Capital payments to life insurance statutory funds
21. Distribution of capital in a life insurance statutory fund
22. Allocation of surplus on life insurance business
23. Restriction on dividends and bonuses
24. Declaration of interim bonuses
25. Transitional provisions
26. Appointed actuary
27. Responsibilities of appointed actuary

PART IV

REQUIREMENTS AS TO CAPITAL AND STATUTORY DEPOSITS

28. Requirements as to capital
29. Deposits
30. Reservation of deposits
31. Refund of deposits

PART V

SOLVENCY REQUIREMENTS

- 32. Admissible assets
- 33. Assets and liabilities in Pakistan
- 34. Valuation of assets and liabilities
- 35. Net admissible assets of life insurers
- 36. Insurers of non-life insurance business to have assets in excess of minimum solvency requirement
- 37. Prohibition of loan
- 38. Liability of directors, etc for loss due to contraventions of sections 35, 36 or 37
- 39. Assets of insurer how to be kept

PART VI

REINSURANCE ARRANGEMENTS

- 40. Special definitions and conditions applicable to this Part
- 41. Requirement to effect and maintain reinsurance arrangements
- 42. Compulsory cession
- 43. Premiums and statements
- 44. Rules and regulations for the administration of compulsory reinsurances

PART VII

ACCOUNTS AND AUDIT

- 45. Books and records
- 46. Accounting and reporting
- 47. Compliance with companies laws relating to accounts, reports, etc.
- 48. Audit
- 49. Special audit
- 50. Actuarial report

51. Submission of returns
52. Exemption from certain provisions of the Companies Ordinance, 1984
53. Furnishing reports
54. Abstract of proceedings of general meetings
55. Custody and inspection of documents and supply of copies
56. Power of Commission regarding returns
57. Power of Commission to order actuarial report
58. Evidence of documents

PART VIII

INVESTIGATION, DIRECTIVES, ETC.

59. Power of Commission to order investigation
60. Power of the Commission to give directions to the insurer
61. Power of Commission to call for information and access
62. Power of Commission to require plan
63. Power of Commission to issue direction to cease entering into new contracts of insurance
64. Power to require calling of meeting of directors etc.
65. Power to remove Chairman, Director, etc. of the insurer
66. Power to prescribe maximum levels of acquisition costs and maximum levels of management expenses

PART IX

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

67. Approval of acquisition or transfer
68. Amalgamation and transfer of life insurance business.
69. Sanction of amalgamation and transfer by Court.

70. Statements required after amalgamation and transfer

PART X

ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATION

71. Assignment and transfer of life insurance policies

72. Nomination by policy holder

73. Nomination under group life policies

PART XI

MARKET CONDUCT

74. Application of this Part only to direct insurance business

75. Duty of utmost good faith

76. Insurer not to engage in misleading or deceptive conduct

77. Construction of ambiguities in favour of policy holder

78. Exclusion of provisions of Ordinance void; an offence

79. Remedies for non-disclosure or misrepresentation

80. Policy not to be called in question on ground of mis-statement after two years

81. Tribunal may disregard avoidance in certain circumstances

82. Cancellation of a life insurance policy for fraudulent claim

83. Power of the Commission to prescribe rules for market conduct

84. Commission to have power to undertake compliance visits

85. Commission to have power to require a survey to be performed

86. Contractual stipulations for placing insurance with specific or named insurers

87. Provisions when not to constitute discrimination

PART XII

SURRENDER, LAPSE AND FORFEITURE OF CERTAIN LIFE INSURANCE POLICIES

88. Special definitions and interpretation for this Part

89. Acquisition of surrender value

90. Surrender of policy at policy holder's option

91. Surrender of policy at insurer's option

92. Paid-up policy at policy holder's option

93. Non-forfeiture

PART XIII

INTERMEDIARIES

94. This Part to apply only to direct insurance business

95. Liability of Insurer for act or omissions of agent

96. Persons acting as agents

97. Minimum qualifications for agents

98. Insurer to maintain register of agents

99. Payments by and to insurance agents

100. Duty to disclose agency

101. Restriction on life insurance agents, becoming directors of life insurance companies

102. Insurance brokers to be licensed

103. Brokers to be presumed agents under certain circumstances; liability of brokers when not so presumed

104. Ownership and management interests inter se of brokers and insurers prohibited

105. Broker's duty to disclose relationships

106. Payments by and to insurance brokers

107. Requirements in respect of persons ceasing to act as insurance brokers

108. Basis for payment of remuneration by insurers to insurance brokers

- 109. Insurance brokers to report annually to Commission
- 110. Power to inspect insurance agents and insurance brokers
- 111. Persons permitted to act as insurance surveyors
- 112. Licensing of insurance surveyors
- 113. Registration of authorised surveying officers
- 114. Classes of insurance surveying

PART XIV

SPECIAL PROVISIONS OF LAW

- 115. Application of Pakistan law to policies issued in Pakistan
- 116. Payment of money into Tribunal
- 117. Small Disputes Resolution Committees
- 118. Payment of liquidated damages on late settlement of claims
- 119. Supply of copies of proposals and medical reports
- 120. Prohibition of business on dividing principle

PART XV

INSURANCE TRIBUNAL

- 121. Constitution of the Tribunal
- 122. Powers of Tribunal
- 123. Procedure of the Tribunal
- 124. Appeal

PART XVI

INSURANCE OMBUDSMAN

- 125. Appointment of Insurance Ombudsman
- 126. Terms and conditions of Insurance Ombudsman

- 127. Jurisdiction, functions and powers of Insurance Ombudsman
- 128. Reference to Insurance Ombudsman by Court
- 129. Procedure for making complaints
- 130. Recommendations for implementation
- 131. Power to call for information
- 132. Duties of insurers
- 133. Duty and power of the Insurance Ombudsman to report to the Commission
- 134. Report of Insurance Ombudsman

PART XVII

APPOINTMENT OF ADMINISTRATORS

- 135. When Administrator for management of insurance business may be appointed
- 136. Powers and duties of the Administrator
- 137. Powers of Administrator respecting property liable to attachment under section 160
- 138. Cancellation of contracts and agreement
- 139. Termination of appointment of Administrator
- 140. Finality of decision of appointing Administrator
- 141. Penalty for withholding document or property from Administrator
- 142. Protection of action taken under sections 135 to 139

PART XVIII

WINDING UP

- 143. Winding up by the Court
- 144. Voluntary winding up
- 145. Court may order continuation of life insurance business
- 146. Court may appoint special manager of life insurance business

- 147. Court may appoint independent actuary
- 148. Powers of Court to reduce contracts of life insurance
- 149. Commission empowered to apply for directions
- 150. Commission entitled to notice and hearing
- 151. Commission entitled to obtain information
- 152. Determination of insurance liabilities
- 153. Application of statutory fund assets
- 154. Winding up secondary companies
- 155. Return of deposits

PART XIX

OFFENCES AND PENALTIES

- 156. Penalty for default in complying with, or acting in contravention of this Ordinance
- 157. Penalty for transacting insurance business in contravention of sections 5, 6 and 29
- 158. Penalty for false statement in document
- 159. Wrongfully obtaining or withholding property
- 160. Power of Tribunal to order restoration of property of insurer or compensation in certain cases
- 161. Notice to Commission and hearing
- 162. Previous sanction of Commission for institution of proceedings
- 163. Power of Court to grant relief

PART XX

MISCELLANEOUS

- 164. Service of notices
- 165. Insurance of interests in Pakistan

166. Insurance of public property

PART XXI

RULES AND REGULATIONS

167. Power to make rules and regulations

PART XXII

REPEAL AND SAVINGS

168. Repeal

169. Repealed Act to apply to certain insurers ceasing to enter into new contracts before commencement of this Ordinance

170. Savings

171. Exemptions

172. Removal of difficulties

AN ORDINANCE To regulate the business of the insurance industry to ensure the protection of the interests of insurance policy holders and to promote sound development of the insurance industry and for matters connected therewith and incidental thereto; WHEREAS, it is expedient to repeal and re-enact the law relating to the business of insurance; AND WHEREAS the National Assembly and the Senate stands suspended in pursuance of Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999; AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action; NOW, THEREFORE, in pursuance of the proclamation of Emergency of the fourteenth day of October, 1999, and Provisional Constitution Order No. 1 of 1999, as well as Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

PART I

PRELIMINARY

1. Short title, extent and commencement.-

- (1) This Ordinance may be called the Insurance Ordinance, 2000.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context,-

(i) "actuary" means a person possessing such actuarial qualifications as may be prescribed;

(ii) "appointed actuary" means the actuary required to be appointed by a life insurer pursuant to the provisions of section 26 of this Ordinance;

(iii) "approved securities" means Government securities, and any other security charged on the revenues of the Federal Government or of a Provincial Government, or guaranteed fully as regards principal and profit or return (however called or designated) by the Federal Government or a Provincial Government; and any debenture or other security for money issued under the authority of any Act of the Federal Legislature or any Provincial Legislature by or on behalf of the trustees of the port of Karachi; any security issued under the authority of any Act of Parliament or of a Provincial Assembly; and any security specified as an approved security for the purpose of this Ordinance by the Federal Government by notification in the official Gazette;

(iv) "approved auditor" means an auditor approved by the Commission for the purpose of performing the functions assigned to auditors under this Ordinance;

(v) "auditor" means a person qualified under the provisions of section 254 of the Companies Ordinance, 1984 (XLVII of 1984), to act as an auditor of companies;

(vi) "authorised person" means, in the case of a company, a director, including the chief executive, (by whatever name called), or in the case of insurers being bodies corporate incorporated outside Pakistan and continuing business as such after the commencement of this Ordinance,

10 the closest comparable equivalent thereto, under the laws of the place of incorporation of such foreign body corporate;

(vii) "banking company" has the meaning assigned to the term in clause (a) of section 2 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997);

(viii) "base rate" means the effective annual rate implied by the most recent repurchase rate that is published from time to time in a circular issued by the Securities Department of the State Bank of Pakistan for six months Pakistan Treasury Bills, or, if such rate is not available, the most recent repurchase rate for six months Short Term Federal Bonds, or, if neither of such rates is available, the most recent repurchase rate for any other short term paper issued by the Federal Government of an approximately similar tenor, whether in addition to or in substitution for any of the foregoing;

(ix) "Board" means the Policy Board established under section 12 of the SECP Act;

(x) "borrower" has the meaning assigned to the term in clause © of section 2 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997);

(xi) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer means certified by an authorised person on behalf of such insurer to be a true copy or a correct translation, as the case may be;

(xii) "class of business" means a classification of insurance business having similar characteristics, into which life insurance or non-life insurance may be divided;

(xiii) "Commission" means the Securities and Exchange Commission of Pakistan constituted under section 3 of the SECP Act;

(xiv) "company" has the meaning assigned to it in clause (7) of sub-section (1) of section 2 of the Companies Ordinance, 1984 and includes an existing company as defined in clause (15) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(xv) "continuous disability contract" means a contract under which a benefit is payable in the event of:

(i) the death, by a cause specified in the contract, of the person whose life is insured (the "insured"); or

(ii) injury to, or disability of, the insured as a result of accident or sickness; or

(iii) the insured being found to have a specified medical condition or disease;

(xvi) "Court" means the principal civil Court of original jurisdiction in a District, and includes a High Court in exercise of its ordinary civil jurisdiction; and in relation to Part IX and Part XVIII, shall have the meaning as in section 7 of the Companies Ordinance, 1984 (XLVII of 1984);

(xvii) "customer" has the meaning assigned to the term in clause (d) of section 2 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997);

(xviii) "direct", in relation to the business of insurance, means insurance other than reinsurance;

(xix) "domestic insurance policy" means a contract of insurance that provides

11 insurance cover in respect of loss of or damage to a building used primarily and principally as a residence for the policy holder, for persons with whom the policy holder has a family or personal relationship, or for both the policy holder and such persons, or loss of or damage to the contents of such a building, or both;

(xx) "duly attested" means attested in the manner required for financial or future obligations by Article 17 of the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984);

(xxi) "electronic media" includes the internet, radio, television, tapes, cassettes, all forms of electronic recording media including computer diskettes and CD-ROMs;

(xxii) "encumbrance" in relation to any property, movable or immovable, means any mortgage, charge (fixed or floating), hypothecation, pledge, assignment or transfer by way of security, or any other form of security or ownership interest less than absolute legal and beneficial ownership;

(xxiii) "eligible person" means a person specified in clauses (a) and (b) of subsection

(1) of section 5;

(xxiv) "finance" has the meaning assigned to the term in clause (e) of section 2 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997);.

(xxv) "Government securities" means Government securities as defined in the Securities Act, 1920 (X of 1920);

(xxvi) "group" in relation to contracts of life insurance, including health insurance, means contracts having a term not dependent on the termination or continuation of human life, under which the benefits are payable to a member of a group defined in the contract on the happening to that member during the term of the contract of a contingency defined in the contract, not being a contingency which is bound to happen;

(xxvii) "insurance" means the business of entering into and carrying out policies or contracts, by whatever name called, whereby, in consideration of a premium received, a person promises to make payment to another person contingent upon the happening of an event, specified in the contract, on the happening of which the second-named person suffers loss, and includes reinsurance and retrocession:

Provided that a contract of life insurance shall be deemed to be a contract of insurance notwithstanding that it may not comply with the definition set out in this clause;

(xxviii) "insurance broker" means a person carrying on the business of insurance broking;

(xxix) "insurance broking" means the arrangement of insurance for reward by a person other than an agent of an insurance company;

(xxx) "Insurance Ombudsman" means the officer appointed by the Federal Government under section 125;

(xxxi) "insurer" means:

(i) any company or other body corporate carrying on the business of insurance, which is a company or other body corporate incorporated under any law for the time being in force in Pakistan; and

(ii) any body corporate incorporated under the law of any jurisdiction outside Pakistan carrying on insurance business which carries on that business in Pakistan.

