

NATIONAL INSURANCE COMMISSION ACT

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Supplementary provisions relating to the Board and the Commission

NATIONAL INSURANCE COMMISSION ACT

An Act to establish the National Insurance Commission with responsibility, among other things, to ensure the effective administration, supervision, regulation and control of insurance business in Nigeria.

[1997 No. I.]

[10th January, 1997]

[Commencement.]

PART I

Establishment, etc., of the National Insurance Commission and its Governing Board

1. Establishment, etc., of the National Insurance Commission

(1) There is hereby established, a body to be known as the National Insurance Commission

(in this Act referred to as "the Commission").

(2) The Commission shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) Subject to the Land Use Act and this Act, the Commission may acquire, hold or dispose of any movable or immovable property for the purpose of its functions under this Act.

[Cap. L5.]

2. Governing Board of the Commission

(1) There is hereby established for the Commission, a Governing Board which shall be responsible for managing and superintending the affairs of the Commission and consist of-

- (c) a part-time chairman;

(b) a representative each of-

- (i) the Federal Ministry of Finance, not below the rank of a director;
- (ii) the Central Bank of Nigeria, not below the rank of a director;
- (iii) the Chartered Insurance Institute of Nigeria;

(iv) the Federal Ministry of Commerce;

(c) three part-time members to represent the interest of the public;

(d) the Commissioner for Insurance; and

(e) the two Deputy Commissioners of the Commission.

(2) The chairman and members of the Commission other than *ex-officio* members, shall be appointed by the President.

(3) No member of the Board shall have the right to appoint any proxy to represent him at a meeting of the Board.

(4) The supplementary provisions set out in the Schedule to this Act, shall have effect with respect to the proceedings of the Board and the other matters mentioned therein. [Schedule.]

3. Tenure of office

(1) A member of the Board appointed, otherwise than by office, shall hold office for a period of four years, and subject to the provisions of subsection (2) of this section, may be re-appointed for one further period of four years and no more.

(2) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if-

(a) he resigns as a member of the Board by notice in writing under his hand addressed to the President;

(b) the President is satisfied that it is not in the interest of the Commission for the person appointed to continue in office and notifies the member in writing to that effect; or

(c) he is removed from office under section 4 of this Act.

4. Removal from office of member of the Board

(1) If it appears to the Minister that the chairman or any other member of the Board, other than an *ex-officio* member, should be removed from office on the grounds of misconduct or inability to perform the functions of his office, the Minister shall make a recommendation to the President.

(2) If the President approves the recommendation, the Minister shall, in writing, declare the office of the member vacant.

5. Allowances of members of the Board

The chairman and other members of the Board shall be paid such allowances and incidental expenses as may be approved by the Federal Government from time to time.

PART II

Object, functions and powers

6. Object of the Commission

The principal object of the Commission shall be to ensure the effective administration, supervision, regulation and control of insurance business in Nigeria.

7. Functions of the Commission

The Commission shall-

- (a) establish standards for the conduct of insurance business in Nigeria;
- (b) approve rates of insurance premiums to be paid in respect of all classes of insurance business;
- (c) approve rates of commissions to be paid in respect of all classes of insurance business;
- (d) ensure adequate protection of strategic Government assets and other properties;
- (e) regulate transactions between insurers and re-insurers in Nigeria and those outside Nigeria;
- (f) act as adviser to the Federal Government on all insurance related matters;
- (g) approve standards, conditions and warranties applicable to all classes of insurance business;
- (h) protect insurance policy holders and beneficiaries and third parties to insurance contracts;
- (i) publish, for sale and distribution to the public, annual reports and statistics on the insurance industry;
- (j) liaise with and advise Federal Ministries, Extra Ministerial Departments, statutory bodies and other Government agencies on all matters relating to insurance contained in any technical agreements to which Nigeria is a signatory;
- (k) contribute to the educational programmes of the Chartered Insurance Institute of Nigeria and the West African Insurance Institute; and
- (l) carry out such other activities connected or incidental to its other functions under this Act.

8. Powers of the Commission

The Commission shall have power to-

- (a) establish a bureau to which complaints, against any insurer, re-insurer, insurance broker or loss adjuster (in this Act referred to as "insurance institution") may be submitted by members of the public;
- (b) request or call for information from Federal Ministries, extra-ministerial departments, statutory bodies and other government agencies on matters relating to insurance;
- (c) borrow such sums of money as the Commission may, from time to time, require for performing its functions under this Act;
- (d) acquire offices and other premises for the use of the Commission;
- (e) establish such zonal and other offices of the Commission as it may deem necessary for the proper performance of its functions under this Act; and
- (f) do such other things as are necessary for the successful performance of its functions under this Act.

9. Powers of the Board

The Board shall have power-

- (a) to manage and supervise the affairs of the Commission;
- (b) for the overall policy and general administration of the Commission and act in the name of the Commission;
- (c) to recommend to the Minister, from time to time, the rates of contributions to be made by insurance institutions, to the funds of the Commission; and
- (d) to do such other things and enter into such transactions which in its opinion are necessary to ensure the efficient performance of its functions under this Act or any other enactment.

PART III

Staff of the Commission

10. Appointment of Commissioner for Insurance

- (1) There shall be for the Commission, a Commissioner for Insurance (in this Act referred to as "the Commissioner") who shall be appointed by the President.
- (2) A person shall not be qualified for appointment as the Commissioner unless he has-
 - (a) a recognised professional qualification in insurance or related course;
 - (b) not less than 15 years post-qualification experience in the insurance industry.
- (3) The Commissioner shall-

- (a) be the chief executive of the Commission; and
- (b) be responsible for-
 - (i) the execution of the policies of the Commission as formulated by the Board;
 - (ii) the day-to-day administration of the Commission; and
- (c) hold office for a period of four years in the first instance and may be reappointed for a further period of four years and no more, and on such other terms and conditions, including emoluments and allowances, as may be specified in his letter of appointment.

