

Law No. 6/2005 6 July

## **REGIME FOR THE LICENSING, SUPERVISION AND REGULATION OF INSURANCE COMPANIES AND INSURANCE INTERMEDIARIES**

The present law approves the regime for the licensing, Supervision and regulation of insurance companies and insurance intermediaries, with a view to establishing a sound, legal basis for launching the business of insurance in Timor-Leste. In effect, doing the business of insurance turns out to be of paramount importance to various sectors. The existence of an insurance market contributes to the safety of people and their assets and, above all, to the development of any business branch. Only through resources to insurance may businessmen undertake a transfer of the different risks that hang over them, be they risks relating to the business itself, their assets or the ability of their employees. The implantation of the business of insurance in Timor-Leste is thus a decisive factor for the development of the private sector and consequently for the overall development of the country.

Yet, this law is solely intended to allow one to carry on the business of insurance. The economic structure of the insurance contract and, above all, of insurance companies, requires the establishment of an appropriate Supervision system that will install the market with an overall climate of trust in insurance companies and insurance intermediaries.

Therefore, the present law sets forth a regime for access to the business of insurance, as well as a model of ongoing Supervision aimed at ensuring compliance with strict standards of conduct in financial matters and in-house governance. The Banking and Payments Authority, as a supervisory entity in the area of insurance, is vested with the necessary powers to intervene, to the extent necessary, in imposing the penalties provided in the law.

Thus, pursuant to sub article 92.1 of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

### **Article 1**

#### **(Regime for the Licensing, Supervision and Regulation of Insurance Companies and Insurance Intermediaries)**

The Regime for the Licensing, Supervision and Regulation of Insurance Companies and Insurance Intermediaries (Insurance Law) is hereby approved as an annex to the present law and as an integral part hereof.

<sup>1</sup> The Insurance Law "originally was written in Portuguese" the English version was translated to facilitate availability of information for the applicant's; the contents of this version should based on Portuguese version.

**Article 2**  
**Repeal**

All previous legislation dealing with matters related to the licensing, Supervision and regulation of insurance companies and insurance intermediaries is hereby repealed.

**Article 3**  
**Entry into Force**

The Regime for the Licensing, Supervision and Regulation of Insurance Companies and Insurance Intermediaries (Insurance Law) shall come into force sixty (60) days after the date of its publication.

Approved on 9 May 2005.

The Speaker of the National Parliament

[Signed]  
Francisco Guterres “Lu-Olo”

Promulgated on 16 June 2005.

To be published.

The President of the Republic

[Signed]

(Kay Rala Xanana Gusmão)

**Annex REGIME FOR THE LICENSING, SUPERVISION AND REGULATION  
OF INSURANCE COMPANIES AND INSURANCE INTERMEDIARIES  
(Insurance Law)**

**CHAPTER I GENERAL PROVISIONS**

**Article 1  
Definitions**

For the purposes of the present law:

- (a) “BPA” means the Banking and Payments Authority of Timor-Leste;
- (b) “Assets” means the types of assets defined by a BPA instruction;
- (c) “Actuary” means a person qualified as an actuary and registered with BPA;
- (d) “Agent” means the person acting on behalf of an insurance company, representing the services and the products of that company;
- (e) “Insurance policy” means the contract under which, having regard to the minimal conditions to be set in a BPA instruction, one party (the insurer) assumes the risk of the occurrence of an uncertain future event (the loss or damage), through the payment of a premium by the other party (the policyholders), the insurer undertaking to compensate the other party or a third party in the case of occurrence of such a loss or damage;
- (f) “Annuity” means the insurance contract modality whereby the insurance company is obligated to make regular payments, lifelong or for a certain period of time, in exchange for the receipt of a lump-sum premium or periodic premiums;
- (g) “Beneficiary” means any person directly designated in an insurance policy or otherwise identifiable as being entitled to insurance compensation in the case of occurrence of loss or damage;
- (h) “Reinsurance company” means a company that carries on the business of reinsurance;
- (i) “Insurance company” means a company that carries on the business of insurance;
- (j) “Control”, whether individually or in conjunction with one or more persons, means:
  - i. directly or indirectly holding at least 50% of the capital or voting rights of a company;
  - ii. the possibility of electing at least one half of the members of the board of

- directors or of the auditing board of a corporate body; or
- iii. irrespective of who holds the capital or voting rights, the possibility of exerting a dominant influence on the management or the policies of the company by means of agreements on the exercise of the right to vote or otherwise;

(l) “Broker” means a person acting on behalf of the policyholders;

(m) “Branch” means, in the context of a corporate body, any entity controlled by another entity;

(n) “Insolvency” means a situation in which the assets of an insurance company or insurance intermediary, in the case of immediate disbursement, are not sufficient to liquidate its liabilities, as well as a situation in which the company cannot afford to pay its periodic debts by the time such debts become due, including quasi-monetary assets equivalent to the Minimum Solvency Margin;

(o) “BPA instructions” means regulations of a general character, with a binding effect, issued by the BPA Board of Directors under this law, and addressed to insurance companies and/or insurance intermediaries or the general public;

(p) “Relevant interest”, whether individually or in a coordinated action with other persons, means:

- (i) directly or indirectly holding a share equal to or higher than 10% of the capital or voting rights of a company, or
- (ii) irrespective of who holds the capital or voting rights, the possibility of exerting a dominant influence on the management or policies under agreements on the exercise of voting rights or otherwise;

(q) “Insurable interest” means any interest of the policyholders, insurer or beneficiary, in an asset or physical integrity, which might be affected by the occurrence of loss or damage in relation to an general insurance, and in the case of life insurance, means an interest in maintaining the life of one or more persons;

(r) “Insurance intermediary” means the insurance agent, sub-agent or broker, whether they have been constituted as companies or not;

(s) “License” means an authorization issued in writing by BPA to an insurance company or insurance intermediary, granting them the right to carry on the business of insurance;

(t) “Orders” means directives especially intended for a person or group of persons, issued by BPA in the exercise of the powers conferred thereupon under the present law and aimed at enforcing the rules and principles contained herein;

(u) “Person related to an insurance company or insurance intermediary” means any person under any of the following circumstances;

- (i) directly or indirectly holds a relevant interest in the insurance company or insurance intermediary;
  - (ii) related by blood or affinity, up to the second degree, to a member of the board of directors or auditing board or to a person holding a relevant interest in the insurance company or insurance intermediary;
  - (iii) a corporate body that is a branch of an insurance company or insurance intermediary;
  - (iv) a member of the board of directors or auditing board of a corporate body is also a member of the board of directors or auditing board of the insurance company or insurance intermediary or directly or indirectly holds a relevant interest therein;
  - (v) a member of a corporate body who directly or indirectly holds a relevant interest therein is also a member of the board of directors or auditing board of the insurance company or insurance intermediary or directly or indirectly holds a relevant interest therein;
  - (vi) related by blood or affinity, up to the second degree, to a member of the board of directors or auditing board of a corporate body or to a holder of a relevant interest in a corporate body related to the insurance company or insurance intermediary;
  - (vii) any other circumstance in which, under the terms established by a BPA instruction, a person is considered to be related to an insurance company or insurance intermediary on the basis of a significant level of economic interests; and
  - (viii) any other circumstance defined in a BPA instruction, which exhibits a nature similar to that of any of the circumstances contemplated in subparagraphs (i) to (vii);
  - (v) “Insurance premium” means the amount payable (occasionally or periodically) by the policyholders in exchange for the insurer’s obligation to assume the risk;
  - (x) “Mathematical provisions” means provisions calculated for life insurance policies. Except as otherwise stated, references to technical provisions include mathematical provisions;
  - (z) “Technical provisions” means provisions related to non-acquired premiums, notified obligations, obligations incurred but not notified and reserves for non-eliminated risks, no-claims bonuses, deductions and cancellations, and mathematical reserves for all insurance companies;
- (aa) “Resident” means a natural person, irrespective of their citizenship, residing in Timor-Leste;
- (bb) “Obligations” includes the volume of technical provisions, as well as other debt obligations or amounts payable to creditors of the insurance company, as specified in a BPA instruction;
- (cc) “Reinsurance” means financial protection extended by an insurance company to another insurance company;
- (dd) “Insurer” means the entity that carries on the business of insurance;

(ee) “Insurance” means financial protection (including reinsurance) acquired by means of a contract under which one party (the insurer) assumes the risk of the occurrence of an uncertain future event (the loss or damage) against the payment of a premium by the other party (the policyholders) for a negative impact on the legal sphere of the policyholders or a third party (the insurer), the insurer undertaking to compensate the other party or third party in the case of occurrence of loss or damage.

(ff) “Accidental insurance” means insurance against the risk of damage arising out of a fortuitous occurrence;

(gg) “General insurance” means all types of insurance, including health insurance, except for life insurance and all other categories of activities as may be determined by a BPA instruction;

(hh) “Obligatory insurance” means an insurance taken out as an imposition made by internal regulation.

