



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 224 1998

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 22 of 1998: Namibia National Reinsurance Corporation Act, 1998.

ACT

To provide for the establishment of the Namibia National Reinsurance Corporation to carry on reinsurance business in Namibia; to provide for the structure of the said Corporation; to define the objects and the powers, duties and functions of the said Corporation; to provide for a legal cession of policies and reinsurance contracts issued by registered insurers and registered reinsurers; and to provide for matters incidental thereto.

(Signed by the President on 25 August 1998)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I
INTRODUCTORY PROVISIONS

Definitions

1. (1) In this Act, unless the context otherwise indicates -

“auditor” means an auditor who -

- (a) is registered in terms of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

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(b) is a member of an institution recognized by the Minister, for the purposes of this Act, as a controlling body for auditors; and

(c) is resident in Namibia;

“Board” means the board of directors referred to in section 4(1);

“class”, in relation to insurance business, means any class of insurance business specified in -

(a) Schedule 1 to the Short-term Insurance Act; or

(b) section 13(1) of the Long-term Insurance Act;

“committee” means any committee of the Board established under section 13(1);

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“Corporation” means the Namibia National Reinsurance Corporation established by section 2(1);

“deposit premium” means a provisional premium which is agreed upon in the event of it being impossible at the due date of the premium to determine the exact premium, and which represents a reasonable estimate of the premium;

“director” means a director of the Board (including the chairperson and the vice-chairperson) appointed or elected in terms of section 4(2) and, except for the purposes of sections 4, 5, 7(1), 9, 10 and 13(2), includes an alternate director;

“equal percentage”, in relation to a premium, means a percentage equal to the percentage of the value of a policy or reinsurance contract ceded to or accepted by the Corporation, as the case may be;

“financial year” means the financial year of the Corporation referred to in section 31;

“foreign insurer” means a person registered in terms of the laws of a country other than Namibia to carry on insurance business;

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“foreign reinsurer” means a person registered in terms of the laws of a country other than Namibia to carry on reinsurance business;

“guarantee policy” means a guarantee policy as defined in section 1(1) of the Short-term Insurance Act;

“insurance business” means insurance business referred to in subsection (2);

“insurance contract” means a short-term insurance contract or a long-term insurance contract, as the case may be, which constitutes any class of insurance business;

“Long-term Insurance Act” means the Long-term Insurance Act, 1998 (Act No. 5 of 1998), and includes the regulations made thereunder;

“long-term insurance business” means long-term insurance business as defined in section 1(1) of the Long-term Insurance Act;

“majority”, in relation to private shareholders, means a majority of votes of the private shareholders personally present or represented by proxy at a general meeting of shareholders, voting in accordance with the articles of association of the Corporation;

“Managing Director” means the Managing Director of the Corporation appointed in terms of section 18(1);

“Minister” means the Minister of Finance;

“policy” means any insurance contract, irrespective of the form in which the rights and obligations of the parties thereto are expressed or created, and includes a guarantee policy;

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

“prescribed” means prescribed by regulation;

“private shareholder” means a shareholder of the Corporation other than the State;

“registered insurer” means a person registered as an insurer in terms of -

- (a) section 16(3) of the Short-term Insurance Act to carry on short-term insurance business; or
- (b) section 16(3) of the Long-term Insurance Act to carry on long-term insurance business,

as the case may be;

“registered reinsurer” means a person registered as a reinsurer in terms of -

- (a) section 16(3) of the Short-term Insurance Act to carry on short-term insurance business; or
- (b) section 16(3) of the Long-term Insurance Act to carry on long-term insurance business,

as the case may be;

“reinsurance business” means the business of insuring any registered insurer or registered reinsurer or any foreign insurer or foreign reinsurer in respect of any such insurer’s or reinsurer’s contractual obligations under any policy or reinsurance contract;

“reinsurance contract” means a short-term reinsurance contract or a long-term reinsurance contract, as the case may be, irrespective of the form in which the rights and obligations of the parties thereto are expressed or created, which constitutes any class of insurance business;

“share”, in relation to the Corporation, means a share in the share capital of the Corporation and, in relation to an offer of shares for subscription or sale, includes a share of the Corporation and any rights or interests in or to any such share;

“shareholder” means any holder of shares in the Corporation;

“Short-term Insurance Act” means the Short-term Insurance Act, 1998 (Act No. 4 of

1998), and includes the regulations made thereunder;

“short-term insurance business” means short-term insurance business as defined in section 1(1) of the Short-term Insurance Act;

“special resolution” means a resolution -

- (a) passed by not less than 75 per cent of those shareholders of the Corporation who are personally present or represented by proxy and vote in accordance with the articles of association of the Corporation at a special general meeting called for that purpose; and
- (b) the terms and effect of which and the reasons for which have been fully set out in the notice convening that meeting;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act” includes the regulations made thereunder.

(2) Except where it is inconsistent with the context or clearly inappropriate, a reference in this Act to insurance business shall be construed as a reference to short-term insurance business and to long-term insurance business.

PART II

ESTABLISHMENT AND ADMINISTRATION OF CORPORATION

Establishment of Corporation

2. (1) There is hereby established a body corporate to be known as the Namibia National Reinsurance Corporation.

(2) The Corporation shall for all purposes be a juristic person.

(3) The Registrar of Companies shall on the commencement of this Act enter the name of the Corporation in the registers kept by such Registrar in terms of the Companies Act.

(4) The Corporation shall apply to the Registrar of Short-term Insurance and to the Registrar of Long-term Insurance in terms of the Short-term Insurance Act and the Long-term Insurance Act, respectively, for registration as a reinsurer, and the provisions of both said Acts shall, subject to the provisions of subsection (5), apply in respect of the Corporation.