11. Appointment, etc., of Deputy Commissioners

(1) There shall be for the Commission-

- (a) a Deputy Commissioner for Technical Operations; and
- (b) a Deputy Commissioner for Finance and Administration, each of whom shall be appointed by the President, on the recommendation of the Minister.

(2) A person shall not be qualified for appointment-

- (a) as a Deputy Commissioner for Technical Operations unless he has-
 - (i) a recognised professional qualification in insurance or related course;
 - (ii) not less than 12 years post-qualification experience in the insurance industry; and
 - (iii) spent the last 7 years of the 12 years referred to in sub-paragraph (ii) of this paragraph at senior management level; or
- (b) as a Deputy Commissioner for Finance and Administration unless he has-
 - (i) a recognised professional qualification in finance, accounting or administration;
 - (ii) not less than 12 years post-qualification experience in finance management and administration;
 - (iii) spent the last 7 years of the 12 years referred to sub-paragraph (ii) of this paragraph at a senior management level.

(3) The Deputy Commissioner for Technical Operations shall-

- (a) be responsible to the Commissioner for the day-to-day administration and co-ordination of all the technical operations of the Commission; and
- (b) perform such other duties as the Commissioner or the Board may, from time to time, assign to him.

(4) The Deputy Commissioner for Finance and Administration shall-

(a) be responsible to the Commissioner for the day-to-day control of the financial affairs and administration of the Commission; and

(b) perform such other functions as the Commissioner or the Board may, from time to time, assign to him.

(5) A Deputy Commissioner appointed under subsection (1) (a) or (b) of this section shall hold office for a period of five years in the first instance, and may be re-appointed for a further period of five years and no more and on such terms and conditions, including emolument and allowances, as may be specified in his letter of appointment.

(6) When the office of the Commissioner is vacant or the Commissioner is for any reason absent or otherwise unable to perform his functions as Commissioner, the Minister shall appoint any of the two Deputy Commissioners to act as the Commissioner.

(7) A Deputy Commissioner acting on behalf of the Commissioner under subsection (6) of this section shall perform all the functions and have all the rights and privileges of the Commissioner.

12. Disqualification for appointment as Commissioner or Deputy Commissioner
The Commissioner or a Deputy Commissioner shall cease to hold office in the Commission if he-

(a) becomes of unsound mind or, owing to ill health, is incapable of carrying out his duties; or

(b) is convicted of any offence involving dishonesty or any other offence the maximum penalty of which exceeds imprisonment for a term of six months; or

(c) is guilty of a serious misconduct in relation to his duties under this Act; or

(d) is disqualified or suspended from practising his profession in Nigeria by order of a competent authority made in respect of him personally; or

(e) becomes bankrupt or suspends payments or compounds with his creditors.

13. Commissioner and Deputy Commissioners to be full-time members

The Commissioner and Deputy Commissioners shall be full-time Commissioners and shall, while holding office in the Commission, not occupy or hold any other office or engage in any employment whether remunerated or not, but the Commissioner or Deputy Commissioners may, by virtue of their office, be appointed, with the approval of the Board to-

(a) act as member of any body established by the Federal Government to inquire into any matter affecting insurance or other related matters in Nigeria; or

(b) become a member of a body (whether corporate or unincorporated), by whatever name called, of any international insurance organisation or institution in which the Federal Government has interest or has given support or approval;

(c) become a director of any corporation in Nigeria in which the Commission may participate.

14. Directors and other employees of the Commission

(1) Subject to sections 10 and 11 of this Act, the Board shall, from time to time, appoint for the Commission such number of directors and other employees as may appear to it expedient and necessary for the proper and efficient performance of the functions conferred on the Commission under this Act.

(2) The Commission shall pay its employees such remuneration and allowances, pensions and gratuities and other benefits as it may, with the approval of the Minister, determine.

15. Power to make rules

(1) The Commission may, with the approval of the Minister, make rules relating generally to the conditions of service of employees of the Commission, and without prejudice to the generality of the foregoing, the rules may provide for-

- (a) the appointment and disciplinary control of all employees of the Commission;
- (b) appeals by the employees against dismissal or other disciplinary measures.

(2) Rules made under subsection (1) of this section need not be published in the *Gazette*, but the Commission shall cause them to be brought to the notice of all affected persons in such manner as it may, from time to time, determine.

PART IV

Financial provisions

16. Resources of the Commission

(1) The resources of the Commission shall comprise-

- (a) such sums of money as the Federal Government may, from time to time, assign to it;
- (b) one per cent levy on every insurance institution;
- (c) income from investments of the Commission;
- (d) money borrowed from such sources as may be approved by the Board;
- (e) fees and penalties payable by insurance institutions and other persons; and
- (f) all sums of money accruing to the Commission by way of gifts, testamentary dispositions and endowments and contributions from any other source whatsoever.

(2) The levy imposed under subsection (1) (b) of this section shall be based-

- (a) in the case of an insurer or a reinsurer, on its gross premium income;
- (b) in the case of an insurance broker, on its gross commission;

(c) in the case of a loss adjuster, on its gross fees.

(3) Every sum payable by any insurer, reinsurer, insurance broker or loss adjuster under this Act, shall be payable on or before the 30th September of each year.

17. Funds of the Commission

(1) The Commission shall establish and maintain the following funds, that is-

- (a) *an operating fund;*
- (b) *an education fund;*
- (c) *a security and insurance development fund; and*
- (d) *a general reserve fund.*

(2) The sums of money derived from the resources of the Commission under section 16 of this Act, shall be paid into the funds established in pursuance of subsection (1) of this section as follows, that is-

- (a) in the case of the operating fund, 50 per cent;
- (b) in the case of the education fund, 30 per cent;
- (c) in the case of the security and insurance development fund, 20 per cent;
- (d) in the case of the general reserve fund, the net operation surplus in the operating fund at the end of each year.

