

Insurance Ordinance, 2000

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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 stand 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, 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 (c) 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 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;

(xlv) “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;

(xlvii) "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 subsection (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
- (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

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 authorized 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 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.

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 paid up 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.

(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.

(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 paid-up 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;

- (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 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.

(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 *mutate 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.

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.

(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.

(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.

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.

(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 authorized 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 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 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

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) []¹; and
- (d) assets, []²in 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:

¹ The words "not to be admissible assets" omitted vide Finance Act, 2007, dated 1st July, 2007.

² The words "being assets referred to in clause (g) of sub-section (2)," omitted vide Finance Act, 2007, dated 1st July, 2007.

- (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 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 subsection (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 subsection (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 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.

(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 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 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.- []³

(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 (2)⁴ 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.

³ Sub-section (1) omitted vide Finance Act, 2007 dated 1st July, 2007. Before Omission sub-section (1) read as follow: “(1) Every insurer shall in each year reinsure with 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.”

⁴ The number “1” substituted with number “2” vide Finance Act, 2007 dated 1st July, 2007.

43. Premiums and statements.- (1) Every insurer [having reinsurance with Pakistan Re-insurance Company Ltd.,]⁵ shall pay the amount payable on account of reinsurance with the Company as required under sub-section (2)⁶ 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 (2)⁷ 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 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 [surplus]⁸ 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

⁵ The words, full stop and comma inserted vide Finance Act, 2007 dated 1st July, 2007.

⁶ The number "1" substituted with number "2" vide Finance Act, 2007 dated 1st July, 2007.

⁷ The number "1" substituted with number "2" vide Finance Act, 2007 dated 1st July, 2007.

⁸ The word inserted vide Finance Act, 2007 dated 1st July, 2007.

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 -

- (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,
 - (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 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 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 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 subsection (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 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 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.

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.

[59A. *Power of the Commission to undertake onsite inspection of insurance companies.*—(1) The Commission may undertake onsite inspections of an insurer to ensure that the requirements of sound and prudent management are being fulfilled by the insurer and the insurer is complying with the requirements of the ordinance and the rules made there under.

(2) On-site inspections shall be conducted with such frequency as the commission may deem appropriate.

(3) All officers and agents of the company, including lawyers, auditors and actuaries shall supply all information, documents and assistance that may be required by the Commission in the course of the inspection.

(4) The inspectors shall have the right to enter any company premises during conduct of the inspections, and may search, seize, take possession of any record, object, article, material whether electronic or otherwise, account books or other documents, including any travel or other personal documents which may be used as evidence.

(5) Except where the Commission believes that the record may be destroyed by the insurer, the Commission shall give two week written notice to the insurer before undertaking an on-site inspection.]⁹

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.

⁹ Section 59A inserted vide Finance Act, 2007 dated 1st July, 2007.

(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.

(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 sub-section 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 deputised 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.

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 [the Commission 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 provided that for public section insurance company or corporation i.e. National Insurance Company Ltd., Pakistan Re-insurance Company Ltd., and State Life Insurance Corporation of Pakistan the Commission may make a recommendation only to the Federal Government for the purpose]¹⁰.

[]¹¹

(3) An order under sub-section (1)¹² in respect of any person may also provide that he shall not, without the previous permission in writing of the Commission¹³ in any way,

¹⁰ Substituted the words “to have the charge of an insurer, the Commission shall make a report of the fact to the Tribunal” substituted vide Finance Act, 2007, dated 1st July, 2007.

¹¹ Sub-section (2) omitted vide Finance Act, 2007, dated 1st July, 2007. Before Omission it read as follows:

“(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.”

¹² The number “2” substituted with number “1” vide Finance Act, 2007 dated 1st July, 2007.

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 (1)¹⁴ shall be made in respect of any person without giving him an opportunity of being heard unless the Commission¹⁵ 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.

¹³ The word “Tribunal” substituted with the word “Commission” vide Finance Act, 2007 dated 1st July, 2007.

¹⁴ The number “2” substituted with number “1” vide Finance Act, 2007 dated 1st July, 2007.

¹⁵ The word “Tribunal” substituted with the word “Commission” vide Finance Act, 2007 dated 1st July, 2007.

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.

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 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.

PART X

ASSIGNMENT OR TRANSFER OF POLICIES

AND

NOMINATION

71. Assignment and transfer of life insurance policies.- (1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case, by the transferor or by the assignor or his duly authorised agent and duly attested, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but, except where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to use for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places or business in Pakistan such notice shall be delivered only at the place in Pakistan mentioned in the policy for the purpose or at his principal place of business in Pakistan.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy and where there is more than one instrument of transfer or

assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in subsection (2) recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons shall be valid.

(7) No transferee or assignee of a life insurance policy issued by a mutual insurance company shall become a member of that company by reason only of such transfer or assignment.

72. Nomination by policy holder.- (1) The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the policy holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the record relating to the policy and any such nomination may, at any time before the policy matures for payment, be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy holder a written acknowledgment of having registered a nomination or a cancellation or change thereof.

(4) A transfer or assignment of a policy made in accordance with section 71 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the right of the nominee only to the extent of the insurer's interest in the policy.

Provided further that the assignment of a policy to a party other than the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that person on the security of the policy within its surrender value shall not cancel a nomination but shall suspend it, to the extent of the interest of that person in the policy, until such time as the policy is re-assigned on repayment of the loan.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees, survive the person whose life is insured the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (III of 1874), applies or has at any time applied:

Provided that where a nomination made before the commencement of this Ordinance, in favour of the wife of the person who has insured his life or of his wife and children or any of them, is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not have applied to the policy.

73. Nomination under group life policies.- (1) A person whose life is insured under a contract of group life insurance may at any time nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the person whose life is insured to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) A nomination made under sub-section (1) shall be made in such manner as may be prescribed.

PART XI

MARKET CONDUCT

74. Application of this Part only to direct insurance business.- The provisions of this Part shall apply only to direct insurance business.

75. Duty of utmost good faith.- (1) A contract of insurance is a contract based on the utmost good faith and there shall be implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.

(2) If reliance by a party to a contract of insurance on a provision of the contract would be to fail to act with the utmost good faith, the party may not rely on the provision.

(3) In deciding whether reliance by an insurer on a provision of the contract of insurance would be to fail to act with the utmost good faith, the Tribunal shall have regard to any notification of the provision that was given to the policy holder, whether or not the insurer was required by this Ordinance to give such notification.

(4) The effect of this section is not limited or restricted in any way by any other law, including the subsequent provisions of this Part, but this section does not have the effect of imposing on an policy holder, in relation to the disclosure of a matter to the insurer, a duty other than the duty of disclosure

76. Insurer not to engage in misleading or deceptive conduct.- (1) An insurer shall not, in the course of its business as an insurer, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) The inclusion in an insurance policy of unusual terms tending to limit the liability of the insurer, without the express acknowledgement of the policy holder, shall constitute misleading or deceptive conduct.

(3) Nothing contained in sub-section (2) shall be taken as limiting by implication the generality of sub-section (1).

(4) Where a policy holder has relied upon any representations by an insurer or by an agent of an insurer which are incorrect in any material particular, inasmuch as it has the effect of misleading or deceiving the policy holder in entering into a policy, the policy holder shall be entitled to obtain compensation from the insurer for any loss suffered.

(5) Notwithstanding the provisions of the foregoing sub-section, the Commission shall also have the power to levy a fine on the insurer which shall be equal to the lesser of twice the loss determined to be suffered by the policy holder under the foregoing sub-section and ten million rupees.

77. Construction of ambiguities in favour of policy holder.- (1) Any ambiguity in a contract of insurance shall not be capable of being construed in a manner which is contrary to the interests of the policy holder.

(2) An insurer or an insurance intermediary shall:

- (a) when drafting policy documentation, make reasonable efforts to use plain language; and
- (b) when drafting proposal forms and claim forms, make reasonable efforts to ensure that it identifies in those documents the usual information the insurer ordinarily requires to be disclosed; and that those documents are in plain language and provide instructions where necessary on how the questions should be answered; and comply with the law.

(3) Failure to comply with foregoing sub-sections shall be an absolute bar and shall preclude an insurer from refusing payment of a claim on grounds of non-compliance or non-disclosure by the policy holder, where it may reasonably be determined that the non-compliance or nondisclosure resulted from inadequate understanding by the policy holder of the language of the policy, proposal or claim form as a result of such failure.

78. Exclusion of provisions of Ordinance void; an offence.- Where any provision in a contract of insurance has the effect of modifying or excluding, to the prejudice of any person other than the insurer, any applicable provision of this Ordinance, any such provision shall be void and the insurer shall be liable to punishment for an offence under this Ordinance.

79. Remedies for non-disclosure or misrepresentation.- (1) This section shall apply where the person who became the policy holder under a contract of insurance upon the contract being entered into:

- (a) failed to comply with the duty of disclosure; or
- (b) made a misrepresentation to the insurer before the contract was entered into.

(2) The insurer may not avoid a contract of insurance by reason only of the failure to comply with the duty of disclosure or the misrepresentation if:

- (a) the insurer would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to comply with the

duty of disclosure or had not made the misrepresentation before the contract was entered into; or

(b) the failure to comply with the duty of disclosure or the misrepresentation was not fraudulent:

Provided that in circumstances to which clause (b) refers, the insurer shall be entitled to be placed, in such manner, not otherwise inconsistent with this sub-section, as may be prescribed, in a position in which the insurer would have been if the failure had not occurred or the misrepresentation had not been made.

(3) Subject to sub-section (2), if the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.

(4) Nothing in this section shall affect any right of an insurer to recover damages from any person in respect of loss suffered by the insurer as a result of a fraudulent act by that person, or any criminal liability to which any person may be subject by reason of a fraudulent act by that person.

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

Notwithstanding anything in section 79, no policy of life insurance effected before the commencement date of this Ordinance shall after the expiry of two years from the commencement date of this Ordinance and no policy of life insurance effected after the commencement date shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the policy holder, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose:

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the benefits payable under the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

81. Tribunal may disregard avoidance in certain circumstances.- (1)

In any proceedings by the policy holder in respect of a contract of insurance that has been avoided on the ground of fraudulent failure to comply with the duty of disclosure or fraudulent misrepresentation, the Tribunal may, if it would be harsh and unfair not to do so, but subject to this section, disregard the avoidance and, if it does so, shall allow the policy holder to recover the whole, or such part as the Tribunal thinks just and equitable in the circumstances, of the amount that would have been payable if the contract had not been avoided.

(2) The power conferred by sub-section (1) may be exercised only where the Tribunal is of the opinion that, in respect of the loss that is the subject of the proceedings before the Tribunal, the insurer has not been prejudiced by the failure or misrepresentation or, if the insurer has been so prejudiced, the prejudice is minimal or insignificant.

(3) In exercising the power conferred by sub-section (1), the Tribunal

(a) shall have regard to the need to deter fraudulent conduct in relation to insurance; and

(b) shall weigh the extent of the culpability of the policy holder in the fraudulent conduct against the magnitude of the loss that would be suffered by the policy holder if the avoidance were not disregarded, but may also have regard to any other relevant matter.

