



DEMOCRATIC REPUBLIC OF CONGO



**ACT NO 15/005 IMPLEMENTING THE INSURANCE
CODE**

People's Palace
Kinshasa/Lingwala
January 2015



EXPLANATORY STATEMENT

The Act implementing the Insurance Code is one of the most important schemes among the reforms initiated to modernise and liberalise some activities of the country's economic and financial sectors.

Insurance is an essential activity for a modern country's economic and social development.

On the one hand it contributes to family security and enterprises' durability by mitigating the effects of accidents that pose a threat to their property or financial security; on the other hand it generates collective savings that, being invested in the interest of national economy, contribute greatly to the latter's development.

Legal certainty is indeed one of the investors' main concerns and therefore a condition to the country's economic development and improvement of its citizens' living conditions.

The particular nature of insurance transactions has led States to universally legislate in order to create a specific legal framework pertaining to insurance policies, insurance companies' operating mode, and their monitoring by public authorities.

Congolese insurance legislation consists of disparate and obsolete texts, in addition to remaining outside international instruments. Pursuant to Article 202(36) of the Constitution, it is therefore necessary to establish a comprehensive modern legislation by way of an Insurance Code that incorporates all international commitments pertaining to insurance as well as the country's specific requirements.

Given that insurance transactions are part of the competitive economy sector, the State should not play a large role in this sector. However, the State must determine the conditions under which new companies, including mutual insurance companies, may be licensed to carry out insurance activities.

By liberalising the insurance market, thus ending the *Société Nationale d'Assurances*'s monopoly of the sector, the State must continue to assume its responsibilities regarding market surveillance and regulation as well as operators' discipline in the interests of insured parties thanks to the financial security offered by insurance companies. This is why this Act shall establish an Insurance Regulatory and Supervisory Authority.

This Act is structured in the following seven books:

Book I : Insurance transactions

Book II : Insurance and reinsurance companies

Book III : Institutional Framework and State Control

Book IV : General Agents, Brokers and Other Insurance Intermediaries

Book V : Particular insurance establishments

Book VI : Accounting and Fiscal Regimes
Book VII : Transitory and Final Provisions and Repeals

Such is the general scheme of this Act.

ACT

The National Assembly and the Senate have adopted;
The President of the Republic hereby promulgates the law set forth below:

BOOK I : INSURANCE TRANSACTIONS

TITLE I : GENERAL PROVISIONS

Article 1: Scope

This Act shall apply to all direct insurance and reinsurance transactions carried out in the territory of the Democratic Republic of Congo.

It shall not apply to insurance operations managed by the social security authorities.

However, it does apply to some direct insurance and reinsurance transactions carried out by licensed companies in addition to and after exhaustion of the guarantees granted by social security.

Article 2: Prevalence of provisions specific to some insurance classes

Provisions specific to some insurance and reinsurance classes shall prevail, in case of conflict, over the provisions common to all insurances.

Article 3: Definitions

For the purposes of this Act, the terms are defined as follows:

1. **Actuary:** Person who, by training, specialises in analysing the mathematical, technical and financial aspects of insurance, risks and related fields, more specifically the construction of a mortality table, the calculation of premiums, policy liabilities and various values;
2. **Insurance agent:** Insurance intermediary permitted to present insurance transactions to the public. Either a natural or a legal person, the agent of an insurance company, whom in a given constituency shall represent and exclusively offer their production to the said company. They are bound to the insurer under a contract of appointment, which determines the extent and nature of the agent's and the commissioning company's duties;
3. **Boat equipment:** equipment used to manoeuvre a vessel, more specifically cables, yards and sails;
4. **Apparel:** machines installed on-board vessels and designed for handling operations or manoeuvres;
5. **Arrears :** sum of money due or accruing that must be paid periodically to the beneficiary of an annuity or a pension;
6. **Property insurance:** insurance for which the insurance benefit depends on an uncertain event that causes damage to a person's property. Property insurance includes both property and casualty insurance as well as liability insurance.
7. **Fronting insurance:** civil liability insurance taken out by drivers of vehicles registered in a foreign country that is not part of an International Motor Civil

Liability Insurance System. It is usually issued for a limited period at the border offices;