18. Operating fund

The Commission shall, from time to time, apply the proceeds of the operating fund established in pursuance of subsection (1) (a) of section 17 of this Act-

- (a) to the cost of administration of the Commission;
- (b) for reimbursing members of the Board or of any committees set up by the Board, for such expenses as may be expressly authorised by the Board, in accordance with the rates approved by the Minister;
- (c) to the payment of salaries, fees or other remuneration, allowances, pensions and gratuities payable to the employees of the Commission; and
- (d) for the maintenance of any property vested in the Commission.

19. Education fund

The Commission shall apply the proceeds of the education fund established in pursuance of subsection (1) (b) of section 17 of this Act, as contribution to--

- (a) the Chartered Insurance Institute of Nigeria;
- (b) the West African Insurance Institute;
- (c) such other insurance educational institutions as the Board may, from time to time, determine, to assist the institutions in the education of professionals required for the insurance industry.

20. Security and development fund

The Commission shall apply the proceeds of the security and development fund established in pursuance of subsection (1) (c) of section 17 of this Act to assist in the development of the insurance industry in Nigeria.

21. General reserve fund

(1) The general reserve fund which contains the net operational surplus in the operating fund at the end of every year shall be applied to such purposes and invested in such manner as the Board may, from time to time, determine.

(2) The net operational surplus in the operating fund at the end of each year shall be determined after meeting all the current expenditure for that year and after making such provisions as the Board may deem fit for the depreciation and superannuating funds and all other contingencies.

22. Power to accept gifts

(1) The Commission may, within and outside Nigeria, accept gifts of land, money or other property or things upon such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Commission shall not accept any gift if the conditions attached by the person or organisation making the gift to the acceptance thereof are inconsistent with the aims and objectives of the Commission under this Act.

23. Annual estimates, accounts and audits

(1) The Commission shall cause to be prepared and submitted to the Board, not later than three months to the end of the year or soon thereafter, an estimate of the expenditure and income of the Commission during the next succeeding year.

(2) The Board shall cause to be kept proper accounts and proper records in relation thereto and when certified by the Board, such accounts shall be audited by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

24. Annual reports

The Board shall, not later than 30 September in each year, submit to the Minister a report on the activities of the Commission and its administration during the immediately preceding year and shall include in such report the audited accounts of the Commission and the auditor's report thereon.

PART V

Collection of levy from insurers, etc.

25. Returns for collection of levy

Any insurance institution which is liable to pay a levy under this Act, shall furnish to the Commission, not later than 31 March of each year returns in such form as may be approved by the Commission and containing such particulars as are specified therein.

26. Further returns, etc.

(1) In addition to any return which is required under section 25 of this Act, the Commission may, with the approval of the Minister, by notice in writing, call upon any insurance institution to furnish to it within a time specified in the notice, such return or further returns as the Commission may require.

(2) For the purpose of inquiring into or ascertaining the liability of an insurance institution under this Act, the Commission may, by notice in writing, require the insurance Institution to-

(a) furnish it with such information as it may require; or

(b) attend and give evidence before it or before an officer authorised by it for that purpose; or

(c) produce any book of account, documents and other papers relating thereto in the custody or under the control of an insurance institution or any person under its supervision or control.

27. Assessment by the Commission

(1) The Commission shall at the beginning of each year assess and furnish to the insurance institution, the sum payable as contribution to the Commission for the year.

(2) An assessment made pursuant to subsection (L) of this section may be confirmed, varied or modified by the Commission, upon being shown a balance sheet duly audited, showing the financial position of the insurance institution for the close of the previous year.

28. Appeal to the Minister

(1) An insurance institution aggrieved by an assessment or a decision made by the Commission pursuant to section 27 of this Act, may appeal to the Minister within 28 days of its receiving the notification of assessment.

(2) The decision of the Minister on an appeal under subsection (I) of this section shall be final and binding and shall not be the subject of any action or proceeding in any court or tribunal.

29. Failure to pay sum due or any instalment thereof and recovery

(1) Any sum payable under this Act or any instalment thereof unpaid, including any additional sum, may be sued for and recovered in a court by the Commission or by any officer authorised in that behalf by the Commission.

(2) Where an insurance institution is liable to pay any sum of money or instalment under this Act and fails to pay the sum payable on or before the date on which the sum is due and payable, the insurance institution shall, in addition to the inability to pay the sum or instalment, be liable to pay an additional sum at the rate of 2Y2 per cent above the Central Bank of Nigeria minimum discount rate.

(3) The additional sum or instalment payable under subsection (2) of this section, shall be computed from the date on which the sum became due and payable.

(4) Any sum or additional sum payable under this Act, shall be deemed to become due and payable as a debt due to the Commission and may be recovered pursuant to this section.

(5) Failure by an insurance institution to pay any sum or additional sum due under this Act, shall constitute a ground for the cancellation of its certificate of registration under the Insurance Act.

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(6) For the purposes of implementation of the provisions of subsection (5) of this section the Commission may exercise its powers thereof without recourse to the provisions of subsection (I) of this section.

30. Offences under this Part

(7) Notwithstanding any other provisions of this Act or any other enactment, an insurance institution which-

(a) for the purpose of avoiding payment of any sum due under this Act, knowingly makes any false statement, declaration, representation, or produces, furnishes or causes to be produced or furnished any return document information which is false in any material particular; or

(b) fails to pay to the Commission within such period as may be prescribed any sum due under this Act; or

(c) fails to make any returns, as the case may be, is guilty of an offence under this Act and liable on conviction to a fine not exceeding NSOO,000.