(5) The provisions of the Short-term Insurance Act and of the Long-term Insurance Act shall apply in respect of the Corporation only in so far as those provisions are not clearly inappropriate or inconsistent with the provisions of this Act.

Principal office and other branch offices of Corporation

3. (1) The principal office of the Corporation shall be in Windhoek.

(2) The Corporation may establish one or more branch offices at such place or places within or outside Namibia as the Board may determine in consultation with the Minister.

Board of directors

4. (1) The affairs of the Corporation shall be managed and controlled by a board of directors, which shall, subject to the provisions of this Act, exercise the powers and perform the duties conferred or imposed upon the Corporation by this Act or any other law.

(2) The Board shall consist of such number of directors, but not fewer than seven, as the Minister may from time to time determine, of whom, subject to the provisions of section 6 -

- (a) the majority of directors, of whom at least one shall be female, shall be appointed by the Minister; and
- (b) the remaining directors shall be elected by a majority of the private shareholders,

at a general meeting of shareholders.

(3) The Minister shall from among the directors appointed by him or her in terms of subsection (2)(a) designate one director as chairperson and another director as vice-chairperson of the Board, who -

- (a) shall, subject to the provisions of section 8, hold office for a period of three years;
- (b) may, if he or she is reappointed as director in terms of section 7(1), again be designated as chairperson or vice-chairperson, as the case may be, upon the expiry of his or her term of office.

(4) No appointment or election of a director shall take effect until the written consent of such person to act as a director of the Corporation has been lodged with the Corporation on a duly completed prescribed form containing the prescribed particulars.

(5) The Minister shall, as soon as practicable after the constitution of the Board or any change in such constitution, publish in the *Gazette* the names of the directors and the date or dates of commencement of their terms of office.

Alternate directors

5. (1) An alternate director may at any time -

- (a) be appointed by the Minister to each director appointed by him or her in terms of section 4(2)(a);
- (b) be elected by a majority of the private shareholders to each director elected by them in terms of section 4(2)(b).

(2) Any appointment or election or any removal from office of an alternate director shall be in writing addressed and delivered to the alternate director and to the chairperson of the Board.

(3) An alternate director appointed or elected under subsection (1) -

- (a) shall act as director only when the director to whom he or she is

alternate is unable to exercise his or her functions on the Board by reason of illness, absence, disqualification in terms of section 11(6) from taking part in the consideration of, or voting on, any matter in which he or she has an interest, or any other sufficient cause approved by the Board;

- (b) shall, when acting as a director, have all the powers and duties of the director to whom he or she is alternate.

(4) An alternate director who is not in the full-time employment of the State, shall be remunerated, as determined by the Minister after consultation with the Board, from the remuneration and allowances which is due to the director in whose place he or she acts or which would have become due to such director if he or she had acted as director.

(5) The provisions of section 4(4) and (5) shall apply *mutatis mutandis* in respect of an alternate director.

Disqualification of directors

6. No person shall be qualified for appointment or election as a director, if he or she -

- (a) is not -
 - (i) a Namibian citizen resident in Namibia; or
 - (ii) a person who is lawfully admitted to Namibia for permanent or temporary residence therein:

Provided that the Minister may in exceptional circumstances grant written permission that a director may, for such period as may be determined by the Minister, be a person other than a Namibian citizen or a person referred to in subparagraph (ii);

- (b) has any financial interest which is directly or indirectly connected with the interests of the Corporation, unless the Minister, on the

recommendation of the Board, determines in writing that the financial interest in question is such that it is unlikely to interfere with the impartial performance by that person of his or her functions as a director;

- (c) is an unrehabilitated insolvent;
- (d) has, within the period of 10 years immediately preceding the date of his or her proposed appointment or election, been convicted, whether in Namibia or elsewhere, of any offence involving fraud or dishonesty and sentenced in respect thereof to imprisonment without the option of a fine;
- (e) is a member of the National Assembly or the National Council;
- (f) does not in the opinion of the Minister possess the necessary expertise in matters affecting the functions of the Board.

Tenure and conditions of office of directors

7. (1) A director shall, subject to the provisions of section 8, hold office for a period of three years and shall, upon the expiry of his or her term of office, be eligible for reappointment or re-election.

(2) Subject to the provisions of this Act, a director shall hold office upon such conditions as the Minister may determine generally.

(3) A director may hold any other office or position of profit under the Corporation, except that of auditor, for such period and upon such terms and conditions as to remuneration (including allowances) and otherwise as the Board may determine.

Vacation of office by directors

8. (1) A director shall vacate his or her office and his or her office shall become vacant -

- (a) after the expiry of at least one months' notice in writing, addressed

and delivered to the Minister and to the chairperson of the Board, of his or her intention to resign as director;

- (b) if he or she is, after the date of his or her appointment or election, convicted, whether in Namibia or elsewhere, of any offence and sentenced to imprisonment without the option of a fine;
- (c) if he or she is in terms of any law detained as a mentally disordered person;
- (d) if he or she becomes subject to any disqualification contemplated in section 6;
- (e) if he or she is absent from three consecutive meetings of the Board without leave of the Board;
- (f) if he or she attains the age of 75 years;
- (g) if he or she is removed from office under subsection (2) by the Minister.

(2) The Minister may at any time, after having afforded a director an opportunity to be heard, remove the director from office if the Minister is satisfied that he or she -

- (a) has conducted himself or herself in a manner that is unbecoming to a director or is prejudicial to the interests or reputation of the Corporation or the Board;
- (b) has failed to comply with any condition of his or her office contemplated in section 7(2);
- (c) is for whatever reason incapable of efficiently discharging his or her functions as a director.