(ii) “Health insurance” means insurance that provides protection against financial loss risks arising out of harm caused to a person’s health;

(jj) “Life insurance” means insurance, for one or more persons represented by an insurance policy or policies, in which case insurance compensation is contingent upon the life or death of a certain individual or involves the payment of an annuity; the delivery of savings and pension products in connection with the life, death or disability of an individual is considered to be subsumed into the category of life insurance;

(ll) “Damage or loss” means an uncertain future event that may, if it comes to pass, generate the right to insurance compensation;

(mm) “Sub-agent” means a person who acts on behalf of the insurance agent, even if the former is not employed by the latter;

(nn) “Subsidiary” means any corporate body in which another person or group of persons jointly hold shares equal to or higher than 50% of the capital or voting rights or a relevant interest that allows that person or group or persons to exert an effective control over the management or policies of the subsidiary;

(oo) “Branch” means a commercial establishment that from a legal viewpoint depends on an insurance company or insurance intermediary, which has not been separately constituted and that directly exercises the totality or part of the activities of the insurance company or insurance intermediary;

(pp) “Policyholders” means the counterpart of the insurer in an insurance contract and the person registered as the holder of the insurance policy with the relevant insurance company.

**Article 2**  
**Scope of Law**

1. The present Law shall apply to insurance companies and insurance intermediaries, as well as to shareholders, managers, employees, representatives, subsidiaries and branches.
2. This Law is equally applicable to companies carrying on the business of insurance as subcontractors.

**CHAPTER II**  
**FUNCTIONS AND POWERS OF BPA**

**Article 3**  
**The Purpose and Responsibilities of BPA**

1. It is the duty of BPA to license, supervise and regulate insurance companies and insurance intermediaries.
2. It is the duty of BPA to ensure the protection of the legitimate interests of policyholders and insurers in relation to any matter not confined to the financial stability and security of insurance companies and insurance intermediaries.
3. The definition of standards of conduct for insurance companies and insurance intermediaries is equally the duty of BPA, through the establishment of regulations in the form of instructions, and BPA may also issue specifically addressed directives in the form of orders.
4. Instructions shall publish in the Official Gazette and shall take effect on the date of such publication, unless otherwise stated, the publication immediately on the following day.

**Article 4**  
**Powers of BPA**

Within the scope of its responsibilities on insurance-related matters, BPA has the following powers:

- (a) examine such accounts, books, documents and other records, and to take such other action as it shall deem necessary or advisable to give effect to the intent of the present Law or instruction, orders or guidelines issued by the BPA;

(b) Request to insurance companies and insurance intermediaries, including their shareholders, members of the board of directors or auditing board or other officials holding managerial posts, to furnish information necessary to discharge its Supervision functions;

(c) Define, through an instruction, which set out the amount of premiums rates and claim costs for certain classes of insurance businesses and branches;

(d) Initiate proceedings in connection with breaches and impose the relevant fines and accessory penalties;

(e) propose legal action and appear before any court of competent jurisdiction to claim for damages, enforce any civil penalty imposed under the present Law, or to enjoin any acts or practices which constitute a violation of the present Law or any instructions, orders or guidelines issued by the BPA ; and

(f) Other powers expressly contemplated in this law.

## **Article 5**

### **Classes of Insurance**

1. The same insurance company may not carry on classes of insurance business in the general insurance and life insurance simultaneously.

2. BPA shall, by means of an instruction, define the insurance categories authorized in the areas of general insurance and life insurance.

## **Article 6**

### **Compulsory Insurance**

BPA shall, established by instruction, set out the common policy conditions for premium and claim requirements for the provision of compulsory insurance.

## **Article 7**

### **Fees**

1. With a view to meeting direct and indirect costs for the provision of supervisory and regulatory services, BPA shall charge insurance companies a rate in proportion to commissions earned or on the basis of the amount of the extraordinary expenditure incurred by BPA or by its representatives, where applicable.

2. Insurance intermediaries are also charged a rate calculated in proportion to commissions earned or on the basis of the amount of the extraordinary expenditure



incurred by BPA or by its representatives, where applicable.

3. Rates are determined in accordance with a schedule adopted by the BPA board of directors and are payable within ten (10) days of their due dates.

### **Article 8**

#### **Cooperation with Other Supervisory and Regulatory Authorities**

1. The BPA may exchange information with other supervisory and regulatory authorities, including international regulatory authorities, in order to promote the harmonious development of a sound financial institution regulatory network.

2. Prior to disclosing information, BPA shall ask the requesting entity to:

(a) present a detailed justification for such a request, namely stating any suspicions over the breach of laws or regulations or of improper behaviors or practices by an insurance company or insurance intermediary and/or its shareholders, members of the board of directors or auditing board, or employees;

(b) Submit excerpts of relevant laws, regulations or other provisions defining standards of behaviors that have not been complied with;

(c) ensure, in writing, that such information is exclusively used for the purpose of discharging Supervision functions, that its laws provide for legal restrictions that impede such information from being passed on to third parties for non-regulatory purposes, and that the requesting entity will comply with sub article 8.4.

3. Where the information asked from BPA is related to fiscal or tax issues regarding foreign jurisdictions, BPA shall do its utmost to provide such information. However, BPA may decline any request where there is no substantiated legal basis for accepting it.

4. Subsequent conveyance of information that has been previously obtained from BPA is subject to permission from BPA.

5. Default in fulfilling the conditions set out in this article by another supervisory or regulatory authority shall compromise the continuation of any agreements entered into, whether formally or informally, with BPA.

**CHAPTER III**  
**LICENSING, COMMENCEMENT AND CESSATION OF BUSINESS**

**Article 9**  
**Licensing**

1. The business of insurance in Timor-Leste is subject to a license to be granted by BPA.
2. For purposes of use businesses name, commercial establishments, firms, denominations, marks or logotypes, the use of the word “insurance” or its derivatives is equally subject to granted authorization by BPA.
3. Unclear statements regarding relevant facts or false or misleading descriptions, as well as the practice of any act with the intent to create a false or misleading image, or participation in a manipulation plan or practice related to the issuance of insurance policies, are prohibited.
4. Corporate bodies established outside of Timor-Leste may carry on the business of insurance in Timor-Leste through a branch office duly licensed by BPA.

**Article 10**  
**Establishment of Insurance Companies**

1. The establishment of an insurance company or branch office of a foreign insurance company is subject to prior approval by BPA and the applicant shall attach the documents mentioned in no. 1 paragraph c) no 5.1 sections 12.
2. Insurance companies shall take on the form of a limited company by hold a share capital in excess of US\$ 500,000.00 (five hundred thousand American dollars).
3. To compliance with the minimum capital does not preclude an insurance company from observing the solvency margins and the company may, to that effect, is obliged to increase its capital where this proves to be necessary to observe the said margins.

**Article 11**  
**Establishment of insurance intermediaries**

1. The establishment of companies intended to carry on the business of insurance intermediation is subject to prior approval by BPA.
2. However, agents and subagents may be natural or legal persons and BPA shall, through an instruction, determine the minimum value of assets required for access to the business of insurance by natural persons.

3. Insurance brokers shall take on the form of a company and shall hold a share capital in excess of US\$ 25,000.00 (twenty five thousand American dollars), subject to compliance with the limits established by the companies act.

4. Insurance intermediation companies in the form of limited liability companies shall always include in its structure a single auditor or an auditing board.

5. Compliance with the minimum capital shall not exempt an intermediary from observing solvency margins and prudential rules and the intermediary may, to that effect, be obliged to increase its capital where such is deemed necessary to observe the said rules.

## **Article 12**

### **Licensing of Insurance Companies**

1. The application for a license to establish an insurance company shall be accompanied by the following elements:

- (a) The company founders' agreement;
- (b) Copy of articles of association;
- (c) Copy of corporate agreements, where applicable;
- (d) Organic structure and breakdown of capital and persons concerned;
- (e) Identification of members of the corporate organs;
- (f) Other elements, to be defined by a BPA instruction, necessary to conduct supervisory functions.

2. Within three (3) months of receipt of the application for a license to establish an insurance company, BPA shall either approve or reject it on a preliminary basis and shall notify the applicant in writing, indicating the grounds for such a decision.

3. In the case preliminary approval of a license to establish an insurance company, BPA shall indicate the conditions yet to be met for the definitive granting of a license and for the commencement of business.

4. A preliminary approval shall expire within one year of the date of granting of such approval.

5. The definitive approval of an insurance company is contingent on the fulfillment of the following requirements:

- (a) Have established the company under the companies law of Timor-Leste or as the branch of a company established under a foreign legal jurisdiction;
- (b) Have fully underwritten the mandatory minimum capital;
- (c) Have prepared the company's business plan on the basis of a sound analysis

- grounded in reasonable assumptions;
  - (d) Have made a written commitment to abiding by the provisions of the present law; and
  - (e) adequacy of the qualifications, experience and integrity of the members of the board of directors, of the auditing board and of the company's key shareholders, as well as of the persons who have or wish to have relevant interests therein, in view of the business plan and the financial activities of the insurance company;
  - (f) Compliance with all the other conditions referred to in Chapter VIII;
  - (g) Other requirements as may be determined by BPA, by way of an instruction, intended to guarantee compliance with the provisions of the present law.
6. BPA may refuse to grant a license where it realizes that such a license would undermine legitimate interests of future policyholders or insurers.
  7. A granted license is valid for an indefinite period of time and may not be transferred.
  8. Decisions on the licensing of insurance companies are made by BPA in an independent and impartial manner.