(4) The power conferred by sub-section (1) applies only in relation to the loss that is the subject of the proceedings before the Tribunal, and any disregard by the Tribunal of the avoidance does not otherwise operate to reinstate the contract.

82. Cancellation of a life insurance policy for fraudulent claim.- (1) Notwithstanding anything to the contrary in this Ordinance, a policy of life insurance may be cancelled in accordance with this section by reason that a person having or purporting to have rights under the policy has made a claim under the policy which is fraudulent.

(2) A life insurer may apply to the Tribunal for consent to cancel a policy of life insurance in accordance with this section.

(3) The life insurer shall give written notice to the policy holder and to any person identified in the application for consent that an application for consent under sub-section (2) is to be made.

(4) Where the Tribunal is satisfied with respect to the matters contained in sub-section (1), the Tribunal shall give its consent and the insurer may at any time thereafter cancel the policy by written notice to the policy holder.

(5) Where a policy is cancelled under this section, the Tribunal may on the application of a person having an interest under the policy award to any person such amount as is just and equitable under the circumstances.

83. Power of the Commission to prescribe rules for market conduct.- (1) The Commission may make rules, not inconsistent with this Part, to govern the conduct of insurers, policy holders and intermediaries in the insurance market in Pakistan.

(2) A provision of a Rule made under this section which applies to a contract of insurance to which it is relevant and which is entered into after the commencement date of that Rule shall be deemed to constitute a condition of that contract.

84. Commission to have power to undertake compliance visits.- (1) The Commission may, in accordance with procedures prescribed by rules, make visits to the offices and branches of insurers and inspect books, records and papers for the purpose of ensuring compliance with the provisions of this Part (Market Conduct) and Part XIII (Intermediaries).

85. Commission to have power to require a survey to be performed .- (1) The Commission may make rules requiring that an independent survey be conducted, in accordance with the provisions of the Ordinance, in respect of such class or classes of insurance claims meeting such criteria as may be prescribed by the Commission.

(2) A survey conducted pursuant to rules made under sub-Rule (1) shall be conducted at the expense of the insurer and a copy of the report of the surveyor shall be provided to the policy holder.

(3) The provisions of this section shall not operate to limit, curtail, diminish or extinguish any liability of the insurer to which the insurer would otherwise have been subject.

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

(1) In respect of any contract or arrangement under which one party to the contract or arrangement requires another party to the contract or arrangement to procure, effect and pay for or reimburse the costs of effecting insurance of any property, liability, life or anything connected with any thereof, it shall be unlawful to stipulate, expressly or impliedly, directly or indirectly, that the insurance which is to be procured and effected as a condition of the contract must be placed with any specific or named insurer or insurers, other than insurers specified generally as a class according to objective criteria based on financial strength.

(2) Any such stipulation in or arising out of or connected with any such contract or arrangement made after the commencement date shall be void and any such stipulation in or arising out of or connected with any such contract or arrangement made before the commencement of this Ordinance shall thereafter be subject to the provisions of this section.

(3) If there is any connection or association between a lender and the insurer it shall be disclosed to the policy holder together with any commissions received by the lender from the insurer in respect of the insurance contract. Disclosure shall in each case be made prior to the making of the contract.

(4) It shall be unlawful for insurance to be taken out by a lender without the knowledge and consent of the borrower or customer, unless the borrower or customer having undertaken to do so, has without good cause and for reasons beyond his control failed to comply with his obligations in this respect.

(5) Notwithstanding anything contained in this section, until 31st December 2002 lenders may prescribe a listing of unacceptable insurers by name, provided that no insurer which

complies with the paid-up capital requirements set out in section 28 of this Ordinance, excluding the provisos to sub-section (2) of that section, may be included on that list.

87. Provisions when not to constitute discrimination.- Notwithstanding anything contained in any other law for the time being in force, provisions in respect of the terms and conditions of insurance policies, shall not constitute discrimination provided that differentiation contained therein is based on reasonable classification and:

(a) is based on actuarial and statistical data from a source on which it is reasonable to rely; and

(b) is reasonable having regard to the data and any other relevant factors.

The onus of proving that the insurer has complied with this section shall lie upon the insurer.

PART XII

SURRENDER, LAPSE AND FORFEITURE OF

CERTAIN LIFE INSURANCE POLICIES

88. Special definitions and interpretation for this Part.- (1) For the purposes of this Part, a “relevant policy” is a policy of life insurance under which the whole of the benefits become payable either on, or at a fixed interval or intervals after, the occurrence of a contingency which is bound to occur.

(2) In this Part, an amount due under a relevant policy includes a premium due under that policy but unpaid.

89. Acquisition of surrender value.- (1) A relevant policy which has been in force for not less than two years shall have a surrender value which shall be calculated in accordance with the terms of the policy.

(2) In the case of a policy issued before the commencement date and still in force immediately after the commencement date, the surrender value shall not at any time be less than the surrender value of the policy immediately before the commencement date.

(3) Where under the terms of a policy the basis of calculation of the surrender value may be varied at the discretion of the insurer, the basis of calculation shall be furnished to the Commission and no variation shall be made therefrom unless the insurer has, not less than sixty days before the date of such variation, furnished to the Commission a statement of the proposed variation and the reasons for that variation, accompanied by a

statement by the appointed actuary of his opinion as to the appropriateness of the proposed variation.

(4) When an insurer furnishes to the Commission the matters referred to in the preceding sub-section relating to a proposed variation, the Commission may within sixty days direct the insurer to make such changes in the proposed variation as it believes on reasonable grounds to be necessary for the protection of the interests of policy holders of the insurer, and the insurer shall comply with any such direction.

90. Surrender of policy at policy holder's option.- (1) The holder of a relevant policy which has been in force for not less than two years may make, in writing, a request to the insurer to surrender the policy.

(2) Subject to sub-section (3) and sub-section (4), within one month of receiving a request under sub-section (1), such request not having been withdrawn by the policy holder, the insurer shall pay to the policy holder an amount equal to the surrender value of the policy less the amount of any debt owed to the insurer under, or secured by, the policy.

(3) If an insurer, within fifteen days of receiving a request under sub-section (1), communicates in writing with the policy holder to request the policy holder to consider the advantages of maintaining the policy and to seek professional advice if appropriate, the period of one month referred to in sub-section (2) shall be extended by fifteen days so far as concerns that request.

(4) The Tribunal may, on application by an insurer, issue a written order suspending or varying the insurer's obligation to make payments under sub-section (2), where the Tribunal is satisfied that such suspension or variation is necessary in order to avoid prejudice to:

- (a) the financial stability of the insurer; or
- (b) the interests of the policy holders of the insurer.

(5) An order issued under sub-section (3) shall:

- (a) be valid for such period as the Tribunal may determine; and
- (b) be subject to such conditions as the Tribunal may determine.

91. Surrender of policy at insurer's option.- (1) A policy which has acquired a surrender value shall not be surrendered other than at the request of the policy holder except as set out in this section.

(2) Where the total amount of all debts owed to the insurer under, or secured by, a relevant policy exceeds the surrender value of that policy, the insurer may issue to the policy holder a written notice:

- (a) setting out the amount owed to the insurer under, or secured by the policy at the date of the notice ('the debt');
- (b) setting out the surrender value of the policy at the date of the notice; and
- (c) stating that the policy will be surrendered at the end of 30 days after the notice was issued to the policy holder and the surrender value applied against the debt, if the excess of the debt over the surrender value is not paid to the insurer before the expiry of that period.

(3) Where at least 30 days have elapsed between the issue of a notice set out in subsection (2) and the excess of the debt over the surrender value has not been paid to the insurer, the insurer may by written notice to the policyholder effect surrender of the policy and apply the surrender value against the debt, which shall to the extent of the surrender value be extinguished.

92. Paid-up policy at policy holder's option.- (1) An insurer shall, within one month from receipt of an application in writing by the holder of a relevant policy which has been in force for not less than two consecutive years, make the policy paid-up.

(2) If an insurer, within fifteen days of receiving an application under subsection (1), communicates in writing with the policy holder to request the policy holder to consider the advantages of maintaining the policy in full force and to seek professional advice if appropriate, the period of one month referred to in sub-section (1) shall be extended by fifteen days so far as concerns that application.

(3) A policy which is made paid-up shall have a paid-up sum insured, which, subject to clause (b) of sub-section (5),-

- (a) shall include in full all subsisting reversionary bonuses that have already attached to the policy; and
- (b) shall, where the policy is one on which the maximum number of premiums payable is fixed and the premiums are of uniform amount and paid at uniform intervals, be, before the inclusion of such bonuses not less than such amount as is prescribed.

(4) A policy made paid-up under this section shall not be entitled by virtue only of this section to participate in any surplus declared distributable after the conversion of the policy into a paid-up policy.

(5) If, when an application is made to an insurer under sub-section (1) to have a policy paid-up, the policy holder owes a debt to the insurer under the policy, or a debt owed by the policy holder to the insurer is secured by the policy, the insurer may either:

- (a) treat the debt as a debt secured by the paid-up policy; or
- (b) in calculating the paid-up sum insured, take the debt into account in such manner as is approved as equitable by the appointed actuary.

(6) If in calculating the paid-up sum insured, a debt is taken into account in accordance with clause (b) of sub-section (5), the debt is discharged.

93. Non-forfeiture.- (1) A relevant policy is not liable to be forfeited only because of the non-payment of a premium (the "overdue premium") if –

- (a) the policy has been in force for at least two years; and
- (b) the surrender value of the policy exceeds the total of:
 - (i) the amount of the overdue premium; and
 - (ii) the total of any other amounts owed to the insurer under, or secured by, the policy.

(2) For the purposes of clause (b) of sub-section (1), the surrender value of the policy shall be calculated as at the day on which the overdue premium falls due and shall be calculated as though the premium has been paid.

(3) When the holder of a policy to which this section applies fails to pay a premium due under that policy, the insurer shall, before the expiry of three months from the date on which that premium in respect was payable but not paid, give notice to the policy holder informing him of the options available to him.

(4) Notwithstanding anything to the contrary in the policy, the options available to the policy holder under this section shall include without limitation two of the following, namely :-

- (a) the policy shall be paid up in accordance with this Part;
- (b) the surrender value of the policy shall be applied to the payment of the premium due until the surrender value is exhausted;
- (c) the policy shall be surrendered in accordance with this Part; and
- (d) the policy shall be surrendered, and the company shall issue to the policy holder a contract for term life insurance for a term to be specified by the policy holder and

a sum insured determined on the basis of the surrender value of the policy surrendered less the amount of any debt owed to the company under, or secured by, the policy.

(5) Notwithstanding anything to the contrary in the policy, the action taken by the insurer with respect to the policy shall be –

- (a) if a course of action not stated in the notice issued under sub-section (3) is agreed in writing between the insurer and the policy holder, after the policy holder has received the notice, that course of action;
- (b) if the policy holder agrees in writing to an option contained in the notice issued under sub-section (3), that course of action;
- (c) if the policy holder does not respond to the notice issued under sub-section (3), and after making reasonable efforts the insurer is unable to contact the policy holder:
 - (i) if the policy holder has elected in writing, either at the time of taking the policy or at any time thereafter before the cessation of the payment of premium, that a course of action should be taken; that course of action; otherwise
 - (ii) if a course of action (not being the course of action set out in clause (b) of sub-section (4)) is stated in the policy, that course of action; otherwise
 - (iii) the course of action set out in clause (a) of subsection (4).