Filling of casual vacancies on Board

9. Any casual vacancy on the Board caused by the death of any director, or the removal from or vacation of office of any such director shall, with due regard to the provisions of section 4(2), be filled for the unexpired portion of the period of office of the director who has died, or has been removed from or has vacated his or her office, as the case may be.

Remuneration and allowances of directors and members of committees

10. A director, and any person appointed as a member of a committee of the Board in terms of section 13(2)(b), who are not in the full-time employment of the State shall be paid from the funds of the Corporation -

- (a) such remuneration, if any, as the Minister may from time to time determine; and
- (b) such allowances as the Board may from time to time determine to defray any reasonable expenses incurred by such director or member in connection with the performance of the functions of the Board or such committee, as the case may be.

Declaration by directors of interest

11. (1) In this section -

“associate”, in relation to a director, means -

- (a) a person who -
 - (i) is a close relative of the director; or
 - (ii) is a partner, employee or employer of the director; or
 - (iii) is a debtor, mortgager, creditor or mortgagee of, or otherwise has direct, material or commercial dealings with, the Director; or

- (b) any company or any body of persons, whether corporate or unincorporated, of which the director is also a director or in which the director holds any office or position or in which the director holds a controlling interest;

“close relative”, in relation to a director, means -

- (a) his or her spouse; or
- (b) his or her child, stepchild, parent or stepparent, or any descendant of such parent or stepparent; or
- (c) the spouse of any of the persons mentioned in paragraph (b);

“partner”, in relation to a director, means any person associated in any kind of partnership with the director;

“spouse” includes a party to a customary union.

(2) At the first meeting of the Board after a person has been appointed or elected as a director, such director shall declare to the Board the financial or other assistance, if any, being provided by the Corporation to him or her or to any of his or her associates.

(3) A director who is in any way, whether directly or indirectly, interested in any business or contract or any proposed business or contract with the Corporation shall, at the meeting of the Board at which such business or contract or proposed business or contract is first taken into consideration, declare to the Board the nature and extent of his or her interest or of any of his or her associates.

(4) If a director becomes interested, whether directly or indirectly, in any business or contract or any proposed business or contract with the Corporation after it has been taken into consideration by the Board, he or she shall, at the first meeting of the Board after he or she became so interested, declare to the Board the nature and extent of his or her interest or of any of his or her associates.

(5) A general notice that a director or any of his or her associates is a member of any company or body of persons and is interested in all business or contracts

by that company or body of persons shall not be sufficient disclosure for the purposes of this section, and whenever any business or contract or any proposed business or contract by the Corporation with that company or body of person is taken into consideration by the Board a declaration of interest required in terms of subsection (3) or (4), as the case may be, shall be made to the Board.

(6) A director shall not take part in any consideration of, or cast his or her vote on, a matter relating to any business or contract or any proposed business or contract with the Corporation, or any other matter connected with the interests of the Corporation, in which he or she or any of his or her associates has an interest.

(7) A declaration of interest made in terms of this section shall be recorded in the minutes of the meeting of the Board at which such declaration is made.

(8) Any director who contravenes or fails to comply with a provision of subsection (2), (3), (4) or (6) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Meetings and proceedings of Board

12. (1) The first meeting of the Board shall be held at such time and place as the Minister may determine and thereafter meetings of the Board shall, subject to the provisions of subsection (2), be held at such times, but not less than four times in each financial year, and such places as the Board may fix.

(2) The chairperson of the Board may at any time, and shall when requested in writing to do so by the Minister or at least three directors, convene a special meeting of the Board, to be held at such time, but not less than seven days and not more than thirty days from the date of receipt of such request, and such place as the chairperson may direct.

(3) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at the meetings of the Board at which he or she is present.

(4) If both the chairperson of the Board and the vice-chairperson are absent from any meeting of the Board, the directors present thereat shall from among

the directors appointed by the Minister in terms of section 4(2)(a) elect one director to preside at such meeting.

(5) Subject to the provisions of subsection (6), the majority of the directors shall constitute a quorum for any meeting of the Board.

(6) No business of the Board other than the holding of a general meeting shall be transacted, unless the directors appointed by the Minister in terms of section 4(2)(a) constitute the majority of a quorum contemplated in subsection (5).

(7) Each director shall, subject to the provisions of section 11(6) and of subsection (8) of this section, have only one vote in respect of any matter which is being put to the vote.

(8) The decision of a majority of the directors present at any meeting of the Board shall constitute a decision of the Board, and, in the event of an equality of votes in regard to any matter, the chairperson or other director presiding at the meeting of the Board shall have a casting vote in addition to his or her deliberative vote.

(9) The chairperson of the Board may, with the approval of the Board, invite any person who in his or her opinion possesses the necessary expertise in any matter which is under consideration by the Board to take part in such discussions at a meeting of the Board as in the opinion of the chairperson relate to the expertise of such person, but such person may not cast a vote in respect of any matter which is being put to the vote.

(10) The Board may, in consultation with the Minister, make rules relating to the procedure at its meetings.

Committees of Board

13. (1) The Board may appoint one or more committees, consisting of not fewer than two members, to perform, subject to the directions of the Board, such functions as may from time to time be assigned to any such committee by the Board.

