



WHITE PAPER

INDUSTRY CONSULTATION

POLICY CHANGES TO THE INSURANCE ACT, 2008

White Papers communicate a decided Government policy or approach on a particular issue. They are chiefly intended as statements of Government policy.

The Financial Service Authority (FSA) is proposing the following policy changes for the Insurance Act, 2008. This document will be used for consultation with stakeholders before finalization.

1. Introduction

In 2016 the Government of Seychelles embarked on an approach to improve the financial market stability through expanded supervision of Seychelles' financial markets, institutions, products and transactions. In view of the ever-changing international standards and best practices, in order for Seychelles to adhere to these standards, there are necessary amendments in various legislations, including the existing Insurance Act, 2008. These amendments will ensure that Seychelles and the relevant legislations are consistent with international best practices of insurance.

Therefore, this paper will focus on the proposed changes to be made in the Insurance Act, 2008 of which will be discussed with the industry before legislative amendments are undertaken.

2. Policy intention for the changes

The Financial Services Authority ("FSA") have deduced that the primary insurance related issues involves regulating the sector, capacity development, particular provisions extending the scope of prudential and market conduct supervision by the FSA (herein after known as "Authority") which are consistent with international standards and best practices namely International Association of Insurance Supervision ("IAIS").

The IAIS is an international body governing the licensing and supervision of all regulatory insurance bodies and their respective jurisdictions. In 2018, the FSA became a member of the IAIS and is working towards becoming a signatory member so that it may benefit from the signing of MOUs with other members which would in turn be a significant achievement in turn of corresponding with other regulators during the licensing, supervisory and overall regulatory function of the FSA helping to boost and maintain its reputation and position as a stable insurance jurisdiction.

The IAIS has published the Insurance Core Principles ("ICPs") that governs the regulatory models of its members. These Core Principles sets out the manner and measures which regulators should take when licensing and supervising their entities in their respective insurance markets. As similar to the FATF and IOSCO standards, the ICPs are essential to the proper conduct of a jurisdiction and the FSA is subjected to periodic reviews by the IAIS of its progress to conduct the necessary regulatory measures that reflects said ICPs. It is to be noted that during several reviews and the FSA's application to be a signatory member that it was highlighted that there is a vital need to review and consequently undertake certain amendments to the IA to make it in line with the ICPs of the IAIS.

Since the enactment of the IA in 2008, there had been substantial developments in the Seychelles Insurance sector specifically in regards to the regulatory aspect of the legislation. To address such, since 2019, the Financial Services Authority, undertook a complete revision of the Insurance Act 2008, ("IA") as there was a need to review the provisions of the IA to suit the current dynamic supervisory landscape.

3. Proposed new policy changes

The proposed new policy changes are as follows:

3.1. Definitions under the Insurance Act

The FSA found that the certain statutory definitions were not consistent with international best practices that it is currently adopting in regards to the licensing and supervision of insurance business.

Under Part I – Preliminary, there are certain changes to the existing definitions and new definitions that need to be added so that the Insurance Act (“IA”) could be consistent with those of the IAIS.

Therefore, the FSA is proposing to amend some existing definitions under the IA and also inserting new definitions Under **Part 1 – Preliminary** as follows;

- (i) amending the definition of “actuary” to read as follows;

“actuary” means a person approved by the Authority in accordance with the provisions of this law the responsibilities of who include, but are not limited to, the calculation of premiums, probability tables, reserves and solvency and;
- (ii) amending the definition of “advertisement” to read as follows;

“advertisement” includes every form of advertising and promotional activities, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media;
- (iii) inserting a new definition “aggregator” after the definition “affiliated company” to read as follows;

“aggregator” relates to information retrieval for goods and services on the internet; and analyses and compares information in terms of premium pricing
- (iv) inserting a new definition “annuity” after the definition “assigned capital” to read as follows;

“annuity” means an insurance contract providing periodic payments specified for a number of years or life;
- (v) amending the definition of “auditor” part a) to read as follows;

“auditor” means a person –
 - a) who has qualified as an accountant by a credentialed and internationally accepted auditing organization, and who is a current member of good standing, of one of the above institutions or a person of good standing with some other accountancy qualification who is recognized by the Authority as such for the purpose of this Act;

- (vi) amending the definition of “Authority” to read as follows;

“Authority” means the Financial Services Authority pursuant to the Financial Services Act, 2013;

- (vii) inserting a new definition “cession” after the definition “category” to read as follows;

“cession” means the transfer of a part of the insured risk from an insurance company to a reinsurance company;

- (viii) inserting a new definition “claims professional” after the new definition of “cession” to read as follows;

“claims professional” means a person registered to carry on the business of loss surveyor, loss adjuster or motor assessor, and advises or investigates the cause and circumstances of loss and ascertain the quantum of the loss for the purpose of processing a claim on a general insurance policy;

- (ix) inserting a new definition “co-insurance” after the definition of “class” to read as follows;

“co-insurance” means the sharing of risk, on the same terms, between two or more insurance companies;

- (x) inserting a new definition “consumer” after the definition of “conservator” to read as follows;

“consumer” has the same meaning as in the Financial Consumer Protection Act;

- (xi) inserting a new definition “core capital” after the definition of “Consumer” to read as follows;

“core capital” means the minimum amount of capital that insurers must maintain to comply with prescribed regulations as amended.

- (xii) inserting a new definition “delegated authority” after the definition of “court” to read as follows;

“delegated authority” means a formed relationship when an insurer permits another party to act on their behalf, either in an underwriting or claims handling capacity.

- (xiii) inserting a new definition “financial technologies or FinTech” after the definition of “financial statements” to read as follows;

“financial technologies or FinTech” means technologically enabled financial innovation that could result in new business models, applications, processes, or

products with an associated material effect on financial markets and institutions and the provision of financial services;

- (xiv) inserting a new definition “financial year” after the definition “financial technologies or FinTech” to read as follows;

“financial year” means an accounting period of twelve consecutive months at the end of which account books are closed, profit or loss is computed, and financial reports are prepared for filing

- (xv) inserting a new definition “group wide supervision” after the definition “general insurance policy” to read as follows;

“group wide supervision” means the supervision of insurance groups containing similar insurance entities or other legal and/or regulated entities

- (xvi) inserting a new definition “insurable interest” after the new definition “group wide supervision” to read as follows;

“insurable interest” means the legal right to insure arising out of a financial relationship recognized at law, between the insured and the subject matter of insurance

- (xvii) inserting a new definition “insurance” after the new definition “insurable interest” to read as follows;

“insurance” means an economic device transferring risk from an individual to a company and reducing the uncertainty of risk via pooling

- (xviii) inserting a new definition “insurance activity” after the new definition “insurance” to read as follows;

“insurance activity” means the drafting, offering, consideration, conclusion and performance of general insurance and long term insurance contracts by an insurance company;

- (xix) amending the definition of “insurance broker” to read as follows;

“insurance broker” means a person who works for the policyholder in the insurance process, acting on behalf of the client, independent of insurers;

- (xx) inserting a new definition of “insurance intermediary” after the definition of “insurance business” to read as follows;

“insurance intermediary” means any person that engages in insurance intermediation including brokers, who represent buyers in insurance activity and agents, insurance sales representative and introducers who represent the insurer;

- (xxi) inserting a new definition of “insurance intermediation” after the definition of “insurance intermediary” to read as follows;

“insurance intermediation” means the promoting or facilitating of an insurance contract between an insurer and a purchaser, selling or attempting to sell insurance on behalf of an insurer, asking or urging potential purchaser to apply for a particular insurance product, or conferring with or giving advice to a potential purchaser concerning a particular insurance product by a person or entity who sells or arranges the insurance contract. Activities by an insurer are not included;

- (xxii) inserting a new definition of “insurance group” after the definition of “insurance intermediation” to read as follows;

“insurance group” is composed of two or more legal persons at least one of which is an insurer with the other having significant influence in the insurer;

- (xxiii) inserting a new definition of “insurance period” after the definition of “insurance manager” to read as follows;

“insurance period” means the period for which an insurer covers an insurance risk;

- (xxiv) inserting a new definition of “insurance portfolio” after the definition of “insurance policy” to read as follows;

“insurance portfolio” means the entirety of the insurance contracts of one or different insurance classes of one insurer;

- (xxv) inserting a new definition of “insurance product” after the definition of “insurance portfolio” to read as follows;

“insurance product” means a specific contract prepared and issued by an insurer to cover a single specific risk or a number of specific risks, under agreed terms and conditions

- (xxvi) inserting a new definition of “insurance risk” after the definition of “insurance product” to read as follows;

“insurance risk” means the risk of adverse change in the value of capital resources due to unexpected changes in the assumptions of pricing or reserving such as severity, frequency, trend, volatility or level of occurrence rates

- (xxvii) inserting a new definition of “Insurance technology or InsurTech” after the definition of “insurance sub-agent” to read as follows;

“insurance technology or InsurTech” means the variety of emerging technologies and innovative business models that have the potential to transform the insurance business”;

- (xxviii) inserting a new definition of “insured event” after the definition of “insurer” to read as follows;

“insured event” means the event foreseen in the insurance contract which occurs under the terms and within the period covered by the contract;

- (xxix) inserting a new definition of “international financial reporting standards” after the definition of “insured event” to read as follows;

“international financial reporting standards” means the standards issued, from time to time, by the International Accounting Standards Board;

- (xxx) inserting a new definition of “introducer appointed representative” after the definition of “international financial reporting standards” to read as follows;

“introducer appointed representative” means a person whose scope of appointment by the authorized insurer is limited to effecting introductions and distributing brochures, proposal forms and other similar promotional materials;

- (xxxi) inserting a new definition of “loss assessor” after the definition of “long term insurance policy” to read as follows;

“loss assessor” means a person licensed under this Act to undertake the business of assessing and investigating losses on behalf of an insurer or insured;

- (xxxii) inserting a new definition of “minimum capital requirement” after the definition of “matching assets” to read as follows;

“minimum capital requirement” means required level of capital that each insurer must maintain to sufficiently meet insurance obligations OR such capital is required to be held by an insurer calculated in accordance with the Solvency Regulation;

- (xxxiii) inserting a new definition of “micro insurance” after the definition of “minimum capital requirement” to read as follows;

“micro insurance” means insurance for the protection of low-income people against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of risk involved;

- (xxxiv) inserting a new definition of “mutual companies” after the definition of “Minister” to read as follows;

“mutual companies” means insurance companies owned by policyholders;

- (xxxv) inserting a new definition of “outsourcing” after the definition of “non-Seychelles policy” to read as follows;

“outsourcing” means the transfer of one or more functions of the activity of an insurance company to another person;

- (xxxvi) inserting a new definition of “participating company” after the definition of “outsourcing” to read as follows;

“participating company” means the Company or any Parent Corporation or Subsidiary Corporation

(xxxvii) amending the definition of “principal officer” to read as follows;

“principal officer” means a Director, Chief executive officer, the manager or the Chief Internal auditor, and includes a person however designated holding similar key controlling functions and responsibilities;

(xxxviii) inserting a new definition of “professional indemnity” after the definition of “principal officer” to read as follows;

“professional indemnity” protects professional people (freelancers, professionals and the self-employed) and their business, against claims which might be made alleging any injustice;

(xxxix) inserting a new definition of “prescribed capital requirement” after the definition of “prescribed” to read as follows;

“prescribed capital requirement” is the capital required to ensure that the licensed insurer should be able to meet its obligations over the financial year calculated in line with the Solvency Regulations;

(xl) inserting a new definition of “regulatory capital” after the definition of “Protection Fund” to read as follows;

“regulatory capital” means any minimum or notional margin of solvency or minimum regulatory capital or capital ratios required for insurance companies, insurance holding companies or financial groups by the Financial Services Authority or any successor regulatory body.