(xxxii) "investment contract" means a contract of insurance, providing for benefits to be paid on death or on a specified date or dates before death where the benefits paid are calculated by reference to either a running account or units under the contract whether or not the minimum value of that account or those units is guaranteed and providing for the account to be increased during the currency of the contract;

(xxxiii) "investment-linked" in relation to life insurance means investment contracts, the principal object of which is the provision of benefits calculated by reference to units, the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided;

(xxxiv) "lender" means a person inside or outside Pakistan carrying on the business of advancing money by way of loans or finance and includes a banking company;

(xxxv) "listed company" means a company, a body corporate or corporation (including a body corporate or corporation incorporated outside Pakistan) or other body whose securities are allowed to be traded on a stock exchange (inside or outside Pakistan);

(xxxvi) "loan" has the meaning assigned to the term in clause (f) of section 2 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997);

(xxxvii) "managing agent" has the meaning ascribed to that term in section 206 of the Companies Ordinance, 1984 (XLVII of 1984);

(xxxviii) "member of the family" in relation to any person, means the husband or a wife, the dependent father, mother, brother or sister, or a minor son or unmarried daughter of that person;

(xxxix) "mutual insurance company" means an insurer, being a company incorporated under the law of Pakistan or any country or state other than Pakistan, which has no share capital and of which, by its constitution, only and all policy holders are members;

(xl) "National Insurance Corporation" means the corporation established under the National Insurance Corporation Act, 1976;

(xli) "officer" has the meaning assigned to that expression in clause (24) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(xlii) "Pakistan Insurance Corporation" means the corporation established under the Pakistan Insurance Corporation Act, 1952 (XXXVIII of 1952);

(xliii) "participating", in reference to life insurance business, means contracts of life insurance, other than investment-linked contracts, health contracts, group life contracts and group health contracts, under the terms and conditions of which the policy holder has an entitlement to participate in distributions by the life insurer of profits or surpluses;

Explanation: a benefit paid under a policy is not a distribution of profit or surplus if the benefit is determined according to the terms and conditions of the contract and is not subject to the exercise of discretion by the insurer;

(xliv) "permanent capital fund" means a fund that is established in the records of a life insurance company not having a share capital, and which contains that part of the assets and liabilities of a life insurer which is attributed to it and is not attributed to any statutory fund maintained by that life insurer;

(xlv) "policy" means a contract of insurance;

(xlvi) "policy holder" means the person to whom a policy is issued or, in the case of a policy of life insurance, the person to whom the whole of the interest of the policy holder in the policy is

assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;

(xlvi) "policyholder liability", in relation to life insurance, means:

- (i) a liability that has arisen under a policy of life insurance; or
- (ii) a liability that, subject to the terms and conditions of a policy, will arise on the happening of an event, or at a time, specified in the policy;

(xlviii) "prescribed" means prescribed by rules made under section 167;

(xlix) "private motor property damage policy" means a contract of insurance that provides insurance cover in respect of loss of or damage to a motor vehicle or of the contents of a motor vehicle used primarily and principally as a means of private transport by the policy holder, by persons with whom the policy holder has a family or personal relationship, or by both the policy holder and such persons;

(l) "private company" has the meaning assigned to it in clause (28) of subsection (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(li) "public company" has the meaning assigned to that expression in clause (30) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984), or an existing company which is not a private company or a subsidiary of a private company;

(lii) "reinsurance" means a contract of insurance under which the event, specified in the contract, contingent upon the happening of which, payment is promised to be made to the policy holder thereunder, is payment by the policy holder of a claim or claims made against that policy holder under another contract or contracts of insurance issued by that policy holder;

(liii) "regulations" means regulations made under this Ordinance.

(liv) "repealed Act" means the Insurance Act, 1938 (IV of 1938);

(lv) "retrocession" means a contract of reinsurance under which the event, specified in the contract, contingent upon the happening of which, payment is promised to be made to the policy holder thereunder, is payment by the policy holder of a claim or claims made under another contract or contracts of reinsurance issued by that policy holder;

(lvi) "rules" means rules made under this Ordinance.

(lvii) "scheduled bank" has the meaning assigned to it in clause (m) of section 2 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956);

(lviii) "SECP Act" means the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(lix) "shareholders' fund" means a fund that is established in the records of a life insurance company and which contains that part of the assets and liabilities of a life insurer which is attributed to it and is not attributed to any statutory fund maintained by that life insurer;

(lx) "State Life Insurance Corporation" means the corporation established under Article 11 of the Life Insurance (Nationalization) Order, 1972 (P.O. 10 of 1972);

(lxi) "statutory fund" means a fund that is established in the records of a life insurer and which relates solely to the life insurance business of that life insurer or a particular part of that life insurance business.

(lxii) "subsidiary" or "subsidiary company" has the meaning assigned to it in clause (38) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(lxiii) "surveyor" means a person (by whatever name called) who examines the goods, property

or any interests insured under a contract of non-life insurance to express an independent opinion as to the cause, extent, location and amount of any loss incurred or claimed to be incurred under that contract;

(lxiv) "Takaful" means a scheme based on mutual assistance in compliance with the provisions of Islamic shariah, and which provides for mutual financial aid and assistance to the participants in case of occurrence of certain contingencies and whereby the participants mutually agree to contribute to the common fund for that purpose;

(lxv) "Tribunal" means the Tribunal constituted under section 121 of this Ordinance; and

(lxvi) "unit", except in section 32, means a notional share in the net value of a specified class or group of assets of a statutory fund of an insurer carrying on life insurance business, the value of which is to be used as a basis for determination of the benefits payable under an investment linked contract.

3. Division of insurance business into life and non-life.-

(1) For the purposes of this Ordinance insurance business is divided into life insurance business and non-life insurance business.

(2) Subject to sub-sections (3), (4) and (5), the effecting and carrying out of any or all of the following type of contracts shall constitute the carrying on of life insurance business; namely:-

- (a) a contract of insurance that provides for the payment of money on the death of a person or on the happening of a contingency dependent on the termination or continuance of human life;
- (b) a contract of insurance that is subject to payment of premiums for a term dependent on the termination or continuance of human life;
- (c) a contract of insurance that provides for the payment of an annuity for a term dependent on the continuance of human life;
- (d) a contract that provides for the payment of an annuity for a term not dependent on the continuance of human life but exceeding the period of one year;
- (e) a contract providing an indemnity for medical expenses;
- (f) a continuous disability income contract;
- (g) an investment contract; and
- (h) such contracts as may be prescribed.

(3) Notwithstanding anything in this Ordinance to the contrary, the effecting and carrying out of a contract whose principal object is one of life insurance business, but which contains related and subsidiary provisions of a non-life insurance nature, shall be taken to constitute the carrying on of life insurance business.

(4) Notwithstanding anything in this Ordinance to the contrary, the effecting and carrying out of a contract that provides for the payment of money on the death of a person shall not constitute the carrying on of life insurance if the contract is effected and carried out by an insurer who is registered to carry on non-life insurance business; and both of the following conditions exist:

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

(5) Notwithstanding anything in this Ordinance to the contrary, the effecting and carrying out of a contract that provides for the payment of money in the event of a person suffering loss, other than death, attributable to accident, sickness or infirmity shall not constitute the carrying on of life insurance if the contract is effected and carried out by an insurer who is registered to carry on non-life insurance business; and by the terms of the contract, the duration of the contract is to be not more than one year.

(6) All contracts of insurance which are not, in accordance with the provisions of the foregoing sub-sections, classified as life insurance contracts, shall be classified as non-life insurance contracts.

4. Classes of life and non-life business.-

(1) For the purposes of this Ordinance, the following shall be the classes of business into which life insurance business is divided:

- (a) Class 1 being ordinary life business;
- (b) Class 2 being capital redemption business;
- (c) Class 3 being pension fund business; and
- (d) Class 4 being accident and health business.

(2) For the purposes of sub-section (1) -

- (a) "ordinary life business" means effecting and carrying out contracts of life insurance other than contracts included in Class 2, Class 3 or Class 4;
- (b) "capital redemption business" means effecting and carrying out capital redemption contracts;
- (c) "pension fund business" means effecting and carrying out contracts of life insurance that are maintained for the purposes of a pension or retirement scheme and are owned by trustees under the scheme; and 16
- (d) "accident and health business" means effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity or a combination of both, against risks of the policy holder or a person for whose benefit the contract was made -

- (i) sustaining injury as a result of an accident;
- (ii) becoming incapacitated in consequence of an accident or disease; or
- (iii) suffering loss, including medical expenses, attributable to accident, sickness or infirmity

(3) For the purposes of this Ordinance, the following shall be the classes of business into which non-life insurance business is divided:

- (a) for direct and facultative reinsurance business;
- (i) Class 1 being fire and property damage business;
- (ii) Class 2 being marine, aviation and transport business;
- (iii) Class 3 being motor third party compulsory business;
- (iv) Class 4 being liability business;
- (v) Class 5 being workers' compensation business;

- (vi) Class 6 being credit and suretyship business;
- (vii) Class 7 being accident and health business; and
- (viii) Class 8 being agriculture insurance including crop insurance;
- (ix) Class 9 being miscellaneous business;

(b) for treaty reinsurance business:

- (i) Class 9 being proportional treaty business; and
- (ii) Class 10 being non-proportional treaty business.

(4) For the purposes of sub-section (3).-

(a) "fire and property damage business" means effecting and carrying out contracts of insurance against loss to the policy holder arising from loss of or damage to property, other than as contained in class 2;

(b) "marine, aviation and transport business" means effecting and carrying out contracts of insurance against loss to the policy holder arising from:

(i) loss of or damage to, or arising out of or in connection with the use of:

(a) means of transport, including motor vehicles and railway rolling stock used on land, vessels used on the sea or on inland waters, and aircraft; or

(b) the machinery, tackle, furniture or equipment of those means of transport; including third party risks and carrier's liability but excluding risks contained in class 3 or class 5: or

(ii) loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport;

(c) "motor third party compulsory business" means effecting and carrying out contracts of insurance against loss to the policy holder arising from liabilities incurred to third parties arising out of or in connection with the use of motor vehicles on land, as specified in the Motor Vehicles Act, 1939 (IV of 1939);

(d) "liability business" means effecting and carrying out contracts of insurance against loss to the policy holder arising from liabilities incurred to third parties, other than in respect of risks specified in class 2, class 3 or class 5;

(e) "workers' compensation business" means effecting and carrying out contracts of insurance against loss to the policy holder arising from liabilities incurred to workers arising out of or in connection with the employment of the workers by the insured persons;

(f) "credit and suretyship business" means effecting and carrying out:

(i) contracts of insurance against loss to the policy holder arising from failure, whether through insolvency or otherwise, of debtors to pay debts when they fall due; or

(ii) contracts of insurance against loss to the policy holder arising from his having to perform contracts of guarantee entered into by him; or

(iii) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds, custom bonds or similar contracts of guarantee;

(g) "accident and health business" means effecting and carrying out contracts of insurance, the duration of which under the contract is not more than one year, providing fixed pecuniary

benefits or benefits in the nature of indemnity or a combination of both, against risks of the policy holder or a person for whose benefit the contract was made;

- (i) sustaining injury as a result of an accident;
- (ii) dying as a result of an accident;
- (iii) becoming incapacitated in consequence of a disease; or
- (iv) suffering loss, including medical expenses, attributable to sickness or infirmity; but excluding contracts of a type included in class 5;

(h) "agriculture insurance" means effecting and carrying out contracts of insurance against loss to the policyholder arising from loss of or damage to agriculture related property including crops;

(i) "miscellaneous business" means effecting and carrying out contracts of insurance of types not included in any other class;

(j) "proportional treaty business" means effecting and carrying out of contracts of treaty reinsurance, whether obligatory or otherwise, of such a nature that a proportion of premium or of a separately identified part of premium on insurance contracts which are the subject matter of the treaty is payable to the reinsurer by the cedant and an identical proportion of claims or of a separately identified part of claims on those contracts is payable to the cedant by the reinsurer, and including without limitation treaties of quota-share and surplus classifications; and

(k) "non-proportional treaty business" means effecting and carrying out of contracts of treaty reinsurance, not being contracts of a type included in Class 9.

(5) The Commission may, by rules, prescribe sub-classes of business into which any of those set out in sub-section (1) and sub-section (3) may be divided.

(6) The Federal Government may, by rules, prescribe any class of business set out in sub-section (1) or sub-section (3), or sub-class of business prescribed under sub-section (5), as a restricted class or sub-class as the case may be.

PART II

18

PROVISIONS APPLICABLE TO INSURERS

5. Persons eligible to transact insurance business.-.

(1) After the commencement date no person other than:

- (a) a public company; or
- (b) a body corporate incorporated under the laws of Pakistan (not being a private company or the subsidiary of a private company); shall start any insurance business in Pakistan.

(2) After the commencement date no person other than an eligible person or the branch of a body corporate incorporated in any jurisdiction outside Pakistan, which, immediately before the commencement of this Ordinance, was registered to carry on and was carrying on such business in Pakistan, shall, after the expiry of one year from such commencement, continue such business.