(2) The court before which an insurance institution is convicted of an offence under this Act, may, without prejudice to any civil remedy, order the insurance institution to pay to the Commission any sum together with any interest or penalty thereon certified to be due from the insurance institution to the Commission at the date of conviction and such amount may be recovered in the same manner as a fine and paid to the Commission.

PART VI

Supervision Inspection

31. Establishment, etc., and staff of the Inspectorate Department

(1) There is hereby established for the Commission, an Inspectorate Department which shall be responsible for carrying out the supervisory functions of the Commission in respect of insurance institutions and shall for that purpose-

(a) not less than once in every two years, authorise an inspection, examination or investigation of every insurance institution for the purpose of satisfying the

Commission as to whether or not the provisions of this Act or the Insurance Act or any regulations made thereunder are being complied with;

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(b) may, without prejudice to the provisions of paragraph (a) of this subsection, at any time, authorise one or more inspectors or other officers to inspect, examine or investigate any aspect of the insurance institution's business; and

(c) with reference to the inspection to be carried out under paragraph (b) of this subsection, the Commission shall submit to the Minister a half yearly report on the activities of the Inspectorate Department.

(2) The Inspectorate Department shall -

(a) be headed by a Chief Inspector of Insurance whose status shall be of the rank of a director;

(b) have such number of other officers, to be known as inspectors, as may be necessary and expedient, to assist the Chief Inspector of Insurance in the performance of the functions of the department under this Act.

32. Powers of inspectors

(1) An inspector shall, in the performance of his duties under this Act-

(a) inspect, examine or investigate in accordance with subsection (1) of section 31 of this Act and under conditions of confidentiality, the books and affairs of an insurance institution;

(b) have a right of access at all times to the books, accounts, documents and vouchers of an insurance institution;

(c) intervene in the checking of the cash in hand, cash accounts and otherwise verify the liquid and other assets of the insurance institution;

(d) check all the main and auxiliary books of accounts, registers, computer records and other papers and correspondence connected with the insurance institution's business;

(e) verify the investment of the capital and statutory reserves of the insurance institution;

(f) verify the legality or otherwise of any insurance business transacted by the insurance institution;

(g) have the power to require from any director, manager and officer of an insurance institution such information and explanation as he may deem necessary in each case.

(2) In exercising the powers under subsection (1) of this section, an inspector shall exercise reasonable care to avoid undue hindrance to the day-to-day activities of an insurance institution.

33. Duty of insurance institution to produce books, etc., to inspector

(1) It shall be the duty of every insurance institution, to produce and give an inspector such book, account, document, voucher, information and explanation as the inspector may require for the purposes of section 32 of this Act.

(2) An insurance institution which-

(a) wilfully refuses to-

(i) produce any book, account, document or voucher; or

(ii) give any information or explanation required by an inspector; or

(b) negligently, wilfully or with intent to defraud-

(i) produces any book, account, document or voucher; or

(ii) gives any information or explanation,

which is false in any material particular, is guilty of an offence.

(3) An insurance institution which is guilty of an offence under subsection (2) of this section is liable on conviction to a fine of N250,000 and in the case of a continuous offence, to an additional fine of N 1 ,000 for each day during which the offence continues.

34. Report of inspection

(1) An inspector shall, on completing a routine inspection under section 32 of this Act, make a report of the inspection to the Commissioner.

(2) The Commissioner shall-

(a) submit every report made to him under subsection (1) of this section to the Board for consideration; and

(b) forward a copy of the report, together with any recommendation by the Board, to the insurance institution concerned, with instruction that it be placed before a meeting of the board of directors or of the partners specially convened for the purpose of considering the report and recommendation.

(3) The insurance institution shall within 14 days of receiving the report under subsection (2) of this section forward to the Commission, the board of directors or partners' reactions to the report and its proposals for implementing the recommendations of the Board.

(4) An insurance institution which fails to comply with the provisions of subsection (3) of this section is guilty of an offence and liable on conviction to a fine of N2,500 for each day during which the offence continues and if the offence continues for more than 60 days, the Commission may, in addition to the fine, suspend the registration of the insurance institution.

35. Special inspection

(1) The Commissioner may, at any time, with the approval of the Board, order a special inspection or investigation of the books and affairs of an insurance institution where he suspects, or is satisfied that-

(a) it is in the public interest so to do; or

(b) the insurance institution has been carrying on its business in a manner detrimental to the interest of its policy holders; or

(c) the insurance institution does not have sufficient assets to cover its liabilities to the insuring public and it is necessary to do so; or

(d) the insurance institution has been contravening the provisions of the Act or the Insurance Act; or

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(e) an application is made therefor by-

(i) a director, shareholder or partner of the insurance institution;

(ii) a policy-holder of the insurance institution.

(2) For the purpose of subsection (1) of this section, the Commission shall have power to appoint one or more qualified persons, other than the officers of the Commission, to conduct the special inspection or investigation, under conditions of confidentiality, of the books and affairs of the insurance institution.

(3) Nothing in this section or in any other section of this Act shall be construed as precluding the Commission from appointing one or more officers of the Commission apart from those mentioned in subsection (2) of this section and ascribing to those officers such other designations as it deems fit, and from directing or requiring all or any of the officers to exercise all or any of the powers conferred on the inspectorate department.

(4) An inspector shall, not later than 30 days after completing an inspection or investigation under this section, submit a report to the Commissioner.

(5) The provisions of section 34 of this Act shall apply to a report submitted under subsection (4) of this section.

(6) An insurance institution which fails to comply with the provisions of section 34 of this Act in respect of a report submitted under subsection (4) of this section, is guilty of an offence and liable on conviction to a fine of N I ,000 for each day during which the offence continues and if the offence continues for more than 60 days, the Commission shall in addition suspend the certificate of registration of the insurance institution.

(7) In this section, "inspector" includes a person appointed under subsection (2) of this section;

(8) An inspector carrying out an inspection or investigation has the same powers as are conferred on an inspector under section 32 of this Act.