(xli) inserting a new definition of “reinsurance” after the definition of “regulatory capital” to read as follows;

“reinsurance” means a financial transaction by which risk is transferred (ceded) from an insurance company (cedant) to a reinsurance company (reinsurer) in exchange of reinsurance premium;

(xlii) inserting a new definition of “reinsurer” after the definition of “reinsurance contract” to read as follows;

“reinsurer” means an insurer assuming the risk of another insurer in exchange of a premium under a reinsurance contract;

(xlili) inserting a new definition of “reinsurance activity” after the definition of “reinsurer” to read as follows;

“reinsurance activity” means the drafting, offering, conclusion, remuneration and performance of reinsurance contracts on the transfer, in part or whole, of underwritten risk to a reinsurance company;

- (xliv) inserting a new definition of “reinsurance broker” after the definition of “reinsurance activity” to read as follows;

“reinsurance broker” means a person who acts as an intermediary between parties taking out reinsurance. Their activities comprise working before a reinsurance contract is signed, obtaining a signed contract, and providing professional advice and assistance with generating and executing contracts;

- (xlv) inserting a new definition of “responsible supervisory authority” after the definition of “resident” to read as follows;

“responsible supervisory authority” means an authority in a foreign country that is authorized by law to supervise the activities of insurance, reinsurance and intermediation;

- (xlvi) inserting a new definition of “retrocession” after the new definition of “responsible supervisory authority” to read as follows;

“retrocession” means the transfer of part of the insured risk from one reinsurance company to another in exchange of a premium;

- (xlvii) inserting a new definition of “risk based capital” after the definition of “risk” to read as follows;

“risk based capital” is the amount of capital that insurance companies must have on hand in order to hedge against their risks in order to ensure that the company can maintain solvency, and can fulfill all of its financial operating needs;

- (xlviii) inserting a new definition of “risk management” after the definition of “risk based capital” to read as follows;

“risk management” means the process through which risks are managed allowing all risks of an insurer to be identified, assessed, monitored, mitigated (as needed) and reported on a timely and comprehensive basis.

- (xlix) inserting a new definition of “surplus capital” after the definition of “substantial shareholder” to read as follows;

“surplus capital” means the amount by which an insurer's assets exceed its liabilities. It is the equivalent of "owners' equity" in standard accounting terms. The ratio of an insurer's premiums written to its surplus is one of the key measures of its solvency

- (l) inserting a new definition of “working days” after the definition of “technical provisions” to read as follows;

“working days” shall mean any day on which the Authority’s business is conducted excluding Saturday, Sunday, gazette statutory or bank holiday;

3.2 Other amendments of sections required

New Parts that would be inserted in the Insurance Act, 2008 are as follows to reflect policy changes. Therefore, the new arrangements of sections should be after Part IV with the current Parts II to IV to be amended only.

- (i) inserting a new section “Part V – Corporate Governance”;
- (ii) inserting a new section “Part VI – Board of Directors”;
- (iii) inserting a new section “Part VII- Senior Management”;
- (iv) inserting a new section “Part VIII- Control Functions”;
- (v) inserting a new section “Part IX – Risk Management”;
- (vi) inserting a new section “Part X- Auditors, Actuaries, Accounts and Returns”
- (vii) inserting a new section “Part XI- Transfer and Amalgamation”
- (viii) inserting a new section “Part XII- Insolvency and Winding Up”
- (ix) inserting a new section “Part XIII – Intermediaries, Claims Professional and Third Party Claims Administrator”;
- (x) inserting a new section “Part XIV – Consumer Protection”;
- (xi) inserting a new section “Part XV – Policy Owners ‘Protection Fund’”;
- (xii) inserting a new section “Part XVI – Supervision (Inspection and Investigation);
- (xiii) inserting a new section “Part XVII - Administrator and Conservator”;
- (xiv) inserting a new section “Part XVIII - Preventative and Corrective Action”;
- (xv) a new section “Part XIX – Termination of license”;
- (xvi) inserting a new section “Part XX– Miscellaneous”;
- (xvii) inserting a new section “Part XXI – Transition Period”;

The amendments and new insertion are detailed below

3.2.1 Amending Part II - Licensing Process of Insurance Business

The insurance licensing function is a critical point in an effective insurance regulatory system. The Authority’s current licensing process is cumbersome and has the potential to expose consumers to inadequately and unscrupulous insurance entities particularly in respect to licensed entities of the FSA. Furthermore, there are issues of financial impairment risk by permitting composite insurance, i.e. one

insurer providing both long-term and general insurance and provides no options for obtaining insurance coverages not offered by Seychellois insurers.

Therefore, Part II – Licensing of Insurance Business needs updating to reflect International Best Practices.

Going forward the insurance legislation should clearly:

- include a definition of insurance activities which are subject to licensing;
- prohibit unauthorised insurance activities;
- define the permissible legal forms of domestic insurance legal entities;
- allocate the responsibility for issuing licences; and
- set out the procedure and form of establishment by which foreign insurers are allowed to conduct insurance activities within the jurisdiction.

Additionally, licensing requirements and procedures should be clear, objective which are consistently applied if it is to reflect international best practices such as the IAIS ICPs. As such, the applicant is required at least to:

- have sound business and financial plans;
- have a corporate or group structure that does not hinder effective supervision;
- establish that the applicant's Board Members, both individually and collectively, Senior Management, Key Persons in Control Functions and Significant Owners are suitable;
- have an appropriate governance framework; and
- satisfy capital requirements.

As such the proposed amendments are as follows:

3.2.1.1. In section 7 – Restrictions on composite insurance business

- (i) by deleting subsection 3(b) and merging subsection 3(a) with subsection (3) to read as follows;

(3) “Notwithstanding subsections (1) and (2), the Authority may authorise an insurer to carry on both long term insurance business and general insurance business where either the long term insurance business or the general insurance business is restricted exclusively to reinsurance;

- (ii) re-numbering subsection (5) as subsection (6) and inserting a new subsection (5) after subsection (4) to read as follows;

(5) An insurer licensed for specific insurance classes and intends to operate other insurance classes must apply for a license, subject to the Authority's approval, to extend its activity to those classes and submit;

- (i) decision of the shareholders' meeting to extend the activity;
- (ii) source for increasing the capital for the classes applying for;
- (iii) proof of deposition the additional basic capital as per the insurance classes it intends to operate under, in accordance with the provisions of this law;

- (iv) a feasibility study in accordance with the provisions of this law;
- (v) reinsurance plan
- (vi) calculations for possessing the solvency margin, in accordance with the provisions of this law;
- (vii) detailed information on the technical and mathematical provisions and matching them with the appropriate assets;
- (viii) data on the products, premiums, premium calculations, insurance contract specimen covering the insurance class which the insurance company is applying for in the context of activity extension;

3.2.1.2. In section 9 – Application for a licence as insurer

- (i) by repealing subsection (a), (b), (c), d) and (e) and replacing it with new subsection (a), (b), (c), to read as follows;
 - (a) statement of the proposed insurance business, including details of the class of insurance business to be carried on;
 - (b) list of shareholders including types of shares, nominal share value, percentage of holding in the share capital and any related persons or parties, particulars of substantial shareholders or of any person being proposed to act as principal officer of the proposed insurer;
 - (c) information on shareholder capital sources within the meaning of this Act;
- (ii) inserting new subsections (d), (e), (f), (g), (h), (i), (j), (k) to read as follows;
 - (d) corporate governance policies in accordance with the prescribed codes and regulations;
 - (e) proposed board members in accordance with the Companies Act;
 - (f) organizational structure of the company including internal audit, risk management, internal controls, information technology, consumer complaint handling systems and anti-money laundering and terrorism financing procedures;
 - (g) proposal forms and policies in accordance with the class(es) of business for which the company seeks to be licensed;
 - (h) data on products, premium, and premium calculation, in accordance with Part 5 of this Act:
 - (i) long term to include; mortality tables, method for premium calculation and method for calculating reserves as required by Law;
 - (ii) general insurance to include; loss/risk ratios and premium calculation data;
 - (i) the applicant will submit a certified business plan or feasibility study certified by an actuary, as may be applicable detailing the objectives of the insurance activity, the

capability of the insurance company to meet their estimates and liabilities, for at least the first three years of the activity, and shall contain the following information:

- (i) the proposed organizational structure, including functions and personnel;
 - (ii) the list of insurance classes for which the insurance activity will be carried out;
 - (iii) targeted market share;
 - (iv) details on the distribution channels;
 - (v) reinsurance strategy;
 - (vi) evaluation of establishment expenses, management expenses, including overall expenses and commissions;
 - (vii) evaluation of expenses of setting up the administrative services and the organization for securing business and financial resources intended to meet those costs;
 - (viii) details on the internal controls and risk management systems;
 - (ix) data on the staff and actuary;
 - (x) elements comprising the initial minimal capital, as per the provisions of this Law;
 - (xi) type of reinsurance agreements the company proposes to conclude with the reinsurance company;
 - (xii) optimistic and pessimistic estimates concerning the premium production and technical profitability for each insurance class in which they would like to operate;
 - (xiii) a forecast balance sheet and profit and loss account;
 - (xiv) an evaluation of the required solvency margin and required basic capital as per the provisions of item (xiii) in this Paragraph and the calculation methods used for such evaluations;
 - (xv) the intended reinsurance or retrocession program, with the maximum coverage tables for all activity classes;
 - (xvi) an evaluation of the financial sources intended to cover the technical provisions, required minimum capital and required solvency margin, as per the provisions of this Law;
- (j) such other information and documents as may be specified in regulations;
- (k) the start-up capital, paid up capital and any other funding of the applicant as may be specified by the Authority shall be maintained in an account of the applicant with a bank licensed under the Financial Institutions Act to carry on banking business, as evidenced by a certificate of such bank at the time when the application is made and at such other time as may then be required by the Authority; and
- (l) the prescribed fee;
- (iii) re-numbering subsection (2), (3), (4), (5) and (6) to (3), (4), (5), (6) and (7) and inserting a new subsection 9(2) after subsection 9(1) to read as follows;
 - (2) An application will not be deemed completed for consideration unless all the documents listed in subsection (1) are submitted to the Authority

- (iv) by repealing the letter (b) in subsection (3) after the words “subsection (1)(b)” and replace it with (c)

3.2.2. Amending Part III- Solvency Requirements

Part III of the current Insurance Act addresses the issues of solvency requirements. However, the current solvency laws, regulations and practices are not consistent with international best practices. A new solvency regime therefore needs to be designed in order to enhance the maintenance of the financial stability of insurers and to protect consumers, including capital adequacy requirements for solvency purposes so that Seychelles insurers can absorb significant unforeseen losses and to provide for degrees of supervisory intervention.

The FSA’s rationale behind the need for adequate solvency regulations are driven by the international best practice of Risk-based capital management.

Risk-based capital management refers to a rule that establishes minimum regulatory capital for financial institutions. Risk-based capital management requirements exist to protect financial firms, their investors, their clients, and the economy as a whole. These requirements ensure that each financial institution has enough capital on hand to sustain operating losses while maintaining a safe and efficient market.