(6) No commission shall be payable to any person in respect of the following, namely:-

- (a) the application of the surrender value to the payment of premiums in accordance with clause (b) of sub-section (4); and
- (b) the issue of a contract of term insurance under clause (d) of sub-section (4).

PART XIII

INTERMEDIARIES

94. This Part to apply only to direct insurance business.- The provisions of this Part shall apply only to direct insurance business.

95. Liability of Insurer for act or omissions of agent .- (1) Every insurer shall, so far as relates to a contract of insurance entered into by the insurer through an agent, be liable to

the policy holder for the acts or omissions of that agent as though that agent were an employee of the insurer, in circumstances where the policy holder has relied in good faith on the agent and as a consequence has suffered loss or damage. Liability shall be absolute and shall not be capable of being contracted out of, either in the agency agreement or on a policy, proposal or other document.

(2) For the purposes of this Part, any person who, for remuneration arranges insurance cover for a policy holder or intending policy holder, and who is not a registered insurance broker, shall be presumed to be the agent of the insurer in relation to any matter relating to insurance.

(3) The provisions of the foregoing sub-section shall not operate to limit, curtail, diminish or extinguish any liability of the insurer to which the insurer would otherwise have been subject.

96. Persons acting as agents.- (1) It shall be unlawful for any person to act as an agent in respect of an insurer if that person, or, in the case of a body corporate, any director of the body corporate, or officer of the body corporate engaging in the business of insurance agency:

- (a) is a minor;
- (b) has been found of unsound mind by a Court of competent jurisdiction;
- (c) has been found guilty, within the five years preceding the present date, of criminal misappropriation or criminal breach of trust, cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction;
- (d) has served any custodial sentence imposed by a Court of competent jurisdiction, ending within the five years preceding the present date;
- (e) has been found guilty by a Court of competent jurisdiction of any offence involving insurance; or
- (f) has been otherwise declared as disqualified by the Tribunal, other than for a term which had expired prior to the present date.

(2) It shall be unlawful for any person to act as an agent in respect of an insurer except under a contract in writing.

(3) Any person who acts as agent in breach of this section, and any insurer who knowingly permits him to act as agent, shall be guilty of an offence.

(4) A contract of agency shall include, and if it does not, shall be deemed to include, as a condition, that the agent must obtain the permission of the insurer before entering into a

contract of agency with any other insurer while the contract with the first or any other insurer remains in force.

(5) A contract of agency which does not disclose any existing contracts of agency with other insurers shall be deemed to include a warranty that no other such contracts exist.

97. Minimum qualifications for agents.- The Commission may prescribe minimum qualifications for persons appointed as insurance agents, which may extend to educational requirements, experience in the industry and membership of an approved trade or professional organisation.

98. Insurer to maintain register of agents.- (1) An insurer shall maintain a register of all agents employed by the insurer, containing such particulars as may be prescribed:

Provided that in the case of an insurer deemed to be registered at the commencement date, the particulars required by section 43 of the repealed Act to be contained in the register maintained under that section of the repealed Act shall be deemed to constitute the particulars required to be maintained under this sub-section, for a period of one year from the commencement date.

(2) Prior to appointing a person as its agent, and at intervals of not more than twelve months thereafter during the time the person continues to act as its agent, an insurer shall obtain from that person in such form as may be prescribed, a declaration in respect of the following matters:

- (a) the information provided by him for inclusion in the register referred to in sub-section (1) is complete and correct;
- (b) he has complied with the requirements of the Ordinance concerning the qualifications of agents; and
- (c) such other matters as may be prescribed.

(3) It shall be an offence for an insurer to use an agent who has not been included on the register referred to in sub-section (1), or to use an agent who has not made the declaration referred to in sub-section (2), or knowingly to use an agent who has made a false declaration.

99. Payments by and to insurance agents.- (1) Any sums received by an insurance agent from a policy holder or an insurer, other than remuneration payable to the agent by the insurer, shall be deemed to be held on trust for the insurer. Payment by a policy holder to an insurance agent shall be deemed to constitute payment to the insurer.

(2) Any payment to which sub-section (1) applies shall be passed on to the insurer or the policy holder (as the case may be) as soon as practicable and in any case not later than two weeks from receipt by the agent.

(3) No insurance agent shall, except with the approval of the insurer who is the agent's principal, pay to or receive from a policy holder or intending policy holder any sums in relation to a contract of insurance:

Provided that this sub-section shall not operate to relieve any person from a liability to which that person is otherwise subject by the operation of this Ordinance.

(4) It shall be unlawful for an agent to deduct from premiums paid by and received from a policy holder any sums on account of commission due to the agent.

(5) No payment of commission or other remuneration to an insurance agent shall be made otherwise than by a crossed cheque, pay order or electronic funds transfer or in such other manner as may be prescribed: Provided that this sub-section shall not apply to payments to an agent which do not in the aggregate in one year exceed the sum of five thousand rupees.

100. Duty to disclose agency.- An agent acting for an insurer shall disclose to the policy holder or intending policy holder the fact that he acts as an agent for that insurer and any relationship between the agent and the insurer.

101. Restriction on life insurance agents, becoming directors of life insurance companies.- (1) No insurance agent who solicits or procures life insurance business, shall be eligible to be or remain a director of any insurance company carrying on life insurance business unless he suspends such solicitation or procurement.

(2) Any insurance agent who contravenes the provisions of sub-section (1) shall cease to be a director and shall be disqualified from acting as an insurance agent, for such period as the Tribunal may determine.

102. Insurance brokers to be licensed.- (1) It shall be unlawful for any person to act as or describe himself or hold himself out or permit himself to be described or held out as an insurance broker in respect of direct insurance business unless he holds a current insurance broker's licence issued by the Commission.

(2) No person who is not a company shall be eligible to be licensed as an insurance broker.

(3) An insurance broker's licence may only be issued by the Commission to a company which complies with such minimum requirements as may be prescribed by the Government in respect of:

- (a) paid-up capital;
- (b) statutory deposits;
- (c) professional indemnity insurance; and

(d) such other matters as may be prescribed.

(4) An application for an insurance broker's licence shall be made in the prescribed form, and shall be accompanied by the following documents, namely:-

(a) the memorandum and articles of the broker;

(b) evidence of professional indemnity insurance;

(c) a declaration in a prescribed form to the effect that neither the applicant nor any director or principal officer of the applicant is disqualified from holding his office as such;

(d) a letter of support from not fewer than five registered insurers in the prescribed form, each signed, on behalf of the insurer, by a duly authorised representative;

(e) evidence of payment of the prescribed fee; and

(f) such other evidence and documents as may be prescribed.

(5) An insurance broker's licence shall be issued initially for a period of one year and may on application in the prescribed form be renewed annually.

(6) The Commission may cancel or refuse to issue or renew a broking licence, where the Commission believes on reasonable grounds that the broker has contravened a provision of the Ordinance, including without limitation that the broker has failed to maintain prescribed minimum levels of paid-up capital, statutory deposit or professional indemnity insurance.

(7) The Commission may apply for an order from the Tribunal, that a person is disqualified from acting as an insurance broker, or as a director or principal officer of an insurance broker, if it demonstrates on reasonable grounds that the activity of the person as an insurance broker or as a director or principal officer of an insurance broker would be detrimental to the interests of policy holders.

103. Brokers to be presumed agents under certain circumstances; liability of brokers when not so presumed.- (1) A licensed insurance broker shall be presumed to act as the agent of any insurer with which such broker has a contract of agency, so far as relates to any policies placed by that broker with that insurer, and the insurer shall be liable for the conduct or misconduct of the broker with respect to such policies.

(2) Where a licensed insurance broker is not, by virtue of the foregoing subsection, presumed to act as the agent of an insurer, the broker shall be liable to the policy holder and the insurer shall not be liable for the conduct or misconduct of the broker as distinct from itself or its agents, except as otherwise provided in this Ordinance.

104. Ownership and management interests *inter se* of brokers and insurers prohibited.- No insurer and no director of an insurer shall hold any direct or indirect ownership interest in an insurance broker or take part in the management or direction of an insurance broker, and vice versa.

105. Broker's duty to disclose relationships.- (1) A licensed insurance broker shall disclose to the policy holder or intending policy holder any relationship between the broker and any insurer.

(2) A licensed insurance broker, in placing business with an insurer with whom the broker has a contract of agency, shall, before the contract of insurance is effected, inform the intending policy holder of both the existence of the contract of agency and that the broker is acting as the agent of the insurer in respect of all matters concerning the contract of insurance.

106. Payments by and to insurance brokers.- (1) Any sums received by an insurance broker from a policy holder or an insurer, other than remuneration payable to the broker by the insurer, shall be deemed to be held on trust for the insurer. Payment by a policy holder to an insurance broker shall be deemed to constitute payment to the insurer.

(2) Any amount held by an insurance broker for payment to the policy holder shall be paid to the policy holder as soon as practicable and in any case in not less than two weeks.

(3) Any amount held by an insurance broker for payment to the insurer shall unless the insurer has previously agreed otherwise in writing be paid to the insurer as soon as practicable.

(4) Any payment of money (other than premium) from an insurance broker to an insurer or vice versa shall be made by crossed cheque, pay order or electronic funds transfer.

107. Requirements in respect of persons ceasing to act as insurance brokers.- (1) A company ceasing to act as an insurance broker shall maintain, for such period as may be prescribed, such minimum level of professional indemnity insurance in respect of liabilities arising from its activities as an insurance broker to which the company may be subject, as may be prescribed.

(2) No company formerly acting as an insurance broker may be voluntarily wound up during the period prescribed in the preceding sub-section.

108. Basis for payment of remuneration by insurers to insurance brokers.- (1) ..A licensed insurance broker shall not receive from an insurer or from a person on behalf of an insurer a gift, gratuity, benefit or other reward (however described) except as remuneration for services rendered to the insurer:

(a) in arranging or effecting a particular contract of insurance;

(b) in connection with dealing with or settling a claim under a particular contract of insurance; or

(c) otherwise than in connection with the broker arranging or effecting contracts of insurance or dealing with or settling claims under contracts of insurance.

(2) An insurer shall not pay to an insurance broker, and an insurance broker shall not receive from an insurer, in respect of the arranging or effecting of contracts of insurance by that insurance broker with the insurer, remuneration at a rate or on a basis that has been varied having regard to any one or more of the following:

(a) the number of contracts so arranged or effected;

(b) the total amount of premiums paid or payable under such contracts;

(c) the total amount of sums insured under such contracts.

109. Insurance brokers to report annually to Commission.- A licensed insurance broker shall make an annual report to the Commission. Such report shall include audited accounts of the insurance broking business and such other information and statements as may be prescribed, each in such format as may be prescribed.

110. Power to inspect insurance agents and insurance brokers.- The Commission may, in accordance with procedures prescribed by rules, visit the premises of an insurance broker or of an agent of an insurance company, to establish compliance by the broker, or the agent, or any insurer of which the broker or agent is agent, with the provisions of this law relating to insurance contracts, brokers and agents.