### **Article 13**

#### **Licensing of insurance intermediaries**

1. An application for grant of a license to an insurance intermediary that is a company shall be accompanied by the following elements:
  - (a) The company founders' agreement;
  - (b) Copy of the articles of association;
  - (c) Copy of para-corporate agreements, if any;
  - (d) Identification of the organic structure and a breakdown of the capital and the persons concerned;
  - (e) Identification of the members of the corporate organs;
  - (f) Other elements, to be defined by BPA instruction, necessary to exercise Supervision functions.
2. The granting of a definitive license to an insurance intermediary by BPA is contingent upon the fulfillment of the following requirements:
  - (a) The company has been established under the companies law of Timor-Leste or as the branch of a company established under a foreign legal jurisdiction;
  - (b) Have fully underwritten the obligatory minimum capital;
  - (c) Have prepared the insurance intermediary's business plan on the basis of a sound analysis grounded in reasonable assumptions;
  - (d) Have made a written commitment to abiding by the provisions of the present law; and
  - (e) adequacy of the qualifications, experience and integrity of the members of the

board of directors, of the auditing board and of the insurance intermediary's key shareholders, as well as of the persons who have or wish to have relevant interests therein, in view of the business plan and the financial activities of the insurance intermediary;

- (f) Compliance with all the other conditions referred to in Chapter VIII;
- (g) Other requirements as may be determined by BPA, by way of an instruction, intended to guarantee compliance with the provisions of the present law.

3. BPA may refuse to grant a license where it realizes that such a license would undermine legitimate interests of future policyholders or insureds.
4. BPA shall, by way of an instruction, set special requirements for licensing insurance intermediaries that are not to establish themselves as a company.
5. The license of an insurance intermediary is subject to a periodic renewal process and may not be transferred.
6. Decisions on the licensing of insurance intermediaries shall be made by BPA in an independent and impartial manner.

#### **Article 14**

##### **Record of Licensed Insurance Companies and Insurance Intermediaries**

BPA shall maintain a record, accessible to the public during normal business hours, identifying all licensed insurance companies and insurance intermediaries.

#### **Article 15**

##### **Cancellation of Licenses**

1. A license is cancelled in the case of:
  - (a) Failure to commence business with six (6) months after the license has been granted;
  - (b) Voluntary waiver of a license;
  - (c) Initiation of the process of liquidating or dissolving, whether voluntarily or involuntarily, an insurance company or insurance intermediary;
  - (d) Breach of a restriction or condition mentioned in a license granted by BPA;
  - (e) Underwrite or carrying on the insurance business that have not been licensed by BPA;

- (f) Breach of, or failure to comply with, the principles of prudent business management;
- (g) Carrying on the business to the detriment of the interests of policyholders or insures;
- (h) Serious failure to comply with laws or regulations, which is likely to bring about significant financial problems and/or the insolvency of the insurance company or insurance intermediary;
- (i) Willful breach of any of the provisions of the present law;
- (j) Failure to meet the deadline set by BPA for correcting a deficiency detected by BPA;
- (l) incompetence of one or more members of the board of directors or auditing board, as well as of key shareholders or persons who have or wish to hold a relevant interest in the insurance company, in accordance with criteria previously established by BPA;
- (m) Willful and serious breach of any legal provisions by an insurance company or insurance intermediary;
- (n) Adoption of a misleading corporate name by an insurance company or insurance intermediary;
- (o) Inability to timely fulfill obligations on the part of an insurance company or insurance intermediary;
- (p) provision of false or misleading information to policyholders, insures or to BPA by an insurance company or insurance intermediary;
- (q) exercise of unlawful influence by members of the board of directors or auditing board, shareholders or employees on the business of the insurance company or insurance intermediary, which is likely to cause damage to the interests of policyholders or insures;
- (r) Suspicion of involvement in fraudulent activities by a member of the board of directors or auditing board, shareholder or employee of an insurance company or insurance intermediary;
- (s) Danger of insolvency of an insurance company or insurance intermediary in accordance with a reliable actuarial report, in the opinion of an expert on reserves for obligations arising out of insurance policies or according to information otherwise obtained;

(t) Termination or rescission of an agency contract for an insurance intermediary to act as an agent of the insurance company. If so, the insurance company shall forthwith notify BPA and the BPA shall cancel the license of the agent and of all the respective subagents; or

(u) Other reason contemplated in the law.

2. The cancellation of the license of an insurance company results in the cancellation of licenses of all the agents and subagents acting on its behalf.

3. The cancellation of a license may be retracted by presenting proof to BPA that the facts that have led to the cancellation of such a license no longer exist or that such facts have not occurred.

### **Article 16** **Consequence of the cancellation of licenses**

Upon the cancellation of its license, the insurance company or insurance intermediary is placed under intervention in conformity with Chapter X.

### **Article 17** **Publication**

The cancellation of a license is reported by BPA to the insurance company or insurance intermediary and published in one or more of the most widely-circulated newspapers.

### **Article 18** **Withdrawal from the Insurance Market**

1. BPA's approval is needed where an insurance company established outside of Timor-Leste wishes to withdrawal from the Timor-Leste market.

2. To that effect, the insurance company shall exhibit to BPA sufficient proofs that all its obligations arising out of insurance policies have been fulfilled or, should that company wish to transfer such obligations to another company, seek authorization to do so.

3. BPA may ask an insurance company wishing to withdrawal from the market to establish a special fund to handle with the liabilities of that company.

4. Prior to its pullout from the market, should there be no conveyance of a portfolio to another insurance company, BPA shall set at least four (4) deadlines for filing credit claims arising out of insurance policies, with intervals not shorter than one week, and

such deadlines shall be published by the insurance company in widely-circulated newspapers.

5. Except in the case of life insurance, insurance companies pulling out of Timor-Leste and BPA are not liable to pay any claims filed after the payment deadlines set in the sub article 18.4 have elapse.

6. BPA shall, by means of an instruction, determine other procedures to be adopted in the event that insurance companies wish to withdraw from the Timor-Leste market without having transferred their insurance policies to other insurance companies, namely defining the ways in which funds shall be secured, the management process of such funds, the receipt and processing of claims, the information to be provided to the market and the way in which this information is to publicized, and the disposal of residual funds.

## **CHAPTER IV INSURANCE INTERMEDIARIES**

### **Article 19 Insurance Intermediaries**

1. Insurance intermediaries include insurance agents, insurance subagents and insurance brokers.
2. Insurance companies shall keep an up-to-date record of all insurance intermediaries with whom they have contractual links.

### **Article 20 Insurance agents and subagents**

1. The role of an agent is to sell insurance products and services adequate for the needs of policyholders and insures, in representation of an insurance company, against the payment of a commission, a fixed salary, or a combination of both, by the latter.
2. The relationship between the agent and the insurance company shall be governed by a written contract, the contents of which shall be exhibited to BPA on the premises of the company or agent, as and when request by BPA.
3. The contract shall establish the specific powers of the agent and expressly define the acts to be performed by the agent for which the insurance company assumes responsibility.
4. Agents are prohibited from acting on behalf of more than one insurance company.
5. Agents are obliged to keep an up-to-date list of licensed subagents, which may also, at



all times, be examined by BPA.

6. Subagents are prohibited from acting on behalf of more than one insurance agent and subagents shall, on a yearly basis, submit to BPA a written confirmation of the agent on whose behalf they are authorized to act.

7. Subagents are remunerated in the form of a commission or fixed salary, or both, by the insurance agents they represent.

8. Sub articles 20.2 and 20.3 are applicable, with the necessary adaptations, to contracts between agents and subagents.

### **Article 21 Insurance Brokers**

1. Brokers are obliged to get the most adequate insurance policy for the needs of the policyholders or insures.

2. Brokers are remunerated in the form of a commission by the insurance company whose insurance policy they have sold.

3. Brokers are obliged to keep an up-to-date list of the insurance companies on whose behalf they are authorized to act, and that list may, at all times, be examined by BPA.

### **Article 22 Responsibility**

1. The insurance company is responsible for obligations arising from insurance contracts entered into by their authorized agents and subagents, in accordance with agency and sub agency contracts.

2. The insurance broker is liable to the policyholders or insures for any damage arising out of negligence or false information provided by the broker.

3. An insurance broker acting in representation of an insurance company shall inform all the persons with whom they have or seek to establish contractual relations of that fact.

4. An insurance intermediary who deceitfully assesses charges to be levied upon premium payments other than the actual amount is subject to criminal, civil and disciplinary liability.

**Article 23**  
**Insurance Intermediaries Obligations**

1. Insurance intermediaries are obliged:
  - (a) To clearly pass on to a prospective policyholders all information regarding their relationship with the insurance company, whether upon request or in their own discretion;
  - (b) To notify the prospective policyholders of the name of the insurance company, the terms and conditions of the insurance policy, the amounts and payment due dates for premiums, the coverage provided, the exceptions of a general or specific nature, and the consequences of failure to pay premiums or of late payment thereof;
  - (c) To ask for sufficient information to compile precise profiles of prospective policyholders in order to allow for a reliable assessment of the needs of the latter;
  - (d) To have justifications for any recommendations made to a prospective policyholders;
  - (e) To act in the best interests of the prospective policyholders, exercising prudence, professionalism and diligence while carrying on business;
  - (f) To relate to current and prospective policyholders with integrity and objectivity;  
and
  - (g) To expeditiously transfer levied amounts to the insurance company;
2. BPA may, by means of an instruction, establish other requirements consistent with this law.