Therefore, the FSA proposes the following amendments:

3.2.2.1. in section 14 – Maintenance of financially sound condition

- (i) by repealing subsection (a) and (b) and replacing it with new subsections (a) and (b) as follows;
 - (a) shall possess the adequate amount of capital relative to the insurance volume and classes under which it operates, and the nature of the risks it is exposed to;
 - (b) shall operate in such a way as to ensure that the risks they are exposed to under a specific class or all insurance classes never exceed the amounts or limits in this Law or in the acts of the Authority;
- (ii) by inserting after subsection (b) new subsections (c) and (d) as follows;
 - (c) meet its liabilities as they arise; and
 - (d) keep the solvency margin required under this Part.
- (iii) Re-numbering subsection (2) and (3) to subsection (3) and (4) and inserting after subsection (1) a new subsection (2) as follows;
 - (2) Insurers shall calculate and submit to the Authority as required;
 - (a) the amount of capital;
 - (b) the amount of guaranteed fund;
 - (c) the required solvency margin, with an authorized actuary’s opinion;
 - (d) the amount of technical provisions, with an authorized actuary’s opinion;

- (e) the amount and types of investments that are not financed out of the risk premium;
- (f) the amount of assets covering technical provisions;
- (g) the type, distribution, matching of assets with liabilities and location of invested assets covering technical and mathematical provisions;
- (h) liquidity ratios;
- (i) underwritten risks for each insurance class;
- (j) ceded reinsurance;
- (k) insurance statistical data;
- (l) financial statements and reports on operating results of the insurer;
- (m) an own Risk and Solvency Assessment;
- (n) other information required by the Authority

3.2.2.2. in section 20 – Prohibitions concerning assets

- (i) by repealing section 20 and inserting a new section 20 as follows;

20. (1) Insurer shall manage their financial resources and to ensure at any time the fulfillment of their liabilities when they fall due.

(2) Insurers shall invest only in assets and instruments in relation to the overall asset portfolio whose risks the companies can adequately identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency requirements.

- (a) All assets shall be invested in order to ensure the security, quality, liquidity and profitability of the overall portfolio, and be easily accessible to the Authority for inspection purposes;
- (b) The assets shall be diversified in an appropriate manner in order to avoid excessive concentration on a single asset, issuer or group of companies or a specific geographical area, and excessive accumulation of risk of the overall portfolio;
- (c) Investment and assets that are not tradeable on regulated financial markets shall be kept at a prudential level pursuant to the limits laid down in regulations by the Authority;
- (d) The Authority shall adopt rules on the categories of allowed investments and the limits applicable to asset investment
- (e) An insurer shall not, without the approval of the Authority, given generally or in a particular case, and on such conditions as the Authority may determine –
 - (i) Mortgage, charge or otherwise encumber its assets;
 - (ii) Directly or indirectly borrow any asset;
 - (iii) By means of any surety, give any security in relation to obligations between other persons except where the security is provided under a guarantee policy which, the insurer is authorized to issue under its licence

- (iv) An insurer shall not invest in derivatives other than –
 - (A) derivatives designated as an asset in respect of linked long term policy;
 - (B) for the purpose of reducing investment risk or for efficient portfolio management; or
 - (C) in such manner as the insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches its obligations under that instrument and from which it can discharge those obligations.

(3) For the purpose of protection against the liquidity risk, insurers shall adopt and implement systematic liquidity management policies, including;

- (a) planning expected and potential cash flows;
- (b) systematic monitoring of liquidity;
- (c) implementation of appropriate measures for preventing and eliminating the causes of lack of liquidity
- (d) calculating the amount of their liquidities on a daily basis in accordance with regulations promulgated by the Authority

(4) Insurers shall develop, adopt and implement investment and lending policies, standards and procedures that a reasonable and prudent professional would implement in relation to an investment and loan portfolio, in order to avoid any undue risk of losses and obtain a reasonable return on investment. Such policies must be in writing, available for inspection and reviewed at least annually.

3.2.2.3. in section 23 – Solvency regulations

- (i) by repealing section 23 and inserting a new section 23 as follows;

23. (1) A licensed insurer must at all times hold regulatory capital resources greater than or equal to its Minimum Capital Requirement (“MCR”)

(2) A licensed insurer must at all times hold regulatory capital resources greater than or equal to its Prescribed Capital Requirement (“PCR”)

(3) A licensed insurer must at all times hold paid up share capital as determined by the solvency regulations.

(4) It is a requirement that a licensed insurer shall maintain minimum shareholders’ funds of at least 75% of the capital floor or an equivalent sum in any currency acceptable to the Authority.

(5) The Minister may make solvency regulations for the purpose of this Part.

(6) Regulations made under subsection (5) may provide for –

- (a) the nature and classes of business involved
- (b) the spread of risk and the historic and industry based claims data, the size, complexity of business and business risks of the licensed insurer,

- (c) classes of assets and their exclusion from the calculation of the solvency margin;
- (d) the holding and investment of assets in Seychelles;
- (e) restrictions on diversification of investments;
- (f) the calculation of technical provisions and liabilities;
- (g) the valuation of assets;
- (h) the establishment of designated funds and statutory reserves; and
- (i) nature and scope of the Own Risk and Solvency Assessment;
- (j) such other matters as are relevant to the prudential management of an insurance business;

3.2.3. Amending Part IV - Regulation of Business of Insurer

The Authority's oversight of insurers needs to reflect international best practices, potentially exposing consumers to insurers that are not being managed in a sounder and prudent manner. The rationale for the change is that the FSA wants an insurance industry that is operating in a healthy economic environment whereby consumers have confidence in the insurers and feel protected when they are purchasing any type of insurance.

3.2.3.1. in section 24 – stated capital and deposit

- (i) by repealing subsection (a) and (b) and inserting new subsections (a), (b), (c) and (d) as follows;
 - (a) operate through an appropriate administrative and accountability structure, and an adequate internal audit structure and risk management structure, of a size and capability appropriate for the business it conducts;
 - (b) maintain an organizational structure that reflects an appropriate separation and clear designation of responsibilities and has an effective internal system of communication;
 - (c) have and maintain the required regulatory capital; and
 - (d) make and maintain a deposit in such amount, and with such custodian, as may be prescribed;

3.2.3.2. in section 36 – appointments of principal officers

- (i) by repealing subsection (2) and inserting a new subsection (2) to read as follows;

(2) An insurer shall declare to the Authority at the time of an application for approval in accordance with subsection (1) that the person is a fit and proper to be appointed as a principal officer or is to be a member of the Board of Directors, ultimate controller, or key functionary of the insurance company shall be fit and proper to hold the particular position
- (ii) by repealing section 3(e) and inserting a new section 3(e) to read as follows;

- (e) maintaining his independence so that the company's interests are not affected by any conflict of interests that might arise in the course of performing his duties;
- (iii) inserting new subsections (f) to read as follows;
 - (f) make an assessment of the past behavior and business or financial activity of the persons referred to this Section. It shall consider whether there is evidence showing that the person;
 - (i) has been convicted by a final judgement of organizing and operating fraudulent and pyramid borrowing schemes, money laundering and financing of terrorism;
 - (ii) is engaged in, or associated with, any financial losses due to dishonesty, incompetence or malpractice in the provision of financial services or the management of other companies;
 - (iii) is engaged in business practices which the Authority considers as fraudulent, oppressive or otherwise improper, or which in some way reflect lack of personal values in the provision of financial services or other business transactions;
 - (iv) has been convicted of any other criminal offences in the past five years.
- (iv) Inserting new subsections (4), (5) and (6) to read as follows;
 - (4) the fit and proper requirements shall be complied with by the abovementioned persons during all the time they hold the respective positions.
 - (5) The Authority shall, whenever it deems it appropriate, have the right to ask from insurance companies to provide proof of their being fit and proper.
 - (6) The Authority shall promulgate regulations necessary to effect this provision consistent with the position and responsibility of each person subject to this Article and in accordance with the International Standards in the area of insurance.

3.2.3.3. In section 38 – Board sub-committees

- (i) by repealing section 38 and inserting a new section 38 to read as follows;
 - (1) The board of directors of an insurer must establish an Audit Committee and may set up such other committees as it may deem appropriate in order to ensure that the business of the insurer is conducted according to principles of sound corporate governance.
 - (2) The Audit Committee shall –
 - (a) have at least one member with no less than three years of experience in accounting or auditing;
 - (b) help the board of directors perform its supervisory functions for shareholders and other stakeholders.
 - (c) In performing the function under (b), the audit committee shall –

- (i) monitor the financial reporting processes and evaluate the integrity of the insurer's financial statements;
 - (ii) develop, maintain and monitor the insurer's investment policy;
 - (iii) monitor the adequacy and effectiveness of the insurance company internal controls;
 - (iv) monitor the appropriateness and adequacy of the processes designed to ensure compliance with legal and regulatory rules;
 - (v) nominate the head of the internal audit unit, and monitor the internal audit unit activity;
 - (vi) nominate the external auditor, and review and monitor the independence of the audit firm;
 - (vii) monitor the adequacy and effectiveness of the Insurance Company's risk management procedures.
- (d) The functions of the audit committee can be allocated to other committees if necessary by the board;
- (3) The Audit Committee shall meet at least three times a year, and in extraordinary meetings whenever it is convened by the insurance company board of directors. All decisions shall be taken with a majority of the votes of all the attending members. No abstention is allowed.
- (4) The Audit Committee may be assisted in the performance of its functions by external experts selected by it.

3.2.3.4. In section 39 – internal control systems

Inserting a new subsection (2), (3), (4), (5) and (6) to read as follows;

- (2) The objectives of the internal control system are to identify the types of risks an insurance company exposed to, and measure, manage and monitor the level of those risks.
- (3) The policies developed pursuant to this part shall be reviewed at least annually and shall be subject to approval by the Board of directors of the insurance company.
- (4) The internal control system of an insurance company shall consist of –
 - (a) operations and internal procedures;
 - (b) the organization of accounting and information processing systems;
 - (c) risk and result measurement systems;
 - (d) documentation and information systems; and
 - (e) transactions monitoring systems.
- (5) Insurers shall establish, subject to the board's approval an internal audit unit as part of their internal control system to provide an integrated and disciplined method for the evaluation and enhancement of their governance, risk management and control processes.

- (6) Insurers shall establish, subject to the board's approval the risk management system, which shall identify and control risks through policies, implementations procedures and application of limits in order to monitor, control and, where necessary, change the quality and level of activity on the basis of risk and revenue structure that the future cash flows carry.
- (7) Further to the board's approval, the insurer shall develop, adopt and implement investment and lending policies, standards and procedures that a reasonable and prudent professional would implement in relation to an investment and loan portfolio, in order to avoid any undue risk of losses and obtain a reasonable return on investment. Such policies must be in writing, available for inspection and reviewed at least annually.

3.2.3.5. Inserting after section 39, a new section 39A – Outsourcing Functions, to read as follows;

- (1) An insurer may, with prior approval from the Authority, outsource the following functions:
 - (i) claim handling and adjusting;
 - (ii) actuarial services;
 - (iii) promotion and marketing;
 - (iv) information technology;
 - (v) auditing;
 - (vi) management of assets;
 - (vii) human resources functions;
 - (viii) risk managers;
- (2) Outsourced functions:
 - (a) may not endanger the interests of the insured;
 - (b) may not make supervision of the insured difficult or impossible;
 - (c) is performed under a contract, in which
 - (I) an insurance company transfers a part of its functions to another person or entity;
 - (II) the contract states that the delegating insurer is responsible for the outsourced functions;
 - (III) the contract specifies that the person or entity accepting the outsourced functions be obligated to provide the insurer with the information referred to in this Law which the insurer shall use for supervision purposes.
- (3) Insurers and persons or entities performing any functions are required, upon a request from the Authority to submit data on the financial position and activity of the legal person or entity that signed the outsourcing contract or any other relevant data as required by the Authority.