(3) An insurer, being a body corporate incorporated in a jurisdiction outside Pakistan and registered to carry on and carrying on insurance business in Pakistan at the commencement of this Ordinance, may, within six months of such commencement take steps to transfer the business of such an insurer to a new public company pursuant to a scheme of arrangement under the provisions of sections 284 to 287 of the Companies Ordinance, 1984 and the applicable provisions of this Ordinance, and all such provisions shall apply mutatis mutandis as if the business in Pakistan of such an insurer is being carried on by a public company incorporated in Pakistan.

6. Registration of insurers.-

(1) No eligible person shall, after the commencement of this Ordinance, begin or, after the expiry of six months from the commencement date, continue, to carry on any insurance business in Pakistan, unless such eligible person has obtained from the Commission a certificate of registration to carry on insurance business under this Ordinance, and that registration has not been revoked.

(2) A certificate of registration issued to an insurer under section 3 or section 3A of the repealed Act shall be deemed, for the purposes of this section, to constitute registration under this Ordinance, during the period until the expiry of such existing registration or one year from the commencement date for this section whichever is earlier; and National Insurance Corporation, Pakistan Insurance Corporation and State Life Insurance Corporation shall be deemed, for the purposes of this section, to have been so registered, such registration to continue until one year from the commencement date.

(3) During the period of six months from the commencement date, the Commission may on the application of an insurer registered under the repealed Act as at the commencement date extend, for the purposes of this section, the validity of the certificate of registration held by the insurer for a period not exceeding six months from the date on which that certificate of registration would otherwise have expired.

(4) An eligible person required to register under this Ordinance, may make an application to the Commission for registration as a person authorised to carry on life insurance business or non-life insurance business as the case may be.

(5) An application for registration shall be made in writing, in either the English or the Urdu language and shall be signed by authorised persons 19 on behalf of an eligible person.

(6) An application for registration shall contain such information and shall be accompanied by such documents, reports, certificates and other matters as may be prescribed.

(7) An application for registration made by an insurer carrying on insurance business at the commencement date shall include a plan for the achievement of compliance by the insurer with the paid-up capital and solvency levels set out in Part IV and Part V of this Ordinance by the dates set out in those Parts.

(8) An application for registration as a person authorised to carry on life insurance business shall in all cases include or be accompanied by:

(a) a statement of the rates, advantages, terms and conditions of life insurance policies proposed to be offered by the applicant, including without limitation where the policy acquires a surrender value, the basis on which the surrender value is determined, and including without limitation in the case of investment-linked policies a description of:

- (i) the investments to which the policy is linked;
- (ii) the basis on which the benefits payable under the policy are determined;
- (iii) the frequency with which and basis by which the unit values are determined; and the values attributed to units at the time of purchase and sale;
- (iv) the basis by which values are attributed to units at the time of and for the purpose of purchase and sale;
- (v) the basis on which expenses attributed to the policy are determined; and
- (vi) the basis on which charges for mortality attributed to the policy are determined;

(b) a business plan setting out the expected premium income, expenses and results of the applicant for a period of not less than ten years from the date at which authorisation is proposed to be obtained;

(c) a copy of any written, electronic or other material proposed to be issued by the applicant for mass communication or for communication with a policy holder or prospective policy holder, in respect of life insurance policies proposed to be offered by the applicant;

(d) a statement by the appointed actuary that the terms and conditions of the life insurance contracts proposed to be entered into are sound and workable; and

(e) a statement by the appointed actuary that the business plan has been prepared according to principles which appear to him to be reasonable and sound.

(9) Where an applicant has made an application under this section for registration and, before registration is granted or refused, a change occurs in the particulars specified in the application or in the matters contained in a document required to accompany the application, the applicant shall, within 14 days after the occurrence of the change, give to the Commission notice in writing signed by any two authorised persons and specifying particulars of the change.

(10) An applicant shall not:-

(a) make an application under this section; or

(b) give to the Commission a notice under sub-section (9); that is false or misleading in a material particular. 20

7. Commission may register insurer upon satisfaction.-

(1) Where an application for registration is received by the Commission under section 6, the Commission may, subject to sub-section (2) and sub-section (3), register the insurer as authorised to carry on life insurance business or authorised to carry on non-life insurance business as the case may be, if the Commission is satisfied that:

(a) the provisions of this Ordinance relating to minimum paidup share capital requirements have been complied with;

(b) the provisions of this Ordinance relating to minimum statutory deposits have been complied with;

(c) the provisions of this Ordinance relating to minimum solvency requirements have been complied with;

(d) the provisions of this Ordinance relating to the effecting of reinsurance arrangements have been complied with;

(e) the applicant is, and is likely to continue to be, able to meet its liabilities;

(f) the applicant meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;

(g) the applicant has appointed an auditor recognised by the Commission as appropriately qualified to audit the business of life or non-life insurance as the case may be;

(h) the applicant has, if it proposes to carry on life insurance business, appointed an actuary as its appointed actuary, and the Commission does not disapprove that appointment;

(i) the applicant is, and is likely to continue to be, able to comply with such other of the provisions of this Ordinance as are applicable to it; and

(j) on the basis of the information provided by the application and any other information received by the Commission, the application ought to be granted.

(2) The Commission shall not grant a certificate of registration if the granting of that certificate would not be in accordance with policy decisions made by the Federal Government.

(3) The Commission shall not grant registration to any applicant where the grant of such registration would result in an insurer carrying on both life insurance and non-life insurance business.

(4) Where the Commission is not satisfied with respect to all or any of the matters referred to in sub-section (1), it shall refuse an application.

(5) Within thirty days of receipt of an application for registration, or such longer period as may be prescribed, the Commission shall, in writing, notify the applicant that the application has been granted or refused, as the case may be; except that:

(a) if the Commission so notifies the applicant in writing before the expiry of the period of thirty days referred to in this sub-section, the period of thirty days shall be extended to ninety days or such longer period as may be prescribed; and

(b) if the application is deficient in any technical particular, and the Commission so notifies the applicant before the expiry of the period of thirty days referred to in this subsection, the application for registration shall not, for the purposes of this sub-section, be treated as received until the applicant has amended the deficiency so notified. 21

(6) The Commission may, on granting registration, specify any class, classes, sub-class or sub-classes of business prescribed as restricted under sub-section (6) of section 4 as a class, classes, sub-class or sub-classes of business which the insurer is not authorised to carry on.

(7) The Commission may at any time require a registered insurer or an insurer deemed under this Ordinance to be registered, to comply with such conditions, not inconsistent with the provisions of this Ordinance, as the Commission may specify in writing:

Provided that conditions imposed under this sub-section shall be imposed only where the Commission believes on reasonable grounds that such conditions are desirable for the

protection of the policy holders and potential policy holders of the insurer and such conditions shall not be imposed in such a manner as to restrict unreasonably the commercial liberty of any insurer as against other insurers or such as to impose an unreasonable burden upon any insurer;

Provided also that conditions shall not be imposed under this subsection without giving an insurer to whom the conditions would apply not less than thirty days' written notice of intention to impose such conditions, or without giving such insurer an opportunity to be heard.

8. Inspection and supply of copies filed with Commission.- Any person may on payment of the prescribed fee inspect such of the documents filed by an insurer with the Commission under section 6 as may be prescribed, and may obtain a copy of any such document or part thereof on payment in advance at the prescribed rate for the making of the copy.

9. Duration and revocation of registration.-

(1)..Registration under this Ordinance to carry on insurance business shall continue until it is revoked.

(2) Where the Commission is requested in writing by an insurer to revoke the registration of that insurer to carry on insurance business, the Commission may by a written instrument revoke that registration.

(3) Registration under this Ordinance to carry on insurance business shall not be revoked unless the Commission is satisfied that adequate provision has been made for the irrevocable transfer to a registered insurer of all insurance liabilities incurred by the insurer seeking revocation of registration under the preceding sub- section.

(4) Nothing in this section shall prevent the Commission from exercising the powers available to it under section 63 to direct a registered insurer to cease entering into new insurance contracts.

10. Notification of grant or revocation of registration.-

(1) Where registration under the preceding provisions of this Part is granted or revoked, the Commission shall cause notice of the grant (including any limitations as to classes of business which may be underwritten) or revocation of registration to be published in the Gazette. 22

(2) Where registration under the preceding provisions of this Part is granted, the Commission shall issue to the insurer a written certificate of registration, which certificate shall be surrendered to the Commission on revocation of registration.

(3) The Commission may, on payment of the prescribed fee, issue a duplicate certificate of registration to replace a certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where it is of opinion that the issue of a duplicate certificate is necessary.

11. Conditions imposed on registered insurers.-

(1) An insurer registered under this Ordinance shall at all times ensure that:

(a) the provisions of this Ordinance relating to minimum paidup share capital requirements are complied with;

(b) the provisions of this Ordinance relating to minimum statutory deposits have been complied with;

- (c) the provisions of this Ordinance relating to minimum solvency requirements are complied with;
- (d) the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;
- (e) the insurer is, and is likely to continue to be, able to meet its liabilities;
- (f) the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;
- (g) the insurer has appointed an auditor recognised by the Commission as appropriately qualified to audit the business of life or non-life insurance as the case may be; and
- (h) the insurer is, and is likely to continue to be, able to comply with such other of the provisions of this Ordinance as are applicable to it.

(2) An insurer registered under this Ordinance shall be deemed to have undertaken to abide by the decisions of any small disputes resolution committee constituted under section 117.

(3) An insurer registered under this Ordinance shall pay to the Commission, on or before the fifteenth day of January in every calendar year, an annual supervision fee of the greatest of:

- (a) Rs. 100,000;
- (b) one rupee per thousand of gross direct premium written in Pakistan during the calendar year preceding the calendar year ended on the previous 31st day of December; or
- (c) such amount as may be prescribed.

12. Criteria for sound and prudent management.- (1) For the purposes of this Ordinance, the following shall, without limitation, be recognised as criteria for sound and prudent management of an insurer or applicant for registration as a person authorised to carry on insurance business:

- (a) the business of the insurer or applicant is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities;
- 23
- (b) each director and officer or (in the case of an applicant which is a body corporate incorporated outside Pakistan) the principal officer in Pakistan of the insurer or applicant is a fit and proper person to hold that position;
- (c) the insurer or applicant is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold; (d) the insurer or applicant maintains adequate accounting and other records of its business; and
- (e) the insurer or applicant maintains adequate systems of control of its business and records.

Explanation: A person is a fit and proper person who possesses such experience and qualifications as are appropriate for the duties for which he is responsible, and conducts those duties with due diligence and skill. A person is not a fit and proper person to hold the position of Chairman, or of Chief Executive or principal officer in Pakistan, of an insurance company if that person does not have experience or qualifications of direct relevance to the conduct of insurance operations. A person is not a fit and proper person if the association of that person with the insurer is or is likely, for whatever reason, to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable.

(2) Accounting and other records shall not be regarded as adequate for the purposes of clause (d) of sub-section (1) unless they are such as:

(a) to enable the business of the insurer or applicant to be prudently managed; and
(b) to enable the insurer or applicant to comply with the obligations imposed on it by or under this Ordinance.

(3) In determining whether any systems of control are adequate for the purposes of clause (e) of sub-section (1), the Commission shall have regard to the functions and responsibilities for those systems which are held by the persons who are responsible for the direction and management of the insurer or applicant and to whom clause (b) of subsection (1) applies.

(4) The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders.

(5) The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it:

(a) fails to satisfy an obligation to which it is subject by virtue of this Ordinance; or
(b) fails to supervise the activities of a subsidiary with due care and diligence and without detriment to the insurer's or applicant's business.

(6) No insurer shall appoint a managing agent for the conduct of its business.

13. Restriction on issue of certain life policies.-

(1)..No insurer shall offer any policy or contract in respect of life insurance business other than those described in the prescribed documents filed with the Commission under sub-section (6) or sub-section (8) of section 6 or an amendment to such prescribed documents filed with the Commission under sub-section (9) of section 6, unless the insurer has, not less than thirty days prior to 24 such offer, furnished to the Commission in respect of such contracts the particulars and materials specified in sub-section (8) of section 6.

(2) The Commission may, within thirty days of such submission, require the insurer in writing to make such changes in the particulars and materials as the Commission may direct, and where the Commission does so direct the insurer shall not be taken to have complied with sub-section

(1) until the insurer has complied with the direction of the Commission.

PART III

STATUTORY FUNDS OF AND OTHER SPECIAL REQUIREMENTS FOR LIFE INSURANCE COMPANIES

14. Statutory and other funds of life insurance companies.-

(1)..An insurer carrying on the business of life insurance shall at all times maintain at least one statutory fund in respect of its life insurance business.

(2) An insurer that carries on life insurance business consisting of the provision of investment-linked benefits shall maintain one or more statutory funds exclusively for that business.

- (3) An insurer that carries on life insurance business consisting of the provision of capital redemption business shall maintain one or more statutory funds exclusively for that business.
- (4) An insurer that carries on life insurance business consisting of the provision of pension fund business shall maintain one or more statutory funds exclusively for that business.
- (5) An insurer that carries on life insurance business consisting of the provision of accident and health insurance business shall maintain one or more statutory funds exclusively for that business.
- (6) An insurer that carries on life insurance business outside Pakistan shall maintain one or more statutory funds exclusively in respect of that business.
- (7) An insurer that carries on life insurance business of such class or subclass as may be prescribed by the Commission for the purposes of this sub-section shall maintain one or more statutory funds exclusively in respect of that business.
- (8) Statutory funds may not be divided or amalgamated without the approval of the Commission.
- (9) The Commission may direct a life insurer to amalgamate or transfer a life statutory fund where the Commission believes on reasonable grounds that amalgamation or transfer is required for the protection of the interests of policy holders.
- (10) An insurer having a share capital and carrying on life insurance business shall maintain a shareholders' fund.
- (11) An insurer not having a share capital and carrying on life insurance business, shall maintain in its records a permanent capital fund.