111. Persons permitted to act as insurance surveyors.- (1) Subject to subsection (2), it shall be unlawful for any person to act for remuneration as a surveyor, loss adjuster, or loss assessor (by whatever title called) unless such person is

(a) an adjuster of aviation or maritime losses; or

(b) a person licensed as a surveyor under this Ordinance.

(2) Nothing in this section shall prevent -

(a) the performance in the course of his employment by an employee of an insurer of activities of the nature of insurance surveying for that insurer; or

(b) the expression in the course of his general professional practice of an expert opinion on the nature, cause or quantum of an insurance loss by an advocate, solicitor, accountant, actuary or other professional person engaged in a profession other than surveying.

112. Licensing of insurance surveyors.- (1) The Commission may, on application by a person, grant to that person a licence, having a term of not more than twelve months, to act as a surveyor, where the Commission is satisfied that that person is qualified under this section to be granted such a licence.

(2) A licence granted under the preceding sub-section (or renewed under this sub-section) may be renewed for a term of not more than twelve months on application made by the holder of the licence prior to expiry of the licence, where the Commission is satisfied that such person is qualified under this section to be granted such a licence.

(3) No person shall be entitled to apply for or to hold a licence as a surveyor under this Ordinance unless the following conditions are fulfilled at the date of the application and at all times during which the licence is held:

- (a) the person is a company with a prescribed minimum share capital;
- (b) the person carries professional indemnity insurance at such level as may be prescribed;
- (c) reports issued in respect of surveys conducted by the person are signed by natural persons, registered under section 113 as authorised surveying officers;
- (d) reports issued in respect of surveys conducted by the person contain such information and comply with such conditions as may be prescribed;
- (e) the person is a member of such approved professional association as may be prescribed; and
- (f) the person complies with such other conditions as may be prescribed:

Provided that a person, including a firm, who or which was, immediately prior to the commencement date, the holder of a certificate of registration under section 44A(4) of the repealed Act, shall be exempt, subject to such conditions as may be prescribed, from compliance with the conditions set out in this subsection.

Provided further that the application of such exemption to a person shall cease permanently and immediately on that person ceasing to hold such a certificate or to hold a licence issued under this section in renewal of such a certificate.

Provided further that such exemption shall cease permanently and absolutely at the expiry of five years from the commencement date, from which date no firm and no natural person shall be licensed as a surveyor.

Provided further that such exemption shall not be available to any person in respect of the requirement for a licence to act as an insurance surveyor in a class of insurance surveying for which a certificate of registration under section 44A(4) of the repealed Act

was not held by such person as at the commencement date.

(4) An application for a licence or for renewal of a licence under this section shall contain such information and be accompanied by such documents as may be prescribed.

(5) A person licensed as a surveyor who becomes aware that he has ceased, or is about to cease, to comply with any condition of that licence shall, within one week of becoming aware of such non-compliance, notify the Commission of the circumstances surrounding such non-compliance, and his licence shall stand suspended as at the date falling one week after the date on which he became aware, or should reasonably have become aware, of the non-compliance. Such suspension of a licence shall continue until the Commission is satisfied that the person has taken such action as the Commission believes on reasonable grounds to be necessary to remove the causes of the non-compliance, or until the term of the licence expires, whichever is earlier.

(6) If the Commission believes on reasonable grounds that a licensed surveyor has failed to comply, or has ceased to comply, with a condition of his licence, the Commission may by notice to the licensed surveyor of not less than two weeks cancel that licence.

Provided that a licence shall not be cancelled under this sub-section without giving the holder of the licence an opportunity to be heard.

(7) A person who purports to act as a licensed surveyor during the period during which his licence is suspended, or following cancellation of his licence, shall be guilty of an offence and liable on conviction to a fine not exceeding one million rupees.

113. Registration of authorised surveying officers.- (1) The Commission may, on application by a person, register that person for a term of not more than twelve months as an authorised surveying officer, where the Commission is satisfied that such person is qualified to be registered under this section.

(2) Registration granted under the preceding sub-section (or renewed under this sub-section) may be renewed for a term of not more than twelve months on application made by the person registered prior to expiry of registration, where the Commission is satisfied that the person is qualified under this section to be so registered.

(3) No person shall be entitled to apply to be registered, or to be or remain registered, as an authorised surveying officer unless the following conditions are fulfilled at the date of the application and at all times during which the person is registered -

- (a) the person is a natural person;
- (b) the person is a director, officer or employee of a company licensed as a surveyor under this Ordinance; and
- (c) the person has such qualifications as may be prescribed:

Provided that a natural person who was, immediately prior to the commencement date, the holder of a certificate of registration under section 44A(4) of the repealed Act, shall be deemed, subject to such conditions as may be prescribed, to possess the qualifications required under clause (c) of this sub-section.

Provided further that the application of the first proviso to this sub-section to a person shall cease permanently and immediately on that person ceasing to hold such a certificate or to be registered under this section on renewal of such a certificate.

Provided further that the first proviso to this sub-section shall cease to apply permanently and absolutely at the expiry of five years from the commencement date.

Provided further that the first proviso to this sub-section shall not apply to any person in respect of the requirement for registration under this Ordinance as an authorised surveying official in a class of insurance surveying for which a certificate of registration under section 44A(4) of the repealed Act was not held as at the commencement date.

(4) An application for registration or for renewal of registration under this section shall contain such information and be accompanied by such documents as may be prescribed.

(5) A person registered as an authorised surveying officer who becomes aware that he has ceased, or is about to cease, to comply with any condition of that registration shall, within seven days of becoming aware of such non-compliance, notify the Commission of the circumstances surrounding such non-compliance, and his registration shall stand suspended as at the date falling seven days from the date on which he became aware, or should reasonably have become aware, of the non-compliance; and such suspension of a registration shall continue until the Commission is satisfied that the person has taken such action as the Commission believes on reasonable grounds to be necessary to remove the causes of the non-compliance, or until the term of the registration expires, whichever is earlier.

(6) If the Commission believes on reasonable grounds that an authorized surveying officer has failed to comply, or has ceased to comply, with a condition of his registration, the Commission may by notice to the authorised surveying officer of not less than fourteen days cancel that registration:

Provided that a registration shall not be cancelled under this subsection without giving the person concerned an opportunity to be heard.

(7) A person who purports to act as an authorised surveying officer during the period when his registration is suspended, or following cancellation of his registration, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand rupees.

114. Classes of insurance surveying.- Surveyors and authorised surveying officers may be classified into such classes or sub-classes as may be prescribed, and, if so classified, separate application shall be made and separate licences and certificates issued in respect of each such class or sub-class.

PART XIV

SPECIAL PROVISIONS OF LAW

115. Application of Pakistan law to policies issued in Pakistan.- The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in Pakistan after the commencement of this Ordinance shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in Pakistan of any sum secured thereby and to sue for any relief in respect of the policy in any Tribunal; and if the suit is brought in Pakistan any question of law arising in connection with any such policy shall be determined according to the law in force in Pakistan:

Provided that nothing in this section shall apply to a policy of marine insurance.

116. Payment of money into Tribunal.- (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer may before the expiry of nine months from the date of the maturing of the policy or, where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer, apply to pay the amount into the Tribunal within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise.

(2) A receipt granted by the Tribunal for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into the Tribunal under this section shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely:-

- (a) the name of the insured person and his address;
- (b) if the insured person is deceased, the date and place of his death;
- (c) the nature of the policy and the amount secured by it;

- (d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;
- (e) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount; and
- (f) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into the Tribunal.

(4) An application under this section shall not be entertained by the Tribunal if the application is made before the expiry of six months from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the person insured, as the case may be.

(5) If it appears to the Tribunal that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into the Tribunal and shall invest the amount in Government securities pending its disposal.

(6) The insurer shall transmit to the Tribunal every notice of claim received after the making of the application under sub-section (3), and any payment required by the Tribunal as costs of the proceedings or otherwise in connection with the disposal of the amount paid into the Tribunal shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Tribunal.

(7) The Tribunal shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into the Tribunal, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant.

(8) The Tribunal shall decide all questions relating to the disposal of claims to the amount paid into the Tribunal.

117. Small Disputes Resolution Committees.- (1) The Federal Government shall constitute one or more Small Disputes Resolutions Committees to arbitrate disputes arising between an insurer and a policy holder.

(2) The constitution and procedure of the Committees shall be prescribed by rules made by the Federal Government, and the Arbitration Act, 1940 (X of 1940), or any re-enactment thereof shall not apply to such Committees.

(3) No person shall be appointed a member of the Committee if he has any interest (as defined in sub-section (1) of section 16 of the SECP Act) in the subject matter of the arbitration.

(4) The Committees shall only have jurisdiction in respect of life insurance policies not being group life policies, domestic insurance policies and private motor insurance policies in respect of claims the pecuniary value of which shall be limited to a sum to be prescribed.

Provided that the Committees shall not have jurisdiction in respect of claims made under private motor insurance policies for 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);.

118. Payment of liquidated damages on late settlement of claims.- (1) It shall be an implied term of every contract of insurance that where payment on a policy issued by an insurer becomes due and the person entitled thereto has complied with all the requirements, including the filing of complete papers, for claiming the payment, the insurer shall, if he fails to make the payment within a period of ninety days from the date on which the payment becomes due or the date on which the claimant complies with the requirements, whichever is later, pay as liquidated damages a sum calculated in the manner as specified in sub-section (2) on the amount so payable unless he proves that such failure was due to circumstances beyond his control.

Explanation: for the purposes of this sub-section, failure or delay by any person in making payment (including without limitation payment under a contract of reinsurance) to an insurer shall not constitute circumstances beyond the control of the insurer.

(2) The liquidated damages payable under sub-section (1) shall be payable for the period during which the failure continues and shall be calculated at monthly rests at the rate five per cent higher than the prevailing base rate.

119. Supply of copies of proposals and medical reports.- Every Insurer shall, on application by a policy holder and on payment of such fee as may be prescribed, supply to the policy holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in any medical report supplied in connection therewith.

120. Prohibition of business on dividing principle.- No insurer shall after the commencement of the Ordinance, begin or carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of participating policies of life insurance in accordance with

the provisions of this Ordinance, either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

Provided further that nothing in this section shall apply to the business of Takaful insurance carried on by an insurer in accordance with laws established for the conduct of Takaful business.

PART XV

INSURANCE TRIBUNAL

121. Constitution of the Tribunal.- (1) The Federal Government shall constitute a Tribunal or Tribunals in consultation with the Commission and shall in respect of each Tribunal so constituted specify the territorial limits within which, or the class or classes of cases in respect of which each such Tribunal shall exercise jurisdiction under this Ordinance:

Provided that the Federal Government may by notification in the official Gazette confer all or any of the powers of the Tribunal on any District or Additional District and Sessions Judge of an area where for any reason it may not be expedient to constitute a separate Tribunal, and in doing so the Federal Government shall also specify the composition and pecuniary and territorial limits of such a Tribunal.

(2) The Tribunal shall consist of a Chairperson who shall be a serving or retired judge of the High Court and not less than two members being persons of ability and integrity who have such knowledge or experience of life insurance, non-life insurance, actuarial science, finance, economics, law, accountancy, administration or other discipline as would, in the opinion of the Federal Government, enable them to discharge the duties and functions of members of the Tribunal.