3.2.4. Replace current Part V and insert a new heading as Part V – Corporate Governance to read as follows;

- (40) (1) Every licensed insurer shall establish and maintain an appropriate governance and management framework.
- (2) Every licensed insurer shall establish and maintain such strategies, policies, procedures and controls appropriate for the nature, scale and complexity of its business and its risk profile and ensure that they are regularly reviewed and updated.
- (3) The governance and management framework shall provide for –
- (a) The appointment of roles between shareholders, directors, senior management and key persons in control functions;
 - (b) the separation of the oversight function from management responsibilities; and
 - (c) the adequate monitoring of and control of the business and affairs of the licensed insurer by the directors and senior management;
- (4) The licensed insurer shall routinely review the suitability of the board members, senior management, key persons in control functions and significant owners.

3.2.5. Replace current Part VI and insert a new heading as Part VI – Board of Directors to read as follows;

- (41) (1) Every licensed insurer shall furnish the Authority with the names and addresses of its board of directors, senior executives and technical personnel.
- (2) A member of the board of directors of an insurer shall –
- (a) be a fit and proper person as prescribed by the Authority;
 - (b) not at the same time serve as a member of the board of directors of another insurer in Seychelles without the prior written approval of the Authority; and
 - (c) have sufficient time and commitment to undertake his or her duties diligently
- (3) Every insurer shall ensure that the board of directors is adequately resourced and that the board of directors has sufficient powers –
- (a) to obtain, in a timely manner, such information as the board of directors requires to undertake its functions; and
 - (b) to assess senior management, key persons in control functions and other relevant persons.
- (4) The board of directors of an insurer is responsible for the business and affairs of the insurer and for ensuring its effective organisation.

3.2.6. Replacing current Part VII and insert a new heading Part VII – Senior Management to read as follows;

- 42 (1) Every member of the senior management of an insurer shall meet the fit and proper criteria prescribed by the Authority.

- (2) The senior management of a licensed insurer shall be responsible for the day to day operations of the licensed company insurer and provide the board of directors with timely and accurate information with recommendations for its review and approval.

3.2.7. Replacing current Part VIII and insert a new heading Part VIII– Control Functions to read as follows;

- 43 (1) Every licensed insurer shall establish and maintain the following control functions –
- (a) a risk management function;
 - (b) a compliance function;
 - (c) an actuarial function;
 - (d) an internal audit function;
 - (e) such other control functions as may be specified in regulations made under this Act; and
 - (f) such other functions as the insurer may consider appropriate for the nature, scale and complexity of its insurance business.
- (2) Every licensed insurer shall –
- (a) ensure that each control function is provided with the authority, independence and resources required to enable it to operate effectively; and
 - (b) appoint an individual to –
 - (i) undertake the responsibilities of each control function; or
 - (ii) where the responsibilities of the control function are to be undertaken by more than one employee or to be outsourced, have overall responsibility for, and oversight of, the control function.

3.2.8. Replacing current Part IX and insert a new heading Part IX – Risk Management to read as follows;

- 44 (1) Every insurer shall establish and maintain –
- (a) a clearly defined strategy and policies for the effective management of all significant risks to which the insurer is or may be exposed; and
 - (b) procedures and controls that are sufficient to ensure that the risk management strategy and policies are effectively implemented.
- (2) The risk management strategy and policies shall –
- (a) be appropriate for the nature, scale and complexity of the licensed business;
 - (b) specify how risks are to be identified, monitored, managed and reported on in a timely manner;
 - (c) take into account the probability, potential impact and the time duration of risk;
 - (d) provide for the effective identification and management of risks as the Authority may, by regulations, determine.

3.2.9. Renumbering Part V - Auditors, Actuaries, Accounts and Returns, to read as Part X – Auditors, Actuaries, Accounts and Returns

The IAIS stresses the importance of actuarial expertise and the role of external audit in assessing the financial stability of insurers. It is important to note that Seychellois insurers have not employed these experts routinely or effectively and thus, a review of the regulatory requirements and access to these services has to be revised. Therefore, under Part V of the act, the terms auditor and actuary needs to emphasize as it relates to the insurer to enhance the importance and role it plays within the operation of insurance markets and supervision.

3.2.9.1. renumber section 40 as section 45, and thereafter repeal its subsection 3 (a), (b) and (c) by inserting new subsections a (i) and (ii), (b) and (c) to read as follows;

(a) holds the required qualifications and competence and, in the case of:

(i) an actuary, is credentialed by an Internationally accepted actuarial organization;

(ii) an auditor, is credentialed by the Association of Chartered Certified Accountants ("ACCA") or other internationally accepted auditing organization

(b) is independent of the insurer in that the appointee, or in the case of a firm any of its partners, has no relationship with, or interest in, the insurer, any of its group of companies, nor has any connection with any director or substantial shareholder of the insurer that could reasonably be perceived as materially affecting the exercise by the appointee of an independent mind and judgment in the performance of the appointee's duties;

(c) is fit and proper as prescribed by the Authority

3.2.9.2. renumber section 41 as section 46 with its title - notice of resignation and termination

3.2.9.3. renumber section 42 as section 47 with its title - termination of appointment by Authority

3.2.9.4. renumber section 43 as section 48 with its title - Auditor's and actuary duty to report and thereafter insert new subsections (g), (h), (i) and (j) after the subsection (2) (f) to read as follows;

(g) there is fraud or embezzlement, theft, money laundering or financing of terrorism;

(h) there are violations of the internal rules of an insurer;

(i) there are facts and/or circumstances that could affect the future activity of an insurer;

(j) based on the actuaries and auditor's expertise there are transactions between the insurer and its related parties that pose a risk to the liquidity and risk management requirements of this Act.

3.2.9.5. renumber section 44 as section 49 with its title - Additional duties of the auditor and thereafter insert a new subsection (e), (f) and (g) after subsection (d) to read as follows;

(e) who is responsible for the performance of the statutory audit or on behalf of the auditing company approved by the Authority;

(f) may not audit the same insurance company for a minimum of five years unless the application is determined by the Audit Committee to be reasonable and necessary;

- (g) where the main audit partner responsible for the performance of the statutory audit on behalf of the audit company may not be allowed to hold any governing or managing positions in the audited insurance company unless a period of two years from the date of leaving the position of the main audit partner responsible for the performance of the statutory audit on behalf of the audit company.

3.2.9.6. renumber section 45 as section 50 with its title – Actuarial assessment and thereafter;

- (i) repeal subsection (1) and insert a new subsection (1) to read as follows;
 - (1) All insurers licensed by the Authority shall cause an assessment of its financial condition to be made annually by the insurer’s actuary.
- (ii) By inserting the words “at a minimum” in subsection (2) to read as follows;
 - (2) An assessment to which subsection (1) relates shall, at a minimum include -

3.2.9.7. renumber section 46 as section 51 with its title – separation of accounts

3.2.9.8. renumber section 47 as section 52 with its title – accounts, balance sheet and other returns and thereafter;

- (i) repeal subsection (6) and insert a new subsection (6) to read as follows;
 - (6) No insurer shall change its financial year without the approval of the Authority. An insurer’s financial year shall be as defined in Part 1 of this Act.
- (ii) repeal subsection (7) and insert a new subsection (7) to read as follows;
 - (7) Any financial statement required by section 45 (1) not prepared in compliance with International Financial Reporting Standards will be rejected by the Authority as not timely filed and not in the format as designated by the Authority.
- (iii) by re-numbering and amending subsection (7) as subsection (8) to read as follows;
 - (8) The Authority may specify such additional requirements in respect of the audited financial statements including protected cell companies as it may deem appropriate.

3.2.9.9. renumber section 48 as section 53 with its title – audit and auditor’s certificate, and thereafter;

- (i) Insert a new subsection (2) (d) to read as follows;
 - (d) the adequacy of the insurance company technical provisions is in accordance with this Law and Authority’s acts based on the appropriate actuarial techniques.

3.2.9.10. renumber section 49 as section 54 with its title – submission and publication of returns, and thereafter;

- (i) repeal subsection (1) and insert a new subsection (1) to read as follows;
 - (1) A copy of every account, balance sheet, certificate, report, return or statement required to be prepared under section 50, 51 and 53 shall be signed by two directors and, in the case of a foreign company, the managing agent of the insurer, and by the auditor who made the audit or the actuary who made the valuation as the case may be and shall be submitted to the Authority within 3 months after the end of the period to which they relate with a copy of the board meeting minutes when they were presented.
- (ii) insert a new subsection (5) after subsection (4) to read as follows;
 - (5) where a licensee is a member of a group of companies, the Authority may require the licensee to submit group financial statements.

3.2.10. Renumbering Part VI – Transfer and Amalgamation as Part XI - Transfer and Amalgamation

- (i) renumber sections 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 as sections 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 respectively

3.2.11. Renumbering Part VIII – Other Insurance Professionals as Part XIII – Intermediaries and Other Insurance Professionals

Certain key amendments to Part VIII of the Insurance Act needs to be made to bring it in line with the international standards and best practices of the insurance sector. Presently Insurance intermediary regulation, including oversight of brokers, agents, sub agents and other professionals such as claim personnel, does not provide the consumer protection necessary to develop the confidence required to foster economic development of the insurance sector.

These professional have a key role in building and justifying public trust and confidence in the insurance sector and is therefore important that licensing and conduct standards for intermediaries are appropriate and sufficient.

The proposed amendments will therefore;

1. Enhance consumer protection
2. Foster market development through the expansion of requirements for intermediaries. These includes;
 - a) on-going professional development; and
 - b) by clarifying intermediary obligations.

Moreover, this section will also introduce the registration of claims professionals, as they currently operate domestically without any registration requirements and thus are absent of oversight of their practices. These gaps means that the Authority cannot ascertain their skills, qualifications and experience within the insurance field. In addition to that the section will also introduce the licensing requirements of third party claims administrator.

3.2.11.1. renumber section 67 as section 72 and thereafter;

- (i) amend the title to include “Intermediaries and” before the words “Other Insurance Professionals
- (ii) insert a new sub section (1), (2), (3), and (4) to read as follows;
 - (1) The Authority shall license and supervise the activity of insurance and reinsurance intermediaries
 - (2) Insurance and reinsurance intermediaries means the activity of presenting, proposing and carrying out other preparatory activities up to the signing of an insurance or reinsurance contracts, and the provision of assistance during the period of validity of that contract, especially in the case of claims.
 - (3) The following activities shall not be considered as insurance and reinsurance intermediation:
 - (a) the activity carried out directly by an insurance/reinsurance company and its employee who on a part time and/or full time basis is prohibited from applying and acting as an intermediary to an insurer or policyholder;
 - (b) occasional provision of information in the course of carrying out another professional activity if the intention of that activity is not the provisions of assistance in the signing or implementation of insurance contracts;
 - (c) the activity of handling insurance claims, if this is carried out by an employee
 - (d) the activity of claim adjusting
 - (4) The provisions of this Act that are applicable to the supervisions of insurance companies shall also apply to the supervision of insurance and reinsurance intermediaries on a case-by-case basis as appropriate.
- (iii) renumber sub section (1) and (2) as sub section (5) and (6) respectively;
- (iv) renumber sub section (3) as sub section (7) and thereafter insert the words “or to renew said licence” after the words “An application for a licence” to read as follows;

An application for a license or to renew said license, act as an insurance manager, insurance agent or insurance broker, as the case may be, shall be made in such form, manner and medium, and be accompanied by such documents and information as the Authority may specify.

- (v) Renumber section (4) as section (8) and thereafter insert a new subsection (9) to read as follows;

The Authority shall not grant or renew a license under subsection (5) except where it is satisfied that –

(b) the applicant has such stated capital as may be specified in subsidiary legislations;

(e) upon being granted approval of the license, the applicant has a period of two (2) months to settle the prescribed license fee as prescribed by the Authority;

(h) the applicant for licensing submits proof of completion of continuous professional development as approved by the Authority

3.2.11.2. renumber section 68 as section 73;

3.2.11.3. renumber section 69 as section 74 to be read as follows;

(i) subsection 1 is repealed with a new sub-section to be inserted and be read as follows;

The financial year of an insurance broker, manager and agent shall be defined in Part 1 of this Act.