25

- (12) In this Ordinance, a reference to the shareholders' fund shall be deemed to include a reference to the permanent capital fund, and provisions which are applicable to the shareholders' fund shall apply mutatis mutandis to the permanent capital fund.

15. Establishment of statutory fund.- Whenever an insurer establishes a statutory fund for its life insurance business, the insurer shall give the Commission, not later than thirty days prior to the establishment of the fund, written notice (in such form as may be prescribed by the Commission) of:

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

16. Policies to be referable to specific statutory funds.-

- (1) A life insurance policy issued by an insurer carrying on life insurance business shall be referable to one or more statutory funds:

Provided that a policy which is not investment-linked shall be referable to one statutory fund only;

Provided further that if:

- (a) a contract ("the supplementary contract") which is supplementary to the policy ("the principal policy") is of a type which would but for the preceding proviso be required by section 14 to be referable to a different statutory fund from that to which the principal policy is

referable, and

(b) the premium attributable to such supplementary contract exceeds the premium attributable to the principal policy, the supplementary contract shall be referable to that different statutory fund.

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

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

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

(b) either:

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

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

(4) The statutory fund or funds to which a policy is referable may be changed by endorsement to the policy document.

(5) If a change is made, in accordance with the foregoing sub-section, to the statutory fund or funds to which a policy is referable, the insurer shall effect such transfer of assets between the statutory funds concerned as may be determined by the appointed actuary in accordance with such principles as may be prescribed.

26

17. Assets, liabilities, revenues and expenses of funds.-

(1) All assets, liabilities, revenues and expenses of a life insurer shall be referable to one or more funds of the insurer.

Explanation: in this section the word 'fund' means a statutory fund or the shareholders' fund.

(2) All amounts received by a life insurer in respect of the business of a statutory fund shall be credited to that fund.

(3) All assets and investments related to the business of a statutory fund shall be included in that fund.

(4) All liabilities (including policy liabilities) of a life insurer arising out of the conduct of the business of a statutory fund shall be treated as liabilities of that fund.

(5) All assets, liabilities, revenues and expenses of a life insurer which are referable to the shareholders' fund and which are not attributed to a statutory fund shall be attributed to the shareholders' fund.

(6) If an asset, a liability, a revenue or an expense of a life insurer is referable to two or more statutory funds, or is referable in part to a statutory fund or funds but is also referable to the shareholders' fund, the insurer shall apportion such asset, liability, revenue or expense on a fair and equitable basis between the funds to which it is referable.

(7) An apportionment made under this section shall only be made after the directors of the insurer have received the appointed actuary's written advice as to the fairness and equity of the proposed basis of allocation.

18. Disposition of assets of statutory funds.-

(1) The assets of a statutory fund are only available for expenditure related to the conduct of the business of the statutory fund.

(2) Profits and losses of a statutory fund may only be dealt with in accordance with the applicable provisions of this Ordinance.

19. Prohibition of reinsurance between statutory funds.-

(1)..Reinsurance between statutory funds maintained by one insurer is prohibited.

(2) For the purposes of this section, reinsurance between statutory funds shall be deemed to exist, (whether or not there is a written contract of reinsurance)where the following circumstances are present:

(a) part of the premium payable under a policy referable to one statutory fund is credited to another statutory fund ("the reinsuring fund") to which the policy is not referable; and

(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.

20. Capital payments to life insurance statutory funds.-

(1)..A life insurer may at any time make a capital payment to a statutory fund.

27

(2) For the purposes of this section, a capital payment is an amount credited to a statutory fund that is not required to be credited to that fund and does not represent any part of the assets of another statutory fund.

(3) All capital payments made to a statutory fund in accordance with this section shall be credited in the records of the statutory fund to a ledger account clearly identified as capital contributed to the statutory fund.

21. Distribution of capital in a life insurance statutory fund.-

(1)..A distribution of capital, other than a distribution to holders of participating policies by way of bonus, shall not be made at any time at which any of the accounts identified in sub-sections (1) and (2) of section 22 have a debit balance.

(2) A distribution of capital, other than a distribution to holders of participating policies by way of bonus, shall not be made from a statutory fund unless the provisions of sub-sections (3) and (4) of section 35, after such distribution, are complied with.

(3) A distribution of capital contributed to a statutory fund may only be made after the directors of the insurer have received the appointed actuary's written advice as to the likely consequences of the proposed distribution.

(4) In providing his written advice under sub-section (3), the appointed actuary shall have regard, without limitation, to the effect of the proposed distribution on the compliance by the insurer with the provisions of this Ordinance relating to solvency and on the ability of the insurer to continue to comply with the provisions of this Ordinance relating to solvency in the context of its planned level of activity.

(5) Capital contributed to a statutory fund may only be distributed in the following ways:

- (a) by transfer to the shareholders' fund;
- (b) by transfer to another statutory fund of the company; or
- (c) by distribution as bonuses to holders of participating policies.

22. Allocation of surplus on life insurance business.-

(1)..An insurer conducting participating life insurance business shall, in the accounting records of the statutory fund or funds in which that business is carried on, maintain ledger accounts separately identifying the following:

- (a) retained earnings on participating business attributable to participating policyholders;
- (b) retained earnings on participating business attributable to shareholders but not distributable; and
- (c) retained earnings on participating business distributable to shareholders.

(2) An insurer conducting business other than participating business shall in the accounting records of the statutory fund or funds in which that business is carried on maintain a ledger account identifying the retained earnings on business other than participating business.

28

(3) For the purposes of this section and section 23, the ledger accounts referred to in clauses (a), (b) and (c) of sub-section (1) and in sub-section (2) are described for reasons of brevity as follows, respectively:

- (a) the A Account;
- (b) the B Account;
- (c) the C Account; and
- (d) the D Account.

(4) The ledger accounts identified in sub-sections (1) and (2) shall not be dealt with other than in accordance with the provisions of this section and section 23, or as the Commission may prescribe.

(5) Immediately following each investigation carried out in accordance with section 50, the insurer shall allocate, by debiting or crediting the accounts identified in sub-section (1) and sub-section (2) in each fund, the amount of surplus earned in that fund, in accordance with the provisions of this section.

(6) In this section, the term 'surplus' in respect of a year means the increase or decrease in that year of the excess of assets over liabilities (other than policyholder liabilities) of a statutory fund or of a separately identifiable part of a statutory fund, reduced by the increase and enhanced by the decrease (so far, in the case of a separately identifiable part of a statutory fund, as such increase or decrease is attributable to that separately identifiable part) in that year of:

- (a) the amount of policyholder liabilities;
- (b) the cumulative amount of capital contributed by the shareholders' fund;
- (c) the amount of the accounts identified in sub-sections (1) and (2); and
- (d) the amount of any reserve required under this Ordinance to be maintained.

Explanation: All amounts referred to in this sub-section shall be determined in accordance with the accounting rules prescribed for the preparation of the statement of assets and liabilities referred to in sub-clause (i) of clause (a) of sub-section (1) of section 46.

(7) The surplus earned on participating contracts shall be allocated as follows between the A Account and the B Account:

- (a) not less than ninety per cent. of the amount of surplus earned on participating contracts shall be allocated to the A Account; and
- (b) the amount represented by the difference between the surplus earned on participating contracts and the amount referred to in clause (a) shall be allocated to the B Account.

Explanation: in a statutory fund which contains both participating and non-participating policies, the amount of surplus earned on participating contracts for the purposes of this section includes that element of surplus earned other than on participating contracts which is, on a fair and equitable basis, attributable to the participating policy holders having regard to the interest of participating policyholders in the undertakings of the statutory fund.

(8) Immediately following the allocation of surplus in accordance with subsection

(7), the amount of surplus adjustment in respect of that year shall be credited to the A Account and debited to the C Account:

Provided that where the amount of surplus adjustment exceeds the credit balance of the C Account the amount by which it exceeds that balance shall not be debited to the C Account but shall be debited to the B Account.

Provided further that where the amount of surplus adjustment, but for this proviso, exceeds the sum of the credit balance, if any, of the B Account and the credit balance, if any, of the C Account, the amount of surplus adjustment shall for the purposes of this subsection only be equal to the sum of the credit balance, if any, of the B Account and the credit balance, if any, of the C Account.

(9) In this section, "surplus adjustment" means ninety per cent. of the sum of the following two amounts:

(a) the amount, if any, by which the total amount of management expenses brought to account in determining the surplus earned on participating contracts exceeds such total amount as is determined by the application of such percentages as may be prescribed by the Commission in regulations to first year and renewal premiums brought to account in determining that surplus; and

(b) the amount determined by applying for six months on a compound basis, to the amount if any determined in clause (a), the higher of:

(i) the investment earning rate of the statutory fund during the year, so far as concerns participating contracts; and

(ii) the average base rate during the year, calculated as at the final date of each month on a compound basis.

(10) The amount of surplus earned in each statutory fund during a year, and in respect of each statutory fund to which sub-section (1) applies the amounts of surplus earned on participating contracts during that year and surplus adjustment in respect of that year shall be certified by the insurer's appointed actuary.

(11) All surplus other than surplus required to be dealt with under sub-section (7) shall be allocated to the D Account.

(12) The Commission may make rules for the administration of any matter in this section, not otherwise provided for.

23. Restriction on dividends and bonuses.-

(1) No insurer carrying on life insurance business shall declare or pay any dividend to shareholders or make any payment in service of any debentures, other than from the shareholders' fund.

(2) No insurer carrying on life insurance business shall appropriate from any statutory fund to the shareholders' fund any amount other than:

(a) an amount from the C Account or the D Account; or

(b) a distribution of capital in accordance with section 21.

(3) No insurer carrying on life insurance business shall allocate, whether by way of cash payment, by addition to policy liabilities or otherwise, as bonuses to participating policy holders any amount other than:

- (a) an amount from the A Account, or
- (b) a distribution of capital by way of bonus in accordance with section 21.

(4) No amount may be credited to the C Account other than in accordance with the provisions of this section.

(5) An appropriation under sub-section (2) or an allocation of bonus under sub-section (3) may only be made after the directors of the insurer have received the appointed actuary's written advice as to the likely consequences of the proposed appropriation or allocation.

(6) In providing his written advice under sub-section (5), the appointed actuary shall have regard, without limitation, to the effect of the proposed appropriation or allocation on the compliance by the insurer with the provisions of this Ordinance relating to solvency and on the ability of the insurer to continue to comply with the provisions of this Ordinance relating to solvency in the context of its planned level of activity.

(7) At the time at which bonuses, other than distributions of capital by way of bonus in accordance with section 21, are allocated to participating policy holders, an amount determined in the following manner may, subject to sub-section (12), be debited to the B Account and the amount if any debited to the B Account shall be credited to the C Account:

(a) not more than one-ninth of the amount of such bonuses as have been allocated from the A Account; less

(b) the lower of:

(i) the amount if any of surplus adjustment debited to the B Account in accordance with the proviso to sub-section (8) of section 22; and

(ii) the amount set out in clause (a) of this sub-section.

(8) Where the business in a statutory fund contains investment contracts, not being participating contracts, under the terms of which the insurer has discretion to vary the amount of expenses charged under the policy, the transfer to the shareholders' fund which may be made in any one year from the D Account in that statutory fund shall be reduced, to the extent of the balance in the D Account, by the amount of expense adjustment arising in the year ended on the preceding 31st December.

(9) For the purpose of sub-section (8), "expense adjustment" means such proportion as may be prescribed of the amount, if any, by which the total amount charged to all such policies to meet management expenses exceeds such total amount as is determined by the application of such percentages as may be prescribed by the Commission to first year and renewal premiums relating to such investment contracts:

Provided that, where investment contracts include supplementary benefits, the amount referred to in this sub-section shall be determined with reference to the premiums for the main contract only excluding such supplementary benefits;

Provided further that for the purposes of determining the amount of expense adjustment, the amount of management expenses charged to policies shall be determined in accordance with such basis as the Commission may prescribe.

(10) The amount of expense adjustment in each year in respect of each statutory fund to which sub-section (8) applies shall be certified by the appointed actuary.

(11) An insurer may, subject to sub-section (12), at any time make a transfer from the B Account, the C Account or the D Account to the credit of the A Account.

(12) No appropriation, allocation or transfer under sub-section (2) or subsection (3) or under sub-section (7) or sub-section (11) shall be made if that appropriation, allocation or transfer would result in a debit balance in the ledger account from which the appropriation, allocation or transfer is made.

(13) The Commission may make rules for the administration of any matter in this section, not otherwise provided for.

31

24. Declaration of interim bonuses.- Notwithstanding anything to the contrary contained in this Ordinance, an insurer carrying on the business of life insurance shall be at liberty to declare an interim bonus or bonuses to policy holders whose policies mature for payment by reason of death or otherwise during the period between two investigations conducted in accordance with section 50, on the recommendation of the appointed actuary made in his report on the last preceding valuation.

25. Transitional provisions.-

(1)..All life insurance funds maintained under the repealed Act or under the Life Insurance Nationalisation Order, 1972 by an insurer carrying on life insurance business on the commencement date or succeeding to an insurer carrying on life insurance business on the commencement date shall, with effect on or before 31st December 2001, be converted into one or more statutory fund or funds.

(2) A conversion to a statutory fund or funds under this section shall be made in accordance with such criteria as may be prescribed by the Commission.