**Article 24**  
**Financial Requirements for an Insurance Broker**

1. Insurance brokers shall, prior to being granted a license to carry on business, furnish BPA with documents attesting to their financial capacity
2. Insurance brokers are subject to an obligatory insurance against civil professional liability or unconditional financial guarantee on the part of a bank approved by BPA, and documents attesting to such an insurance or guarantee shall be submitted to BPA.
3. Both forms of coverage shall require a one month's notice prior to the cancellation thereof.
4. The coverage amount secured shall be proportional to the amount estimated for the

volume of premiums to be processed by the person applying for a broker license.

5. Insurance against civil professional liability or bank guarantee shall cover the professional activities of the broker for a period of no less than one year.

6. In the event of cancellation of the effects of insurance against civil professional liability or bank guarantee, such an insurance or guarantee shall be replaced with a new insurance or guarantee, no less than one month prior to the date on which the effects are cancelled, under penalty of suspension of the broker's license and prohibition of entering into contracts.

7. Suspension may only be lifted through production of proof attesting that an insurance against civil professional liability or unconditional bank guarantee valid for a period of no less than one year has been taken out.

8. BPA shall, by means of an instruction, define all other financial requirements to be met by brokers.

## **CHAPTER V SUPERVISION**

### **Article 25 Monitoring and Inspection**

1. Insurance companies and insurance intermediaries, including their subsidiaries, shall be monitored by BPA, and such a monitoring implies bringing up to date the data contained in the records, and reviewing financial statements and other reports submitted to BPA.

2. Insurance companies and insurance intermediaries, including their subsidiaries, are subject to inspections undertaken by BPA inspectors or auditing or actuarial firms as designated by BPA.

3. If an insurance company is a branch of an insurance company supervised by a regulatory body from another country, responsible for a prudent Supervision of the business of insurance in that country, the team of inspectors may include officials from that body.

### **Article 26 Record-keeping**

1. Insurance companies and insurance intermediaries shall maintain, within their premises, complete and detailed records on their current activities, on their activities in the five (5) previous years, as well as all valid insurance policies, under the terms to be

defined by a BPA instruction.

2. Insurance companies and insurance intermediaries may maintain their records in electronic format as long as such records may be readily accessed in Timor-Leste by internal and external auditors, including BPA inspectors.
3. If so, the computer equipment, the operating systems, application programmed, and other elements required to access or consult electronic records, shall also be kept accessible.
4. Back-up copies of the electronic records shall be produced on a daily basis and such copies shall be kept in a secure place outside the premises.
5. Both the records kept within the premises and the ones kept outside the premises in print or electronic format shall be protected against fire, theft, damage caused by water, sabotage and other potentially destructive risks.
6. As used in this article, the term “records” refers to all the documentation relating to premiums, obligations arising from insurance policies and financial applications, including internal and external reports, correspondence and any other information required for an internal or external auditor or BPA itself to review an activity carried out by an insurance company or insurance intermediary.

## **CHAPTER VI PRUDENTIAL ASPECTS**

### **Article 27 Solvency Margin**

General and life insurance companies and branches of foreign insurers are obliged to maintain a minimum solvency margin, calculated in accordance with a BPA instruction.

### **Article 28 Reserve**

1. General insurance companies are obliged to keep a liquidity reserve account in cash or monetary assets, equivalent to a proportion of their technical provisions as per BPA instruction.
2. Life insurance companies are obliged to keep a reserve account equivalent to a proportion of their technical provisions, to be determined by an actuary agreeable to BPA as per BPA instruction.
3. The reserve account is kept with BPA or a bank approved by BPA.

**Article 29**  
**Limits on Net Premiums Writing by Insurance Companies**

1. BPA shall, by means of an instruction, set the limits on net premium rates to be levied by insurance companies.
2. BPA may issue instructions specifically addressed to certain insurance companies in order to impose on them a more rigorous standard than the one prescribed in a general instruction issued by BPA.

**Article 30**  
**Limit on an Insurance Company's Exposure to a Single Insurable Event**

1. Insurance companies shall ensure that the maximum net loss arising from the occurrence of a particular disaster, including funds to be recovered through reinsurance, does not exceed the rate determined by BPA through an instruction.
2. Insurance companies shall enter into reinsurance contracts with a view to covering rates exceeding their exposure limits.

**Article 31**  
**Liquidity and Matching of Assets with Liabilities**

1. Insurance companies are obliged to ensure a permanent availability of resources for the timely payment of obligations arising from insurance policies, as well as from any other obligations as they become due.
2. BPA shall, by means of an instruction, set the limit of resources that may be invested in any particular type of assets.
3. BPA may, by means of an instruction, determine requirements to be met by insurance companies and insurance intermediaries with respect of the maturity balance between their assets and liabilities.
4. Branches of foreign insurance companies and insurance intermediaries shall keep in Timor-Leste sufficient assets to cover their obligations and solvency margins.

**Article 32**  
**Prohibited Acts or Transactions**

Insurance companies and insurance intermediaries are prohibited from:

(a) Outsourcing their key operational activities, namely risk evaluation and subscription, as well as the receipt, transfer and payment of obligations arising from insurance policies;

(b) Undertaking activities that do not form a part of the business of insurance or that are not insurance-related activities.

### **Article 33** **Acts Subject to Authorization of BPA**

1. The following are subject to written authorization from BPA:

- (a) Distribution of dividends by insurance companies and insurance intermediation companies;
- (b) Amortization of shares, reduction in, or conversion of, the capital of an insurance company or insurance intermediation company;
- (c) Significant changes in the business plan of the insurance company or insurance intermediary;
- (d) Conveyance of contractual status, as well as conveyance of credits or transfer of debts by insurance companies or insurance intermediaries;
- (e) Transactions resulting in the abstention, by any person, of a relevant interest in an insurance company or insurance intermediary;
- (f) Transactions changing the size of a relevant interest held by a person in an insurance company or insurance intermediary;
- (g) Merger, disposal or acquisition of insurance companies or insurance intermediaries or relevant components thereof;
- (h) Replacement of auditors and actuaries by an insurance company or insurance intermediary;
- (i) Replacement of members of the board of directors or auditing board of an insurance company or insurance intermediary;
- (j) Change in the corporate purpose or name of an insurance company or insurance intermediary;
- (l) Reinsurance programmed of insurance companies;

- (m) Relevant changes to the reinsurance programmed, namely entering into new reinsurance partnerships and changes to the types of reinsurance coverage;
  - (n) Financial transactions involving by-products namely futures, wasp and forwards, or a combination of these financial instruments;
  - (o) Imposition of liens on assets or conveyance of assets as loans;
2. Failure to file an authorization application or substantiated refusal by BPA result in the nullity of the acts or legal businesses carried on;
  3. The actual performance of acts or contracts provided in sub article 33.1 shall be communicated to BPA for the purposes of bringing up-to-date the registration provided in article 14.
  4. In reviewing an application to engage in any of the operations referred to in paragraph 33.1(d), BPA shall weigh the consequences of the transfer to the solvency margin of the acquiring insurance company or the financial impact on the acquiring insurance intermediary;
  5. Upon the approval of cession of rights and obligations, such rights and obligations are forthwith transferred to the acquiring company or intermediary;
  6. The acquirer is obliged to notify policyholders of the acts referred to in paragraphs 33.1(d) and (g), and the insurance company shall notify policyholders of the performance of the acts referred to in paragraphs 33.1(e) (f) and (j);
  7. In the case of transfer of insurance policies, policyholders may terminate the contract that has been the object of such a cession, within thirty (30) days of serving the notice contemplated in sub article 33.6.

#### **Article 34**

##### **Aspects to be defined by Instruction**

BPA shall define by instruction:

- (a) The criteria for evaluating the assets and liabilities of insurance companies or insurance intermediaries;
- (b) Directives for and restrictions on reinsurance programmed;
- (c) Conditions for or restrictions on the outsourcing of non-essential services;
- (d) Requirements for maintaining assets of insurance companies and of insurance intermediaries in Timor-Leste;

**CHAPTER VII  
FINANCIAL ASPECTS**

**Article 35  
Accounting Norms and Records**

1. Insurance companies and insurance intermediaries shall prepare their financial statements in accordance with the Companies Law and International Accounting Standard, and requirements to be defined by BPA.
2. Insurance companies and insurance intermediaries shall maintain sound accounting systems and records, including a Premiums Register, a Premiums Ratio, Premiums Reports, Obligations Register, Obligations Ratio, Obligations Reports, an Investment List, and the Overall Ratio, in consistency with a BPA instruction;
3. To the registers foreseen in previous articles 26 shall be applicable.