(3) To constitute a sitting of a Tribunal the presence of the Chairperson and at least one other member shall be necessary.

(4) A Tribunal shall not merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by or produced before it.

(5) A Tribunal may hold its sitting at such places within its territorial jurisdiction as the Chairperson may decide from time to time.

(6) No act or proceeding of a Tribunal shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution of the Tribunal.

122. Powers of Tribunal.- (1) A Tribunal shall:

- (a) in the exercise of its civil jurisdiction, have in respect of a claim filed by a policy holder against an insurance company in respect of, or arising out of a policy of insurance, all the powers vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908);
- (b) in the exercise of its criminal jurisdiction, try the offences punishable under this Ordinance and shall, for this purpose, have the same powers as are vested in the Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898);
- (c) exercise and perform such other powers and functions as are, or may be, conferred upon, or assigned to it, by or under this Ordinance; and
- (d) in all matters with respect to which procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) as the case may be.

(2) The jurisdiction of a Tribunal shall not extend to appeals to which section 33 and section 34 of the SECP Act apply.

(3) No Court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Tribunal extends under this Ordinance, including a decision as to the territorial limits and the execution of a decree, order or judgment passed by a Tribunal:

Provided that for the purposes of this section a Small Claims Settlement Committee established under section 117 shall not be deemed to be a Court.

123. Procedure of the Tribunal.- (1) A Tribunal shall for the purpose of the trial of an application, follow such procedure as may be prescribed and have the same powers as are vested in a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents and material objects;
- (c) receiving evidence on affidavits; and
- (d) issuing commissions for the examination of witnesses or documents.

(2) If, in the course of the trial of an application, any one of its members ceases to hold office, or is, for any reason, unable to attend the sittings of that Tribunal, the trial shall continue notwithstanding such vacancy, and the decision may be given by the remaining members.

(3) If upon any matter requiring the decision of the Tribunal there is a difference of opinion among its members, the opinion of the majority shall prevail and the decision of that Tribunal shall be expressed in terms of the view of the majority:

Provided that where the members are equally divided on any point it shall be decided in accordance with the views of the Chairperson.

(4) The decision of a Tribunal shall be given in writing and shall be signed by the Chairperson.

(5) A Tribunal shall give a copy of the decision to each party to the dispute and shall also forward a copy to the Commission.

(6) A Tribunal shall, upon an application made in this behalf by any party to a dispute adjudicated by it and on payment of such fee not exceeding one rupee for every one hundred words, and subject to such conditions, as may be prescribed, furnish certified copies of its proceedings or of any document submitted to or produced before it.

124. Appeal.- (1) Subject to the right of appeal conferred by sub-section (2) hereof, the decision of the Tribunal on any application shall be final and shall not be questioned in any Court or before any other authority.

(2) Any party aggrieved by a decision of the Tribunal may, if the amount of the claim in dispute or the penalty prescribed, as the case may be, is not less than one hundred thousand rupees, prefer an appeal to the High Court within a period of thirty days from the date of such decision.

(3) An appeal under sub-section (2) shall be heard by a Bench of not less than two judges of the High Court having territorial jurisdiction over the relevant Tribunal.

PART XVI

INSURANCE OMBUDSMAN

125. Appointment of Insurance Ombudsman.- (1) As soon as may be, after the commencement of this Ordinance, the Federal Government shall appoint an Insurance Ombudsman.

(2) The Insurance Ombudsman shall be a natural person having high integrity and ability and unimpeachable insurance or legal credentials, and shall not at the date of his appointment be more than seventy years of age. He shall not be a shareholder of an insurance company.

(3) The Insurance Ombudsman shall hold office for a period of four years from the date of his appointment unless he resigns earlier or is disqualified or removed in accordance

with sub-section (2) or (3) of section 126. He shall not be eligible for any extension of tenure or for reappointment under any circumstances whatsoever.

(4) Any vacancy occurring in the office of the Insurance Ombudsman shall be filled within sixty days of the occurrence of such vacancy.

(5) The Insurance Ombudsman shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services, and shall not during the two years immediately prior to his appointment have held any office in any body corporate carrying on insurance business in Pakistan.

126. Terms and conditions of Insurance Ombudsman.- (1) The Insurance Ombudsman shall be entitled to the same salary and allowances as a Judge of a High Court.

(2) The Insurance Ombudsman may at any time resign his office by giving written notice to the Commission of not less than three months.

(3) The Insurance Ombudsman shall be disqualified from holding his office and his appointment may be revoked if:

- (a) he has been convicted of an offence involving moral turpitude;
- (b) he has been guilty of misconduct;
- (c) he has been or is adjudged insolvent;
- (d) he is incapable of discharging his duties by reason of physical, physiological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Commission;
- (e) he is disqualified by virtue of holding an office (other than that of Insurance Ombudsman) for which he receives remuneration; or
- (f) he fails to discharge diligently or impartially his duties under this Ordinance:

Provided that, unless a disqualification referred to in this subsection arises from the judgement or a court or tribunal of competent jurisdiction under any relevant provision of applicable law, the appointment of an Insurance Ombudsman shall not be revoked without an enquiry by an impartial person or body of persons constituted in accordance with such procedure as may be prescribed by rules made by the Federal Government, and such rules shall provide for a reasonable opportunity for him to be heard in his defence.

(4) The Insurance Ombudsman shall be provided with a secretariat to be appointed in consultation with the Commission. Appointments to the secretariat may be made on deputation from the Commission or other insurance companies or otherwise on the basis

of professional qualifications. The costs of the secretariat shall be shared by insurance companies in such proportions as may be determined by the Commission.

127. Jurisdiction, functions and powers of Insurance Ombudsman.- (1) The Insurance Ombudsman may on a complaint by any aggrieved person undertake any investigation into any allegation of mal-administration on the part of any insurance company

Provided that the Insurance Ombudsman shall not have any jurisdiction to investigate or inquire into any matters which –

- (a) are within the jurisdiction of the Office of the Wafaqi Mohtasib under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. 1 of 1983) ; or
- (b) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him.

(2) For the purposes of this section “mal-administration” includes –

- (a) a decision, process, recommendation, act of omission or commission which:
 - (i) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
 - (ii) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
 - (iii) is based on irrelevant grounds; or
 - (iv) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and
- (b) corruption, nepotism, neglect, inattention, inordinate delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

(3) Notwithstanding anything contained in sub-section (1), the Insurance Ombudsman shall not accept for investigation any complaint which is brought by or on behalf of an insurance company and which relates to a contract of reinsurance.

(4) Notwithstanding anything contained in sub-section (1), the Insurance Ombudsman shall not accept for investigation any complaint by or on behalf of an employee of an insurance company concerning any matters relating to the insurance company in respect of any personal grievance relating to his service therein.

(5) For carrying out the objectives of this Ordinance and, in particular for ascertaining the root causes of corrupt practices and injustice, the Insurance Ombudsman may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

128. Reference to Insurance Ombudsman by Court.- If at any time during the pendency of a case, a Court or Tribunal trying a case relating to an insurance company is of the opinion that the management of the insurance company has *prima facie* acted in a *mala fide* manner, or in violation of insurance rules and regulations, it may make reference to the Insurance Ombudsman for inquiring into the matter and passing such order in accordance with the provisions hereof as he may deem fit:

Provided that the making of a reference shall not prevent the Court or Tribunal from deciding the claim before it on its merits.

129. Procedure for making complaints.- (1) A complaint shall be made on solemn affirmation or oath in writing addressed to the Insurance Ombudsman. The complaint shall set out the full particulars of the transaction complained of and the name and address of the complainant.

(2) Prior to making a complaint the complainant shall intimate in writing to the concerned insurance company his intention of filing a complaint and if the insurance company either fails to respond, or makes a reply which is unsatisfactory to the complaint, within a period of one month, the complainant may file a complaint at any time thereafter within a further period of three months:

Provided that the Insurance Ombudsman may, if satisfied that there were reasonable grounds for the delay in filing the complaint, condone the delay and entertain the complaint.

(3) The Insurance Ombudsman may adopt any procedure as he considers appropriate for investigating a complaint.

Provided that he shall not pass any order against a insurance company without first giving it a notice and an opportunity to be heard.

(4) Subject to section 128, the Insurance Ombudsman shall not have any power to issue an order in the nature of a stay order or to entertain any complaints if the matter is pending before a Court, Tribunal or other legal forum.

(5) The Insurance Ombudsman may reject a complaint summarily or he may accept the same or pass any other order he deems fit.

Provided that in each case he shall pass a reasoned order for his decision.

(6) The Federal Government may further prescribe rules for the conduct of proceedings in relation to complaints brought before the Insurance Ombudsman.

130. Recommendations for implementation.- (1) In the event the Insurance Ombudsman comes to the conclusion that the complaint is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation and failing that communicate his findings to the concerned insurance company with the direction -

- (a) to reconsider the matter;
- (b) to modify or cancel the earlier decision, action or failure to take appropriate action;
- (c) to pay reasonable compensation to the complainant as fixed by the Insurance Ombudsman;
- (d) to take the requisite steps to improve the functioning or efficiency of the insurance company; or
- (e) to take such other remedial steps or actions as may be specified by the Insurance Ombudsman.

(2) Any insurance company, or official of a insurance company or a complainant aggrieved by an order passed by the Insurance Ombudsman may file an appeal with the Commission within thirty days which shall pass any order thereon it deems fit.

(3) Any order passed by the Insurance Ombudsman which has not been appealed against, or any order passed by the Commission in appeal, as the case may be, shall become final and operative and if not implemented shall render the insurance company concerned liable to such action including the imposition of a fine or penalty as the Commission may deem fit, and in relation to a insurance company officer, to the appropriate disciplinary or other proceedings.

(4) Nothing contained herein shall prevent a complainant from filing a suit against an insurance company in the event his complaint is rejected.

131. Power to call for information.- The Insurance Ombudsman shall have the power for purposes of disposing a case, to require an insurance company to disclose to him any information subject to the following conditions, namely:-

- (a) the Insurance Ombudsman shall make every endeavour to ensure that insurance confidentiality is maintained as required by insurance law and procedure and shall take no action which is violative thereof;

- (b) the Insurance Ombudsman may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint;

Provided that he shall not be entitled to call for unrelated documents which may compromise the insurance company's position in relation to other customers;

Provided further that in cases where the Insurance Ombudsman is investigating cases of corruption, he shall have a greater latitude in relation to the inspection of documents; and

- (c) in the event of an insurance company refusing to furnish information, or copies of relevant documents, the Insurance Ombudsman may draw an adverse inference and comment on the same in his findings.

132. Duties of insurers.- (1) An insurer shall at all times co-operate with the Insurance Ombudsman and with any person properly authorized by him, in the conduct of an investigation by the Insurance Ombudsman into a complaint which has been brought before him.

(2) An insurer that obstructs, through its wilful act or failure to act, any investigation by the Insurance Ombudsman shall be guilty of an offence.