(2) A committee appointed under subsection (1) shall consist of -

- (a) one or more directors of the Board, nominated by the Board for that purpose, of whom one shall be designated by the Board as chairperson of the committee; and
- (b) such other person or persons (including alternate directors of the Board) not being a director or directors of the Board as may be appointed by the Board upon such terms and conditions as to remuneration and otherwise as the Board may determine.
- (3) The chairperson of a committee may at any time, and shall when requested in writing to do so by the chairperson of the Board, convene a meeting of the committee, to be held at such time and such place as the chairperson of the committee may direct.
- (4) Whenever a member of a committee nominated in terms of subsection (2)(a) is unable to act as such a member on account of his or her absence or incapacity, the chairperson of the Board may nominate another director of the Board, who is not a member of the committee in question, to act as a member of that committee in the place of such member during the absence or incapacity of such member.
- (5) If consensus cannot be reached on any matter which is under consideration by any committee, the matter shall be referred to the Board for decision.
- (6) The chairperson of the Board may attend any meeting of a committee and shall be entitled to take part in the proceedings at such meeting.
- (7) The Board may in its discretion dissolve or reconstitute a committee.
- (8) The Board may, subject to such conditions as it may determine, delegate any power or assign any duty conferred or imposed upon it by or under this Act to a committee appointed under subsection (1), but the Board shall not thereby be divested or relieved of the power or duty so delegated or assigned.
- (9) A decision by a committee in the exercise of a power delegated to it under subsection (8), shall be subject to the approval of the Board, and the Board may at any time vary or set aside any such decision.

(10) The provisions of section 12(9) shall apply *mutatis mutandis* in respect of a committee of the Board.

(11) The Board may, in consultation with the Minister, make rules relating to the procedure at meetings of any committee of the Board.

Minutes of proceedings of Board and committees

14. (1) The Board shall cause proper record to be kept of the proceedings at every meeting of the Board and of every committee appointed by the Board under section 13(1), and the chairperson of the Board shall -

- (a) within 14 days from the date on which a meeting of the Board was held, submit to the Minister a copy of the minutes of that meeting;
- (b) at the written request of the Minister, submit to him or her a copy of the minutes of any meeting of a committee of the Board.

(2) Any minutes referred to in subsection (1) purporting to have been signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next ensuing meeting of the Board or of the committee in question, as the case may be, shall be *prima facie* evidence of the proceedings of the meeting to which the minutes relate.

Validity of decisions and acts of Board

15. Subject to the provisions of section 12(6), no decision or act of the Board performed by authority of the Board shall be invalid by reason only -

- (a) of the existence of a vacancy on the Board; or
- (b) of the fact that a person who was not entitled to sit as a director sat as a director at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act was performed or authorized by the requisite majority of the directors who were present at the time and entitled to sit as directors.

Execution of agreements and instruments by Corporation

16. Any agreement, instrument or other document approved by the Board may be entered into or executed on behalf of the Corporation by any person or persons generally or particularly authorized thereto in writing by the Board.

Secretariat to Board

17. (1) The Board shall, in consultation with the Minister, establish a component in the Corporation to be known as the Secretariat to the Board, consisting of -

- (a) one person appointed by the Board, who shall -
 - (i) be the secretary of the Board; and
 - (ii) be the head of the Secretariat and, subject to the control and directions of the Board, as such be responsible for the management of and administrative control over the staff of the Secretariat; and
- (b) such other person or persons as the Board may consider necessary to appoint to assist the secretary to perform, subject to his or her control and directions, any function of the Secretariat.

(2) Any person appointed by the Board in terms of subsection (1) may at any time be removed from office by the Board, if the Board is of the opinion that there are sufficient reasons for doing so.

(3) A person who is in the employment of the Secretariat to the Board shall -

- (a) be paid such remuneration and such allowances; and
- (b) receive such other benefits, including pension and medical aid benefits,

from the funds of the Corporation as the Board may from time to time determine.

(4) The functions of the Secretariat to the Board are -

- (a) to perform such administrative functions as may from time to time be assigned to the Secretariat by the Board or any committee of the Board; and
- (b) to provide all technical support required by the Board or any committee of the Board.

(5) The secretary shall attend every meeting of the Board, but may not cast a vote in respect of any matter which is being put to the vote.

(6) Whenever the secretary is unable to attend any meeting of the Board or to act as secretary, the Board shall designate any other person appointed in terms of subsection (1)(b) to act as secretary in the place of the secretary, and such person shall, when so acting, have all the powers and perform all the duties and functions of the secretary.

Managing Director

18. (1) The Board in consultation with the Minister shall, subject to the provisions of this Act and upon such terms and conditions as to remuneration and otherwise as the Board may determine, appoint a person to be the Managing Director of the Corporation, who -

- (a) shall be the chief executive officer of the Corporation; and
- (b) shall, subject to the control and directions of the Board, be responsible for the efficient management and administration of the Corporation.

(2) The Managing Director shall *ex officio* be a member of the Board with no voting right.

(3) Any person appointed as Managing Director shall not at the same time be the holder of the office of director in any banking institution, corporation or company.

(4) The Board in consultation with the Minister may at any time remove the Managing Director from office, if there are sufficient reasons for doing so.

(5) The Board may, subject to such conditions and restrictions as it may determine, either in general or in particular, delegate any power or assign any duty conferred or imposed upon it or the Corporation by or under this Act to the Managing Director, but the Board shall not thereby be divested or relieved of the power or duty so delegated or assigned.

(6) The Board may at any time -

(a) withdraw or amend a delegation or assignment made under subsection (5);

(b) set aside or vary any decision made in the exercise of a power delegated under that subsection.

(7) Whenever the office of Managing Director becomes vacant or the Managing Director is for whatever reason unable to perform his or her functions as Managing Director, the Board in consultation with the Minister shall, having regard to the provisions of subsection (3), designate any competent person appointed under section 19 to act as Managing Director, and such person shall, when so acting, have all the powers and perform all the duties and functions of the Managing Director.

Staff of Corporation

19. The Board may appoint, upon such terms and conditions as to remuneration and otherwise as it may determine, such other persons as the Board may consider necessary to employ to perform the functions and conduct the affairs of the Corporation, and such employees may in accordance with those terms and conditions be promoted, discharged, reduced in rank or grade or transferred.