Actuarial investigation

36. Actuarial investigation

The Commission shall appoint actuaries or secure the services of actuarial consultants to advise and assist the Commission on all actuarial matters relating to the relevant insurance institutions under this Act.

(2) An actuary appointed or secured under subsection (1) of this section shall, in every five years, make an investigation into the financial condition of insurance institutions.

(3) The value of any asset and the amount of any liability shall, for the purposes of an investigation under subsection (2) of this section, be determined in accordance with the applicable valuation regulations.

(4) The report of every investigation made under this section shall be made to the Commissioner.

Intervention, etc.

37. Intervention

The Commission may exercise the powers of intervention specified in sections 38, 39, 40 and 41 of this Act if-

(a) it considers the exercise desirable for protecting policy holders or potential policy holders of an insurance institution, against the risk that the insurance institution may be unable to meet its liabilities or fulfill the reasonable expectations of policy holders or potential policy holders; or

(b) it appears to the Commission that the insurance institution has failed to satisfy an obligation to which it is subject by virtue of this Act; or

(c) it appears to the Commission that the insurance institution has furnished misleading or inaccurate information to the Commission under this Act or the Insurance Act; or

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(d) there exists such other condition or circumstance, as the Commission may determine, which makes it necessary for the Commission to exercise any of those powers.

38. Requirement about investment

(1) The Commission may require an insurance institution-

(a) not to make investments of a specified class or description;

(b) to realise, before the expiration of a specified period or such longer period as the Commission may allow, the whole or a specified proportion of investments of a specified class or description.

(2) A requirement under subsection (1) of this section shall not apply to the assets of an insurance institution, where their value exceeds the amount of the liabilities of the business carried on by the insurance institution.

39. Power to obtain information and production of documents

(1) Without prejudice to the power of inspection under this Act, the Commission may at any time-

(a) require an insurance institution to furnish it with information about such matters as it may specify; or

(b) require an insurance institution to produce, at such time and place as it may specify, such books and papers as it may specify.

(2) The power conferred on the Commission under subsection (1) of this section to require an insurance institution to produce books and papers includes power-

(a) if the books and papers are produced-

(i) to take copies of or extracts from them;

(ii) to require a person who is or was at any time, a director, partner, controller, auditor or employee of the insurance institution, to provide an explanation of any of them;

(b) if the books or papers are not produced, to require the person who was required to produce them, to state to the best of his knowledge and belief where they are.

(3) In this section, "books or papers" includes accounts, deeds, writings and other documents.

40. Residual power to impose requirements to protect policy holders

The Commission may require an insurance institution to take such action as appears to it to be appropriate for the purpose of protecting policy holders or potential policy holders of an insurance institution against the risk that the insurance institution may be unable to meet its liabilities or fulfill the reasonable expectation of policy holders or potential policy holders.

PART VII

Failing and failed insurers, etc.

41. Failing insurance institutions

(1) Where-

(a) an insurance institution informs the Commission that-

(i) it is likely to become unable to meet its obligations under the Insurance Act; or

(ii) it is about to suspend payment of claims to any extent; or

(iii) it is insolvent; or

(b) where, after an examination, inspection, investigation or intervention under this

Act or otherwise howsoever, the Commission is satisfied that an insurance institution-

(i) is of an unsound condition so that its method of transacting its business

is such as to render its continued operation hazardous to its policy holders and potential clients; or

(ii) has failed to maintain the statutory reserves; or

(iii) has failed to maintain adequate management control; or

(iv) has failed generally to comply with the provisions of this Act or the Insurance Act or of regulations made thereunder, the Commission may, by order in writing, exercise anyone or more of the powers specified in subsection (2) of this section.

(2) The Commission may, by order in writing under subsection (1) of this section-

(a) prohibit the insurance institution from transacting any further business for such period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the explanations as may be set out in the order, and from time to time, by further order similarly made, extend that period;

(b) require the insurance institution to take any step or any action or to do or not to do any act or thing whatsoever, in relation to the insurance institution or its business or its directors, partners or officers, which the Commission considers necessary and which is set out in the order, within such time as may be stipulated therein;

(c) remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the insurance institution, notwithstanding anything in any written law, or any limitations contained in the Memorandum and Articles of Association or partnership agreement of the insurance institution;

(d) in respect of an insurance institution, notwithstanding anything in any written law or any limitations contained in the Memorandum and Articles of Association or other agreement of the insurance institution and in particular, notwithstanding any limitation therein as to the minimum number of directors, for reasons to be recorded in writing-

(i) remove from office, with effect from such date as may be set out in the order, any director of the insurance institution; or

(ii) appoint any person or persons as a director or directors, of the insurance institution and provide in the order for the person or persons so appointed to be paid by the insurance institution such remuneration as may be set out in the order;

(e) appoint any person to advise the insurance institution in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the insurance institution such remuneration as may be set out in the order;

(f) all appointments and removals to be undertaken by the Commission under this section shall be subject to the prior approval of the Minister.

42. Control of failing insurance institutions

(1) If, after exercising any of the powers set out in section 41 of this Act, as in the opinion of the Commission may be appropriate in the circumstance the state of affairs of the insurance institution concerned does not improve significantly, the Commission may, with the approval of the Minister-

(a) assume control of the whole property and affairs of the insurance institution, and carry on the whole of its business and affairs; or

(b) assume control of such part of its property, business and affairs as the Commission considers necessary; or

(c) appoint persons to do so on behalf of the Commission.

(2) Where the Commission or an appointed person has assumed control of the business of an insurance institution in pursuance of subsection (1) of this section, the insurance institution shall submit its business to the control of the Commission and shall provide the Commission or the appointed person with such facilities as the Commission or the appointed person may require to carry on the business of the insurance institution and notwithstanding the provisions of this section, all insurance institutions shall co-operate with the Commission at all times.