133. Duty and power of the Insurance Ombudsman to report to the Commission.-

(1) Where the Insurance Ombudsman has reason to believe during the course of his investigation into a complaint brought before him, or finds as a result of his investigation that an insurer has -

- (a) failed to comply with this Ordinance; or
- (b) failed to act in good faith; or
- (c) acted in such a manner as to bring the insurance industry into disrepute;

he shall make a report on that matter to the Commission in such manner as the Commission may prescribe.

(2) The Insurance Ombudsman may make a report to the Commission on any matter arising from his investigation into a complaint brought before him, in which he deems it fit or proper to do so.

(3) The Insurance Ombudsman may, in a report made under sub-section (1) or under sub-section (2), make recommendations as to action to be taken, including without limitation an investigation by the Commission, or the taking of the requisite steps or legal proceedings against an insurance company which has acted in violation of insurance laws, rules, regulations, procedures, or directives of the Commission.

134. Report of Insurance Ombudsman.- (1) The Insurance Ombudsman shall prepare and submit to the Federal Government on or before the 31st March in every year following the commencement date a report setting out a review of the activities of his office during the preceding year.

(2) The Insurance Ombudsman shall also submit a report or reports to the Federal Government containing the results of such inquiries as he may be directed to conduct by the Federal Government from time to time.

(3) All reports submitted by the Insurance Ombudsman shall be published and released to the public unless he directs otherwise for reasons to be recorded.

PART XVII

APPOINTMENT OF ADMINISTRATORS

135. When Administrator for management of insurance business may be appointed.- (1) If at any time the Commission has reason to believe that an insurer carrying on insurance business is acting in a manner likely to be prejudicial to the interest of holders of insurance policies it may, after giving an opportunity to the insurer to be heard, appoint an Administrator to manage the affairs of the insurer under the direction and control of the Commission.

(2) The Administrator shall receive such remuneration as the Commission may prescribe and the Commission may at any time cancel the appointment and appoint some other person as Administrator.

(3) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator but except with the leave of the Commission the Administrator shall not issue any further policies.

(4) As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of that management.

(5) The Commission may issue such directions to the Administrator as to his powers and duties as the Commission deems desirable in the circumstances of the case, and the Administrator may apply to the Commission at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

136. Powers and duties of the Administrator.- (1) The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Commission a report stating his opinion as to which of the following courses is in the circumstances most advantageous to the general interest of the holders of insurance policies:-

- (a) the transfer of the business of the insurer to some other insurer;
- (b) the carrying on of its business by the insurer (in case of life insurance business whether with the policies of the business continued for the original sum insured with the addition of the bonuses that attach to the policies or for reduced amounts);
- (c) the winding up of business of the insurer; or
- (d) such other course as he deems advisable.

(2) On the filing of the report with the Commission, the Commission may take such action, not inconsistent with the other provisions of this Ordinance, as it thinks fit for promoting the interest of the holders of insurance policies in general.

(3) Any order passed by the Commission under sub-section (2) shall be binding on all persons concerned, and shall have effect notwithstanding anything in the Memorandum or Articles of Association of the insurer, if a company.

137. Powers of Administrator respecting property liable to attachment under section 160.- (1) If the Administrator is satisfied that any person has rendered himself liable to be proceeded against under section 146, he may, pending the institution of proceedings against such person under that section, by order in writing prohibit him or any other person from transferring or otherwise disposing of any property which, in the opinion of the Administrator, would be liable to attachment in proceedings under that section.

(2) Any person aggrieved by an order made by the Administrator under subsection (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the Tribunal.

(3) An order made by the Administrator under sub-section (1) shall, subject to any order made by the Tribunal on appeal, be in force for a period of three months from the date of the order unless before the expiry of the said period, an application is made under sub-section (1) of section 160 to the Court competent to exercise jurisdiction under that sub-section, and when such an application is made, the order shall, subject to any order made by the Court, continue in force as if it were an order of attachment made by that Court in proceedings under that section.

(4) An order made by the Administrator under this section shall

- (a) in the case of an order affecting a corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of the Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), and

(b) in the case of an order affecting a person not being a corporation or firm, be served on such person,

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving a copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gains, and every such order shall also be published in the official Gazette.

(5) If any question arises whether a person was duly served with an order under sub-section (4) the publication of the order in the official Gazette shall be conclusive proof that the order was so served, and a failure to comply with the provisions of clause (a) or clause (b) of sub-section (4) shall not affect the validity of the order.

(6) Notwithstanding anything contained in this section, any property in respect of which an order has been made by the Administrator may, with the previous permission of the Administrator and subject to such terms and conditions as he may impose, be transferred or otherwise disposed of.

(7) Notwithstanding anything contained in any other law for the time being in force, the transfer or other disposition of any property in contravention of any order made by the Administrator under this section or of any terms and conditions imposed by him shall be void.

(8) For the purpose of enabling him to form an opinion as to whether any property would be liable to attachment in proceedings under section 160 or for the purpose of enabling him to institute proceedings under that section, the Administrator may require any person to furnish information on such points or matters as, in the opinion of the Administrator may be relevant for the purpose, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Pakistan Penal Code (Act XLV of 1860).

(9) The Administrator shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) requiring the production of documents; and

(c) receiving evidence on affidavits;

and any proceeding before the Administrator under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

(10) Save as provided in this section or in section 160, and notwithstanding anything contained in any other law for the time being in force –

(a) no suit or other legal proceeding shall lie in any Court to set aside or modify any order of the Administrator or the Federal Government made under this section; and

(b) no Court shall pass any decree, grant any injunction or make any other order which shall have the effect of nullifying or affecting in any way any such order.

138. Cancellation of contracts and agreement.- The Administrator may, at any time during the continuance of his appointment with respect to any insurer and after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other person which the Administrator is satisfied is prejudicial to the interests of holders of insurance policies.

139. Termination of appointment of Administrator.- If at any time it appears to the Commission that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Commission may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Commission, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

140. Finality of decision of appointing Administrator.- Any order or decision of the Commission made in pursuance of section 135 or section 139 shall be final and shall not be called in question in any Court or Tribunal.

141. Penalty for withholding document or property from Administrator.- If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one million rupees, or with both.

142. Protection of action taken under sections 135 to 139.- (1) No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good

faith done or intended to be done in pursuance of section 135, section 136, section 137 or section 138.

(2) No suit or other legal proceeding shall lie against the Commission for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under section 135, section 136 or section 139.

PART XVIII

WINDING UP

143. Winding up by the Court.- (1) The Court may order the winding up in accordance with the Companies Ordinance, 1984 (XLVII of 1984), of any insurance company and the provisions of that Ordinance shall, subject to the provisions of this Ordinance, apply accordingly.

(2) The Court may, provided that it is satisfied that such order is in the interests of the policy holders of the company, order the winding up of an insurance company:

- (a) on the grounds set out in section 305 of the Companies Ordinance 1984 (XLVII of 1984), but subject always to the provisions of this Ordinance;
- (b) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy holders holding participating policies of life insurance other than paid up policies, that have been in force for not less than three years and have a total sum insured, including bonuses added to the sum assured of not less than fifty million rupees; or
- (c) if the Commission, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:-
 - (i) that the company having failed to comply with any requirement of this Ordinance has continued such failure or having contravened any provision of this Ordinance has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Commission;
 - (ii) that it appears from the returns furnished under the provisions of this Ordinance, or from the results of any investigation made thereunder, or from a report made by any Administrator appointed thereunder that the company is insolvent; or
 - (iii) that the continuance of the company is prejudicial to the interests of the policy holders.

(3) An insurance company in respect of which a winding up order is made shall immediately cease to enter into new contracts of insurance, whether in life or non-life insurance.

(4) All contracts of non-life insurance issued by an insurer which are in force at the date of an order for the winding up of the insurer, shall stand cancelled as at the date of the order or at such later date as may be specified in the order.

144. Voluntary winding up.- Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), an insurance company shall not be wound up voluntarily unless it has first transferred or otherwise made provision for the settlement of its liabilities incurred under insurance contracts, and its registration has been revoked.

145. Court may order continuation of life insurance business.- (1) The liquidator of an insurer carrying on life insurance shall, if the Court so orders, carry on the life insurance business, or the life insurance business carried on in any one or more statutory funds, of the insurer with a view to its being transferred as a going concern to another insurer (being a company) registered under this Ordinance, whether an existing company or a company formed for that purpose.

(2) If an order is given under sub-section (1), and has not been revoked, each statutory fund to which the order applies shall be considered for the purposes of the liquidation to constitute a single asset of the insurer, and no assets of any such statutory fund shall be applied in the winding up of the insurer, neither shall any liabilities of any such statutory fund share in any distribution of assets upon winding up.

(3) In carrying on the life insurance business in any statutory fund of an insurer in accordance with an order of a Court under sub-section (1), the liquidator may, subject to the provisions of this Ordinance, agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

146. Court may appoint special manager of life insurance business.- (1) If the liquidator of a life insurer is satisfied that the interests of policyholders require the appointment of a special manager of the insurer's life insurance business, he may make application to the Court to appoint a special manager.

(2) The Court may, on an application made under sub-section (1), appoint a special manager of the insurer's life insurance business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

147. Court may appoint independent actuary.- (1) The Court may, on the application of the liquidator, of a special manager appointed under section 146 or of the Commission, appoint an actuary (not being the insurer's appointed actuary at any time during the five

years prior to the insurer entering into liquidation) to investigate the life insurance business of the insurer according to such scope as the Court shall direct, but including without limitation:

- (a) the desirability or otherwise of that business being continued; and
- (b) any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

(2) An actuary appointed under sub-section (1) shall report to the liquidator, the special manager or to the Court and within such time as the Court may direct, on any investigation conducted by the actuary pursuant to this section.

148. Powers of Court to reduce contracts of life insurance.- (1) Where an insurer is in liquidation, the Court may make an order reducing the amount of the insurance contracts of the insurer upon such terms and subject to such conditions as the Court believes to be in the interests of the policy holders of the insurer.

(2) This section applies also to the business of a statutory fund of a life insurer which is being carried on by a liquidator pursuant to an order made by the Court under section 145.

(3) An application for an order under this section may be made either by the liquidator, or by or on behalf of the company or by a policy holder, or by the Commission; and the Commission and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

149. Commission empowered to apply for directions.- (1) The Commission may apply to the Court for directions regarding any matter arising in connection with or upon the winding-up of an insurer.

(2) Before making an application under sub-section (1), the Commission shall give the liquidator and the special manager (if any) written notice of that proposed application, including details of the proposed application.

(3) The liquidator and the special manager shall be entitled to be heard on the application.

150. Commission entitled to notice and hearing.- (1) Before making an application to the Court in relation to a matter arising in connection with or upon the winding-up of an insurer, a liquidator or a special manager shall give the Commission not less than fifteen days written notice of that proposed application, including details of the proposed application.

(2) The Commission shall be entitled to be heard on the application.

151. Commission entitled to obtain information.- (1) The Commission may in writing request a liquidator or a special manager to provide such information as the Commission may deem necessary, in relation to the winding up of an insurer.

(2) The liquidator or special manager shall comply with the request within fifteen days or, such further period as the Commission shall, on application made to it for extension of time for providing such information, grant.

152. Determination of insurance liabilities.- (1) This section shall not apply to the life insurance business of a statutory fund of a life insurer in respect of which an order has been made by the Court under section 145 to continue that business, and that order has not been revoked.