PART III
OBJECTS AND POWERS, DUTIES AND FUNCTIONS OF
CORPORATION

Objects of Corporation

20. The objects of the Corporation are -
- (a) to carry on reinsurance business and to conduct all affairs relating thereto in accordance with sound insurance practices and methods;
 - (b) to promote the development of, and the participation of the people of Namibia in, the insurance and reinsurance industry in Namibia;
 - (c) to provide reinsurance cover of international standards to insurance markets, whether within or outside Namibia; and
 - (d) to create, develop and sustain local retention capacity in insurance and reinsurance business and to minimize the placement of insurance and reinsurance business outside Namibia.

Powers of Corporation

21. The Corporation may, subject to the provisions of this Act, do or cause to be done all or any of such things which -
- (a) are necessary to achieve its objects and to effectively perform its functions in terms of this Act; and
 - (b) are in the best interest of the Corporation.

Duties and functions of Corporation

22. Notwithstanding anything to the contrary contained in the Short-term Insurance Act or the Long-term Insurance Act, the functions of the Corporation are -
- (a) to accept reinsurance business in respect of any class or classes of insurance business -

- (i) ceded or offered to the Corporation by registered insurers and registered reinsurers;
- (ii) offered to the Corporation by foreign insurers and foreign reinsurers;
- (b) to reinsure against loss or damage of any kind arising from or in connection with any risk or contingency in respect of any matter;
- (c) to reinsure with any registered insurer or registered reinsurer or any foreign insurer or foreign reinsurer any risk undertaken by the Corporation;
- (d) to accept the reinsurance of a part of any risk undertaken by any registered insurer or registered reinsurer or any foreign insurer or foreign reinsurer, being a risk that the Corporation may in terms of this Act reinsure against; and
- (e) to retrocede a part of any risk referred to in paragraph (d).

PART IV

FINANCIAL PROVISIONS RELATING TO CORPORATION

Authorized share capital and allotment and issue of shares

23. (1) Subject to the provisions of subsection (5), the authorized share capital of the Corporation shall be twenty million Namibia dollars, and shall be divided into twenty million ordinary shares of one Namibia dollar each.

(2) The State shall subscribe for and pay up at par value a proportion of the shares, being not less than a majority shareholding in the Corporation, allotted to it at the commencement of this Act.

(3) The State shall at all times hold more than 50 per cent of the shares of the Corporation, and such shares shall -

- (a) be taken up by the Minister on behalf of the State, who shall then exercise the State's rights as shareholder of the Corporation; and

(b) be paid up from moneys appropriated by Parliament for that purpose.

(4) The remaining shares of the Corporation not being held by the State shall, subject to such conditions as the Minister may determine, be offered to the public for sale.

(5) The Minister may from time to time, by special resolution passed by the shareholders of the Corporation and by notice in the *Gazette*, increase the authorized share capital of the Corporation by the issue of shares subject to the provisions of subsections (3) and (4).

(6) The Minister shall by notice in the *Gazette* publish the names of the shareholders, including all other particulars of such shareholders entered in the register referred to in subsection (7).

(7) The Board shall keep a register of shareholders, and shall forthwith enter therein -

- (a) the name, occupation and address of each shareholder;
- (b) the number of shares held by each shareholder;
- (c) the date on which shares were registered in the name of each shareholder; and
- (d) such other particulars as may be prescribed.

(8) The register referred to in subsection (7) shall be *prima facie* evidence of any matters directed or authorized to be entered therein by this Act.

Prohibition of certain transactions in respect of shares

24. (1) Except with the prior written approval of the Minister and to the extent authorized by him or her, no shares of the Corporation shall -

- (a) be transferred; or
- (b) be pledged, hypothecated or otherwise encumbered.

(2) Where shares of the Corporation are transferred, pledged, hypothecated or otherwise encumbered as contemplated in subsection (1), particulars thereof shall be entered in the register referred to in section 23(7).

Loans and credit facilities to Corporation

25. (1) The Corporation may, with the prior written approval of the Minister, borrow moneys or obtain any other credit facilities from any banking institution, building society or other institution approved by the Minister.

(2) The Minister may under section 36 of State Finance Act, 1991 (Act No. 31 of 1991), furnish a guarantee, an indemnity or a security in respect of any financial commitment incurred or to be incurred by the Corporation.

Funds of Corporation

26. (1) The funds of the Corporation shall consist of -

- (a) moneys appropriated by Parliament for the Corporation for the achievement of its objects, including the holding of shares in the Corporation;
- (b) the proceeds derived from the issue of shares in the Corporation;
- (c) all moneys borrowed by the Corporation;
- (d) interest derived from investments made by the Corporation; and
- (e) moneys vesting in or accruing to the Corporation from any other source, whether in the course of its business or otherwise.

(2) The expenditure incurred by or on behalf of the Corporation in connection with the performance of its functions, including the payment of any remuneration, allowances or other benefits with which the Corporation is charged in terms of this Act, shall be defrayed from the funds of the Corporation.

Investment of funds

27. Moneys which are not required by the Corporation for immediate use or as a reasonable working balance, may, in such manner and subject to such conditions as the Board in consultation with the Minister may determine, be invested in good and sound investments.

General reserve fund and other special reserve funds

28. (1) The Corporation shall establish and maintain a general reserve fund into which shall be deposited at the end of each financial year -

- (a) 50 per cent of the annual net profits of the Corporation, if the general reserve fund is less than the authorized share capital of the Corporation; or
- (b) 25 per cent of the annual net profits of the Corporation, if the general reserve fund is equal to or exceeds the authorized share capital of the Corporation.

(2) The Board may, in consultation with the Minister, establish such other special reserve funds as it may consider prudent, into which shall be deposited at the end of each financial year such additional percentage of the annual net profits of the Corporation as the Board considers necessary for the effective conduct of the affairs of the Corporation.