(3) An insurance institution which fails to comply with the provisions of subsection (2) of this section or with any requirement of the Commission or any appointed person under subsection (1) of this section, is guilty of an offence and liable on conviction to a fine of N500,000 and, in addition, to a fine not exceeding N5,000 for each day during which the default continues.

(4) The insurance institution may however within 30 days from the date in which the Commission shall have taken over the operation of the insurance institution lodge an appeal through the Permanent Secretary to the Minister whose decision on the appeal shall be final.

43. Management of failing insurance institutions

(1) Where the Commission or an appointed person has assumed control of the business of the insurance institution in pursuance of section 42 of this Act, the Commission or the appointed person shall remain in control and continue to carry on the business of the insurance institution in the name and on behalf of the insurance institution until such time as-

(a) the Commission is satisfied that adequate provision has been made for the settlement of all outstanding liabilities

(b) in the opinion of the Commission, it is no longer necessary for the Commission to remain in control of the business of the insurance institution.

(2) The cost and expenses of the Commission or the remuneration of an appointed person, as the case may be, shall be payable from the funds and properties of the insurance institution as a first charge on the funds of the insurance institution.

44. Application for order for revocation of certificate of insurance institution

Notwithstanding, anything contained in any law or Memorandum and Articles of Association or other agreement of the insurance institution, where the Commission or an appointed person has, pursuant to an order under section 42 of this Act, assumed control of an insurance institution whose paid-up capital is lost or unrepresented by available assets, the Commission may, with the approval of the Minister, apply to the President for the revocation of the licence of the insurance institution concerned.

45. Duty to notify insurance institution or person to be affected

(1) No order under section 42 or 43 of this Act shall be made unless-

(a) the insurance institution in respect of which the order is to be made; and

(b) in the case of an order under paragraph (c) or (d) of subsection (2) of section 41

of this Act, the director, manager or officer who is to be removed from office, has been given a reasonable opportunity of making representations against or otherwise in respect of the proposed order.

(2) The Commission shall not make an order under subsection (1) of this section if in its opinion any delay would be detrimental to the interest of the insurance institution, policy holders, creditors or the public generally.

(3) An order made in consequence of a representation may either be confirmed, modified, altered, varied or replaced by the Minister.

46. Application to the Federal High Court for winding up

(1) Where the Commission makes an order revoking the certificate of registration of an insurance institution and requiring the business of the insurance institution to be wound up, the insurance institution shall within 14 days of the date of the order, apply to the Court for an order winding up the affairs of the insurance institution and the Court shall hear the application in priority to all other matters.

(2) If the insurance institution fails to apply to the Court within the period specified in subsection (1) of this section, the Commission may apply to the court for the winding up of the insurance institution.

47. Merger of failing insurance institutions

Subject to the approval of the Minister, the Commission shall have power, notwithstanding the provisions of sections 44, 45 or 46 of this Act, to direct that-

(a) a failing insurance institution shall merge or consolidate with any other insurance institution, subject to such conditions as it may deem fit to impose;

(b) an insurance institution merged or consolidated with a failing insurance institution shall settle the financial liabilities of the failing insurance institution;

(c) any asset of the failing insurance institution shall be transferred to and be vested in the insurance institution concerned with the merger or consolidation.

48. Prosecution of failing or failed insurer

Without prejudice to such actions as the Commission may undertake in order to deal with a failing or failed insurer as set out under the provisions of Part VII of this Act, the Commission may in such circumstance as it deems appropriate, with the prior approval of the Minister, refer such failing or failed insurer and any persons connected therewith to be prosecuted under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act.

[Cap. F2.]
PART VIII

Miscellaneous

49. Power to require certain information

(1) In addition to any of its powers under this Act, the Commission may-

(a) require any person having access thereto, at all reasonable times, to supply, in such forms as the Commission may, from time to time, direct information relating to or touching
or concerning matters affecting the insurance industry in Nigeria; and

(b) issue guidelines to insurance institutions.

(2) The Commission shall take account of matters of confidential nature supplied to the Commission under this section, but where the Commission is satisfied that it is in the national interest and that the person supplying the information does not object to a proposal to publish it within a reasonable time of becoming aware of it, the Commission may, from any information in its possession, compile and publish statistical data, and anything relevant thereto, on the insurance industry.

(3) A person, lawfully required to supply information for the purpose of this section who-

(a) supplies information which he knows to be false or supplies the information
recklessly as to its truth or falsify; or

(b) without reasonable excuse (the proof of the reasonableness to lie on him)
fails
to comply with any requirement of the Commission under paragraph (a) of subsection (1) of this section, is guilty of an offence.

(4) A person found guilty of an offence under subsection (3) of this section is liable on conviction to-

(a) a fine not less than N250,000 or more than N500,000 or imprisonment for a
term not exceeding three years for every false information supplied or to both
such fine and imprisonment; and

(b) a fine of not less than N2,500 or more than N 10,000 for every day during which the failure to comply with any requirement of the Commission continues.

(5) A person or insurance institution which fails to comply with any guideline issued under paragraph (b) of subsection (I) of this section, is guilty of an offence under this Act and liable on conviction to a fine not less than N250,000 or more than N500,000 or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

50. Power of entry and search

For the purpose of this Act, an inspector or such other person appointed in writing by the Commission to exercise powers under this Act may, at all reasonable times and on production of that authority-

(a) enter and search any building or place in which he has reason to believe there are any books of account, documents or other papers relating to any insurance institution under this Act; and

(b) inspect or take any such book of account, documents or other papers.

(2) Any person who without reasonable excuse obstructs or hinders a person in pursuance of an authority under subsection (I) of this section is guilty of an offence and liable on conviction to a fine of N250,000.