(3) For the period until 31st December 2001, an insurer carrying on life insurance business on the commencement date shall not be regarded as being in contravention of the Ordinance by reason only that the statutory funds required to be established under this Part have not been established.

26. Appointed actuary.-

(1)..Every life insurer shall appoint an actuary as its appointed actuary.

(2) The Commission may on reasonable grounds disapprove such appointment and require the appointment of another actuary.

27. Responsibilities of appointed actuary.-

(1)..The appointed actuary shall be responsible to perform such duties as he may be assigned under this Ordinance.

(2) Such duties shall include:

(a) performing an annual investigation into the financial condition of a life insurer according to such scope, and reporting on such investigation in such terms as, may be prescribed by the Commission;

(b) providing written advice as to the equitable apportionment of revenues and expenses between funds and between policy holders within funds;

(c) certifying that the terms and conditions of a type of policy issued by a life insurer are sound and workable;

(d) certifying premium rates at the time of introduction of a new product and any change in these rates;

(e) certifying annually mortality, expenses and other charges under investment contracts; and

(f) such other duties as may be prescribed by the Commission.

(3) The appointed actuary of an insurer shall be entitled at any time to address or to make a report to the Board of Directors of the insurer, with respect to any matter which in the opinion of the appointed actuary requires to be brought to the attention of the Board of Directors.

32

(4) An appointed actuary shall not be dismissed from his office without the permission of the Commission, which shall not unreasonably be withheld.

(5) An appointed actuary who resigns his office shall inform the Commission of the reasons for his resignation and of any matters connected therewith which he believes should be brought to the attention of the Commission.

(6) An appointed actuary who is dismissed from his office shall inform the Commission of any matters connected with his dismissal which he believes should be brought to the attention of the Commission.

(7) An appointed actuary who resigns or is dismissed shall not be liable to any person for any statement properly made with due cause pursuant to sub-section (5) or sub-section (6).

PART IV

REQUIREMENTS AS TO CAPITAL AND STATUTORY DEPOSITS

28. Requirements as to capital.-(1)..An insurer registered under this Ordinance to carry on insurance business shall have a paid-up capital of not less than the required minimum amount.

(2) For the purposes of this section, the required minimum amount is:

(a) one hundred and fifty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on life insurance business; and

(b) eighty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on non-life insurance business;

Provided that in respect of clause (a), for an insurer authorised to carry on life insurance business on the commencement date the required minimum amount shall not be less than one hundred million rupees by 31st December 2002 and one hundred and fifty million rupees or such higher amount as may be prescribed by 31st December 2004.

Provided further that in respect of clause (b), for an insurer authorised to carry on non-life insurance business on the commencement date the required minimum amount shall not be less than fifty million rupees by 31st December 2002 and eighty million rupees or such higher amount as may be prescribed by 31st December 2004.

Provided further that in respect of both clause (a) and clause (b), for the period until 31st December 2002, for an insurer authorised to carry on insurance business on the commencement date the required minimum amount shall be that set out in section 6 of the repealed Act.

(3) An insurer, not having a share capital, shall not be required to comply with this section.

29. Deposits.-(1)..Every insurer shall, in respect of the insurance business carried on by him in Pakistan, deposit and keep deposited with the State

33

Bank of Pakistan, in one of the offices in Pakistan of the State Bank of Pakistan for and on behalf of the Federal Government the required minimum amount specified in sub-section (2), either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated.

(2) For the purposes of this section the required minimum amount is, either:

(a) the higher of ten million rupees and ten per cent. (10%) of the insurer's paid-up capital; or

(b) such amount as may be prescribed by the Commission:

Provided that the Commission may, subject to achievement of levels of solvency as required by this Ordinance, abolish the requirement for deposits specified by this section by reducing the required minimum amount to zero.

(3) A deposit made in cash shall be held by the State Bank of Pakistan to the credit of the insurer and shall except to the extent, if any, to which the cash has been invested in securities under sub-section (5), be returnable to the insurer in cash in any case in which, under the

provisions of this Ordinance, a deposit is to be returned; and any profit or return (howsoever called or designated) accruing due and collected on securities deposited under sub-section (1) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realisation of profit or return (however called or designated).

(4) The insurer may at any time replace any securities deposited by him under this section with the State Bank of Pakistan either by cash or by other approved securities or partly by cash and partly by other approved securities provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(5) The State Bank of Pakistan shall, if so requested by the insurer:

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities in which investment is so made as deposit, and may charge the normal commission on such sale or on such investment.

(6) Where sub-section (5) applies, if the cash realised by the sale of or on the maturing of the securities (excluding, in the former case, the profit or return (however called or described) accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold and, unless he does so, the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits.

(7) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such

34 additional sum in cash or approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities, as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

(8) The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Ordinance with the State Bank of Pakistan shall be determined by the State Bank of Pakistan whose decision shall be final.

30. Reservation of deposits.-(1)..Any deposit made under section 29 shall be deemed to be part of the assets of the insurer but shall not be the subject of any encumbrance; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of

policies of insurance issued by the insurer, so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy holder of the insurer in respect of a debt due upon a policy which debt the policy holder has failed to realise in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall be deemed to be a part of the assets of the shareholders' fund.

(3) A deposit which, at the commencement date, was, under the repealed Act, an asset of a life insurance fund established under that Act, shall, on or before the date of conversion of that fund under section 25 be transferred to the shareholders' fund against receipt of the full value of the deposit.

(4) In this section the term 'full value of the deposit' means the cash or the market value of other assets forming the deposit, as certified by the State Bank of Pakistan.

(5) For the period from the commencement date and until 31st December

2001, no insurer which was carrying on life insurance business on the commencement date or which succeeds to an insurer which was carrying on life insurance business on the effective date shall be regarded as being in contravention of the Ordinance by reason only that the statutory deposit required by this Part to be made in the shareholders' fund has not been made either in part or in full, provided that the sum of the statutory deposit which has been made in the shareholders' fund and the statutory deposit which was made in the life insurance fund under the repealed Act and continues to exist as at the relevant date is equal to or greater than the amount required by this Part to be made as a statutory deposit by the insurer.

31. Refund of deposits.- An insurer may at any time apply to the

Commission for consent to return of such portion of the deposit as is in excess of any amount which the insurer is required under this Ordinance to keep deposited, and such consent shall not be unreasonably withheld.

PART V

SOLVENCY REQUIREMENTS

35

32. Admissible Assets.-

(1) For the purposes of this Part, the following are admissible assets:

- (a) Government securities except to the extent that they are subject to any encumbrance;
- (b) assets deposited with the State Bank of Pakistan under

section 29; and

(c) assets, other than assets referred to in clause (a) or clause (b), not specified in sub-section (2) not to be admissible assets; and

(c) assets, being assets referred to in clause (g) of sub-section

(2), in respect of which the Commission has declared that

those assets are to be admissible for the purposes of this

Part.

(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

(a) in a statutory fund of a life insurer, a loan to, capital

transfer to or other interest in the shareholders' fund of the life insurer;

(b) in a statutory fund of a life insurer, any asset to the extent that it exceeds such percentage as may be prescribed by the

Commission of the value of the fund (being the market

value of assets less liabilities other than policyholder

liabilities);

(c) in the shareholders' fund of a life insurer, a loan to, capital transfer to or other interest in a statutory fund of the life insurer;

(d) loans (not being loans secured against life insurance

policies) to directors, shareholders, agents or employees of the insurer, and accrued profit or return (however called or described) thereon:

Provided that a person holding less than one per

cent. of the shares of the insurer shall not be

considered to be a shareholder for the purposes of

this clause.

Provided, further, that a loan and accrued profit or

return (however called or described) thereon to an employee of an insurer, not being a director of the insurer, shall not be inadmissible by virtue only of the operation of this clause, to the extent that the loan is secured against immovable property.

(e) loans to life insurance policyholders of the insurer, to the extent that these, together with accrued profit or return (however called or described) thereon, exceed the surrender value of the policies against which they are secured;

(f) loans which are secured against immovable property, to the extent that they exceed, in the aggregate, such percentage as may be prescribed by the Commission of the insurer's total investments or, in the case of a life insurer, such

percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(g) balances with, shares in, loans to or other amounts due from any body that is related to the insurer or to any

36

director of the insurer;

(h) premiums due and payable to the insurer but not paid for more than three months from the date due and payable;

Provided that in the case of a life insurer a premium which has not been paid shall be deemed to have been paid to the extent that the provisions of clause

(b) of sub-section (4) of section 93 have been applied in respect of that premium;

(i) intangible assets, including but not limited to goodwill, brand names and capitalised establishment costs;

(j) deferred tax asset balances;

(k) amounts available to the insurer under guarantees;

(l) assets subject to encumbrances;

(m) unpaid share capital;

(n) any unit of immovable property, to the extent that it exceeds such percentage as may be prescribed by the Commission of the insurer's total investments or, in the

case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(o) immovable property, to the extent that it exceeds in total

such percentage as may be prescribed by the Commission

of the insurer's total investments or, in the case of a life

insurer, such percentage as may be prescribed by the

Commission of the total investments of the relevant

statutory fund or shareholders' fund;

(p) shares in any one company or group of related companies, to the extent that they exceed such percentage as may be prescribed by the Commission of the insurer's total

investments or, in the case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(q) shares of listed companies, to the extent that they exceed, in the aggregate, such percentage as may be prescribed by the Commission of the insurer's total investments or, in the case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(r) shares of companies (not being listed companies), to the

extent that they exceed, in the aggregate, such percentage

as may be prescribed by the Commission of the insurer's total investments or, in the case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(s) immovable property and shares in the aggregate, to the extent that they exceed such percentage as may be prescribed by the Commission of the insurer's total investments or, in the case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(t) loans to any person or group of related persons, to the extent that they exceed such percentage as may be prescribed by the Commission of the insurer's total investments or, in the case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

(u)

(i) vehicles;

(ii) office equipment and

(iii) fixtures and fittings which are not immovable property;

(v) such assets as the Commission may prescribe; and

(w) assets which are declared by the Commission, pursuant to sub-section (9), not to be admissible assets of an insurer or of a life insurance statutory fund maintained by an insurer.

(3) The Commission may, in prescribing matters referred to in subsection (2), make separate prescription in respect of insurers carrying on life insurance business and those carrying on non-life insurance business; and within the category of life insurance business may make separate prescription in respect of statutory funds which are required by this Ordinance to be established for the conduct of a particular category of life insurance business.

(4) For the purposes of this section, the provisions of clauses (p), (q) and (r) of sub-section (2) shall extend mutatis mutandis to investments made in shares (or equity securities by whatever name called) of a body corporate incorporated in a jurisdiction other than Pakistan.

(5) For the purposes of this section, immovable property is a "unit" where it is the smallest discrete parcel of immovable property, consisting of land or buildings and structures constructed thereon or both, owned by an insurer and is capable of being lawfully the subject of a transfer or other disposition of the whole of the legal and beneficial interest, without the necessity for any consent, licence, permit or approval from any governmental authority to divide or sub-divide the parcel in order to transfer or otherwise make a disposition of the whole of the legal and beneficial interest therein.

(6) In this section, "investments" includes all forms of shares, debentures, bonds, deposits and other securities and derivative instruments, and includes immovable property whether or not occupied by the insurer.

(7) For the purposes of this section, two or more persons are "related" if they are under common control, or if they are connected by an ownership interest of more than 49% or, if they are natural persons, they are members of the same family.

(8) A declaration by the Commission under clause (d) of sub-section (1):

(a) may be made on the application of the insurer;
(b) shall be made in writing to the insurer;
(c) shall not be made unless the Commission believes on reasonable grounds, having regard to the circumstances of the insurer, the interests of policyholders of the insurer, the nature of the assets in respect of which the application is made and the nature of the other assets and the liabilities of the insurer, that:

(i) such a declaration will not adversely affect the ability of the insurer to meet its liabilities, including policyholder liabilities, as they fall due;
(ii) such a declaration is not inconsistent with the principles of sound and prudent management of the insurer set out in section 12; and
(iii) such a declaration ought to be made;

(d) may be made in respect of the whole of the assets in respect of which application is made, or of such part thereof as the Commission may direct;
(e) shall be made subject to such conditions as the Commission may direct;
(f) shall have effect not more than three months from the date of such declaration; and
(g) shall remain in force for a period of not more than twelve months from the date at which the declaration has effect, unless revoked in writing by the Commission before the expiry of that time.

(9) A declaration by the Commission under clause (w) of sub-section (2):

(a) shall be made in writing to the insurer;
(b) shall not be made unless the Commission believes on reasonable grounds, having regard to the circumstances of the insurer, the nature of the assets and the nature of the other assets and the liabilities of the insurer, and after giving the insurer a chance to be heard, that the assets should be declared not to be admissible assets of that insurer or of a life insurance statutory fund of that insurer;
(c) shall have effect not less than three months from the date of such declaration; and
(d) shall continue until it is revoked in writing by the Commission.

33. Assets and liabilities in Pakistan.-

(1) For the purposes of this Part, an asset is an asset in Pakistan if -

(a) it is immovable property situated in Pakistan;
(b) it is movable property (other than money, debts or other actionable claims) physically located in Pakistan and owned by and in the possession of a person resident in Pakistan and no person (other than the owner thereof) has any better right to possession thereof whether by virtue of an encumbrance or otherwise and is lawfully entitled to take it out of Pakistan or remove it from Pakistan;
(c) it is money or a debt or an actionable claim denominated or payable only in rupees in Pakistan; or
(d) it is money or a debt or an actionable claim denominated or payable in a currency other than rupees in respect of which any person has a right to sue and recover the same by proceedings in Pakistan or it is required by law to be received in Pakistan by or is payable to a person resident in Pakistan.