Staff welfare fund

29. (1) The Corporation shall establish and maintain a staff welfare fund into which shall be deposited at the end of each financial year such amount of money, but not exceeding five per cent of the annual net profits of the Corporation, as the Board may determine.

- (2) The moneys of the staff welfare fund shall be utilized -
 - (a) to provide recreation facilities and low interest-bearing loans to the employees of the Corporation; and

- (b) for any other purposes aimed at enhancing the welfare of the employees of the Corporation.

(3) The Board may make rules not inconsistent with the provisions of subsection (2) relating to the staff welfare fund, including the utilization of the moneys of such fund.

Distribution of balance of net profits

30. The Board in consultation with the Minister shall at the end of each financial year determine what percentage of the annual net profits of the Corporation remaining after provision has been made for all deposits which are in terms of sections 28 and 29 required or permitted to be made, shall be set aside as surplus of the Corporation and what percentage of such profits, if any, shall be paid as dividends to the shareholders.

Financial year of Corporation

31. The financial year of the Corporation shall end on 31 March in each year.

Technical and financial plan of Corporation

32. The Board -

- (a) shall annually, in such form and at such time as the Minister may determine, submit to the Minister for his or her approval, a technical and financial plan, comprising -

- (i) a statement of the estimated income and expenditure during the next ensuing financial year; and
- (ii) such other particulars as the Minister may require;

- (b) may at any time during any financial year submit to the Minister for his or her approval such other supplementary estimates of income and expenditure for that financial year as are necessary.

Bookkeeping and accounts of Corporation

- 33.** (1) The Corporation shall -
- (a) keep proper accounts of, and financial information relating to, all its affairs so as to at all times present fairly or reflect correctly all the financial transactions and the financial position of the Corporation; and
 - (b) annually, within three months after the end of its financial year, or at any other time when so requested in writing by the Board in consultation with the Minister, submit to the Board -
 - (i) a revenue account for that year;
 - (ii) a profit and loss account for that year;
 - (iii) a balance sheet showing its financial position at the end of that year; and
 - (iv) a statement of reinsurance business accepted, ceded and retroceded by or to it, containing the terms and conditions of any such acceptance, cession or retrocession,
- duly audited and certified by its auditor, together with a written report by that auditor.

(2) The accounts, balance sheet and statement referred to in subsection (1) shall be prepared by the Corporation in the prescribed form and shall be accompanied by the prescribed documents and information.

Appointment of auditor

34. The Corporation shall at all times have one or more auditors appointed by the Board subject to the approval of the Minister.

Functions, powers and duties of auditor

35. (1) An auditor of the Corporation shall, in addition to the duties imposed upon him or her by or under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) -

- (a) audit the accounts, balance sheet and statement of the Corporation referred to in section 33(1) and, if the auditor is satisfied that they are prepared in the prescribed form and that they, according to the books of the Corporation, present fairly, or give a true and fair view of, or reflect correctly, the matters dealt with therein, the auditor shall, if he or she is so satisfied, certify such accounts, balance sheet and statement to that effect, or, if he or she cannot so satisfy himself or herself, certify such accounts, balance sheet and statement subject to such qualifications as he or she may deem necessary; and
- (b) as soon as practicable after the audit -
 - (i) furnish the Board with a written report on his or her findings; and
 - (ii) submit to the Board a written report on any material irregularity, if any, that he or she believes has taken place or is taking place in the conduct of the affairs of the Corporation which has caused or is likely to cause financial loss to it or to its policyholders or creditors.

(2) Every auditor of the Corporation appointed in terms of section 34 shall have a right of access to the securities, books, accounts and vouchers of the Corporation and may require from its directors (including the Managing Director) or employees such information as may be necessary for the performance of his or her duties as auditor.

(3) An auditor of the Corporation shall, at the cost of the Corporation, undertake such other examination of the affairs of the Corporation as may from time to time be requested by the Minister or by the Board for the purposes of this Act.

(4) An auditor shall not incur any liability to any person in consequence of having furnished in good faith information on any irregularity or other matter which the auditor has become aware of in his or her capacity as auditor of the Corporation and which in his or her opinion may be of concern to the Board having regard to the Board's supervisory functions in terms of this Act.

(5) Any person who hinders or obstructs an auditor in the performance of his or her duties or the exercise of his or her powers in terms of this Act shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Annual report of Corporation

36. (1) The Board shall as soon as practicable, but not later than four months after the end of each financial year of the Corporation, prepare and submit to the Minister an annual report, comprising -

- (a) all financial accounts and statements of the Corporation referred to in section 33(1) in respect of the financial year in question, duly audited and certified by the auditor of the Corporation;
- (b) the report of such auditor relating to such accounts and statements;
- (c) an additional report on the activities of the Corporation during that financial year; and
- (d) such other reports and particulars relating to the affairs of the Corporation as the Minister may require.

(2) A copy of the annual report referred to in subsection (1) shall at all times during normal office hours be open to inspection, free of charge, by all policyholders, shareholders and creditors of the Corporation at the principal office of the Corporation referred to in section 3(1).