**Article 36  
External Auditing**

1. Insurance companies shall ensure that their financial statements are audited on a yearly basis by a licensed auditing firm other than a person related to the entity to be audited.
2. The designation of the auditing firm is subject to written approval by BPA.
3. BPA rejects the designation of the auditing firm in case its degree of expertise and experience in auditing insurance companies or insurance intermediaries is not proved.
4. The insurance company or insurance intermediary shall enter into a written agreement with the auditing firm.
5. The auditing firm is obliged to:
  - (a) Submit to the board of directors of the insurance company a yearly administrative report with a commented analysis on the effectiveness and efficiency of the internal monitoring practices and procedures, as specified in a BPA instruction;
  - (b) state, by means of an opinion, whether the financial statements present an accurate and balanced description of the financial situation and activities of the insurance company or insurance intermediary, in conformity with this law, the International Accounting Norms, and other relevant norms as per BPA instruction; and
  - (c) submit a report and conclusions of the audit to the board of directors of the insurance company or insurance intermediation company.



6. The contract with the auditing firm shall state the need to prepare the opinion referred to in paragraph 36.5(b).

7. The contract with the auditing firm shall impose the obligation to immediately notify BPA of the suspicion of the following facts:

(a) Fraudulent act committed by an employee of the insurance company or insurance intermediary or of any of its subsidiaries or any administrative or operational irregularities or deficiencies that may probably result in material losses for the company or to credits deriving from insurance policies;

(b) Systematic breach by the insurance company or insurance intermediary of this law, BPA instructions or orders; or

(c) omission of, non-compliance with or undue influence on, the conclusions of the audit report by the members of the board of directors or auditing board or consultants of the insurance company or insurance intermediation company.

8. The BPA may established instruction related to the other Auditing requirements.

### **Article 37 Financial Reports**

1. The financial year for insurance companies and insurance intermediaries ends on 31 December.

2. Consolidated financial statements audited and prepared according to the International Accounting Norms shall be submitted by 30 April, as defined in BPA instruction.

3. Each insurance company and each insurance intermediary shall prepare and submit to BPA quarterly reports on its operations in the areas of insurance administration, liquidity, solvency and profitability, as well as on its subsidiaries, both individually and in a consolidated manner.

4. Reports are prepared in accordance with a format approved by BPA instruction.

5. BPA may, by means of an instruction, determine the need to prepare additional yearly information apart from that which is exhibited in annual financial documents of a public character.

### **Article 38 Actuarial Certification or Payments Reserve**

1. Life insurance companies shall submit to the auditing firm and BPA, on a yearly basis, an independent actuarial certification prepared by an actuary approved by BPA with

regard to the sufficiency of their technical provisions.

2. In the case of general insurance companies, BPA may require the submission of an actuarial certification or one prepared by an expert on reserves for obligations arising from insurance policies, with regard to the effectiveness of their technical provisions, along with the yearly financial statements.
3. BPA may determine that the submission of the actuarial certification or the one prepared by an expert on reserves for obligations arising from insurance policies have a shorter periodicity on the grounds of the financial situation of the insurance company.
4. The actuary or expert on reserves for obligations arising from insurance policies shall issue an opinion on the effectiveness of the technical provisions of the insurance company in fulfilling its civil liabilities.
5. The actuary shall report directly to the board of directors of the company whether, in accordance with his or her evaluation, the conclusions of the actuarial certification are being omitted, ignored or unduly influenced by employees of the insurance company, informing BPA of any similar acts that may have been performed by the board of directors of the insurance company.

## **CHAPTER VIII GOVERNANCE AND INTERNAL MONITORING**

### **Article 39 Principles of Governance and Internal Control**

1. Insurance companies and insurance intermediaries shall adopt patterns of governance and internal monitoring systems that will allow them to secure:
  - (a) Good governmental and accounting organization;
  - (b) High levels of professional capacity;
  - (c) Compliance with the rules for a sound and prudent management;
  - (d) Sufficient number of skilled employees to carry on their business;
  - (e) Confidentiality of the facts the members of the board of directors or auditing board and employees may become acquainted with while doing business;
  - (f) Compliance with the principle of equality in their relations with policyholders and insureds under similar circumstances;
  - (g) Observance of transparency with regard to goods held, possessed or owned by members of their corporate organs or managers.
2. For the purposes of applying paragraph 39.1(g), members of corporate organs, as well as managers of insurance companies or insurance intermediaries, shall periodically provide BPA with information pertaining to their financial status, under the terms to be regulated by instruction.

3. The internal control system includes, namely, the preparation of policies on procedures and practices for subscription and investment activities.

4. BPA shall, by means of instruction, establish all other requirements to be met by internal monitoring systems.

#### **Article 40** **Administration and auditing**

1. The organic structure of insurance companies and insurance intermediation companies shall include a board of directors composed of at least three (3) members elected for a term of office not exceeding two years, renewable for equal periods of time.

2. Members of the board of directors and of the auditing board of insurance companies and insurance intermediation companies shall reside in Timor-Leste.

3. Members of the board of directors and of the auditing board shall meet the following requirements:

- (a) Proper qualification, proved by working experience or academic degree;
- (b) Acknowledged good reputation.

4. The following are regarded as an indication that a person lacks good reputation:

- (a) Having been convicted of a criminal offence against property;
- (b) Having been declared bankrupt or insolvent, in either Timor-Leste or overseas;
- (c) Having been convicted in either Timor-Leste or overseas of breaches of special rules governing banking and insurance operations;
- (d) Having been convicted in either Timor-Leste or overseas of fraud or tax evasion.

5. Proper qualification on grounds of working experience is presumed to exist where a person has previously performed, in a competent manner, management functions of a financial and technical nature, and the duration of such experience, as well as the nature and degree of such management functions are consistent with the characteristics and size of the insurance company or insurance intermediary.

6. Where directors are remunerated, BPA may determine a reduction in or cessation of such remuneration if it is proved that this is prejudicial to the financial balance of the company, taking into account the interests of policyholders and insureds.

7. It is the responsibility of members of board of directors to ensure:

- (a) Respect for the interests of policyholders and insureds;
- (b) Observance of a conduct governed by rigor and impartiality;

- (c) Sufficient technical provisions;
- (d) Observance of the minimum capital, solvency margin, reserve amounts, and liquidity margins; and
- (e) Internal and external audits sufficient and appropriate for an objective analysis of the company's financial situation.

#### **Article 41 Management**

1. The managing director shall be appointed from among the members of the board of directors of the insurance company or insurance intermediation company.
2. The managing director must be a resident of Timor-Leste.

#### **Article 42 General Duties**

1. Members of the board of directors, including employees as a whole, of insurance companies or insurance intermediaries are obliged, while fulfilling their duties, to abide by the principles mentioned in sub article 39.1, and shall at all times conduct themselves in accordance with the highest standards of responsibility, competency and respect for the interests of policyholders and insureds.
2. Members of the board of directors or auditing board of insurance companies or insurance intermediaries, including their employees, are not obliged to abide by orders or instructions that are solely intended to benefit a person related to the insurance company or insurance intermediary as opposed to similar acts involving persons who are not related to the insurance company or insurance intermediary.

#### **Article 43 Reporting and Monitoring**

There are reasonable indications of the commission of any acts in contravention of this provision of the chapter a person may lodge a complaint with BPA, subject to specific legislation.

### **CHAPTER IX MARKET PRACTICE AND CONSUMER PROTECTION**

#### **Article 44 Information and Counseling**

1. Any information provided by insurance companies and insurance intermediaries shall

be true, clear, complete, objective and precise.

2. Insurance companies and insurance intermediaries shall seek to obtain information that will enable them to undertake a rigorous evaluation of the needs of the policyholders, in such a manner that the information and the counseling to be provided are consistent with an insurance modality appropriate for those needs.

3. Prior to signing the insurance contract, the insurer and the insurance intermediary shall inform the policyholders of all rights and obligations arising from the insurance policy, whether such rights and obligations concern the policyholders or a third party.

#### **Article 45** **Payment and Dispute Resolution**

1. Insurance companies and insurance intermediaries shall make timely and opportune payment of all obligations arising from insurance policies, acting at all times with diligence and respect for creditors.

2. In the case of dispute, a voluntary arbitration procedure shall be established under the terms to be determined by BPA.

#### **Article 46** **Approval of Minutes of Insurance Policies**

1. The terms and conditions for each category of insurance policy shall be submitted to BPA for approval prior to the application thereof.

2. Any relevant changes to such terms and conditions shall also be subject to approval by BPA.

3. BPA may ask for, examine and approve advertising information prepared in connection with products and services of an insurance company.

#### **Article 47** **Format and Contents of Insurance Policy**

1. Insurance policies shall be in writing and printed in paper, with the records thereof being kept in both print and electronic format.

2. The contract is valid only if signed by both parties.

3. In entering into the contract, the parties shall act in good faith.

4. The insurance policy shall:

- (a) Identify the parties, indicating, in the case of companies, all the elements that must be contained in external acts, under the terms of the companies' law;
- (b) Identify the object of the insurance, whether it is the property of the policyholders or of a third party;
- (c) Identify the insures and beneficiaries of the insurance where they are persons other than the policyholders;
- (d) Indicate the premium amount, payment modality and its due date;
- (e) Foresee the compensation amount or its calculation modalities;
- (f) Explicitly define the risks covered;
- (g) Clearly specify the risks uncovered;
- (h) State the start date and the cessation date for the coverage, where applicable;
- (i) list the rights and obligations of the policyholders, of the insurance company and of the insurance intermediary;
- (j) Incorporate a clause conferring upon the policyholders the right to rescind the contract;
- (l) Incorporate an arbitration clause on dispute resolution;
- (m) Indicate the date the on which the contract was signed.