(2) For the purposes of this Part, where a liability is undertaken by a person under:

(a) a contract of insurance made in Pakistan or in respect of which a proposal was accepted or a policy issued in Pakistan, not being a contract

(i) that relates only to a liability contingent upon an event that can happen only outside Pakistan, not being a liability that the person has undertaken to satisfy in Pakistan; or

(ii) where the person carries on insurance business both in and outside Pakistan, that relates only to a liability that the person has undertaken to satisfy outside Pakistan; or

(b) a contract of insurance made outside Pakistan or in respect

39

of which a proposal was accepted or a policy issued outside Pakistan where any part of the negotiations or arrangements leading to the making of the contract, to the acceptance of the proposal or to the issue of the policy took place or were made in Pakistan, being a contract

(i) that relates to a liability contingent upon an event that can happen only in Pakistan; or

(ii) where the person carries on insurance business both in and outside Pakistan, that relates to a liability that the person has undertaken to satisfy in Pakistan; that liability is a liability in Pakistan.

34. Valuation of assets and liabilities.-

(1) For the purposes of this Part, assets and liabilities shall, subject to sub-section (2), be valued in accordance with such accounting rules as may be prescribed by the Commission.

(2) For the purposes of this Part, as at any date (the "balance date") to which a statement of assets and liabilities (however called or described) is made up:

(a) no asset of an insurer shall be valued at more than the amount, net of transaction costs incurred by the transferor, at which it could be transferred in an orderly market in a transaction between two willing but not anxious parties;

(b) no liability of an insurer, not being a policyholder liability, shall be valued at less than the amount, including transaction costs incurred by the transferor, at which it could be transferred in an orderly market in a transaction between two willing but not anxious parties;

(c) the liability for outstanding claims of a non-life insurer shall not be valued at less than the expected settlement cost, including settlement expenses, of all claims incurred by the insurer but not paid as at the balance date, whether or not those claims have been reported to the insurer as at that date, and including prudent but reasonable provision for adverse development in that expected settlement cost after balance date; and

(d) the liability for unexpired risk of a non-life insurer shall not be valued at less than the sum of the unearned premium reserve and the premium deficiency reserve, where:

(i) the unearned premium reserve is the unexpired portion of the premium which relates to business in force at the balance date; and

(ii) the premium deficiency reserve is the amount if any by which the expected settlement cost, including settlement expenses but after deduction of expected reinsurance recoveries, of claims expected to be incurred after the balance date in respect of policies in force at the balance date, exceeds the unearned premium reserve.

(3) The Commission may prescribe guidelines for the estimation of amounts set out in sub-section (2).

35. Net admissible assets of life insurers.-

(1) A life insurer shall at all times maintain in its shareholders' fund a surplus of admissible assets in Pakistan over liabilities in Pakistan of not less than the required minimum amount.

(2) For the purposes of the preceding sub-section, the required minimum amount is seventy-five million rupees or such higher amount as may be prescribed: Provided that for the period from the commencement date and until 31st December 2004, in respect of an insurer which is authorised to carry on insurance business on the commencement date, this sub-section shall apply as if the amount of seventy-five million rupees specified therein shall be substituted by the amount of thirty million rupees.

(3) A life insurer shall, in each statutory fund maintained by it for the conduct of business other than investment-linked business, maintain at all times a surplus of admissible assets in Pakistan over liabilities in Pakistan, other than policyholder liabilities, equal to or greater than the amount of policyholder liabilities calculated in accordance with such principles as may be prescribed by the Commission.

(4) A life insurer shall, in each statutory fund maintained by it for the conduct of investment-linked business, maintain at all times a surplus of admissible assets in Pakistan over liabilities in Pakistan, other than policyholder liabilities, equal to or greater than a sum calculated in accordance with such principles as may be prescribed by the Commission.

(5) A life insurer shall, in each statutory fund maintained by it, maintain at all times, in each currency in which the policy liabilities of that statutory fund are denominated, a surplus of admissible assets denominated in such currency over liabilities including policyholder liabilities denominated in such currency, in an amount to be determined in accordance with such provisions in this respect as the Commission shall prescribe.

(6) Where a life insurer has issued policies the benefits under which are payable in a currency other than Pakistan Rupees, securities denominated in that currency and issued and guaranteed as to principal and profit or return (however called or designated) by the Government of the country in whose currency such benefits are expressed, shall be deemed for the purposes of this section to be admissible assets of a statutory fund to which such policies are referable.

(7) The Federal Government may prescribe a percentage or percentages of the assets of the shareholders' fund of a life insurer, or of a statutory fund of a life insurer, other than a statutory fund which contains only investment-linked policies, which shall be invested in Government securities, or in a combination of Government securities and other approved securities.

(8) The aggregate of percentages prescribed under sub-section (7) shall not exceed forty per cent.

36. Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.-

(1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.

41

(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount

greater than or equal to the minimum solvency requirement.

(3) For the purposes of this section, the minimum solvency requirement is the greatest of:

(a) such required minimum amount as may be prescribed by the Commission;

(b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure; and

(c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure: Provided that in the case of an insurer incorporated in a jurisdiction outside Pakistan the amounts set out in clauses (b) and (c) of this sub-section shall be calculated with reference to the earned premium revenue, unexpired risk liability and outstanding claims liability and related reinsurance balances of that insurer in respect of its insurance business in Pakistan only.

(4) The Commission may direct an insurer not to deal with any specified asset for any specified period of time in order to ensure compliance by the insurer with the provisions of this Part.

37. Prohibition of loan.-

(1) No insurer shall grant to, or to any member of the family of, any director, chief executive, appointed actuary, or auditor of the insurer any loan or temporary advance, whether secured by an encumbrance of property or otherwise except a loan, secured by a life policy issued by the insurer, of not more than eighty per cent. of the surrender value of that policy.

(2) Except with the prior approval of the Board of Directors at a regularly convened meeting by the vote of not less than two-thirds of the total number of directors, no insurer shall grant any loan or temporary advance to any firm or company in which any director, manager, actuary, auditor or officer of the insurer, or any member of the family of such director, manager, actuary, auditor or officer has any interest as proprietor, partner, director, manager or managing agent: Provided that no such approval shall be required if the loan is secured by a life policy issued by the insurer and is an amount not exceeding eighty per cent. of the surrender value of that policy.

(3) The director concerned shall not vote at, or otherwise participate in the proceedings of the meeting of the Board considering the grant of any such loan or advance as is referred to in sub-section (2).

(4) Where any event occurs giving rise to circumstances the existence of which at the time of the grant of any subsisting loan or temporary advance would have made such grant a contravention of sub-section (1) or sub-section (2), such loan shall, notwithstanding any contract to the contrary, be repaid within three months from the occurrence of such event and in case of default, the director, manager, actuary, auditor or officer concerned shall, without prejudice to any other penalty to which he may be liable, cease to hold office with the insurer granting the loan or 42 advance on the expiry of the said three months.

(5) Nothing in sub-section (1) or sub-section (2) shall apply to loans or advances granted by an insurer to a banking company or to a subsidiary company (being an insurer) or to any insurer to which the insurer granting the loan or advance is a subsidiary company.

(6) Nothing in sub-section (1) shall apply to any stipend paid to any insurance agent while he is undergoing a course of training approved by the Federal Government.

(7) The provisions of section 195 of the Companies Ordinance, 1984 (XLVII of 1984), shall not

apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears risk and the policy was issued to the director on his own life, and the loan is of an amount not more than eighty per cent. of the surrender value of the policy.

(8) Except as otherwise provided in this section, an insurer may make a loan or temporary advance to an employee or agent of that insurer in accordance with such conditions as may be prescribed by the Commission.

(9) With effect from the commencement date, no loan or temporary advance granted under this section by a life insurer to an employee or an agent of the insurer, other than a loan granted on the security of a policy issued to the employee or agent on his own life and on which the insurer bears risk, shall be made other than from the shareholders' fund of the insurer.

38. Liability of directors, etc for loss due to contraventions of sections 35,

36 or 37.- If by reason of a contravention of any of the provisions of sections 35, 36 or 37, any loss is sustained by the insurer or by the policy holders, every director, manager or officer of the insurer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Ordinance, be jointly and severally liable to make good the amount of such loss.

39. Assets of insurer how to be kept.- None of the assets in Pakistan of any insurer shall, except in the case of deposits made with the State Bank of Pakistan under section 29, or in the case of assets, other than deposits, with a scheduled bank acting as a custodian, be kept otherwise than in the corporate name and under the direct control of the insurer and, in the case of assets of a statutory fund of a life insurer, in the name of the statutory fund.

PART VI

REINSURANCE ARRANGEMENTS

40. Special definitions and conditions applicable to this Part.-

(1) In this

Part:

(a) "Company" means the Pakistan Reinsurance Company Limited; and

(b) "net retention" means the part of the sum insured in respect of any one risk which is retained by an insurer to his own

43 account.

(2) This Part, other than section 41, shall cease to have effect on the happening of either of the following events:

(a) the effective date of a direction by the Commission to the Company to cease entering into new contracts of insurance; or

(b) the Federal Government ceasing to hold a controlling ownership interest in the Company.

(3) A provision of this Part, other than section 41, shall not have effect with respect to an insurer if and to the extent that complying with that provision would cause that insurer to contravene a provision of section 11 or section 41.

(4) For the purposes of this Part other than section 41 and this section, the Company is not an insurer.41. Requirement to effect and maintain reinsurance arrangements.-

(1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or body responsible for conducting the management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency.

(2) Every insurer shall submit to the Commission, in the manner prescribed by the Commission and not less than one month prior to the coming into effect, or as soon as practicable thereafter, of any treaty reinsurance arrangement entered into by the insurer as cedant, such features of that reinsurance arrangement as may be prescribed by the Commission.

(3) Where any reinsurance treaty the particulars of which have been submitted to the Commission under sub-section (2) is altered or any new treaty reinsurance arrangement is made after the submission of the information under sub-section (2), the insurer concerned shall submit to the Commission, in the manner prescribed by the Commission, particulars of such alteration in the treaty or such new treaty reinsurance arrangement within one month of such alteration or arrangement and shall submit such further information or clarification as the Commission may require.

(4) The Commission may, at any time and after giving the insurer an opportunity of being heard, for reasons to be recorded in writing, direct the insurer to make such modifications in his reinsurance arrangements as the Commission may specify.

(5) The Federal Government may make rules, not inconsistent with subsection (1), governing the reinsurance outside Pakistan, other than on a treaty basis, of insurance business underwritten by an insurer in Pakistan. Explanation:- For the purposes of this section, "reinsurance" includes "retrocession".

42. Compulsory cession.-

(1) Every insurer shall in each year reinsure with 44 the Company and the Company shall accept by way of reinsurance not less than such proportion, subject to the maximum of twenty per cent on any individual risk, of the sum insured on each direct non-life insurance contract issued by the insurer in Pakistan in that year, as is determined on such basis as may, from time to time, be notified by the Federal Government in the official Gazette.

(2) The Federal Government may, by notification in the official Gazette, direct that every insurer shall offer to reinsure with the Company such proportion as is determined on such basis as may be specified in such notification of its direct non-life insurance business which is in excess of the aggregate of:

(a) the insurer's net retention;

(b) the sum insured required to be reinsured under sub-section (1); and

(c) the sum insured otherwise reinsured with the Company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

(3) The reinsurance set out in sub-section (1) shall for the purposes of this Ordinance constitute a treaty contract of reinsurance between the insurer and the Company, operating on a risks attaching basis.

(4) Whoever contravenes the foregoing provisions of this section shall be punishable with a fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the day on which the contravention continues.

(5) The Federal Government may, by notification in the official Gazette and on reasonable grounds, exempt any insurer and the Company from the preceding requirements of this section so far as concerns any part of any class or sub-class of business.

43. Premiums and statements.-

(1) Every insurer shall pay the amount payable on account of reinsurance with the Company as required under sub-section (1) of section 42, within such period as may be prescribed by regulations and in default of such payment shall be liable to pay the Company for the period during which the default continues a penalty calculated on the amount of the defaulted premium at the base rate prevailing on the date on which the default first occurred.

(2) Every insurer shall submit to the Company in such manner and form and within such period as may be prescribed by regulations, a statement relating to his business reinsured with the Company under sub-section (1) of section 42.

(3) Whoever contravenes sub-section (1) or sub-section (2) shall be punishable with a fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the day on which the contravention continues.

(4) The Company may call for or examine or cause to be examined such relevant accounts, books, documents, memoranda or other records of an insurer as it may reasonably require for the purpose of verifying the correctness of the claims, declarations, returns, statements or other information submitted to it by that insurer.

(5) An insurer shall, when called upon to do so under sub-section (4), produce and make freely accessible to the Company or to its representative duly authorised in this behalf such accounts, books, documents, memoranda or other records as are in his possession or 45 control, and shall otherwise facilitate the examination thereof.

(6) Whoever wilfully obstructs the Company or any person authorised by it in the exercise of its or his power or performance of functions under subsection (4), or fails without reasonable cause to comply with a request made thereunder, or who, being an insurer, fails otherwise to comply with a duty imposed on that insurer under sub-section (5), shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to fifty thousand rupees.

44. Rules and regulations for the administration of compulsory reinsurances.-

(1) The Federal Government may make such rules and regulations and issue such notifications as are necessary for the administration of section 42 and section 43.