(3) The Minister shall lay upon the Table of the National Assembly the annual report submitted to him or her in terms of subsection (1), within 30 days from

the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Preservation of secrecy

- 37.** (1) No -
- (a) director (including the Managing Director) or employee of the Corporation;
 - (b) member of a committee of the Board;
 - (c) staff member of the Ministry of Finance, whether or not such staff member has been or is directly engaged in the performance of any function in terms of this Act;
 - (d) person referred to in section 12(9);
 - (e) person directly or indirectly engaged in the performance of any function in terms of this Act; or
 - (f) person who has at his or her disposal information which he or she has obtained or to which he or she had access by virtue of his or her position as a person who has held any office or employment in terms of this Act,

shall disclose any information relating to the affairs of the Corporation or a shareholder of the Corporation acquired in the performance of his or her functions in terms of this Act, or in the course of his or her participation in the activities of the Corporation, or in the course of his or her employment and which is connected with the performance of any function in terms of this Act, except -

- (i) to any person who of necessity requires it for the performance of his or her functions in terms of this Act or his or her participation in the activities of the Corporation;

- (ii) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act;
- (iii) such information which is required in terms of any law or as evidence in any court of law; or
- (iv) with the prior written approval of the Minister or of the chairperson of the Board or of the Managing Director granted in respect of any matter which in the opinion of the Minister or of the chairperson of the Board or of the Managing Director, as the case may be, is of a general nature and may be disclosed in the public interest.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART V PROVISIONS GOVERNING COMPULSORY REINSURANCE TO CORPORATION

Application of Part V

38. The provisions of this Part shall apply to every registered insurer and registered reinsurer carrying on insurance business in Namibia and to each policy and reinsurance contract the obligation of which is attached to any risk situated within Namibia.

Compulsory reinsurance to Corporation of insurance business by registered insurers and reinsurers

39. (1) Subject to the provisions of section 43(1) and (3) and of subsection (8) of this section, every registered insurer and registered reinsurer shall, in accordance with the terms of, and with effect from a date specified in, a notice issued by the Minister in terms of subsection (2), cede in reinsurance to the Corporation

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a percentage of the value of each policy issued or renewed in Namibia by the registered insurer or registered reinsurer on or after the commencement of this Act.

(2) The Minister shall from time to time by notice in the *Gazette*, published at least 60 days before the requirements of that notice take effect, specify the class or classes of insurance business and the percentage of the value of each policy in respect of each class of insurance business to be ceded by every registered insurer and registered reinsurer in terms of subsection (1), and shall also specify the date on which the requirements of that notice shall take effect.

(3) Every registered insurer and registered reinsurer shall in the prescribed manner pay to the Corporation an equal percentage of the premium due on each policy ceded by it to the Corporation in terms of subsection (1).

(4) Subject to the provisions of section 43(1) and (3) and of subsection (8) of this section, every registered insurer and registered reinsurer shall, in accordance with the terms of, and with effect from a date specified in, a notice issued by the Minister in terms of subsection (5), cede in reinsurance to the Corporation a percentage of the value of each reinsurance contract placed by the registered insurer or registered reinsurer with any other insurer or reinsurer, whether within or outside Namibia, on or after the commencement of this Act.

(5) The Minister shall from time to time by notice in the *Gazette*, published at least 60 days before the requirements of that notice take effect, determine and specify the percentage of the value of each reinsurance contract to be ceded by every registered insurer and registered reinsurer in terms of subsection (4), and shall also specify the date on which the requirements of that notice shall take effect.

(6) Every registered insurer and registered reinsurer shall in the prescribed manner, but subject to the terms and conditions of each reinsurance contract ceded in terms of subsection (4), pay to the Corporation an equal percentage of the premium due on each reinsurance contract so ceded by it to the Corporation.

(7) The Corporation may, in respect of a policy or reinsurance contract required to be ceded to it in terms of subsection (1) or (4), as the case may be, amend the terms and conditions thereof so as to conform to sound insurance practices, if such terms and conditions do not conform to such practices.

(8) Notwithstanding the provisions of section 38, the Minister may from time to time, on the recommendation of the Board and by notice in the *Gazette*, exempt any registered insurer or registered reinsurer carrying on any class of insurance business from the provisions of subsection (1) or (4), as the case may be, for such period and subject to such conditions as he or she may specify in that notice.

Pre-emptive right of Corporation in respect of reinsurance business

40. (1) In respect of the proportion of insurance business remaining after a registered insurer or registered reinsurer has ceded a percentage of the value of a policy or reinsurance contract to the Corporation in terms of section 39(1) or (4), as the case may be, and retaining such percentage of the value of the policy or reinsurance contract not so ceded as it is willing to accept itself -

- (a) the Corporation shall have a right of pre-emption in the acceptance of such insurance business for reinsurance;
- (b) the registered insurer or registered reinsurer concerned shall first offer to the Corporation for reinsurance that part of the risk which it is not willing to accept itself.

(2) Every registered insurer and registered reinsurer shall in the prescribed manner pay to the Corporation an equal percentage of the premium due on each policy or reinsurance contract accepted from it by the Corporation in terms of subsection (1).

(3) The Corporation may, in respect of a policy or reinsurance contract required to be offered to it in terms of subsection (1), by written notice to the registered insurer or registered reinsurer concerned decline to accept the risk to which the offer relates or request the registered insurer or registered reinsurer to improve either such risk or the rating of such risk, or both, within a period specified in that notice.

(4) Where a registered insurer or registered reinsurer fails to comply with a request contemplated in subsection (3), the Corporation shall -

- (a) by written notice to the registered insurer or registered reinsurer concerned reject the reinsurance business in respect of the policy or

reinsurance contract to which the request relates, with effect from the date on which the registered insurer or registered reinsurer is notified of the rejection; and

- (b) in the case of any such rejection, be entitled to a proportionate percentage of the premium due on the policy or reinsurance contract for the period extending from the date on which the liability of the Corporation has commenced to the date referred to in paragraph (a).

(5) Where the Corporation is for just cause unable to accept the whole or a part of any reinsurance business offered to it in terms of subsection (1), the Corporation shall, without undue delay, issue to the registered insurer or registered reinsurer concerned a certificate in the prescribed form to that effect.

(6) Upon receipt of a certificate referred to in subsection (5), the registered insurer or registered reinsurer concerned may offer the whole or any part of the reinsurance business to which the certificate relates to any other registered insurer or registered reinsurer.