**Article 48**  
**Amendment of an Insurance Policy**

Any change to the insurance policy shall also be in writing, and such a change shall be agreed upon by both parties, except where the change results directly from, or is necessary for, the application of a legal or regulatory provision.

**Article 49**  
**Termination of an Insurance Policy**

An insurance policy shall be effective terminate in the following cases:

- (a) Completion of the contract upon the lapse of the validity period or due to the occurrence of any other fact stated in the policy;
- (b) Termination on the part of the policyholders;
- (c) Rescission on the part of the policyholders or insurer, with just cause or while exercising a right provided by law;
- (d) Termination by mutual agreement;
- (e) thirty days after the publication of the decision on the cancellation of the insurance license by BPA, except in the case of life insurance.

## **Article 50**

### **Rights and Duties of the Policyholders**

1. Notwithstanding any clause to the contrary, the policyholders may:

- (a) rescind the contract, through written notice served to the insurance company within ten (10) business days upon the signing of the insurance policy, with the right to immediate refund of the amounts paid in the meantime, provided that no disaster has occurred over that period under the clause referred to in paragraph 47.4(j);
- (b) Submit any disputes arising out of any contractual relationships with insurance companies or insurance intermediaries to voluntary arbitration;
- (c) Secure a refund for all expenses that have been reasonably incurred in taking action in order to minimize the effects caused by the disaster.

2. Notwithstanding any clause to the contrary, the duties of the policyholders are as follows:

- (a) inform the insurance company or insurance intermediary, in a full and truthful manner of all the facts that the policyholders is acquainted with, which are likely to influence the assessment of the risk to be taken by the insurance company or insurance intermediary;
- (b) Pay in a timely manner the premium to the insurance company or insurance intermediary, under the terms provided in the insurance policy;
- (c) In the case of occurrence of a disaster, take reasonable action in order to minimize the damage caused by the disaster, from the date the policyholders become acquainted with the disaster;

- (d) Except as otherwise stated in this law, notify, as soon as possible, the insurance company or insurance intermediary of the occurrence of the disaster;
- (e) assist the insurance company and/or the insurance intermediary in securing proofs that are reasonably necessary for the assessment of the cause, nature and extent of the disaster, and the justification for the claim; and
- (f) Inform the insurance company and/or insurance intermediary of any change in the circumstances that have led to the signing or dictated the contents of the insurance contract.

### **Article 51**

#### **Rights and Duties of the insurance company or insurance intermediary**

1. The insurance company or insurance intermediary may:
  - (a) Rescind a contract due to default in paying the premium upon the signing thereof with to the policyholders, through written notice to settle the payment within thirty (30) days;
  - (b) Rescind the contract due successive delays in the payment of the premiums upon the signing thereof with the policyholders, through written notice to settle the payment within ten (10) days;
  - (c) Rescind the contract, with immediate effect, in the case that the policyholders has willfully omitted information or provided false information regarding facts that are relevant to risk assessment and the signing of the policy;
  - (d) Secure a refund for financial damage arising out of the provision of false information in a claim lodged by the policyholders, and may, for that purpose, retain the refund of premiums or refuse to pay the claim.
2. The right referred to in paragraph 51.1(b) may be exercised only within three (3) months after the latest date on which the policyholders failed to meet the deadline for paying the premium on more than two interspersed occasions.
3. Notwithstanding a clause to the contrary, the obligations of the insurance company or insurance intermediary include:
  - (a) Prepare minutes of insurance policies in writing, providing a copy of each policy to the policyholders prior to the signing of the contract;



- (b) Draft contractual clauses in a clear and understandable manner for the common addressee, in either of the official languages;
- (c) Inform the policyholders of the contents of the clauses of the policy and give any clarifications on such clauses, namely with regard to the payment of the premium, in order to provide the policyholders with sufficient information required to decide about entering into or maintaining the contract.
- (d) Immediately acknowledge receipt of legitimate insurance claims and consider and analyze such claims in a timely manner, as well as pay outstanding amounts;
- (e) Immediately notify the policyholders of the refusal of a request for compensation and the grounds for such a refusal;
- (f) Immediately notify the policyholders of the need to provide further information and its nature;
- (g) Refund the policyholders for all expenses reasonably incurred in taking measures conducive to reducing the damage caused by the disaster;
- (h) Provide for internal mechanisms intended to resolve disputes with policyholders or insureds, after which, failing to reach an agreement, recourse shall be made to the voluntary arbitration procedure.

## **Article 52 Confidentiality**

1. Holders of capital, members of the board of directors or of the auditing board, including all employees and representatives of insurance companies and insurance intermediaries as a whole, are subject to the duty of confidentiality in respect of facts they may become acquainted with solely in that capacity or while fulfilling their functions.
2. The duty of confidentiality implies that any information received while fulfilling the business of insurance may not be disclosed to any person or authority, exception being made to:
  - (a) The provision of information in a summarized or aggregate manner and in such a way as to protect the identity of policyholders or insureds;
  - (b) The disclosure of information intended to fulfill duties with BPA by virtue of the law;

(c) The disclosure of information determined by judicial authorities as provided by law.

3. The duty of confidentiality shall remain even after the disposal of the capital or cessation of the functions referred to in sub article 52.1.

### **Article 53**

#### **Online Sale of Insurance**

1. The business of insurance and of insurance intermediation online, accessible to policyholders who are not residents of Timor-Leste or that is intended to cover risks overseas, is subject to authorization from BPA. Without prejudice to any other authorizations that might be required by the laws of the country where the risk is located or the policyholders resides.

2. The authorization application shall be accompanied by a business plan describing the procedure for fulfilling obligations, namely in respect of the proper protection of the interests of the policyholders.

3. The BPA may, through an instruction, determine other specific conditions for the exercise of the business of insurance online.

## **CHAPTER X**

### **RECEIVERSHIP**

#### **Article 54**

##### **Receivership**

1. Receivership is the process whereby, upon the cancellation of a license, the insurance company or insurance intermediary comes under a controlled management by a special manager designated by BPA.

2. Special management or liquidation of insolvent insurance companies and insurance intermediaries is exclusively subject to the provisions of this law.

3. Expenses incurred by BPA in the receivership process, including the remuneration of the special manager, the remuneration of hired experts, including related expenses, shall be borne by assets of the insurance company or insurance intermediary.

**Article 55**  
**Voluntary Liquidation**

1. Voluntary liquidation of insurance companies or insurance intermediaries is subject to consideration by BPA.
2. Upon the submission of the liquidation project, BPA shall look into the business of the insurance company or insurance intermediary and may approve its voluntary liquidation or determine that the company or intermediary be subject to intervention under the terms of this law, depending on whether or not a proper protection of the interests of the policyholders and creditors is ensured.

**Article 56**  
**Insolvent Life Insurance Companies**

1. In the case of sufficient indications possible met by life insurance company become insolvent based on the opinion of an independent actuary, BPA may determine that the life insurance company policies, including its assets and liabilities and technical provisions, be transferred to one or several life insurance companies actively engaged in the insurance market of Timor-Leste.
2. In the case that such a transfer is not feasible under the terms of sub article 56.1, BPA may determine that its portfolio be transferred to another life insurance company, along with the assets available, and BPA shall guarantee mathematical reserves.
3. In the case previous sub article 56.2, the actuarial report accords a value to the insufficiency of assets, identifying the coverage mechanism or, alternatively, determines a reduction in the rights of policyholders within the scope of the transfer of the portfolio and the criteria for such a reduction.
4. The BPA may, established an instruction, in order to determine that other procedures be applied to the extent that such procedures accord a more adequate protection of the interests of policyholders, insures or beneficiaries.

**Article 57**  
**Special Manager**

1. The special manager is selected from among qualified persons, of good reputation, from the private sector or from BPA.
2. The functions of the special manager are remunerated under the terms to be established by BPA, and provision may be made for both the offer of incentives for the prompt liquidation of assets and distribution of outcomes among policyholders and creditors, and

accountability for failure to pursue such goals,

3. The special manager may be removed from office by BPA on substantiated grounds.

### **Article 58 Notification and Registration of Intervention**

1. The special manager shall, within two (2) days of the date of his or her appointment, affix at every office and establishment of the insurance company or insurance intermediary a notice announcing that the company has come under an intervention process and stating:

- (a) The start date of the intervention for all legal purposes;
- (b) The cancellation of authorizations to make financial or payment commitments, asset transfer commitments or asset management commitments;
- (c) The cancellation of the license; and
- (d) The referral of all claims against the insurance company or insurance intermediary to the special manager under sub article 58.4.

2. The special manager shall also publish, in one or more widely circulated newspapers, a notice informing the public of the intervention process the company has come under, the start date thereof, and the measures to which the company is subject.