(2) Rules, regulations and notifications, made under the authority of the Pakistan Insurance Corporation Act 1952 for the purposes of section 26 of that Act and in force as at the commencement date, shall be deemed to have been made under the provisions of the

preceding sub-section and shall apply mutatis mutandis except in so far as and to the extent that they conflict with the provisions of this Ordinance.

PART VII

ACCOUNTS AND AUDIT

45. Books and records.-

(1) Every insurer, in respect of all insurance business transacted by him, and in the case of an insurer incorporated in a jurisdiction outside Pakistan in respect of the insurance business transacted by the insurer in Pakistan, shall maintain proper books and records.

(2) Books, accounts and records in respect of insurance business transacted in Pakistan shall be maintained in Pakistan and in either the English or the Urdu language.

(3) For the purposes of this Ordinance, proper books and records shall include without limitation:

(a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice;

(b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor; and

(c) such other books and records as may from time to time be prescribed.

(4) For the purposes of this Ordinance, the expression "books" includes -
46

(a) a register;

(b) accounts or accounting records, however compiled, recorded or stored;

(c) a document; and

(d) any other record of information.

(5) A book that is required by this Ordinance or the Companies Ordinance, 1984 to be kept or prepared by an insurer may be kept or prepared

(a) by making entries in a bound or looseleaf book;

(b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or

(c) in any other manner approved by the Commission.

Provided that the matters recorded or stored are capable, at any time, of being reproduced in a written form or a reproduction of those matters is kept in a written form approved by the Commission.

(6) An insurer shall take all reasonable precautions, including such precautions, if any, as may be prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required to be kept or prepared by an insurer.

46. Accounting and reporting.-

(1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:

(a) in the case of a life insurer, -

- (i) a statement of assets and liabilities for each statutory fund operated by the life insurer and the shareholders' fund;
 - (ii) a statement of profits and losses for the shareholders' fund;
 - (iii) a statement of cash flows for each statutory fund operated by the life insurer and the shareholders' fund;
 - (iv) a revenue account for each statutory fund operated by the life insurer;
 - (v) a statement of premiums for each statutory fund operated by the life insurer;
 - (vi) a statement of claims for each statutory fund operated by the life insurer;
 - (vii) a statement of expenses for each statutory fund operated by the life insurer;
 - (viii) a statement of investment income for each statutory fund operated by the life insurer
 - (ix) such other statements as may be prescribed by the Federal Government; each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf;
- (b) in the case of a non-life insurer, 47

- (i) a statement of assets and liabilities;
- (ii) a statement of profits and losses;
- (iii) a statement of cash flows;
- (iv) a statement of premiums;
- (v) a statement of claims;
- (vi) a statement of expenses;
- (vii) a statement of investment income;
- (viii) a statement of claims analysis;
- (ix) a statement of exposures; and
- (x) such other statements as may be prescribed by the Federal Government; each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf.

(2) Every insurer shall furnish, to the Commission, following the last day of December, March, June and September in each year, a statement of assets and liabilities in the form and prepared in accordance with the regulations prescribed under the preceding sub-section made up as of that date and such statement shall be certified by a principal officer of the insurer. Provided that an actuarial valuation of policyholder liabilities as at the date to which such statement is made up is not required by virtue of this sub-section alone, and that the regulations prescribed under this sub-section shall provide for the determination of the value which is to be attributed to policyholder liabilities for the purposes of this sub-section.

(3) In the case of an insurer registered to conduct life insurance business, such statement shall be furnished separately in respect of each statutory fund maintained by the life insurer and in respect of the shareholders' fund.

(4) The statements referred to in the foregoing sub-sections shall be prepared in respect of all

insurance business transacted by an insurer except that in the case of an insurer incorporated in a jurisdiction outside Pakistan, the statement shall be prepared in respect of the insurance business transacted by the insurer in Pakistan.

(5) In the case of a life insurer having in force policies which are investment-linked, the statement referred to in sub-section (2) shall be accompanied by a statement, signed in the case of a company by any two directors and the principal officer of the company, and in the case of an insurer incorporated in a jurisdiction outside Pakistan, by its principal officer in Pakistan and any two directors (or the closest comparable officer equivalent thereto), containing the following particulars in respect of its investment-linked business:

- (a) the assets underlying the units linked to policies in force;
- (b) the values assigned to each such asset;
- (c) the valuation placed on the units; and
- (d) the amount of any provisions made in determining the valuation.

(6) The statements referred to in sub-section (1) shall be signed, in the case of a company, by the chairman, if any, and two directors and the principal officer of the company, or in the case of an insurer incorporated in a jurisdiction outside Pakistan, by its principal officer in Pakistan and any two directors (or the closest comparable officer equivalent thereto) and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer; by a report by such persons on the affairs of the business during that period; and a

48

statement by such persons signed by the same persons who have signed the accounts that

(a) in their opinion the annual statutory accounts of the insurer set out in the forms attached to the statement have been drawn up in accordance with the Ordinance and any rules made thereunder;

(b) the insurer has at all times in the year complied with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements; and

(c) as at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements. 47. Compliance with companies laws relating to accounts, reports, etc.-

(1) Every insurer being a company shall deliver to the Commission in such manner as may be prescribed such additional copies as may be prescribed of all accounts, documents, reports and returns filed under the Companies Ordinance, 1984 at the same time as they are required to be filed thereunder.

(2) An insurer incorporated in a jurisdiction outside Pakistan registered as an insurer shall comply with all applicable requirements of Part XIV of the Companies Ordinance, 1984 and shall provide to the Commission in such manner as may be prescribed such additional copies as may be prescribed of all accounts, documents, reports and returns filed thereunder at the same time as they are required to be filed under the Companies Ordinance, 1984 (XLVII of 1984);

(3) In addition to the requirements of the foregoing sub-section, an insurer which is an insurer incorporated in a jurisdiction outside Pakistan, shall also provide to the Commission, not later than thirty days from such date on which such insurer is required to provide such information to

any governmental or independent regulatory authority in accordance with the laws of the jurisdiction of its incorporation or other applicable law in the country in which it has its corporate seat or principal place of business, a copy of the annual accounts prepared under the laws of the place of its incorporation and a copy of any public document which shows or purports to show the annual profit or state of affairs of the insurer in respect of its business in Pakistan.

(4) Any materials required to be provided under the provisions of subsections (2) and (3), if not in either the English or the Urdu language, shall be accompanied by certified copies (in such number as may be required under the Companies Ordinance, 1984 or as may otherwise be prescribed by the Commission) of an English translation thereof.

48. Audit.-

(1) Every insurer shall appoint an auditor who shall be:

- (a) approved by the Commission as qualified to perform audits of insurance companies; and
- (b) authorised under the Companies Ordinance to perform audits of public companies.

(2) The auditor shall in respect of the statements required to be provided pursuant to sub-section (1) of section 46 express an opinion as to 49 whether:

- (a) the statements accurately reflect the books and records of the company;
- (b) the company has maintained proper books and records;
- (c) the statements present fairly the state of affairs of the company as at the balance date and the result of the company for the financial year ended on that date; (d) in the case of a life insurer, the apportionment required to be performed under section 17 has been performed in accordance with the advice of the appointed actuary; and
- (e) the statements have been prepared in accordance with this Ordinance.

(3) The opinion required to be expressed by an auditor under sub-section (2) shall be expressed in writing and a copy of the opinion shall be attached by the insurer to the statements to which it relates, when those statements are delivered to the Commission.

(4) The auditor shall in the audit of all such accounts and statements have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by sections 255, 256, 257 and 260 of the Companies Ordinance, 1984.

49. Special audit.-

(1) The Commission may at its discretion appoint an auditor, approved by the Commission as qualified to perform audits of insurance companies but not being the auditor, or a partner of the auditor appointed by the insurance company concerned, to perform an investigation of such accounts and statements, books and records of an insurer as the Commission may direct.

(2) An auditor appointed under this section shall have a right of access to all such books of account, registers, vouchers, correspondence and other documents of the insurer, and shall be entitled to require from the directors and officers of this insurer such information and

explanation, as may be necessary for the performance of his functions and duties under this section.

(3) Every report prepared by an auditor or auditors appointed under this section shall be submitted to the Commission.

(4) An auditor appointed under this section shall be paid by the insurer such fees as may be prescribed.

(5) The fee payable by an insurer under sub-section (4) shall be paid to the auditor within such time as may be specified by the Commission.

50. Actuarial report.-

(1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by it, as at the end of each year cause an investigation to be made by the appointed actuary into the financial condition of the life insurance business carried on by it, including a valuation of its policyholder liabilities in respect thereto and shall cause the report of the appointed actuary to be made in accordance with such conditions as may be prescribed by the Commission.

(2) The provisions of sub-section (1) regarding the making of a report shall 50 apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such report as is referred to in subsection

(1) or sub-section (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the appointed actuary for the purpose of the investigation.

(4) The financial condition report prepared under sub-section (1) shall include a statement, prepared in conformity with such conditions as may be prescribed in this behalf, of the life insurance in force at the date to which the accounts of the insurer are made up for the purposes of such report.

(5) The financial condition report prepared under sub-section (1) shall include a statement of the minimum actuarial reserve for policyholder liabilities calculated in the manner and on the basis prescribed by the Commission in this behalf.

Explanation: in this section, the "minimum actuarial reserve for policyholder liabilities" means, for each statutory fund of the insurer, the amount of policyholder liabilities referred to in subsection (3) of section 35 or the sum referred to in sub-section (4) of section 35, whichever is applicable to that statutory fund.

(6) If for any statutory fund the amount which, in the opinion of the appointed actuary, represents a realistic valuation of policyholder liabilities existing at balance date, including prudent but reasonable provision for adverse development in those liabilities after balance date,

is greater than the minimum actuarial reserve for policyholder liabilities for that statutory fund, the financial condition report prepared under subsection

(1) shall include a statement of that amount.

(7) The Commission may require an insurer, or insurers generally, to cause an actuarial investigation to be conducted in such manner as may be prescribed in respect of such class or sub-class of non-life insurance business as may be prescribed, and to provide the Commission with a copy of the actuary's report on that investigation.

51. Submission of returns.-

(1) The audited statements and report referred to in sub-sections (1) and (5) of section 46 and the report and statement referred to in section 50, including any report referred to in sub-section

(7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:

Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month.

(2) The statement referred to in sub-section (2) of section 46 shall be furnished as a return to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within six weeks from the date to which it is made up:

Provided that the Commission may on application by an insurer 51 extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding fifteen days.

(3) One printed copy of the returns shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a chief executive (by whatever name called), also by him, and in the case of the report and statement referred to in section 50 by the actuary who carried out the investigation.

(4) Until 31 December 2000, this section shall apply as though the periods of four months and six weeks contained therein shall be substituted respectively by periods of six months and eight weeks.

52. Exemption from certain provisions of the Companies Ordinance,

1984.-

(1) The Commission may prescribe a form of balance sheet, profit and loss account, revenue account and any other statement required to be filed by life insurers for the purposes of sub-section (5) of section 233 of the Companies Ordinance, 1984 (XLVII of 1984), and filing made in such form shall satisfy the requirements of that sub-section.

(2) The statements required to be filed by life insurers for the purposes of sub-section (5) of section 233 of the Companies Ordinance, 1984 (XLVII of 1984), shall be deemed to include the following statements, each in such form as may be prescribed by the Commission:

- (a) a statement by the appointed actuary of his opinion as to whether the policyholder liability included in the balance sheet has been determined in accordance with the provisions of this Ordinance;
- (b) a statement by the appointed actuary of his opinion as to whether each statutory fund of the insurer complies with the solvency requirements of this Ordinance;
- (c) a statement by the directors of the insurer of their opinion as to whether each statutory fund of the insurer complies with the solvency requirements of this Ordinance; and
- (d) such other statements as may be prescribed by the Commission.

53. Furnishing reports.- Every insurer shall furnish to the Commission a certified copy of every report on the affairs of the insurer which is submitted to the members or policy holders of the insurer immediately after its submission to the members or policy holders, as the case may be.

54. Abstract of proceedings of general meetings.- Every insurer, being a company or body corporate incorporated under any law for the time being in force in Pakistan, shall furnish to the Commission a certified copy of the minutes of the proceedings of every general meeting as entered in the Minutes Book of the insurer within thirty days from the holding of the meeting to which it relates.

55. Custody and inspection of documents and supply of copies.- (1)

Every return furnished to the Commission, or a certified copy thereof shall be kept by the Commission and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of such fee as may be prescribed.

(2) A printed or certified copy of the accounts, statements and report 52 furnished in accordance with the provisions of section 46 shall, on the application of any shareholder or policy holder made at any time within two years from the date on which the document was so furnished be supplied, to him by the insurer within fourteen days when the insurer is a company or body corporate incorporated in Pakistan and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company, shall on the application of any policy holder, be supplied to him by the insurer on payment of such fee as may be prescribed.

56. Power of Commission regarding returns .- If it appears to the Commission that any return furnished to it under the provisions of this Ordinance is inaccurate or defective in any material particular, it may:

- (a) require from the insurer such further information, certified if the Commission so directs by an auditor or actuary, as the Commission may consider necessary to correct or supplement such return;
- (b) call upon the insurer to submit for its examination at the principal place of business of the

insurer in Pakistan any book of account, register or other document or to supply any statement which the Commission may specify in a notice served on the insurer for the purpose;

(c) examine any officer of the insurer on oath in relation to the return; or

(d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer and if the Commission declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 46 or section 51 relating to the furnishing of returns.