(2) In the winding up of an insurer the liquidator shall -

(a) by examination of the books and records of the insurer, identify persons appearing by those books and records to be entitled to or interested in the policies granted by the insurer

(b) determine the value of the liability of the insurer to each such person; and

(c) give notice of such value to those persons in such manner as the Court may direct.

(3) A determination under clause (b) of subsection (2) shall be made in accordance with the directions of the Court.

(4) In giving directions under sub-section (3) the Court shall, and in making the determination under the clause (b) of sub-section (2) the liquidator shall have regard to-

(a) the surrender value of life insurance contracts;

(b) the amount of surplus, if any, that has been allocated for the benefit of participating life insurance policyholders; and

(c) the premium paid, the pattern of risk and the length of the unexpired portion of contracts of non-life insurance.

(5) Any person to whom notice is given under clause (c) of sub-section (2) shall be bound by the value stated in that notice unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by applicable rules and failing which by an order of the Court.

153. Application of statutory fund assets.- (1) This section, other than subsections (6) and (7), does not apply to a statutory fund of a life insurer in respect of which an order has been made under section 145 to continue the life insurance business of that statutory fund, and that order has not been revoked.

(2) In the winding up of an insurance company carrying on life insurance business, the assets and the liabilities of each statutory fund of the insurer shall be ascertained separately from the value of the assets and liabilities of each other statutory fund or of the shareholders' fund.

(3) Subject to this section, in the winding-up of a life insurer, the assets of a statutory fund shall first be applied in accordance with section 405 of the Companies Ordinance in discharging preferential payments given priority under that section.

(4) Sub-section (3) shall have effect only to the extent that creditors of the company which have statutory preference under section 405 of the Companies Ordinance, 1984 (XLVII of 1984), in respect of liabilities which are liabilities that are referable to the business of the statutory fund.

(5) If any assets of the statutory fund remain after the application of subsection (3), the assets shall be applied according to the following rules, namely:-

- (a) the assets shall be applied first in discharge of policy liabilities of the insurer referable to the statutory fund;
- (b) if any assets remain, they shall be applied in discharge of other liabilities that are referable to the business of the statutory fund;
- (c) if, after the application of assets according to clauses (a) and (b), any assets of the statutory fund remain, those assets are to be applied in such manner as the Court directs;
- (d) directions given for the purpose of clause (c) are to be such directions as the Court considers equitable, having regard in decreasing order of preference to:
 - (i) the interests of the holders of policies referable to the statutory fund;
 - (ii) the interests of the holders of policies referable to statutory funds of the insurer other than the statutory fund;
 - (iii) the interests of creditors of the company other than creditors of the statutory fund whose debts have not been discharged by the application of assets according to clause (b); and
 - (iv) the interests of shareholders of the company.

(6) If a liability of the company-

- (a) is referable to two or more statutory funds (including a statutory fund or funds referred to in sub-section (1)); or

- (b) is referable in part to a statutory fund or statutory funds (including in both cases a statutory fund referred to in subsection (1) but is also related to the shareholders' fund;

the liquidator may apportion the liability so as to determine the part of the liability that is to be borne by each of the statutory funds or by the statutory fund or funds and the shareholder's fund, as the case may be on a fair and equitable basis.

(7) In making an apportionment under subsection (6), the liquidator shall comply with any directions of the Court.

(8) The part of the amount so determined in relation to a statutory fund is to be treated as a liability of the insurer that is referable to the business of the fund.

154. Winding up secondary companies.- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may be the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit.

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principle laid down in this section.

155. Return of deposits.- In the winding up of an insurer the liquidator shall apply to the Court for an order for the return of the deposit made by the insurer under section 29 and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

Provided that in the case of a deposit made under section 29 which by virtue of this Ordinance is deemed to be an asset of a statutory fund in respect of which an order has been made under section 145 to continue the life insurance business of that statutory fund and that order has not been revoked, the Court shall not order the return of that deposit.

PART XIX

OFFENCES AND PENALTIES

156. Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, [or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer]¹⁶ and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

157. Penalty for transacting insurance business in contravention of sections 5, 6 and 29.- (1) Any insurer or any person acting on behalf of an insurer, who carries on any class of insurance business in contravention of any of the provisions of sections 5, 6 and 29, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to two million rupees.

¹⁶ The words and comma inserted vide Finance Act, 2007 dated 1st July, 2007.

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (1) shall be punishable with fine which may extend to five hundred thousand rupees: Provided that nothing in sub-section (1) or sub-section (2) shall apply to the business of reinsurance between an insurer in Pakistan and an insurer not having an office in Pakistan.

158. Penalty for false statement in document.- Except as otherwise provided in this Ordinance, whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable [by the Commission]¹⁷ with fine which may extend to one million rupees []¹⁸.

159. Wrongfully obtaining or withholding property.- Any director, or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Ordinance, shall, on the complaint of the Commission made after giving the insurer not less than fifteen days' notice of its intention, or on the complaint of the insurer or any member or any policy holder thereof, be punishable with fine which may extend to one million rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or willfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

(2) For the purposes of this section, property of a life insurance statutory fund maintained by an insurer is property of that insurer.

160. Power of Tribunal to order restoration of property of insurer or compensation in certain cases.- (1) If, on the application of the Commission or an Administrator appointed under section 135 or an insurer or any policy holder or any member of an insurance company or the liquidator of an insurance company (in the event of the insurance company being in liquidation), the Tribunal is satisfied:

- (a) that any insurer (including in any case where the insurer is an insurance company any person who has taken part in the promotion or formation of the insurance company or any past or present director, managing agent, manager, secretary or liquidator) or any officer, employee or agent of the insurer, -
 - (i) has misapplied or retained or become liable or become accountable for any money or property of the insurer; or

¹⁷ The words "with imprisonment for a term which may extend to three years, or" substituted with the words "by the Commission" vide Finance Act, 2007 dated 1st July, 2007.

¹⁸ The comma and the words " , or with both" omitted vide Finance Act, 2007 dated 1st July, 2007.

(ii) has been guilty of any misfeasance or breach of trust in relation to the insurer; or

(b) that any person, whether he is or has been in any way connected with the affairs of the insurer or not, is in wrongful possession of any money or property of the insurer or having any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer;

the Tribunal may examine any such insurer, director, managing agent, manager, secretary or liquidator or any such officer, employee or agent of the insurer or such other person, as the case may be, and may compel him to contribute such sums to the assets of the insurer by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Tribunal thinks fit, or to pay such sum as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable or to restore any money or property of the insurer or any part thereof, as the case may be; and the Tribunal shall have power to order the payment of damages at such rate and from such time as specified in section 118 or as the Tribunal may otherwise deem fit.

(2) Without prejudice to the provisions contained in sub-section (1) or subsection (3), where it is proved that any money or property of an insurer has disappeared or has been lost, the Tribunal shall presume that every person in charge of, or having a disposing power over, such money or property at the relevant time (whether a director, manager, principal officer or any other officer) has become accountable for such money or property within the meaning of sub-clause (i) of clause (a) of sub-section (1), and the provisions of that sub-section shall apply accordingly, unless such person demonstrates to the satisfaction of the Tribunal that the money or property has been utilised or disposed of in the ordinary course of the business of the insurer and for the purpose of that business and in accordance with the provisions of this Ordinance, or that he took all reasonable steps to prevent the disappearance or loss of such money or property or otherwise satisfactorily accounts for such disappearance or loss.

(3) Where the insurer is an insurance company and any of the acts referred to in clauses (a) or (b) of sub-section (1) has been committed by any person, every person who was at the relevant time a director, managing agent, manager, liquidator, secretary or other officer of the insurance company shall, for the purposes of that sub-section be deemed to be liable for that act in the same manner and to the same extent as the person who has committed the act, unless he proves that act was committed without his consent or connivance and was not facilitated by any neglect or omission on his part.

(4) For the purposes of this section, money or property of an insurer includes money or property of a life insurance statutory fund maintained by that insurer, and any sum paid to or money or property restored to or liquidated damages paid to an insurer in accordance with sub-section (1) which relate to the money or property of a statutory fund shall be applied to that statutory fund.

(5) Where at any stage of the proceedings against any person under this section (hereinafter referred to as the delinquent), the Tribunal is satisfied by affidavit or otherwise:-

- (a) that a prima facie case has been made out against the delinquent; and
- (b) that it is just and proper so to do in the interest of the policy holders of an insurer or of the members of an insurance company,

the Tribunal may direct the attachment of:-

- (i) any property of the insurer in the possession of the delinquent;
- (ii) any property of the delinquent which belongs to him or is deemed to belong to him within the meaning of sub-section (6); or
- (iii) any property transferred by the delinquent within two years before the commencement of proceedings under sub-section (1) or during the pendency of such proceedings, if the Tribunal is satisfied by affidavit or otherwise that the transfer was otherwise than in good faith and for consideration.

(6) For the purposes of sub-section (5), the following classes of property shall be deemed to belong to a delinquent:-

- (a) any property standing in the name of any person which by reason of the person being connected with the delinquent, whether by way of relationship or otherwise, or on account of any other relevant circumstances appears to belong to the delinquent ;
- (b) the property of a private company in respect of the affairs of which the delinquent, by himself or through his nominees, relatives, partners or persons interested in any shares of the company is able to exercise or is entitled to acquire control, whether direct or indirect.

Explanation. For the purposes of this section a person shall be deemed to be a nominee of a delinquent, if, whether directly or indirectly, he possesses on behalf of the delinquent, or may be required to exercise on the direction or on behalf of the delinquent, any right or power which is of such a nature as to enable the delinquent to exercise or to entitle the delinquent to acquire control over the company's affairs.

(7) Any claim to any property attached under this section or any objection to such attachment shall be made by an application to the Tribunal and it shall be for the claimant or objector to adduce evidence to show that the property is not liable to attachment under

this section, and the Tribunal shall proceed to investigate the claim or objection in a summary manner.

(8) When disposing of an application under sub-section (1), the Tribunal shall, after giving all persons who appear to it to be interested in any property attached under this section an opportunity of being heard, make such order as it thinks fit respecting the disposal of any such property for the purpose of effectively enforcing any liability under this section, and all such persons shall be deemed to be parties to the proceedings under this section.

(9) In any proceedings under this section the Tribunal shall have full powers and exclusive jurisdiction to decide all questions of any nature whatsoever arising thereunder and in particular, with respect to any property attached under this section and no other Tribunal shall have jurisdiction to decide any such question in any suit or other legal proceeding.

(10) In making any order with respect to the disposal of the property of any private company referred to in clause (b) of sub-section (6), the Tribunal shall have due regard to the interests of all persons interested in such property other than the delinquent and persons referred to in that clause.

(11) This section shall apply notwithstanding that the act is one for which the person concerned may be criminally liable.

(12) In proceedings under this section the Tribunal shall have all the powers which a Court has under section 418 of the Companies Ordinance, 1984 (XLVII of 1984).

(13) The Tribunal entitled to exercise jurisdiction under this section shall be the Tribunal within whose jurisdiction the registered office of the insurer is situate and any proceedings under this section pending immediately before the commencement of this Ordinance in any Court shall, on such commencement, stand transferred to the Tribunal.