3. The notice shall be published at least once a week over a 4-week period.

4. Every claim against the insurance company or insurance intermediary shall be filed with the special manager within ninety (90) days from the date the notice was last published.

5. The BPA shall examine and approve the contents of the notices referred to in this article, and such notices shall at all times include the information provided in sub article 58.4.

### **Article 59 Duties of the Special Manager**

1. It is the duty of the special manager to manage the insurance company or insurance intermediary, namely:

- (a) Liquidate its assets;
- (b) Pay debt obligations arising from insurance policies;
- (c) Meet any other debt obligations with creditors;

2. For the fulfillment of the duties referred to in sub article 59.1, the special manager shall enjoy all the powers that are usually assigned to shareholders and managers of

companies, and shall have authority to:

- (a) Freely enter the office premises and access accounting books and other records of the insurance company or insurance intermediary and its subsidiaries;
- (b) Contract loans, with or without guarantee, provided that the special manager has been given by BPA authority in writing to do so;
- (c) Interrupt or restrict the fulfillment of debt obligations;
- (d) Hire or dismiss any official, employee or advisor;
- (e) Sign documents on behalf of the company;
- (f) Represent the insurance company or insurance intermediary in a court of law or arbitration tribunal for all purposes;
- (g) Upon authorization from BPA, hire experts and pay their fees under article 62.

3. The special manager may, at his or her own request, be assisted by police officers when necessary.

4. The special manager is prohibited from adopting new policies or extending the duration of those in force.

5. The special manager is subject to the liabilities, penalties, conditions and restrictions applicable to managers and other employees of the insurance company or insurance intermediary under this law.

### **Article 60** **Exercise of Special Management**

1. It is the duty of the special manager to protect the assets of the insurance company or insurance intermediary in such a way as to prevent such assets from being misused as a result of abuse of trust, robbery, theft or any other unlawful act, and take action in order to:

- (a) Cancel the powers to bind the insurance company or insurance intermediary, whether these powers have been assigned by the bylaws of the company or by proxy or mandate.
- (b) inform policyholders, insures, agents, subagents, brokers, reinsurance companies, and revenue services, including banks and other entities carrying on business with the insurance company or insurance intermediary, that the previous representatives or persons vested with powers to bind the company are no longer

legally competent to do so, and such representatives or persons shall be replaced by the special manager or other duly authorized persons in all acts and for all purposes;

(c) Suspend the distribution of dividends, as well as payments of any nature, to shareholders and managers, with the exception of payments to be made as a recompense for services already delivered;

(d) Create and monitor new codes in the systems of access to the financial assets of the insurance company or insurance intermediary, and the new codes shall be disclosed only to the BPA representatives taking part in the intervention process.

2. The special manager shall, from the date of commencement of the intervention, make a new inventory of assets for the insurance company or insurance intermediary, determining the amounts pertaining to the liquidation of assets, deducting the amount of the liabilities in reverse order of the ranking of credits in the liquidation process, and obligations shall to that effect be considered to have become due and shall cease to accrue interest from the date of his or her appointment.

3. Within one thirty days (30) days of commencement of the intervention, the special manager shall make an inventory of the assets and rights of the company and shall provide BPA with a copy thereof, for purposes of public disclosure.

### **Article 61** **Effects of Intervention**

1. The appointment of the special manager for the intervention shall have following effects:

(a) Extension for six months of all periods of validity or limitation of any legal or negotiating source regarding rights of the insurance company or insurance intermediary in relation to third parties;

(b) Cancellation of liens and other guarantees over assets and rights of the insurance company or insurance intermediary, except those constituted over six months counted from the date of commencement of the intervention and those established by the special manager;

(c) Suspension of the powers of shareholders and members of the corporate organs of the insurance company or insurance intermediary; and

(d) Suspension of the rights of shareholders until such a time as all obligations arising from insurance policies are met.

2. Claims for credits arising from insurance policies shall be lodged with the special manager within the deadline provided in sub article 58.4.
3. Claims lodged after the deadline shall be attended to if the claimant gives a justification for such a delay, but only after the claims falling under the same category, lodged within the deadline, have been analyzed and paid.
4. Claims shall not be attended to in any other circumstances.
5. The procedure for determining the validity and the amount of the claims and for liquidating the assets of the insurance company or insurance intermediary, as well as the modalities of payment of claims, is defined by a BPA instruction.
6. The disposal of assets shall be conducted in a transparent and commercially reasonable manner.

## **Article 62 Hiring Experts**

1. Following written authorization from BPA, the special manager may hire experts, namely accountants, actuaries, assessors, lawyers, and other professional consultants.
2. An authorization request shall be accompanied by a substantiated statement justifying the need to hire such experts and presenting an estimate of the fees to be paid.
3. Shareholders, members of the board of directors or of the auditing board, and persons related to the company that has come under an intervention process, including any persons in general who do not offer guarantees of independence and impartiality, shall not be hired as experts.

## **Article 63 Canceling Operations Initiated Prior to Intervention**

1. Within two years of the commencement of the intervention, the special manager may propose legal action intended to cancel any operation carried out on the basis of false documents or with the objective of harming creditors.
2. Within the same deadline as stated in sub article 63.1 above, the special manager may also propose legal action intended to cancel any acts that have impacted negatively the assets of the insurance company or insurance intermediary, namely:
  - (a) Gratuitous transfers to a person related to the insurance company or insurance intermediary, made five (5) years prior to the commencement of the intervention;

(b) Gratuitous transfers to a third party, made three (3) years prior to the commencement of the intervention;

(c) Contractual operations in which the installment paid by the insurance company or insurance intermediary has considerably exceeded the value of the services or goods received, made three (3) years prior to the commencement of the intervention;

(d) Acts of refusal to recognize rights arising from insurance policies or other rights, performed five (5) years prior to the commencement of the intervention;

(e) Contraction of loans or establishment of guarantees over the assets of the insurance company or insurance intermediary without the approval by PBA; and

(f) Transfer of assets or payments made to creditors by virtue of obligations contracted six (6) months prior to the commencement of the intervention, where such transfers or payments have been made to clearly favor creditors.

3. Paragraph 63.2(f) shall not be applicable to either the transfer of assets or the payment of debts arising from insurance policies.

4. Within one (1) year of the commencement of the intervention, the special manager may also propose legal action intended to cancel any operations favoring any persons related to the insurance company or insurance intermediary, effected one year prior to the commencement of the intervention, where it is realized that such transactions have been detrimental to the interests of policyholders, insures or other creditors.

5. Excluded from this article are any payments by the insurance company or insurance intermediary made within the scope of the smooth running of the businesses of the company.

6. For the purposes of this article, operations in which the counterpart has either transferred to or established in favor of the insurance company or insurance intermediary an unsecured credit, which has not been paid by the insurance company or insurance intermediary on the actual date of intervention, are not considered to be detrimental to creditors or to affect its assets.

#### **Article 64** **Protection of Third Parties**

1. The rights of third parties who have acted in good faith are protected while canceling operations the purpose of which was to transfer immovable or moveable property subject to registration.

2. Good faith is presumed to have existed when it is realized that the third party has paid a fair price for the asset and that the third party was not aware that the transfer was likely



to harm the interests of the insurance company or insurance intermediary or those of its creditors.

### **Article 65**

#### **Provision of goods or services to company under intervention**

1. The lessor and purveyors of power, gas, water and telephone services may not interrupt the use of a building or the provision of services to an insurance company or insurance intermediary that has come under intervention, not even where such company or intermediary has payments in arrears.
2. The persons referred to in sub article 65.1 may, however, ask the special manager for a deposit of the amounts due on the date the intervention commenced.

### **Article 66**

#### **Ranking Credits**

1. Credits on an insurance company or insurance intermediary are ranked and paid in the following order:
  - (a) Credits enjoying an actual security with regard to proceeds from the disposal of a secured asset;
  - (b) Credits resulting from current expenses necessary for the exercise of the intervention, incurred by the special manager or by BPA, including fees for experts;
  - (c) Salary credits and social security in arrears up to two (2) months prior to the commencement of the intervention;
  - (d) Credits resulting from insurance policies in force;
  - (e) Credits for non-acquired premiums;
  - (f) Tax debts that have become due up to one (1) year prior to the commencement of the intervention;
  - (g) Ordinary credits;
2. In the case of insufficiency of securities, the remainder of the secured credits is dealt with as an ordinary credit.
3. In the case of insufficiency, the payment of credits ranked under the same class is made on a pro-rata basis

4. After all credits have been fulfilled, the remainder, if any, is distributed among shareholders or holders of capital of the company in proportion to their respective shares.

**Article 67**  
**Payment of Employees and Assistant Experts**

Employees and assistant experts hired within the scope of the intervention process are remunerated in accordance with the ordinary payment standard for employees and experts under similar circumstances, who are habitually hired by insurance companies and insurance intermediaries in Timor-Leste.

**Article 68**  
**Final Report of the Intervention Process**

1. Upon the completion of the intervention process, the special manager submits a report to BPA, containing necessarily a statement on the origin of revenues, quantification of the expenditure and the application of resources during the intervention period.
2. Upon the approval of the report by BPA, the intervention process is considered to have come to a close, and BPA and the special manager shall not be answerable for any acts practiced after that date.