57. Power of Commission to order actuarial report .-

(1) If it appears to the Commission that a report prepared under section 50 does not properly indicate the condition of the affairs of the insurer, the Commission may after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation to be made into the financial condition of the insurer as at such date as the Commission may specify, at the expense of the insurer, by an actuary appointed by the insurer for this purpose and approved by the Commission and the insurer shall place at the disposal of the actuary so appointed and approved all the material required by the actuary for the purposes of the investigation within such period, not being less than three months, as the Commission may specify.

(2) Subject to sub-section (3), the provisions of sub-sections (1), (4), (5) and

(6) of section 50, and of sub-section (1) of section 51 shall apply in relation to an investigation under this section:

Provided that the report and statement prepared as the result of such investigation shall be furnished by such date as the Commission may specify.

(3) Where the report first referred to in sub-section (1) was prepared pursuant to sub-section (7) of section 50, sub-section (2) shall not apply, and the provisions of sub-section (7) of section 50 shall apply in relation to an investigation under this section:

Provided that the report prepared as the result of such investigation shall be furnished by such date and in such manner as the Commission may specify.

53

58. Evidence of documents.-

(1) Every return furnished to the Commission, which has been certified by the Commission to be a return so furnished, shall be deemed to be a return so furnished.

(2) Every document, purporting to be certified by the Commission to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

PART VIII

INVESTIGATION, DIRECTIVES, ETC.

59. Power of Commission to order investigation.-

(1) If the Commission believes upon reasonable grounds that an insurer is or is likely to become unable to meet its liabilities or that there has been or is likely to be a contravention of the provisions of the Ordinance or the rules made thereunder by the insurer, it may investigate the affairs of an insurer and wherever necessary, employ an auditor or actuary or both for assisting it in any such investigation.

(2) An investigation under sub-section (1) shall be commenced and carried out in accordance with the provisions of Part VIII of the SECP Act. Provided that for the purposes of this section, the words "the Court referred to in Part II of the Ordinance" contained in sub-section (1) of section 34 of the SECP Act shall be read as though they were omitted and replaced with the words "the Tribunal".

(3) When an investigation is made under this section, the Commission may, after giving an opportunity to the insurer to make a representation in writing or be heard in person, by order in writing require the insurer to take such action in respect of any matter arising out of the investigation as it may consider on reasonable grounds to be necessary to secure compliance with the provisions of this Ordinance.

60. Power of the Commission to give directions to the insurer.- (1) The

Commission may, if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11, issue to the insurer such directions, not otherwise provided for in this Ordinance, as it believes on reasonable grounds to be necessary to protect the interests of the policy holders of the insurer.

(2) The Commission may, on representation made in this behalf, or on its own motion, modify, or cancel any direction issued under sub-section (1) and may, in so modifying or cancelling a direction, impose such conditions as it may deem on reasonable grounds to be appropriate under the circumstances.

(3) Every insurer shall comply with any direction issued under sub-section

(1) or such direction as modified under sub-section

(2) subject to such further conditions, if any, as may be imposed.

(4) The Federal Government may, by rules made in this behalf, provide

(a) for the procedures which the Commission shall follow with respect to all or any of the matters set out in subsections (1) and (2);

Provided that no powers shall be exercised under sub-section (1) until such rules, consonant with the provisions of sub-sections (3) and (4) of section 22 of the SECP Act, have been made; and

(b) for any other matter supplementary or incidental to or consequential on the matters aforesaid for which provision requires to be made by rules.

61. Power of Commission to call for information and access.-

(1) The Commission may by notice in writing direct any insurer to supply the Commission, within such period as the notice may specify, with any information relating to its insurance business which the Commission may reasonably require.

(2) The Commission may direct that any information supplied under subsection (1) shall be certified by the principal officer of the insurer, by an independent auditor or in the case of a life insurer by the insurer's appointed actuary.

(3) The Commission may by notice in writing direct the chief executive or principal officer of the insurer to discuss with the Commission any matter pertaining to the business or management of the insurer.

(4) The Commission may by notice in writing require the insurer to allow any officers of the Commission nominated for the purpose to observe, for such period as the Commission may specify, the manner in which the affairs of the insurer or of any of its offices or branches are being conducted.

62. Power of Commission to require plan.-

(1) The Commission may direct an insurer to prepare, present to its directors and to the Commission, and to report to its directors and to the Commission on the implementation of, a plan for action to rectify or to prevent an actual or apprehended contravention by the insurer of the conditions of registration set out in section 11.

(2) The Commission may in making a direction under sub-section (1) direct that such a plan or report on the implementation thereof contain such information and be accompanied by such opinions or certificates as the Commission shall specify.

63. Power of Commission to issue direction to cease entering into new contracts of insurance.-

(1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11.

55

(2) The Commission shall issue a direction to cease entering into new contracts of insurance if:

(a) a petition is presented for the winding up of the insurer and has not been withdrawn or vacated within a period of sixty days;

(b) the whole of the business of an insurer has been transferred to any person;

(c) the Tribunal has made an order that a direction be given to that insurer to cease entering into new contracts of insurance; or

(d) the insurer has failed to comply with a directive issued under this Ordinance concerning a contravention of the Ordinance or the rules made thereunder, within the time specified in the Ordinance or, if not so specified, within the time specified in the directive or three months, whichever is longer, and the directive had stated that the failure to comply would lead to a direction to cease entering into new contracts of insurance:

Provided that a direction shall not be issued under clause (d) without giving the insurer an opportunity to be heard.

(3) A direction to cease entering into new contracts of insurance shall have effect one month from the date of the direction unless a later date is specified in the direction.

(4) A direction to cease entering into new contracts of insurance shall be accompanied by a statement of the reasons for the direction.

(5) A direction to cease entering into new contracts of insurance shall only be revoked if the reasons for the direction as given in the statement required to be given by the preceding subsection shall have ceased to exist.

(6) An insurer shall not be in contravention of a direction to cease entering into new contracts of insurance by reason only that the insurer continues to carry out its obligations under contracts of insurance entered into before the direction came into effect.

64. Power to require calling of meeting of directors etc.- If the

Commission is satisfied that such action is necessary for the purposes of procuring action by an insurance company, or of satisfying itself that appropriate action is being taken or after an investigation under section 56, the Commission may by order in writing and on such terms and conditions as may be specified therein:

(a) require an insurance company to call a meeting of its directors for the purpose of considering any matter relating to, or arising out of the affairs of the insurer;

(b) require the insurer to allow any officer of the Commission deputed for the purpose to attend, and to speak at, any meeting of the Board of Directors of the insurer or of any committee or other body constituted by the insurer and to furnish such officer with a copy of the proceedings of such meeting; or

(c) require the insurer to send in writing to the Commission all notices of, and other communication relating to, any meeting of the Board of Directors of the insurer, or of any committee or other body constituted by the insurer.

56

65. Power to remove Chairman, Director, etc. of the insurer.-

(1) If, after the completion of a special audit under section 49 or investigation under section 59, or otherwise on reasonable grounds, the Commission has reason to believe that a person holding the office of Chief Executive, Chairman, director, manager or principal officer, by

whatever name called (including the principal officer in Pakistan of an insurer incorporated in a jurisdiction outside Pakistan), of an insurer has contravened the provisions of any law (including, in the case of a company any such person having become disqualified under the provisions of section 187 of the Companies Ordinance) and that the contravention is of such a nature that the association of such person with the insurer or insurance broker is or is likely to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable, such person not being a fit and proper person to have the charge of an insurer, the Commission shall make a report of the fact to the Tribunal.

(2) If, after considering a report under sub-section (1) and after giving such person an opportunity of being heard, the Tribunal is satisfied that the association with the insurer of the person in respect of whom the report has been made is or is likely to be detrimental to the interests of the insurer or the policy holders, or is otherwise undesirable, such person not being a fit and proper person to have the charge of an insurer, it may make an order that such person shall cease to hold the office with the insurer with effect from such date as may be specified in the order, and thereupon that office shall, with effect from the said date, become vacant.

(3) An order under sub-section (2) in respect of any person may also provide that he shall not, without the previous permission in writing of the Tribunal in any way, directly, or indirectly, be concerned with, or take part in the management of the insurer or any other insurer for such period not exceeding five years as may be specified in the order.

(4) No order under sub-section (2) shall be made in respect of any person without giving him an opportunity of being heard unless the Tribunal is of the opinion that any delay in making the order would be detrimental to the interest of the insurer or of the policy holders.

(5) The foregoing provisions of this section shall apply to insurance brokers as they apply to insurers and to such other insurance intermediaries as the Federal Government may specify by notification in the Gazette.

66. Power to prescribe maximum levels of acquisition costs and maximum levels of management expenses.-

(1) The Commission may make rules limiting the total amount of acquisition costs which may be incurred by an insurer in a year.

(2) The Commission may make rules limiting the total amount of management expenses which may be incurred by an insurer in a year.

(3) Rules made under sub-section (1) or sub-section (2) shall apply to all insurers to whom the Ordinance applies:

Provided that the rules may differentiate between different categories of insurance business for the purposes of determining limits.

(4) The power conferred by this section shall expire on 31st December next following the date five years from the commencement date and all rules made under this section shall be repealed on the expiry of that power.

(5) For the purposes of this section:

(a) "acquisition costs" means such costs as may be prescribed, incurred in acquiring insurance policies and in maintaining such policies, and includes without limitation all forms of remuneration paid to insurance agents and brokers; and

(b) "management expenses" means all expenses incurred by an insurer, not being reinsurance expenses or claims expenses or expenses directly referable to claims, and includes without limitation acquisition costs as defined in this subsection.

PART IX

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

67. Approval of acquisition or transfer.-

(1) Any proposed transaction for the acquisition of a shareholding of more than ten per cent. (10%) in an insurance company, or, in the case of a non-life insurer, of the whole or any part exceeding ten per cent. (measured by either the premium income or the sum of the liabilities for unearned premium and outstanding claims and the premium deficiency reserve proposed to be acquired) of the business located in Pakistan of an insurer (whether in one or a number of related transactions and whether at the same or different times) shall not proceed unless, on application by the transferor, approval is given by the Commission.

Explanation: A number of transactions shall be deemed to be related if there being more than one purchaser, those purchasers are acting together or in concert or if, in all the facts and circumstances of the case, there is such a relationship between the purchasers or such common purpose between them so that it would be reasonable to conclude that the transactions are related.

(2) The application required under sub-section (1) shall be made in such form and shall be accompanied by such documents as may be prescribed.

(3) The Commission may, within 15 days from the receipt of the application, require the applicant to submit such further documents and information as may be required for it to make an informed decision about the transaction in the interests of policy holders and shareholders and the applicant shall provide the same within a period of seven days or such later period as the applicant may in writing request.

(4) If after sixty days of the receipt of the application or the receipt of any additional material under sub-section (3), approval has not been granted or a notice given to the applicant declining approval, the Commission shall be deemed to have given its approval.

(5) Approval given or deemed to be given by the Commission under this section shall not preclude the necessity of obtaining any such approval or consent required to be obtained from the Commission under the provisions of any other applicable law.

58

68. Amalgamation and transfer of life insurance business.-

(1) No life insurance business of an insurer shall be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the parties concerned.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefore shall, at least sixty days before the application is made, be sent to the Commission, and certified copies, four in number, of each of the following documents shall be furnished to the Commission, and other such copies shall, during the sixty days aforesaid be kept open for the inspection of the members and policy holders at the principal and branch offices and chief agencies of the insurers concerned, namely:-

(a) a draft of the instrument under which it is proposed to effect the amalgamation or transfer;

(b) statements of assets and liabilities in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the form

prescribed by the Commission and in accordance with regulations issued by the Commission from time to time in respect of the completion of that form;

(c) an actuarial report on the financial condition of the life insurance business of each of the insurers so concerned, prepared in accordance with the regulations issued by the Commission from time to time in respect of the completion of that report;

(d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;

(e) any other reports on which the scheme of amalgamation or transfer was founded.

(4) The statements of assets and liabilities and reports referred to in clauses (b) (c) and (d) of sub-section (3) shall all be prepared as at the date to which the amalgamation or transfer, if

sanctioned by the Court, is to take effect, which date shall not be more than twelve months before the date on which the application to the Court referred to in that sub-section is made.

69. Sanction of amalgamation and transfer by Court.- When any application such as is referred to in sub-section (3) of section 68 is made to the Court, the Court shall cause, if for special reasons it so directs, notice of the application to be sent to every person resident in Pakistan or in a non-Acceding State who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and such policy holders as apply to be heard any and other 59 persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 29:

Provided that:-

(a) no part of any deposit made under section 29 by any party to the amalgamation or transfer shall be returned except where, after sanction is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamation business or the person to whom the business is transferred is completed;

(b) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (a); and

(c) while the deposit last mentioned in clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part payment of any instalment of deposit subsequently due from him under section 29.

70. Statements required after amalgamation and transfer.- Where an amalgamation takes place between any two or more insurers, or where any business of an insurer is transferred, whether in accordance with a scheme confirmed by the Court or otherwise, the insurer carrying on the amalgamated business or the person to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, furnish in duplicate to the

Commission:-

(a) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected;

(b) a declaration signed by every party concerned or in the case of a company by the chairman and by the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any

party to the amalgamation or transfer; and

(c) where the amalgamation or transfer has not been made in accordance with a scheme sanctioned by the Court under section 69:

(i) statements of assets and liabilities in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the form prescribed by the Commission and in accordance with regulations issued by the Commission from time to time in respect of the completion of that form; and

(ii) certified copies of any other reports on which the scheme of amalgamation or transfer was founded.