(14) A Tribunal may, with the approval of the High Court exercising territorial jurisdiction over it, make rules providing for-

(a) the manner in which enquiries and proceedings may be held under this section; and

(b) any other matter for which provision has to be made for enabling the Tribunal effectively to exercise its jurisdiction under this section.

161. Notice to Commission and hearing.- (1) When application is made to the Tribunal for the making of any order to which this section applies the Tribunal shall, unless the Commission has itself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Commission, and shall give the Commission an opportunity of being heard.

(2) The orders to which this section applies are the following namely:-

- (a) an order for the attachment in execution of a decree of any deposit made under section 29;
- (b) an order under section 155 for the return of any such deposit;
- (c) an order under section 69 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon; and
- (d) an order for the winding up of an insurance company.

162. Previous sanction of Commission for institution of proceedings.- (1) Except where proceedings are instituted by the Commission no proceedings under this Ordinance against an insurer or any director, manager or other officer of an insurer shall be instituted by any person unless he has previous thereto obtained the sanction of the Commission (which shall not unreasonably be withheld) to the institution of such proceedings.

(2) Where the proceedings are not initiated by the Commission or the Commission has not been made a party, the Tribunal shall before proceeding further in the matter give notice to the Commission and shall not proceed to hear and decide the matter without giving the Commission the opportunity of participating in the proceedings and being heard.

163. Power of Court to grant relief.- If in any proceedings, civil or criminal, it appears to the Court or the Tribunal hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court or the Tribunal may relieve him either wholly or partly from his liability on such terms as it may think fit.

PART XX

MISCELLANEOUS

164. Service of notices.- (1) Any process or notice required to be served on an insurer shall be sufficiently served if addressed to any person registered with the Commission as a person authorised to accept notices on behalf of the insurer and left at, or sent by registered post to, the address of such person as registered with the Commission.

(2) Any notice or other document which is by this Ordinance required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting such

policy are usually sent and any notice so addressed and sent shall be deemed to be notice to be holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer notice in writing of his interest, any notice which is by this Ordinance required to be sent to policy holders shall also be sent to such person at the address specified by him in his notice.

165. Insurance of interests in Pakistan.- (1) The Federal Government may make rules, not inconsistent with this Ordinance, imposing conditions on the ability of any person to insure outside Pakistan any risk or part thereof in respect of any property or interests which are located in Pakistan at the time the insurance is effected.

(2) The Federal Government may make rules, not inconsistent with this Ordinance, imposing conditions on the ability of any insurer to issue life insurance policies denominated in currencies other than the Pakistan Rupee to persons who are citizens of Pakistan and resident in Pakistan at the time the insurance is effected.

166. Insurance of public property .- (1) This section applies to direct nonlife insurance of public property.

(2) In this section -

(a) “Company” means the National Insurance Company Limited;

(b) “public property” means:

- (i) any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of, -
 - (A) the Federal Government, a Provincial Government or a local authority or statutory corporation; or
 - (B) any company, firm, undertaking, institution, organisation or other establishment which is managed or controlled by the Federal or a Provincial Government or local authority or statutory corporation or in which such Government, by itself or jointly with a local authority or corporation or company managed or controlled by it, holds a controlling financial share or interest or which is specified by the Federal Government for the purposes of this clause; and
- (ii) a project financed out of an external loan, or with external aid until it reaches:
 - (A) in the case of an industrial project, the stage at which it is capable of commencing normal production; and

(B) in the case of any other project, the stage at which it is capable of being put to the use for which it is intended; and

(c) “statutory corporation” means a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law.

(3) Subject to the provisions of sub-sections (4) and (5), all insurance business relating to any public property, or to any risk or liability appertaining to any public property, shall be placed with the Company only and shall not be placed with any other insurer:

Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid.

(4) The Federal Government may –

(a) by order in writing exempt from compliance with subsection (3) any property or liability to which that subsection applies; or

(b) by notification in the official Gazette exclude from the application of sub-section (3) such property or liability as is specified in that notification.

(5) If the Company declares in writing that it is not able, by virtue of the operation of a provision of this Ordinance or for any other reason, to enter into a contract of insurance to which sub-section (3) refers, the property or liability which is the subject of that proposed contract of insurance shall be exempted from the provisions of sub-section (3) to the extent of the insurance proposed to be obtained by means of that contract of insurance.

(6) Any person who insures, and any insurer which accepts insurance of, any property or liability, knowing such insurance to be in contravention of sub-section (3), shall be guilty of an offence:

Provided that no person shall be in contravention of sub-section (3) by reason only of that sub-section becoming applicable to property or liability to which it was not applicable at the time that a contract of insurance in respect of that property or liability was taken out.

(7) The Federal Government may, by notification in the official Gazette, make rules, regulations and notifications, not inconsistent with the provisions of this Ordinance, for carrying out the purposes of this section.

(8) Rules, regulations and notifications, made under the authority of the National Insurance Corporation Act 1976 for the purposes of section 10 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.

(9) This section shall have effect until the earliest of the following dates:

- (a) the effective date of a notification by the Federal Government in the official Gazette that this section no longer has effect;
- (b) the effective date of a direction by the Commission to the Company to cease entering into new contracts of insurance; and
- (c) the effective date at which the Federal Government ceases to hold a controlling ownership interest in the Company.

PART XXI

RULES AND REGULATIONS

167. Power to make rules and regulations.- (1) The Federal Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) The power of the Federal Government to make rules in respect of matters expressly required in this Ordinance to be prescribed by the Commission, shall be deemed to have been hereby delegated to the Commission, who may, subject to the condition of previous publication by notification in the official Gazette, and subject to the condition of previous approval by the Board, make rules in respect of such matters and in respect of any other matters which are required to be or may be prescribed under this Ordinance, which the Federal Government may, in exercise of the power hereby conferred, in writing, published in the Gazette, delegate to the Commission.

(3) The powers of the Board and of the Commission to make regulations, which is conferred by section 40 of the SECP Act, shall extend to the making of such regulations as may be required to carry out the purposes of this Ordinance.

PART XXII

REPEAL AND SAVINGS

168. Repeal - The Insurance Act, 1938 (IV of 1938) is hereby repealed.

169. Repealed Act to apply to certain insurers ceasing to enter into new contracts before commencement of this Ordinance.- (1) Sections 28, 29, 36 of this Ordinance

shall not apply to an insurer in relation to any insurance business where such insurer has ceased, before the commencement of this Ordinance, to enter into any new contracts of insurance and notwithstanding the repeal of the repealed Act, the like provisions of the repealed Act shall for so long as he continues to have any liability under any such contracts, apply to such insurer and any contracts written by him prior to the commencement date:

Provided that not later than one month after the commencement date such insurer has given to the Commission notice of having ceased to write new contracts and with such notice provides to the Commission:

- (a) details of all policies which remain in force as at the commencement date;
- (b) details of all claims reported to the insurer which have not been fully and finally settled as at the commencement date;
- (c) a statement of assets and liabilities in the form prescribed as at a date not earlier than three months before the commencement date;
- (d) if the insurer carries on or has carried on non-life insurance, a report certified by an actuary estimating the ultimate settlement cost, inclusive of expenses of settlement, of claims incurred by the insurer under non-life insurance policies issued by it, whether or not reported, as at the date to which the statement of assets and liabilities is made up;
- (e) if the insurer carries on or has carried on life insurance business, a report in the form prescribed, certified by an actuary, on the financial condition of the life insurance business carried on by the insurer, as at the date to which the statement of assets and liabilities is made up; and
- (f) such other particulars as may be prescribed.

(2) An insurer to which sub-section (1) applies shall in each year submit to the Commission, at the time it submits its annual statutory accounts, statements as follows:

- (a) details of all policies which remain in force as at 31st December in the year to which the annual statutory accounts relate; and
- (b) details of all claims reported which have not been fully and finally settled as at 31st December in the year to which the annual statutory accounts relate.

(3) Within fifteen days of the insurer ceasing to have any policies in force, an insurer to which sub-section (1) applies shall give notice to the Commission to that effect and thereafter the insurer shall not be required to submit the statement identified in clause (a) of sub-section (2).

(4) For the purposes of this section, a policy is in force as at a date if the policy has not lapsed or been cancelled with effect on or before that date, and either –

- (a) the term stipulated in the policy during which premium is to be paid has not expired, on or before that date; or
- (b) the term stipulated in the contract during which an insured event may occur has not expired, on or before that date.

(5) For the avoidance of doubt, a policy of life insurance which has been paid up is a policy in force for the purposes of this section.

170. Savings.- (1) Nothing in this Ordinance shall affect the liability of an insurer, being a company, to comply with the provisions of the Companies Ordinance, 1984 (XLVII of 1984), in matters not otherwise specifically provided for by this Ordinance.

(2) Save as otherwise provided in this Ordinance, nothing in this Ordinance shall affect or be deemed to affect anything done, investigation or proceedings commenced, order, rule, regulation, appointment, document or agreement made, fee prescribed or charged, resolution passed, direction given, proceedings taken, or instrument executed or issued under or pursuant to the repealed Act or any law amended or repealed by this Ordinance and any such thing, action, investigation, proceedings, order, rule, regulation, appointment, document or agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement date for this section and not inconsistent with any of the provisions of this Ordinance, continue in force and have effect as if it had been respectively done, taken, commenced, made, prescribed, charged, directed, passed, given, executed or issued under this Ordinance or any other laws as amended by this Ordinance.

(3) Save as otherwise provided in this Ordinance, all debts and obligations incurred or contracts entered into or rights acquired and all matters and things engaged to be done by, with or for the Federal Government under or pursuant to the repealed Act before the commencement date shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the Commission, as the case may be.

(4) Until the establishment of a Tribunal or Tribunals under this Ordinance, sections 47C to 47L both inclusive and section 110 of the repealed Act shall continue to have effect in relation to the cases already filed or pending before the Claims Settlement Board or Insurance Appellate Tribunal and shall be determined and decided in according with the law in force immediately before the commencement date.

(5) All suits and other legal proceedings instituted by or against the Federal Government under or pursuant to the repealed Act before the commencement date shall be deemed to be suits and proceedings by or against the Commission as the case may be and may proceed and be dealt with accordingly.

171. Exemptions.- (1) Nothing in this Ordinance shall apply to any insurance business carried on by the Federal or by a Provincial Government.

(2) For the purposes of this section, insurance business carried on by a body corporate shall not be deemed to be insurance business carried on by the Federal or by a Provincial Government by virtue only of the fact that the Federal or Provincial Government holds a controlling ownership interest in the body corporate.

(3) Any provision in any other law which exempts an insurer to which this Ordinance applies from compliance with this Ordinance or which requires such an insurer to contravene this Ordinance shall be void to the extent of that exemption or requirement.

172. Removal of difficulties.- If any difficulty arises in giving effect to the provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, make such provision or order as may appear to it to be necessary for the purpose of removing the difficulty:

[]¹⁹

MUHAMMAD RAFIQ TARAR
PRESIDENT

¹⁹ The proviso omitted vide Finance Act, 2007 dated 1st July, 2007. Before omission the proviso read as follows:

“Provided that the power conferred on the Federal Government by this section shall not be exercised after two years from the commencement date.”