51. Legal proceedings

(1) No suit shall be commenced against the Commission before the expiration or a period of 30 days after written notice of intention to commence the suit shall have been served on the Commission by the intending plaintiff or his agent, and the notice shall clearly and explicitly state-

(a) the cause of action;

(b) the particulars of the claim;

(c) the name and place of abode of the intending plaintiff; and

(d) the relief which it claims.

(2) The notice referred to in subsection (1) of this section and any summons, notice or other documents required or authorised to be served on the Commission under this Act or any other enactment or law, may be served by-

(a) delivering it to the Commissioner; or

(b) sending it by registered post, addressed to the Commissioner at the head office of the Commission.

(3) In an action or suit against the Commission, no execution or attachment or process in the nature thereof shall be issued against the Commission, but any sums of money which may, by the judgment of the Court, be awarded against the Commission shall, subject to any directives given by the Commission, be paid from the general reserve of the Commission.

52. Offences by directors, etc., of insurance institution, etc.

(1) A person who, being a director, partner, an officer or employee of an insurance institution-

(a) fails to take all reasonable care to secure-

(i) compliance with the provisions of this Act and the Insurance Act; or
[Cap. 117.]

(ii) the authenticity of any statement, information, book or any document whatsoever submitted, pursuant to the provisions of this Act; or

(b) knowingly, recklessly, negligently, wilfully or otherwise, approves or pays or is in any way connected with the approval or payment of an insurance claim which is false; or

(c) receives or participates in sharing, for personal gratification, any money, property or other benefits, towards or after the approval or payment of an insurance claim which is false, is guilty of an offence and liable on conviction to a fine not exceeding N250,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) An insurance institution which fails to make a report to the Commission of a claim which it knows to be false or has reason to suspect is false is guilty of an offence and liable on conviction to a fine of N500,000.

(3) Any person who knowingly, recklessly, negligently, wilfully or otherwise makes an insurance claim which is false is guilty of an offence and liable on conviction to a fine of N250,000 or to imprisonment for a term of three years or to both such fine and imprisonment.

53. Directors, etc., contributing to the failure, etc., of insurance institutions

Where an insurance institution is failing or has failed, any person who, being a director, partner, officer or employee of the insurance institution, is found to have contributed in any way whatsoever to the failing or failure of the insurance institution, is guilty of an offence and liable on conviction, to a fine of N100,000 or imprisonment for a term of three years or to both such fine and imprisonment.

54. Inducement to acquire, etc., insurance business

Any person who offers, pays, gives, receives or participates in sharing, for personal gratification, any money, property or other benefits-

(a) towards or after the acquisition, transfer, merger or consolidation of an insurance business; or

(b) as an inducement for procuring any insurance business, is guilty of an offence and liable on conviction to a fine of N500,000 or imprisonment for a term of three years or to both such fine and imprisonment.

55. Compounding of offences

Without prejudice to the power of the Attorney-General of the Federation, under section 174

of the 1999 Constitution to continue or discontinue criminal proceedings against any person in any Court of law, the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence.

56. Recovering of sums involved in commission of offence

(1) Where an insurance institution or any other person is found guilty of an offence under this Act, the Court shall, in addition to the imposition of the penalty specified for the offence, make an order for the payment to the Commission of the amount involved in the commission of the offence.

(2) Where the Court makes an order under subsection (1) of this section and the person fails to comply within the time specified in the order, the Court shall make an order to levy execution on all the property of the person.

(3) Any amount paid or recovered under this section, shall be used to compensate any person who, the Commission is satisfied, suffered in any way as a result of the insurance transaction connected with the offence.

(4) Where the amount referred to in subsection (3) of this section is not fully utilised for the purpose specified in that subsection, the balance shall be paid into the security and development fund established under section 20 of this Act.

57. Offences by body corporate, etc.

(1) Where an offence under this Act has been committed by a body corporate or firm or other association of individuals, a person who at the time of the commission of the offence-

(a) was an officer thereof; or

(b) was purporting to act in the capacity of an officer thereof, is guilty of the offence and liable to be prosecuted and punished for the offence, in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

(2) In this section, "officer" includes-

(a) in the case of a body corporate, a director, chief executive by whatever name called, manager and secretary of the body corporate;

(b) in the case of a firm, a partner, manager and secretary of the firm; and

(c) in the case of any other association of individuals, a person concerned in the management of the affairs of the association.

58. Jurisdiction and prosecution

(1) An offence under this Act shall, subject to the Rules of Court, be tried in the Federal High Court

and references in this Act to "Court" or "the Court" shall be construed accordingly.

(2) Prosecution for offences under this Act shall be instituted before the Court in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officer in the Federal Ministry of Justice as he may authorise so to do, and in addition thereto, he may-

(a) after consultation with the Attorney-General of any State in the Federation, authorise the Attorney-General or any officer in the Ministry of Justice of that State; or

(b) if a Court so directs or if the Commission so requests, authorise any other legal practitioner in Nigeria, to undertake any such prosecution directly or assist therein.

(3) The question whether any or what authority has been given in pursuance of subsection (2) of this section shall not be inquired into by any person other than the Attorney-General of the Federation.

(4) A person accused of an offence under this Act shall be entitled to defend himself in person or by a person of his own choice, who is a legal practitioner resident in Nigeria.

59. Obstruction of public officers

A person who wilfully obstructs, interferes with, assaults or resists a public officer in the performance of his duties under this Act or aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such officer is guilty of an offence and liable on conviction to a fine of N250,000 or to imprisonment for a term of three years or to both such fine and imprisonment.

60. Misrepresentation by public officers

(1) A public officer is guilty of an offence if, in the discharge of his duties under this Act, he presents to another public officer, who is to take a decision thereon or do any other act in relation thereto, information which is false in any material particular, unless he proves that-

(a) such information was supplied to him by another person; and

(b) he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and in all the circumstances.