(ii) under subsection (2) (a) add the words “prepared pursuant to International Financial Reporting Standards” after “its audited financial statements”

3.2.11.4. renumber section 70 as section 75 and thereafter repeal subsection 3 and replaced with new subsection 3 to be read as follow

(3) Any insurance manager, insurance agent or insurance broker who receives payment of premium from a policyholder on behalf of an insurer, shall pay premium, less any commission and other deductions to which by written consent of the insurer he is entitled, to the insurer as agreed to in advance by the insurer but in no event later than thirty calendar days after receipt.

3.2.11.5. renumber section 71 as section 76 and thereafter insert a new subsection 2 after subsection 1 to be read as follows;

(2) The licensing of an insurance broker shall be deemed to have lapsed where the annual fee under subsection (1) remains unpaid two months after date on which it became due.

renumber subsection 2 as subsection 3

3.2.11.6. renumber section 72 as section 77

3.2.11.7. renumber section 73 as section 78 and thereafter repeal subsection (1), (2), (3), (4) and (5) and insert new subsection (1), (2) and (3) to be read as follows;

(i) (1) “There shall be prescribed an annual fee to be paid in respect of every principal insurance representative”

- (ii) (2) “The annual fee under subsection (1) shall be paid by the insurer or the principal insurance representative on such date as may be prescribed”
- (iii) (3) “The registration of a principal insurance representative shall be deemed to have lapsed where the annual fee under subsection (1) remains unpaid one month after the date on which it became due”

3.2.11.8. renumber section 74 as section 79

3.2.11.9. renumber section 75 as section 80 and thereafter;

- (i) amend the title to read as follows “Registration of Insurance Sales Representative”
- (ii) repeal the words “insurance sub-agent” within the section and replacing it with “insurance sales representative”

3.2.11.10. renumber section 76 as section 81 and thereafter;

- (i) amend the title of the section to read as follows “Annual fee for Insurance Sales Representative”
- (ii) repeal the words “Insurance sub-agent” within the section and replacing it with “insurance sales representative”

3.2.11.11. renumber section 77 as section 82 and thereafter;

- (i) amend the title of the section to read as follows “Obligations of Insurance Sales Representative”
- (ii) repeal the words “insurance sub-agent” within the section and replacing it with “insurance sales representative”
- (iii) insert in subsection (2) a new paragraph after “insurance agent” to read as follows;

“An insurance sales representative shall not collect and keep premiums on behalf of an insurer, insurance agent or insurance broker, unless delegated authority is provided by the licensed insurer under the written agreement between the registered insurance sales representative, licensed insurance agent or insurance broker or licensed insurer
- (iv) insert a new subsection (3) after subsection (2) to read as follows;

“An insurer, insurance agent or insurance broker shall keep and maintain, at his or her principal place of business, an updated list of its or his insurance salespersons and provide, on demand by the Authority, a copy of the updated list”.

3.2.11.12. renumber section 78 as section 83 and thereafter;

- (i) repeal subsection (1) and inserting a new subsection (1), to read as follows;

“No person shall act as a claims professional for a licensed insurer or policyholder unless that person is registered with the Authority”

- (ii) repeal subsection (2), and insert a new subsection (2), to read as follows;

“For the purpose of this Act, a reference to a claims professional shall be construed as a reference to a person who for remuneration carries on the business of, or holds himself out as, loss surveyors or loss adjusters as motor assessors, insurance investigators or otherwise advises on, or investigates, the cause and circumstances of a loss and ascertains the quantum of the loss for the purpose of processing a claim on a general insurance policy”.

- (iii) insert new sub-sections after (2), to read as follows;

(3) “The activity of a claims professional shall include the collection of data and calculation of the amount to be paid by the insurer for damages resulting from the occurrence of an insured risk”

(4) “The activity of an independent claims professional shall be carried out by natural or legal persons registered by the Authority.

(5) The Authority shall keep and maintain a register of claims professional

(6) A claims professional shall apply for registration to the Authority in such form, manner or medium as may be specified by the Authority

(7) The application under subsection (1) shall be accompanied by;

(a) information or document establishing the fact that the claim professional is fit and proper as required under section 36 and such other information or document as the Authority may specify; and

(b) such fee as may be prescribed

(8) There shall be a prescribed annual fee to be paid in respect of every claims professional

(9) The annual fee under subsection (8) shall be paid in respect of every claims professional on such date as may be prescribed.

(10) The registration of a claims professional shall be deemed to have lapsed where the annual fee under subsection (8) remains unpaid one month after the date on which it became due.

(11) Where the registration of a claims professional under subsection (6), the name of that person shall be removed from the register of maintained by the Authority.

- (12) The Authority shall adopt the rules on the requirements and procedures and causes for refusal, revocation and suspension of the registrations as prescribed under the Act.
- (13) The Authority shall revoke a license when it finds proof that an insurance claims professional
- (a) has violated the licensing conditions or the requirements of this Law and Authority's acts;
 - (b) does not carry out activity within six months from the date of receiving the license;
 - (c) has made incorrect and subjective claim adjustments;
 - (d) has made untrue claim adjustments and violations of procedures;
 - (e) has made claim adjustments in violation of legal provisions in power and professional standards;
 - (f) has submitted forged or false documents when applying for the license;
 - (g) voluntarily resigns from the activity.
- (14) A claims professional shall take out insurance against their third party liability or another form of similar security for any damage resulting from their actions or omissions in a calendar year.
- (15) Shareholders of insurance companies, insurance agents and brokers and any persons involved in the management and auditing of insurance companies may not be;
- (a) A claims professional;
 - (b) Members of the board of directors or audit committee of a legal person operating as a claim adjustor;
 - (c) Shareholders or employees of a legal person operating as a claims professional.
- (16) A claims professional shall not be engaged in other business or professional activities affecting their integrity, independence or professional skills.
- (17) An independent claims professional may not be an employee of an insurer.
- (18) A claims professional may, in the course of carrying out their activity, request from interested parties the original documents or copies of insurance contracts and other necessary documents in accordance with the legislation in force.

(19) Any person who contravenes this section commits an offense punishable under section 119

3.2.11.13. Insert after section 83, a new title “Third Party Claims Administrator”, thereafter insert its new section 84 with title – “Part A - Third Party Claims Administrator License”

84 (1) A person shall not operate as third party claims administrator without the approval of the Authority.

(2) Application for a license under this part shall be made in such form or manner and medium as the Authority may specify and shall be accompanied by such documents and information as the Authority may specify

(3) Where the Authority is satisfied that an application under subsection (2) ought to be granted, it shall on payment of the prescribed fee, issue a license authorizing the applicant to carry on business as third party claims administrator

(4) The Authority shall not grant a license under subsection (3) except where it is satisfied that:

- (a) the applicant’s objects are limited to the business stated in the application and operations arising directly from it including the organisational documents of the third party claims administrator, such as the articles of incorporation, bylaws, articles of association, trade name certificate, and other similar documents and all amendments to those documents;
- (b) a description of the third party claims administrator, its services, facilities, and personnel;
- (c) the applicant has such stated capital as may be specified by the Authority;
- (d) the applicant is covered by a professional indemnity and/or Directors and officer’s insurance policies acceptable to the Authority and meeting such requirements as may be prescribed;
- (e) the applicant meets any such requirements as may be prescribed by the Authority;
- (f) the applicant has disclosed such information as the Authority has requested in relation to the proposed business, and to persons who will, upon commencement of the applicant’s business, have any proprietary, financial or other interest in, or in connection with, that applicant;
- (g) the applicant has the financial resources, organisation and management capacities that are necessary to carry on the business which is the subject-matter of the application;
- (h) the applicant, the substantial share-holders, controllers, and principal officers of the applicant where it is a body corporate are fit and proper

persons, as required under Section 36, to ensure the sound and prudent management of the business;

- (i) the applicant will, upon being licensed, be able to comply with and fulfil all requirements under this Act.

(5) In considering an application under this section, the Authority may take into account –

- (a) any guidelines or standards relating to the regulation of third party claims professionals, as the case may be, issued by an international body;
- (b) the provisions of this Act or directions issued by the Authority; and
- (c) any information obtained from a foreign regulator or enforcement agency.

(6) The Authority may, in granting a license under this section, impose such conditions and restrictions to the scope of business of the licensee as it deems fit.

3.2.11.14. Insert a new “Part B – Third Party Claims Administrator Requirements” thereafter insert its new section 85 to read as follows;

85(1) No licensee under this Part shall change its financial year without the approval of the Authority

(2) A third party claims administrator shall submit to the Authority not later than 3 months after the expiry of each financial year and with reference to that year –

- (a) its audited financial statements;
- (b) any other statements or returns as the Authority may specify.

(3) The Authority may specify the form in which financial statements are to be prepared for submission under subsection (2).

(4) A third party claims administrator shall –

- (a) maintain a principal place of business
- (b) notify the Authority of any significant modifications following the submission of the application for a license made to the Authority;
- (c) only provide administrative services pursuant to a written service contract for the duration of the service contract;
- (d) maintain at its principal administrative office the third party claims administrator’s books and records of all transactions under the service contract in accordance with generally accepted accounting principles or as required by the relevant international body;

- (e) provide for the confidentiality of personal data identifying an individual covered by an insurance policy.
- (f) continue to meet the conditions required under subsection (1) after the licence certificate is issued;
- (g) keep such records; and
- (h) furnish to the Authority such statements and returns relating to its business in such form and at such interval, as may be prescribed;

(5) A third party claims administrator shall not –

- (a) disclose records containing personal information that may be associated with an identifiable individual covered by an insurance policy to a person other than the individual to whom the information pertains except as is necessary to comply with a court order;
- (b) disclose personal data concerning a covered individual without prior consent of the covered individual if the individual covered by an insurance policy has authorized the release of information to a third person, the third person shall not release that information unless the individual executes in writing another consent authorizing the additional release.
- (c) be construed to apply to information disclosed for any of the following reasons:
 - i. For claims adjudication;
 - ii. For claims verification;
 - iii. For other proper insurance policy administration; and
 - iv. To an insurer for the purchase of excess loss insurance and for claims under the excess loss insurance.

3.2.11.15. Insert a new Part C – Third Party Claims Administrator processing claims” thereafter insert its new section 86 to read as follows;

- (86) (1) A third party claims administrator in processing claims, shall not do any of the following:
- (a) Misrepresent pertinent facts relating to coverage;
 - (b) Fail to make a good faith effort to acknowledge promptly or to act reasonably and promptly upon communications with respect to a claim for benefits;
 - (c) Fail to adopt and implement reasonable standards for the prompt investigation of a claim for benefits;
 - (d) Refuse to process claims without conducting a reasonable investigation based upon the available information;

- (e) Fail to communicate affirmation or denial of coverage of a claim for benefits within a reasonable time after a claim has been received;
 - (f) Fail to make a good faith effort to promptly, fairly, and equitably process a claim for benefits;
 - (g) Fail to promptly provide a reasonable explanation of the basis for denial or partial denial of a claim for benefits;
 - (h) Refuse to process claims because of race, color, creed, marital status, sex, national origin, residence, age, disability, or lawful occupation.
 - (i) Knowingly compel any person covered by the insurance policy to institute litigation to recover amounts due under a benefit insurance policy by offering substantially less than the amounts due unless the amounts due are reasonably in dispute.
 - (j) For the purpose of coercing a person covered by the insurance policy to accept a settlement or compromise of a claim, inform any person of a policy of the third party claims administrator of appealing judicial, arbitration, or administrative hearing decisions which are in favor of the persona(s) covered by the insurance policy.
 - (k) Delay the investigation or processing of a claim by requiring any person covered by the insurance policy, or the provider of services to the person covered by the insurance policy, to submit a preliminary claim and then requiring subsequent submission of a formal claim, seeking solely the duplication of a verification. This subdivision does not apply to the predetermination or precertification of benefits.
- (2) The Authority may suspend or revoke the license of a third party claims administrator, if any of the actions in sub-section (13) is committed while processing any claims.
- (3) The Authority shall adopt the rules under the Act on the requirements, procedures and causes for surrender, refusal, revocation and suspension of the license of any third party claims administrator.
- (4) Any person who –
- (a) contravenes subsection (1);
 - (b) fails to comply with any of the conditions attached to the person's license, commits an offence punishable under section 119.
- (5) Any person who for the purpose of an application for a license under subsection (3) –
- (a) makes a representation or statement which the person knows to be false in a material particular; or
 - (b) intentionally makes a statement which is false in a material particular, commits an offence punishable under section 119

3.2.12. Insert a new Part XIV – Consumer Protection

The rationale in inserting this new section is to reflect the Financial Consumer Protection initiative, whereby the Authority finds it deem to be its obligation to protect consumers that are interacting with its licensees.