8. **Life and health insurance:** Insurance covering risks which occurrence depends on the survival or death of the insured party as well as their incapacity or disability.
9. **Cargo insurance:** insurance of the goods and/or of cargo
10. **Term insurance in the event of death:** Insurance guaranteeing the payment of a cash amount or annuity in the event of the death of the insured party, provided that the death takes place before a date set by the contract. If the insured party lives beyond this date, the insurer shall not owe any benefit and the premiums become earned premiums.
11. **Insured party:** Natural or legal person upon whom or upon whose interests insurance is based.
12. **Insurance certificate:** Certificate issued by the insurer certifying the existence of coverage.
13. **Advance payment:** Loan granted by insurer to the policyholder guaranteed by the mathematical reserve of the life insurance policy.
14. **Beneficiary:** Natural or legal person appointed by the policyholder to receive the capital or annuity owed by the insurer.
15. **National bureau:** Professional non-profit agency with which every motor insurer operating on the territory of a Member State signatory of the Inter-Bureaux Convention has to register; the agency intervenes on this territory as manager of the system issuing the International Motor Civil Liability Insurance Card and of the settlement of claims occurring in the territory, as a consequence of cross-border traffic with other countries members of the system.
16. **Insured capital:** Value declared in the policy that constitutes the insurer's limit of liability.
17. **International Motor Civil Liability Insurance System:** Insurance Card that covers the civil liability of the motor vehicles in international traffic, issued by the national office of a Member State and valid in all the other Member States.
18. **Fee¹:** Remuneration attributed to an insurance intermediary, a broker or a manager.
19. **Insurance conditions:** All clauses forming the basis of the agreement reached between the policyholder and the insurer.
20. **Constructor:**
 - architect, entrepreneur, technician or other person bound to the main contractor under a service contract;
 - person who sells, after completion, a work they constructed or had constructed;
 - person who, although acting as a representative of the work's owner, carries out a mission similar to that of a service contractor.

¹ Or Commission

21. **Life insurance policy:** Agreement by which, in exchange for a single payment or regular instalments, the insurer provides services which execution depends on the insured party's survival or death.
22. **Capitalisation policy:** Insurance agreement in which the probability of death or survival does not affect the service as such as in exchange for a single payment or regular instalments the beneficiary shall receive a capital made up of the sums paid increased by any interest and profit-sharing.
23. **Return of premiums:** Guarantee consisting of returning net contributions, plus any interest, at the death of the insured party before expiry of a life policy.
24. **Insurance contribution:** Sum corresponding to the premium owed by the insured party in exchange for an insurance policy taken out from mutual insurance companies.
25. **Declarations of shipments:** A firm order given by an insured party to the insurer that adds to the floating or open policy, concluded in advance or for a given period with the aim to cover regular cargo shipments under marine risks.
26. **Forfeiture:** loss of the right to an indemnity for a given loss upon failure by the insured party to comply with one of their commitments, without such loss of right rendering the said contract null and void.
27. **Abandonment:** Title transfer of an insured property, in the event of a loss, to the insurer against payment by the insured party of the full insured amount.
28. **Insurance application:** A form issued by the insurer in which they offer to temporarily cover the risk at the request of the policyholder.
29. **Premium due date:** Date on which premium settlement is due.
30. **Regulated commitments:** Technical provisions, for current risks and outstanding claims, constituted by insurance agencies so that they can meet their commitments towards their insured. Recorded as liabilities, they correspond to the debts incurred and must be represented under the assets as regulated investments.
31. **Insurance company:** Licensed commercial company that carries out, as a regular activity, underwriting and execution of insurance contracts.
32. **Reinsurance company:** Any company which usual activity consists of accepting insurance risk ceded either by an insurance company or another reinsurance company, or by an insurance or reinsurance mutual company, and which does not underwrite nor issue insurance contracts.
33. **Event:** Circumstance that is likely to provoke or that has provoked a claim.
34. **Exclusion:** Event or state of a person, not covered, being excluded from the guarantee.
35. **Deductible:** Sum that, in the settlement of a claim, is always imposed upon the insured party.
36. **Lapse of right:** Loss of the right to make an appeal.
37. **Insurance indemnity:** Sum paid by the insurer in compliance with the provisions of the policy for the damage suffered by the insured party or victim.
38. **Project Manager:** Natural or legal person for whom the work or the supply of equipment is carried out.