**CHAPTER XI**  
**ENFORCEMENT**

**Article 69**  
**Remedial Measures**

1. In the exercise of its Supervision functions, BPA is the entity responsible for monitoring insurance companies and insurance intermediaries with respect to compliance with the provisions of this law.
2. Should reasonable indications of the performance of any acts contrary to this law, to rules contained in an instruction or to injunctions contained in orders, be found during the investigation, BPA may take one or more of the following remedial measures:
  - (a) Issue written warnings;
  - (b) Ask for midpoint financial reports from the insurance company or insurance intermediary;
  - (c) Prevent the insurance company or insurance intermediary from entering into insurance policy contracts;

- (d) Limit or restrict the operations to be undertaken by the insurance company or insurance intermediary;
- (e) Order the suspension or cessation of certain practices by the insurance company or insurance intermediary;
- (f) Impose such penalties as provided in this law;
- (g) Recommend that the insurance company or insurance intermediary take measures intended to protect its assets;
- (h) Recommend that the insurance company or insurance intermediary increase its share capital;
- (i) recommend that the insurance company or insurance intermediary submit to BPA a corrective plan;
- (j) Appoint an advisor to the insurance company or insurance intermediary;
- (l) Ask the auditors of the insurance company or insurance intermediary to present their opinions directly to BPA;
- (m) Appoint an external auditor at the expense of the insurance company or insurance intermediary;
- (n) Appoint an actuary at the expense of the insurance company or insurance company;
- (o) Appoint an interim manager to substitute the management of the insurance company or insurance intermediary;
- (p) Initiate the intervention process;
- (q) Monitor the management of the assets of the company or insurance intermediary;
- (r) Suspend the license of the insurance company or insurance intermediary; and
- (s) Cancel the license of the insurance company or insurance intermediary.

#### **Article 70** **Minor Infractions**

The following breaches are punishable with a fine of US\$ 250 to US\$ 15,000 or of US\$ 1,250 to US\$ 75,000, depending on whether such a fine is being imposed on a natural or legal person:

- (a) Failure to fulfill the duty to inform policyholders insures, beneficiaries and the general public;
- (b) Failure to fulfill the duty to inform or release documents within the deadlines set by BPA;
- (c) Provision of incomplete or inaccurate information to BPA;
- (d) Failure to abide by applicable accounting rules as determined by law or by BPA instruction;
- (e) Breach of the imperative norms of this law, complementary legislation or rules contained in BPA instruction, which does not amount to a serious or very serious violation.

### **Article 71** **Serious Infractions**

1. The following breaches are punishable with a fine of US\$ 750 to US\$ 50,000 or of US\$ 1,500 to US\$ 250,000, depending on whether such a fine is being imposed on a natural or legal person:

- (a) failure on the part of the insurance company or insurance intermediary to fulfill the duty to report to BPA the composition of the board of directors, the number of shareholders, any corporate agreements and, in general, any facts that are likely to affect the control and administration of the company, and any changes thereto;
- (b) Failure to comply with legal rules relating to the maintenance of and adherence to the minimum capital and solvency margins by insurance companies and insurance intermediaries;
- (c) Failure to fulfill the duty to ask for authorization to practice any of the acts provided in article 33;
- (d) Impede or hinder BPA from exercising its Supervision functions, namely through failure to comply, within set deadlines, with specific orders issued by BPA;
- (e) Failure to provide documents or to attend to information requests specifically made by BPA;
- (f) Provide BPA with inaccurate information that is likely to lead to erroneous conclusions the effect of which amounts to the provision of false information in that respect;

(g) Failure to fulfill the duty to inform policyholders insures, beneficiaries and the general public, which is likely to lead to erroneous conclusions on the situation of the company;

(h) Non-existence of organized bookkeeping, including non-compliance with accounting rules, as determined by law or by BPA instruction, where such non-compliance seriously prejudice the knowledge of the situation about the finances and assets of the company;

(i) Failure to fulfill the duty to use policy models approved by BPA;

(j) Make recourse to a third person with the objective of attaining an outcome that is directly prohibited by law.

## **Article 72** **Very Serious Infractions**

1. The following breaches are punishable with a fine of US\$ 1,500 to US\$ 150,000 or of US\$ 3,000 to US\$ 750,000, depending on whether such a fine is being imposed on a natural or legal person:

(a) Carry on the business of insurance or insurance intermediation without authorization, including the practice of any of the prohibited acts provided in article 32;

(b) Carry on a business that is not part of the corporate object of the company, as registered with BPA;

(c) Fraudulently pay up share capital;

(d) Hide a situation of financial insufficiency;

(e) acts of intentional, harmful management practiced by members of the board of directors or of the auditing board and authorized representatives, to the detriment of the rights of creditors arising from insurance policies, and those of all other creditors;

(f) Acts that seriously impede or hinder a sound and prudent management of the company, practiced by holders of a relevant stake or by related persons;

(g) Use of funds for unauthorized or specifically prohibited expenditures and operations, to the detriment of creditors under the terms of insurance policies, and all other creditors.

### **Article 73**

#### **Accessory Penalties**

Along with the fines provided in the preceding articles, BPA has authority to impose the following accessory penalties:

- (a) Seizure or forfeiture of the item used for committing the breach and of the economic benefit obtained by the offender by committing such a breach;
- (b) In the case of natural persons, prohibition on holding corporate positions in a company subject to Supervision by BPA, for a period ranging from six months to three years;
- (c) Prohibition, in whole or in part, on signing new contracts of the field, modality, product or operation to which the breach is related, for a period of up to three (3) years;
- (d) Suspension or cancellation of granted authorizations;
- (e) Suspension of the exercise of the right to vote in a company subject to Supervision by BPA, for a period ranging from six months to three years;
- (f) Publication by BPA of the penalty in the Official Gazette and in a widely circulated newspaper in Timor-Leste, at the expense of the offender.

### **Article 74**

#### **Liability**

1. Both natural and legal persons may be held jointly or severally liable for breaches committed and, in the case of legal persons, even where such persons have been irregularly established.
2. A legal person is exonerated from liability where its agent has acted against explicit orders or instructions issued by the former.
3. Natural persons appointed as members of corporate organs and representatives of a legal person held liable for a breach are jointly liable with the latter, even if the act originating the mandate or representation is null and void.
4. Liability for any of the breaches provided in this law is neither precluded nor excluded by the application of other laws generating disciplinary, civil or criminal liability.
5. A proceeding in connection with a breach shall lapse within three (3) years counted under the terms of the Penal Code.

## **Article 75**

### **Processing**

1. It is the responsibility of BPA to process and impose provisional remedies, fines and accessory penalties, and it is up to the board of directors to make a final decision on the case.
2. During the investigation phase, BPA may seek assistance from police authorities or from other public services.
3. Upon the completion of the investigations, an indictment is prepared or the case is dismissed, depending on whether there are reasonable indications of the commission of a breach punishable under this law or not.
4. The indictment is notified to all liable persons and the latter may answer within ten to thirty days, taking into account the complexity of the case, by presenting their defense and providing or requiring evidence.
5. The indictment shall contain the identification of the offenders, a description of all of the acts imputed, including the date, time and place where such acts were practiced, as well as the grounds for prohibition and punishment.
6. Once the relevant search for evidence has been completed, the case file is submitted for decision with an opinion attached thereto.

## **Article 76**

### **Judgment and Notifications**

1. The recurrent commission of the same breach may result in the imposition of different fines.
2. The extent of the fine and applicable accessory penalties shall be determined on the basis of the guilt and economic status of the agent, and his or her previous conduct.
3. The fine shall, where possible, exceed the economic benefit that the agent or the person the agent wished to benefit has withdrawn from the commission of the breach.
4. The decision is notified to the liable persons by registered mail with a notice of receipt, addressed to the legal domicile or domicile of choice of the persons concerned or, if need be, through police authorities.
5. In the event that sub article 76.4 may not be applied, the notice may be served by means of an advertisement published in a widely circulated newspaper.

**Article 77**  
**Payment**

1. The payment of fines and costs is made within fifteen (15) days.
2. The amount of fines shall accrue to BPA in its entirety.

**Article 78**  
**Payments of Liability**

1. A legal person, even though it has been irregularly established, is jointly liable to pay fines and costs pertaining to penalties imposed on members of its board of directors or auditing board, representatives or employees.
2. Members of the board of directors or auditing board of a legal person, even though it has been irregularly established, who have not opposed the commission of the breach, are severally and subsidiary liable to pay the fines and costs pertaining to a penalty that may have been imposed on such a legal person.

**Article 79**  
**Execution**

In any action initiated by BPA in connection with the execution of fines, a decision that has been notified but has not been judicially challenged is proof of the obligation to pay the fine.

**Article 80**  
**Judicial Review**

1. A decision imposing a fine may be appealed against to ordinary courts within thirty (30) days of receipt of the notice.
2. An appeal motion shall be lodged with BPA and the BPA shall, upon receipt of the motion, forthwith forward the records to the competent court.
3. BPA may gather the allegations and information it deems relevant to the decision in question.
4. The judge may decide by means of an order where that consider that the hearing is not necessary and appellant that the BPA are not opposed to this type of decision.