Corporation may call for information

41. The Corporation may by written notice require any registered insurer or registered reinsurer to furnish or submit to it in writing, within a period specified in that notice, such information or returns as the Corporation may specify in that notice relating to any insurance business ceded or offered to the Corporation in terms of the provisions of this Part.

Offences and penalties

42. (1) A registered insurer or registered reinsurer which -
- (a) contravenes or fails to comply with a provision of section 39(1) or (4) or 40(1)(b); or
 - (b) fails to furnish or submit to the Corporation any information or returns required in terms of section 41; or

- (c) furnishes or submits information or returns required for the purposes of section 41, knowing such information or returns to be false in any material respect,

shall, notwithstanding the penalty contemplated in subsection (2), be guilty of an offence and on conviction be liable to a fine not exceeding N\$150 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(2) A registered insurer or registered reinsurer which fails to comply with a provision of section 39(1), (3), (4) or (6), 40(1)(b) or (2) or 41, as the case may be, shall be liable to a fine of N\$1 000 for each day during which such failure continues.

(3) Any amount of penalty payable in terms of subsection (2) shall constitute a debt due to the Corporation by the registered insurer or registered reinsurer concerned and may be recovered by the Corporation by means of proceedings instituted in any competent court.

(4) Notwithstanding the provisions of subsections (2) and (3), the Board may waive the payment of or refund the whole or any part of a fine payable in terms of subsection (2), if the Board is satisfied that the failure of the registered insurer or registered reinsurer concerned to comply with a provision of section 39(1), (3), (4) or (6), 40(1)(b) or (2) or 41, as the case may be, was not due to wilful conduct or the want of reasonable care on the part of the registered insurer or registered reinsurer concerned.

(5) In any action or other proceedings instituted under subsection (3) the production by the Corporation of a certificate in the prescribed form purporting to have been signed by the chairperson of the Board stating the name of the defendant and the amount of premium due, shall be *prima facie* evidence of the amount so due.

Commission payable by Corporation

43. (1) The Corporation shall, in respect of each class of insurance business ceded or offered to it by a registered insurer or registered reinsurer in terms of sections 39 and 40, respectively, in the prescribed manner pay to the registered

insurer or registered reinsurer concerned just compensation in the form of a reinsurance commission at such rate as may be determined and specified by the Minister in a notice issued in terms of subsection (2).

(2) The Minister shall from time to time, on the recommendation of the Board and by notice in the *Gazette*, published at least 60 days before the requirements of that notice take effect, determine and specify the rate of the reinsurance commission payable to registered insurers and registered reinsurers in terms of subsection (1), and shall also specify the date on which such rate shall become applicable for the purposes of that subsection.

(3) No profit commission on profits, if any, accruing to the Corporation from any insurance business ceded to the Corporation in terms of the provisions of this Part, shall be payable to registered insurers and registered reinsurers.

PART VI GENERAL PROVISIONS

Limitation of liability

44. No liability shall attach to the Corporation, or, in his or her personal capacity, any director (including the Managing Director) or employee of the Corporation, any member of a committee of the Board or any staff member of the Ministry of Finance, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such director (including the Managing Director) or employee, such member or such staff member in the *bona fide* performance of any function in terms of this Act.

Payment of certain taxes, duties, levies and other fees

45. (1) The Corporation shall, subject to the provisions of subsection (2), be liable to pay any taxes, duties, levies and other fees imposed or payable by or under any law and which are applicable to the Corporation.

(2) The Corporation shall not be liable to pay corporate income tax until such time that the general reserve fund is equal to or exceeds twice the amount of the authorized share capital of the Corporation.

Staff rules and administrative directives by Board

46. The Board may make staff rules and issue administrative directives not inconsistent with the provisions of this Act for the proper control of the Corporation and the effective conduct of its affairs.

Regulations

47. (1) The Minister may, after consultation with the Board, make regulations not inconsistent with the provisions of this Act relating to -

- (a) the payment by registered insurers and registered reinsurers to the Corporation of premiums payable in terms of sections 39(3) and (6) and 40(2), including offences in respect of any failure to pay such premiums;
- (b) the payment by the Corporation to registered insurers and registered reinsurers of reinsurance commission in respect of any class of insurance business ceded or offered to the Corporation by such insurers and reinsurers;
- (c) the regulation and control of methods of ceding and offering insurance business to the Corporation;
- (d) the returns and information to be supplied by registered insurers and registered reinsurers to the Corporation for the purposes of the performance by the Corporation of its functions in terms of this Act, including the form and manner in which such returns and information are to be submitted to the Corporation;
- (e) the form of any notice, certificate or order required or permitted to be made or issued in terms of this Act and the manner in which any such notice or order may be given or served;
- (f) any matter which in terms of this Act is required or permitted to be prescribed; and

- (g) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty, not exceeding a fine of N\$15 000 or imprisonment for a period of two years or not exceeding both such fine and such imprisonment, for any contravention of or failure to comply with any provision thereof.

Memorandum of association and articles of association of Corporation

48. (1) The Minister shall be responsible for the memorandum of association and articles of association of the Corporation and shall sign such memorandum and articles on behalf of the State.

(2) The Minister may, subject to the provisions of subsection (3), make additions to or alter the provisions of the memorandum of association or articles of association of the Corporation.

(3) No addition or alteration made under subsection (2) shall have legal force for the purposes of this Act or any other law, unless authorized by special resolution passed by the shareholders of the Corporation.

Liquidation of Corporation

49. The Corporation shall not be wound up except by or under the authority of an Act of Parliament.

Short title and commencement

50. This Act shall be called the Namibia National Reinsurance Corporation Act, 1998, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.