(2) A public officer who is guilty of an offence under subsection (1) of this section is liable on conviction to a fine of not less than N250,000 or not exceeding N500,000 or to imprisonment for a term of three years or to both such fine and imprisonment.

61. Application of the Insurance Act

The provisions of this Act are without prejudice to and shall be read in conformity with the Insurance Act, so however, that where any of the provisions of the Insurance Act are inconsistent with any provision of this Act the provisions of the Insurance Act shall prevail and the provisions of this Act to the extent of that inconsistency, be void.

[Cap. 117.]

62. Power of the Minister to give directives

The Minister may give to the Commission directives of a general nature or relating generally to matters of policy with regard to the performance by the Commission of its functions under this Act and it shall be the duty of the Commission to comply with those directives.

63. Repeal, savings, etc., of 1989 No. 20

(I) The Insurance Special Supervision Fund Act is hereby repealed and the Fund established thereunder is consequently dissolved.

[Cap. 184 of L.F.N. 1990.]

(2) Without prejudice to section 6 of the Interpretation Act, the repeal of the enactment specified in subsection (I) of this section, shall not affect anything done under or pursuant to that enactment.

[Cap. 123.]

(3) The rights, interests, obligations and liabilities of the fund existing before the commencement of this Act, under any contract or instrument, or in law or in equity apart from any contract or instrument, shall by virtue of this Act be assigned to and vested in the Commission established by this Act.

(4) Any such contract or instrument as is mentioned in subsection (3) of this section shall be of the same force and effect, against or in favour of the Commission established by this Act and shall be enforceable as fully and effectively as if, instead of the Fund, the Commission established by this Act has been named therein or had been a party thereto.

(5) The Commission established by this Act shall be subject to all the obligations and liabilities to which the Fund was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Commission established by this Act as they had against the Fund immediately before the commencement of this Act.

(6) Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the Fund in respect of any right, interest, obligation or liability of the Fund may be continued or, as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Commission established by this Act to the same extent that such proceeding, cause of action or determination might have been continued, commenced or enforced by or against the Fund as if this Act had not been made.

(7) All assets, funds, resources and other movable property which immediately before the commencement of this Act were vested in the Fund shall by virtue of this Act and without further assurance, be vested in the Commission established by this Act.

(8) Notwithstanding the repeal of the enactment referred to in subsection (I) of this section, if the Commission established by this Act thinks it expedient that any vacancy in the Commission established by this Act should be filled by a person holding office at the

commencement of this Act in the Fund, it may employ such person by way of transfer to the Commission established by this Act and the previous service in the Fund by such person shall count as service for the purposes of any pensions subsequently payable by the Commission established by this Act.

(9) The Minister may, if he thinks fit, within twelve months after the commencement of the Act, by order published in the *Gazette*, make additional transitional provisions for the better implementation of the provisions of this section.

64. Regulations

The Commission may, with the approval of the Minister, make regulations for carrying into effect the provisions of this Act.

65. Interpretation

In this Act, unless the context otherwise requires-

"Board" means the Governing Board of the Commission;

"Commission" means the National Insurance Commission established under section 1 of this Act;

"Court" means the Federal High Court;

"failing insurance institution" means an insurance institution which has failed in its business pursuant to this Act and the Insurance Act;

[Cap. 123.]

"insurance broker" has the meaning assigned to it under the Insurance Act;

"insurance institution" means an insurer, a reinsurer, insurance broker or a loss adjuster registered under the Insurance Act;

"insurer" has the meaning assigned to it under the Insurance Act;

"loss adjuster" has the meaning assigned to it under the Insurance Act;

"Minister" means the Minister charged with responsibility for matters relating to insurance, and **"Ministry"** shall be construed accordingly;

"reinsurer" has the meaning assigned to it under the Insurance Act.

66. Short title

This Act may be cited as the National Insurance Commission Act.

SCHEDULE

[Section 2 (4).]

Supplementary provisions relating to the Board and the Commission

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act, the Board shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, the notice to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Board may, from time to time, determine.

[Cap. 123.]

2. (I) There shall be at least four ordinary meetings of the Board in one calendar year and subject thereto, the Board shall meet whenever it is summoned by the chairman, and if the chairman is requested to do so by notice given to him by not less than three other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.

(2) Every meeting of the Board shall be presided over by the chairman and if the chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their number to preside at the meeting.

3. The quorum at the meeting of the Board shall consist of the chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and four other members at least two of whom shall be members appointed pursuant to paragraph (b), (i), (ii) and (iii) of section 2 (I) of this Act.

4. The Board shall meet for the conduct of its business at such places and on such days as the chairman may appoint.

5. A question put before the Board at a meeting shall be decided by consensus, and where this is not possible, by a majority of the votes of the members present and voting.

6. The chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.

7. Where the Board desires to seek the advice of any person on a particular matter, the Board may co-opt a person as a member for such period as it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

8. The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Board may determine and report on any matter with which the Board or the Commission is concerned.

9. A committee appointed under this Schedule shall be presided over by a member of the Board and consist of such number of a persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

10. A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

11. The fixing of the seal of the Commission shall be authenticated by the signature of the Commissioner or of some other person authorised generally by the Board to act for that purpose.

12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Commission by the Commissioner or by any person generally or specially authorised to act for that purpose by the Board.

13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Commission shall be received in evidence and, unless the contrary is proved, be presumed without further proof, to have been signed or sealed.

14. The validity of any proceedings of the Board or its committees shall not be affected by-

(a) any vacancy in the membership of the Board or its committees; or

(b) reason that a person not entitled to do so took part in the proceedings; or

(c) any defect in the appointment of a member.

15. Any member of the Board and any person holding office on a committee of the Board, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or a committee thereof-

(a) shall forthwith disclose his interest to the Board or committee, as the case may be; and

(b) shall not vote on any question relating to the contract or arrangement.

SUBSIDIARY LEGISLATION

No