- 3.2.12.1. Insert the new Part XIV – Consumer Protection thereafter, repeal section 79 and insert as its new section 87 to read as follows;

87 (1) All licensees and registered person carrying out any activities of insurance business under this Act must:

- (a) treat all financial consumers equitably, honestly and fairly, at all stages of their relationship;
 - (b) act in confidentiality and honesty to respect the insured rights;
 - (c) pursuant to section 18 of the Financial Consumer Protect Act, licensees must disclose to the insured prior to the conclusion of the contract, all information on the insurance products, insurance contract special and general conditions, benefits stemming from insurance contracts, and the fees and premiums which the insured have to pay;
 - (d) must have in place relevant policies and procedures for the protection and use of a consumer;

provide for the confidentiality of personal data identifying an individual covered by an insurance policy;
 - (e) pay claims at the appropriate amount and in due time
- (2) All licensees and registered person carrying out any activities of insurance business must not provide information or misrepresentations that misinform for deceive consumers.
- (3) Where an insured event occurs, the insurer must compensate the insured in accordance with the insurance contract and insurance period.
- (4) A provision of an agreement shall be void if it seeks to provide that –
- (a) an insurer is exempt from liability for the actions, omissions or representations of a person acting on its behalf in relation to an insurance policy;
 - (b) the person who has entered into the insurance policy declares or admits that a person who acted on behalf of the insurer in connection with an offer of that person to do so, or with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person;

- (c) the obligation of an insurer under an insurance policy is dependent upon the discharging of an obligation of another person under reinsurance treaty;
- (d) the person who has entered into an insurance policy, or the life insured or any beneficiary under an insurance policy waives a right to which the person is, by or under this Act, entitled.

3.2.12.2. Repeal section 80 and substitute it as a new section 88 with title – Information on policies, to read as follows;

88 (1) Where an insurance policy, other than a reinsurance treaty, is entered into, the insurer or the insurance agent shall, not later 30 days after the policy has been entered into, on policies provide for the purpose of the policyholder written information (in the form of a summary relating to) that (at least the following matters), –

- (a) Ensures that the information disclosed to the insured prior to contract execution is clear and adequate;
- (b) Before contract execution and during contract period of validity, insurers shall help consumers in good faith to understand the technical aspect of insurance coverage and other elements of the insurance contracts, by providing them with oral and written information and by not misleading or deceiving them;
- (c) Before contract execution and during the contract validity period, inform consumers of any conflict of interests that they might have with other parties, including any economic and legal relations that might affect the performance of insurers obligations towards consumers.
- (d) Perform their information obligation toward other persons benefitting under insurance contracts, if those persons request so.
- (e) Provide consumers, prior to signing an insurance contract with information on the respective type of insurance that includes:
 - (i) the company name, legal form and structure, and the address of the company head office;
 - (ii) the address of the head office of the branch through which the insurance contract is signed;
 - (iii) the internal procedures for claim handling, and the structure responsible for dispute resolution;
 - (iv) covered risks and exclude risks, and the options to change the contract, in compliance with the general conditions;
 - (v) contract termination periods and methods;

- (vi) the method of premium calculation, time-limits and methods for paying it, any consequences for failing to pay the premium, and the portion of the premium corresponding to the basic coverage and additional coverage;
 - (vii) requirements and time-limits for the payment of insurance claims or insured amount;
 - (viii) the methods for the calculation and allocation of bonuses;
 - (ix) the method for the calculation of the payable claim and insurance deductibles, in the case of early completion of payments, and the guaranteed amount under the insurance contract;
 - (x) in the case of contracts on units/shares in collective investment undertakings, the complete list of the specific collective investment undertakings in which life contract funds may be invested, and the characteristics of assets comprising those undertakings;
 - (xi) out-of-court proceedings for settling any disputes in relation to insurance contracts in line with the internal rules of the insurer, without prejudice to the right to take action in court;
 - (xii) the conditions on unilateral contract termination;
 - (xiii) general data on taxes, fees and commission related to the insurance contract.
- (2) All licensees and registered person carrying out any activities of insurance business shall inform the insured of any changes to the legislation on insurance, insolvency, mergers, take-overs, liquidation or winding-up of companies in any way, revocation of a license for a specific class or all classes of insurance, and of any other changes or events affecting the rights and obligations of the insured, within 10 days from the date of such event.
- (3) All licensees and registered person carrying out any activities of insurance business shall comply with the information obligation during the contract validity period, by using their official websites, mail, fax, telegraph, email and secure electronic signature.
- (4) An insurer or an insurance agent who knowingly provides a summary required to be made under this section which is false or misleading in any material particular commits an offence punishable under section 119

3.2.12.3. renumber section 81 as section 89

3.2.12.4. renumber section 82 as section 90

3.2.12.5. renumber section 83 as section 91

3.2.12.6. renumber section 84 as section 92

- 3.2.12.7. renumber section 85 as section 93
- 3.2.12.8. renumber section 86 as section 94
- 3.2.12.9. renumber section 87 as section 95

3.2.13. Inserting a new Part XV to read as Policy Owners “Protection Fund” (“POPF”)

The provision for Policy Owners is currently under section 88 of the current legislation and there is a need to amend this section in order to bring more clarity in regards to the POPF matters.

The FSA has received complaints from the insurance intermediaries against the application of the POPF levies on the insurance policies borne by policyholders. In certain circumstances, insurance companies have been forced to waive the policyholder’s obligation to pay for the 1% of the POPF levy applicable on the premiums of the policies. Therefore, there is requirement to amend the laws in order to reflect the fact that insurance companies derive their income from insurance premiums paid by policyholders.

- 3.2.13.1. Repeal section 88 and substitute with a new section as section 96 titled as “Policy Owner’s Protection Fund” to read as follows;

96 (1) There shall be established, under regulations made by the Minister, a fund to be known as the Policy Owners Protection Fund which shall have all the powers to regulate its own proceedings:

- (a) for the payment of any claims, in respect of risks situated in Seychelles as may be prescribed, against an insurer licensed under this Act, remaining unpaid by reason of insolvency of such insurer, subject to such limitations, restrictions, exclusions, and conditions as may be prescribed; and
- (b) for the payment of compensation to persons suffering personal injury in traffic accidents where the tortfeasor or the vehicle which caused the injury is untraceable, subject to such limitations and restrictions as may be prescribed.

(2) Subject to such exceptions or restrictions as may be prescribed, the Authority shall –

- (a) ensure that a sum equal to –
 - (i) the full amount of any liability of a registered insurer in liquidation or in financial difficulties, in respect of a sum payable to any person entitled to the benefit under the terms of any compulsory insurance policy, being a liability arising in respect of a liability of the policy owner which is subject to compulsory insurance; and
 - (ii) 90% of the amount of any liability of a registered insurer in liquidation or in financial difficulties towards a policy owner under the terms of any life policy which was a Seychelles policy and not being a contract of reinsurance, is paid to the person or policy owner as soon as reasonably practicable after the beginning of the liquidation; and

- (b) make arrangements so far as reasonably practicable for securing continuity of insurance for every policy owner of a registered insurer which is in insolvency who is a policy owner in respect of a life policy which was a Seychelles policy and not being a contract of reinsurance, and for this purpose the Authority may take measures to secure or facilitate the transfer of the life business of the insurer, or part of that business, to another registered insurer or to secure the issue by another registered insurer to the policy owners of life policies in substitution of their existing policies;
- (c) ensure that a sum equal to such amount of compensation payable to a person eligible under subsection (1) (a) or (b) as determined by the Authority is paid to the person as soon as reasonably practicable after the determination.

3.2.13.2. renumber section 89 as section 97, thereafter repeal its subsection (1), (2) and (7) and substitute with new subsections respectively to read as follows;

- (1) For the purposes of financing the expenditure of the Policy Owner's Protection Fund, a levy which is derived from insurance premiums collected from insurance policies, may be imposed from time to time by regulations on the registered insurers carrying on –
 - (a) general business under this Act (referred to in this section as “a general business levy”); and
 - (b) life business under this Act (referred to in this section as “life business levy”)
- (2) The proceeds of the general business levy and life business levy under subsection (1) shall be paid into the Policy Owners' Protection Fund unless the levy is suspended based on a biennial determination by an internationally credentialed, and that there are sufficient funds to meet projected obligations for the next three years.
- (7) The Policy Owners' Protection Fund shall be maintained in accordance with such regulations as may be prescribed.

3.2.13.3. renumber section 90 as section 98

3.2.13.4. renumber section 91 as section 99, thereafter repeal its subsection (1) and (2) and substitute with new subsections respectively to read as follows;

- (1) No claim for payment of compensation shall be made under section 88 (1)(b) except where the claim is made under the eligibility requirements as prescribed under the relevant regulations
- (2) Claimant is not eligible to be compensated by the POPF if any of the following are true:
 - (i) Claimant fails to notify the Authority of their intention to make a claim within five years from the date of occurrence accident.
 - (ii) The claim for injury or death is covered by an insurance policy.

- (iii) Claimant is the spouse, parent or child of the judgement debtor (person against whom the claim is made).
- (iv) At the time of accident, the Claimant was operating or riding in a motor vehicle which he/she had stolen or helped to steal or were operating or riding in a motor vehicle without the owner's permission.
- (v) Claimant was the owner or registrant of an uninsured vehicle.
- (vi) The owner or driver of the motor vehicle of the accident is, on a balance of probability, found liable in proceedings instituted against them in a court, for damages arising out of such use.
- (vii) The judgement debtor was validly insured at the time of the accident and the insurance company is liable to pay part or all the judgement.
- (viii) Claimant was operating a motor vehicle without a valid Driving License and a road fund license.
- (ix) The accident occurred outside of Seychelles.

renumber sub-section (2) as sub-section (3), and thereafter insert new sub-sections (4), (5) and (6) to read as follows;

- (3) Where the Authority pays any money out of the Fund to any person eligible for payment out of the Fund, the Authority shall be subrogated to the extent of such payment to the rights and remedies of that person in relation to the matter for which the payment was made.
- (4) Any application for compensation which the Authority investigates to be fraudulent shall be referred to the Seychelles Police for prosecution.
- (5) Claimants who knowingly apply for compensation by providing any false, inaccurate or misleading information or intentionally omitting information material to the claim will result in the denial of compensation.
- (6) The Authority may, under the advisement of the POPF Committee, outsource the claim handling function. However, the outsourced functions:
 - (a) may not endanger the interests and objectives of the Authority and the POPF Committee;
 - (b) is performed under a contract, in which:
 - I. The committee delegates a part of its function to another independent person or entity;
 - II. The contract states that the delegating committee is responsible for the outsourced functions;

- III. The contract specifies that the independent person or entity accepting the outsourced functions be obligated to provide the Authority with the information which the Authority shall use for supervision purposes.
- (c) Independent person or entity performing any functions are required, upon request from the Authority to submit data on the activity of the independent person or entity that signed the outsourcing contract or any relevant data as required by the Authority.

3.2.14. Renumbering Part X as Part XVI and thereafter amending the title to Supervision (Inspection and Investigation)

The FSA wishes to introduce a new title Supervision under Part X of the current Insurance Act to replace Inspection and Investigation. Supervisory practices such as on and off-site inspections are a critical role in the operations of the Authority as a regulator and it ensures that there is financial stability of insurers and the protection of policy holders.

The Insurance Core Principles (“ICPs”) state that it is essential for the Authority to carry out inspections to examine the business of an insurer and its compliance with legislation and supervisory requirements. This amendment is therefore required to bring the Insurance Act with the current international best practices.

- 3.2.14.1. renumber section 92 as section 100, thereafter insert new subsections (2), (3), (4), (5) and (6) respectively to read as follows;

- (2) The Authority shall supervise the activity of licensed entities and persons to evaluate compliance with provisions of this Act and the application of risk-based methodologies.

- (3) For the purposes of this Act, other persons’ subject to supervision shall be;

- i)* reinsurance companies;
 - ii)* insurance groups;
 - iii)* branches of insurance companies from foreign/member countries;
 - iv)* brokers;
 - v)* brokerage companies;
 - vi)* agents;
 - vii)* agent companies; and
 - viii)* any other natural or legal persons whose activity is supervised

- (4) For purposes of supervision under this section a significant influence shall be determined based on the criterion of –

- i)* direct or indirect holding,
 - ii)* influence and/or various contractual obligations,
 - iii)* relations within the group,
 - iv)* exposure risk,
 - v)* risk concentration,
 - vi)* transfer of risk,
 - vii)* percentage of ownership holding and/or intragroup transactions.

- (5) An insurance group exists when an insurance company or reinsurance company or mixed controlling insurance group, controlling financial company or controlling insurance company, or controlling insurer with mixed activity with its head office in the Seychelles is a parent company of one or several insurance or reinsurance companies with their head offices in the Seychelles is a parent company of one or several insurance or reinsurance companies with their head offices in the Seychelles or foreign country.
- (6) A participating company shall be a parent company or a company that owns a holding or is a member of a horizontal group. A horizontal group shall be a group in which a company is related with one or more other companies, in one of the following ways:
- i)* they are subject of joint control under the provisions of an agreement, contract or articles of association;
 - ii)* their managerial, governing and supervisory structure mainly consist of the same persons holding those positions during the financial year, provided that the companies prepare or might have to prepare consolidated financial statements.
- (1) Supervision includes, but is not limited to:
- (a) monitoring, collecting and verifying reports and notifications filed by insurers and other persons who, pursuant to the legislation in force;
 - (b) reference to codes and/or directives as issued by the Authority;
 - i)* general meetings of shareholders and any decisions taken;
 - ii)* the list of insurance company shareholders, influencing holdings or changes thereto;
 - iii)* the statistical database used in the calculation of premiums and mathematical provisions in the case of life assurance;
 - iv)* the statistical database used in the calculation of premium tariffs and technical provisions in the case of non-life assurance, including premium tariffs;
 - v)* appointment and dismissal of board members, members of board of directors and key functionaries;
 - vi)* appointment and dismissal of authorized actuaries;
 - vii)* changes in the internal audit method of operation;
 - viii)* planned commencement of activity, office changes, shut down or temporary suspension of branch activity or any changes in the type of activity carried out by a branch;

- ix)* investments on the basis of which the insurer has directly or indirectly acquired qualifying holding in another legal person, and any further investments in that legal person;
- x)* significant changes in the capital structure;
- xi)* information on related persons or parties, and changes in that information;
- xii)* cease of activity under specific insurance classes;
- xiii)* reinsurance contracts signed with reinsurers;
- xiv)* advertising and promotional materials;
- xv)* business plans, in accordance with the time limits set by the Authority;
- xvi)* technical basis used in the calculation of premiums, including tariffs and commissions;
- xvii)* to ensure supervision of the business transactions within an insurance group if they have been performed as per normal market conditions, an insurer that is a member of an insurance group shall report to the Authority all the significant transactions intra-group that were agreed upon or performed between or by that insurer and:
 - A. related persons or parties of the insurer;
 - B. companies participating in the insurer;
 - C. related companies of a company participating in the insurer;
 - D. natural persons participating in the insurer or its related companies;
 - E. group entities receiving loans;
 - F. group expense sharing agreements;
 - G. group entity reinsurance and retrocession agreements;
 - H. group entity investments;
 - I. group entity transactions related to insurer solvency;
 - J. group entity off-balance sheet transactions and/or guarantees
 - K. carrying out onsite inspection of insurance company activity;
 - L. imposing supervisory measures in accordance with this Act.

(2) Insurer activities may be supervised by other institutions in line with the powers granted to them by relevant laws.

(3) The Authority shall cooperate with other domestic and foreign competent authorities and international organizations in the context of supervising the activity of the entities specified in this Act.

renumber sub-section (2), as sub-section (7), to read as follows;

(7) A licensee or registered person who fails to comply with a direction issued under subsection (1) commits an offence punishable under section 119.

3.2.14.2. renumber section 93 as section 101

3.2.14.3. renumber section 94 as section 102 and thereafter repeal and substitute subsection 1 (c) with the new subsection 1 (c) to read as follows;

1 (c) satisfies criteria or standard set out in or made under this Act or any other applicable written law including the Anti-Money Laundering and Countering the Financing of Terrorism Act 2020

3.2.14.4. renumber section 95 as section 103

3.2.14.5. renumber section 96 as section 104

3.2.14.6. renumber section 97 as section 105

3.2.14.7. renumber section 98 as section 106

3.2.14.8. renumber section 99 as section 107

3.2.14.9. renumber section 100 as section 108

3.2.15. Inserting a new, Part XVIII as Preventive and Corrective Action

The Authority does not currently have the required tools to prevent insolvencies or correct insurer practices causing financial impairment, both of which are essential to the regulatory system. It is therefore needed that a new section within the Insurance Act be introduced to address this concern and issue. The proposed amendments will provide the Authority with the legal and operational means to take timely corrective steps, including both preventive and corrective actions.

3.2.15.1. Inserting a new section as section 109 to read as follows;

109 (1) If the capital of an insurer is inadequate due to solvency requirements or other reasons, the board of directors of the insurer shall promptly take the necessary measures to reach the required capital level, and shall inform the Authority of the proposed measures within seven calendar days from the date of their proposal, or action can be taken by the Authority at any time to assure compliance with solvency requirements.

- (2) If the amount of assets evaluated as adequate by the Authority differs from the amount of assets set by the insurer or its controlled company, the Authority shall send to the auditor, actuary and audit committee of the insurance company a written communication on the adequate amount of the assets set by the Authority.

3.2.15.2. Insert new section as section 110 to read as follows;

110. The Authority shall take corrective action if:

- (1) it deems that an insurer or the persons responsible for an insurer is committing or is about to commit an action or is conducting or is about to conduct a type of business ethical behavior that is dangerous or unsustainable practice for the company;
- (2) it determines that an insurer is or is expected to be incapable of fulfilling its obligations when they fall due or claimable;
- (3) it deems that a company's assets are not sufficient to ensure appropriate protection for the insured and creditors;
- (4) it deems that the assets of an insurer or the assets held under the management of an insurance company have not been accounted for accurately;
- (5) it deems that a threat is posed to the interests of the insured and/or that the level of capital is not sufficient in accordance with the provisions of this Law or it is decreasing in such a way as to negatively affect the insured or creditors;
- (6) it deems that an insurer is posing a threat to the interests of insured, creditors or owners of the assets under the management of the company, including the initiation of bankruptcy proceedings;
- (7) an insurer is or is expected to be incapable of meeting the capital adequacy requirements, including the guarantee fund POPF requirements;
- (8) an insurer does not continue to meet one or several of its original licensing requirements;
- (9) one of the persons referred to in this Law does not continue to meet one or several of the fit and proper requirements;
- (10) an insurer violates the provisions of this Law or Authority's actions acts in the area of insurance
- (11) an insurer does not meet or might not meet the conditions applicable to the operation of the licensed insurance activity;
- (12) an insurer violates the risk management regulations;
- (13) an insurer violates the rules accounting bookkeeping and/or business bookkeeping and the rules on the periodic reporting, internal auditing or auditing of annual statements;

- (14)an insurer fails to fulfil its obligation to report and inform in compliance with the Act;
- (15)an insurer violates the rules in relation to the appointment of the approved authorized actuary;
- (16)a member of a board of directors has not received the approval pursuant to the requirements of the Act;

3.2.15.3. Insert new section as section 111 to read as follows;

- 111. Where the Authority deems that an insurer is affected by one or more of the provisions of section 110 it shall take one or several of the following corrective actions with respect to the insurer;
 - (1) instruct the insurer or responsible person to stop performing the specific action or to pursue a specific business ethical conduct, or instruct them to perform a specific action which, in the opinion of the Authority, is necessary to prevent or correct the violations of the Act and the Authority's regulations;
 - (2) issue an order directive for the elimination of violations and irregularities;
 - (3) direct the insurer to submit a financial recovery plan, as referred to in this Law, to comply with the capital adequacy requirements;
 - (4) direct the insurer to have its financial activity audited by an auditor selected by the Authority but paid by the insurer, or instruct the insurer to dismiss an auditor and appoint another one in accordance with the conditions laid down by the Authority, or ask the external auditor to expand the audit scope or perform other procedures and prepare a report for the Authority;
 - (5) direct an external auditor to perform, at insurer expense, a special audit in relation to the appropriateness of the insurer procedures for protecting its creditors, shareholders and policyholders, or any other audit in the interest of the public, and report to the Authority on that;
 - (6) direct the insurer to appoint, at its expenses, an Authority approved person to provide advice to the insurer on carrying out its activities in the appropriate manner, who will report to the Authority within three months from the date of his appointment;
 - (7) ask for a revaluation of the assets that were taken into account in the calculation of the insurer capital, where there has been a significant change in the market value of those elements compared with the previous financial year;
 - (8) make a valuation of some or all of the insurer's assets or the assets of one of its controlled companies by the Authority or an expert appointed by the Authority at the expense of the insurer;

- (9) request from the insurer additional information at any time and from the Authority deems necessary and/or ask for increased frequency of reporting to the Authority and/or carry out the respective inspections that are related to the said reporting;
- (10) request an external review by an independent authorized actuary, of the actuarial methods and assumptions used by the insurer, at the insurance company's expenses, or instruct the insurance company to modify its actuarial methods or assumptions, by making a revaluation of its provisions, or ask for an independent or external actuary to review the adequacy of the provisions of the insurance company;
- (11) ask the insurer to reinsure any liabilities in excess of the maximum coverage in accordance with the Act;
- (12) expand the scope and increase the frequency of the on-site inspections in accordance with the provisions of the Act, or designate authorized employees to inspect the insurer in order to monitor the situation on an ongoing basis if the Authority deems it necessary;
- (13) direct a recalculation of the required solvency of the insurer based on reinsurance or retrocession, if the nature or qualities of reinsurance retrocession contracts have changed significantly compared with the previous financial year or if those contracts do not enable balanced transfer or risk;
- (14) place the insurer or its assets under provisional administration, appoint new managers of the company, and immediately take over the assets of the company;
- (15) ask for complete or partial license suspension and revocation;
- (16) require an insurer to undertake other specified actions or establish timelines for some or all of its activities.

3.2.15.4. Insert new section as section 112

- 112. where the interests of the insured are jeopardized and/or the capital of a company is inadequate in accordance with the provisions of this Law, the Authority may require the insurer to file a financial recovery plan, subject to the Authority's approval within 28 calendar days of receipt, for at least the following three financial years, containing one or several of the following elements:
 - (1) estimates of management expenses, and comparisons with current general expenses and commissions;
 - (2) detailed estimates of income and expenditure in respect of direct insurance activity and/or detailed estimates of income and expenditures in respect of reinsurance acceptances and reinsurance sessions;
 - (3) a forecast of financial statements and profit and loss account;

- (4) a calculation of the capital and guarantee fund POPF, pursuant to the provisions of the Act;
- (5) a calculation of the required solvency margin, pursuant to the provisions of the Act and Regulation;
- (6) estimates of the financial resources intended to cover the required solvency margin and all underwriting liabilities;
- (7) the overall reinsurance policy or the overall retrocession policy.

3.2.15.5. Insert new section as section 113

113. Orders and Directives issued pursuant to Part XII of the Act may contain one or several of the following restrictions or requirements:

- (1) orders the Board of directors the insurer to implement an action plan that ensures the guarantee fund level;
- (2) orders the insurer to undertake or stop specific actions, perform one or several of the requested actions, or limit its activity to specific areas;
- (3) orders the Board of directors/supervisory board of the insurer to convene the shareholders' general meeting and propose specific resolutions;
- (4) prohibits the insurer from signing new insurance contracts under one or several insurance classes, or orders the insurance company to maintain a specific level of premiums proportionate to the company solvency or take into consideration other factors depending on the situation;
- (5) prohibits the insurer from making specific types of payments, payments to specific persons, specific transactions or other types of transactions;
- (6) prohibits the insurer from making transactions with specific shareholders from its shareholders, members of its board of directors/supervisory board, related parties or investment funds managed by a fund management company that is a related party of the insurer;
- (7) orders the Board of directors of the insurer to adopt and implement the appropriate measures in order to:
 - i. improve the risk management procedures;
 - ii. change the goals of insurer activity;
 - iii. limit loans;
 - iv. improve overdue receivable claim collection procedures

- v. fairly and correctly value the item lines in the face of the balance sheet and off the balance sheet;
 - vi. improve the IT system;
 - vii. improve internal control and internal audit procedures;
 - viii. take any other measures necessary for the implementation of risk management rules;
- (8) prohibits or restricts the free use of a part or all the assets, also including the activity related to lending and investments, as per the rules adopted by the Authority;
- (9) keeping in the Seychelles assets at the amount deemed by the Authority necessary to ensure fulfillment of the liabilities assumed by the insurer in question;
- (10) prohibits the insurer from assuming financial liabilities for third parties;
- (11) prohibits an insurer, which is subject of third party claims, from paying or transferring any amounts to any other persons or assuming the liability to do so;
- (12) prohibits an insurer from borrowing, paying dividends and/or other management fees and/or transferring liabilities to third parties or to a person whose relationship to the insurance company is such as to put him under the obligation to comply with the fit and proper requirements;
- (13) orders the Board of directors of an insurer to dismiss or replace the managing director/management board members, key functionaries of the insurer or make a functional restructuring of the company if:
- (a) the insurer does not comply with the order to eliminate violations and irregularities;
 - (b) the insurer does not implement the measures provided for in this Section;
 - (c) the insurer repeatedly fails to notify or accurately and timely submit a report to the Authority or obstructs in any other way the exercise of supervision by the Authority;
 - (d) request an insurer or its qualifying shareholder to sell all or a part of his shares in the insurance company by a time-limit set by the Authority if the provisions of this Act are violated and if the other necessary measures have been exhausted; or
 - (e) order addressed to the insurer to transfer a part or all the insurance contracts or reinsure a part or all underwritten risks under those contracts, in accordance with the conditions laid down by the Authority.

3.2.15.6. Insert new section as section 114

114. Insurers, qualifying shareholders and main controllers shall implement the orders directives the Authority issues in accordance with this Act.

3.2.15.7. Insert new section as section 115

115. Pursuant to the provisions of the Act, the Authority may ask an insurer to submit a business plan that reflects the appropriate corrective measures that would correct issues within a time limit as specified by the Authority

3.2.15.8. Insert new section as section 116

116. In the order directives provided for in Part XII, the Authority shall specify the time limits for the elimination of violations or irregularities.

3.2.15.9. Insert new section as section 117

Insurers shall submit to the Authority a detailed report on the measures taken to correct the circumstances referred to in sections 109 and 110 of the Act within the time limits specified by the Authority in the respective order. Together with the report, insurers shall also submit any documents or other evidence that provide proof of the elimination of violations or irregularities.

- (1) immediately upon receiving the report from an insurer, the Authority shall verify the correction of violations pursuant to the provisions of this Part. Before making a decision, the Authority may conduct another inspection of the insurer which is necessary to verify whether the violations and irregularities have been eliminated.
- (2) If the report is incomplete or the attached evidence does not provide proof of the elimination of the identified violations and irregularities, the Authority shall order the insurer to complete the report referred to in Section 116 of this part within the specified time limit.
- (3) The Authority shall make a review of the report on the correction of violations and make a decision on it within 30 calendar days from the date of receiving all required and requested information.

3.2.16. Renumbering PART XI as Part XIX – ADMINISTRATOR AND CONSERVATOR

3.2.16.1 renumber section 101 as 118

3.2.16.2 renumber section 102 as 119

3.2.16.3 renumber section 103 as 120

3.2.16.3 renumber section 104 as 121

3.2.16.4 renumber section 105 as 122

3.2.16.4 renumber section 106 as 123

3.2.16.5 renumber section 107 as 124

3.2.16.6 renumber section 108 as 125

3.2.17. Renumbering Part XII as Part XX -Termination of Licenses or registration and thereafter introduce new sections

The process and rationale for termination of licences is not clearly set forth in the existing Insurance Act, which causes confusion on the part of the Authority and its respective licensees. Therefore, a review of this section needs to be done whereby new provisions shall be added.

3.2.17.1. renumber section 109 as section 126 thereafter amendment subsection 1 only, to read as follows;

126 (1) A licensee may surrender its license and/or registration after giving the Authority written notice of at least one month –

- (a) before adopting a resolution for the voluntary winding up;
- (b) prior to the cessation of business.

3.2.17.2. Insert a new sub-section (4) to read as follows:

- (4) As part of the proceedings, the licensee and/or the registered person must return to the Authority the original license and/or registration certificate as was issued by the Authority

3.2.17.3. Insert a new sub-section (5) to read as follows:

- (5) Where a license and/or is surrendered, the Authority shall give public notice of the surrender

3.2.17.4. renumber section 110 as section 127, thereafter repeal sub-section (1) only and substitute with a new sub-section (1) to read as follows:

127 (1) The Authority may forthwith revoke the license where it appears that –

- (a) the licensee has ceased to carry on the business for which it was licensed for or carries out other businesses besides the activity it was licensed for;
- (b) the licensee has failed to commence business within 6 months from the date on which it was licensed;
- (c) the licensee fails to correct the circumstances referred to in Part XII of the Act within the time-limits specified by the Authority in the respective order or the licensee fails to comply and/or fulfil with the conditions and obligations under which it was licensed;
- (d) there exists a ground which, under any provision of this Act, would have prevented the licensee from being licensed;
- (e) the licensee is unable to meet its financial obligations or to keep the solvency margin or where the total amount of liabilities of the licensee, including its technical

or mathematical provisions, calculated in compliance with this Act and the Authority's acts, are higher than the total amount of its assets;

- (f) the business of the licensee is not being carried on in accordance with sound insurance principles;
- (g) the licensee has contravened any of the provisions of the Act or any condition imposed on its license or any directions given by the Authority under this Act, regardless of whether there has been any conviction for an offence in respect of such contravention;
- (h) the licensee has furnished false or misleading information or has concealed, or failed to disclose material facts in its application for a license or in any return filed under this Act;
- (i) the licensee proposes to make or has made a composition or arrangement with its creditors or goes into receivership or liquidation, is wound up or is dissolved; or
- (j) an insurer, being a foreign company, has ceased to be authorized to issue insurance policies or to make contracts of a particular description as a result of being convicted of any offence under the law governing insurance business or an offence under any other written law in the country where it has its head office;
- (k) the licensee has been convicted of an offence under this Act or any other written law whether in Seychelles or elsewhere;
- (l) bankruptcy proceedings have been initiated against the insurer or the insurer has been wound-up;
- (m) the insurer implements internal business practices that have illegal effects on the rights of the insured.

3.2.17.5. renumber section 111 as section 128, and thereafter insert a new subsection (3) after subsection 2 to read as follows:

(3) The Authority shall revoke the license only for one or several specific classes for an insurer, if the cases listed in Section 119 of the Act refer to company activity in those insurance classes. The provisions that apply to the full revocation of license shall also apply to the revocation of license only for one or some specific classes.

3.2.17.6. insert a new subsection (4) after subsection (3) to read as follows;

(4) In the cases referred to in Sections 119 of the Act, the Authority may give a license revocation warning to an insurer, provided that the insurer does not, in the period specified in the Authority's decision, commit additional violations or irregularities that are the same as the ones for which the license revocation warning decision was taken. In the revocation warning decision the Authority may instruct the insurer to eliminate violations and irregularities or implement measures relating to the taking of the license revocation warning decision within a time limit specified in the decision. The Authority

shall lay down the restrictions or conditions to be complied with by insurers in the time period specified by the Authority.

3.2.17.7. Insert a new subsection (5) after subsection (4) to read as follows:

(5) If an insurer commits violations or irregularities, the same as the ones for which the license revocation warning decision was taken, or fails to comply with the conditions provided for in the Act, the Authority shall have the right to revoke its license.

3.2.17.8. Insert a new subsection (6) after subsection (5) to read as follows:

(6) The Authority revocation decision shall be communicated to the insurer within 14 days from the date of the decision requiring the insurer to stop;

- (i) signing new contracts;
- (ii) renewing insurance contracts;
- (iii) extending insurance coverage for contracts in power;
- (iv) increasing an insurance premium.

3.2.17.9. Insert a new subsection section (7) after subsection (6) to read as follows:

Insurers shall submit their licenses to the Authority within 10 working days from the date of receiving notification of license revocation decision. Publication of license revocation decision shall be published in the official Gazette and the daily newspaper.

3.2.18. Renumbering Part XIII - Miscellaneous as Part XXI

3.2.18.1 renumber section 112 as Section 129

3.2.18.2 renumber section 113 as Section 130

3.2.18.3 renumber section 114 as Section 131

3.2.18.3 renumber section 115 as Section 132

3.2.18.4 renumber section 116 as Section 133

3.2.18.5 renumber section 117 as Section 134

3.2.18.6 renumber section 118 as Section 135

3.2.18.7 renumber section 119 as Section 136

3.2.18.8 renumber section 120 as Section 137

3.2.18.9 renumber section 121 as Section 138

3.2.18.10 renumber section 122 as Section 139

3.2.18.11 renumber section 123 as Section 140

3.2.18.12 renumber section 124 as Section 141

3.2.18.13 renumber section 125 as Section 142

4. Recommendations

Given the nature and scope of the proposed amendments in relation to the current insurance environment, the Authority is of the view that the proposed amendments should be phased over a period of time by having a commencement date after assent of the amendment Act as deemed appropriate to allow the licensees time to develop and implement the procedures and practices required through these amendments.