39. **Work:** The result of all civil engineering work that may consist of construction, reconstruction, demolition, repairs or renovation.
40. **Injured party:** Person victim of a loss for which the insured is liable.
41. **Insurance policy:** Document embodying the insurance contract. It indicates the general and specific conditions.
42. **Notice of cancellation:** Period that must be respected by the party wishing to terminate the insurance contract.
43. **Bottomry loan:** an agreed loan at a very high interest rate by a private individual to fund a trader's long-term trip.
44. **Insurance benefit:** The sum payable or service to be supplied by the insurer in return for its commitments.
45. **Premium:** Sum owed by an insurance policyholder in return for the guarantees granted by the insurer.
46. **Pure Premium:** Sum representing the cost of an insured risk determined using actuarial methods based on statistics for the said risk.
47. **Insurance proposal:** Document issued by the insurer or its representative to a potential insured in which the latter must provide information required by the insurer to assess the risk to be covered and determine the terms of coverage.
48. **Mathematical reserve:** Difference between the present values of the commitments respectively made by the insurer and the insured. It is part of the insurer's assets. The mathematical reserve must be repaid even in the event of nullity, or voluntary suicide of the insured.
49. **Technical provisions:** Regulated commitments or sums placed in reserve by the insurers to cover their obligations.
50. **Redemption:** Early payment to the insured of a percentage of savings accumulated under a life insurance contract. Full redemption of the savings shall end the contract.
51. **Reinsurance:** Contract by which a reinsurer covers for the insurer all or part of the risks borne for the insured; the insurer remains solely liable towards the insured.
52. **Limited financial reinsurance or finite reinsurance:** Reinsurance under which the reinsurer's maximum potential loss exceeds, within the limits of a large but limited amount, the premiums owed by the ceding party for the entire policy period. That MPL results from a significant transfer of both underwriting-related risks and risks related to the payment due dates.
53. **Reduction:** Operation that determines the new capital or new guaranteed annuity referred to as "reduction value", to which an insured party is entitled after paying part of their annual premiums under a life insurance policy and who has ceased to pay these premiums.
54. **Reduction in indemnity insurance:** Sanction consisting of the insurer reducing the benefit due to a breach of one of the insurance contract obligations by the insured party or policyholder.
55. **Average:** General insurance principle by which, in the event of a claim, the indemnity is reduced by the proportion of:

- the ratio of the guaranteed amount and the value of the insured property, should the latter be under-insured;
 - the ratio of the premium actually paid and the premium owed by the insured party, should the premium be insufficient given the nature of the risk.
56. **Cancellation:** Premature end of an insurance policy at the request of either one of the parties, or automatically where stipulated by law.
 57. **Risk:** Event feared by the insured and which is the subject of the policy.
 58. **Claim:** Occurrence of an event stipulated by the insurance policy.
 59. **Member:** Person who joins a mutual insurance company. Synonymous for insured.
 60. **Under-insurance:** Whereby the sum declared to the insurer is less than the actual value of the insured risk.
 61. **Policyholder or contracting party:** Legal or natural person who takes out insurance for their own behalf or on behalf of another and as a result undertakes to pay a premium to the insurer.
 62. **Legal subrogation:** Whereby the insurer takes over the rights and actions of the insured party in return for the payment of an indemnity.
 63. **Premium surcharge:** Increase of insurance premium following an increase in the insured risk.
 64. **Tacit renewal:** Automatic renewal of an insurance policy at the end of each guarantee period.
 65. **Premium or contribution rate:** Proportion of the insurance premium or contribution compared to the insured capital.
 66. **Third party payer:** In terms of civil liability, agency providing services to the victim of bodily injury attributable to an event of any kind for which the agency may then obtain reimbursement from the person liable for compensation.

TITLE II: COMMON RULES FOR ALL INSURANCE

Chapter 1: Insurance contract

Article 4: Definition

The insurance contract is an agreement by virtue of which, in exchange for payment referred to as premium or contribution, a party, the insurer, undertakes to supply another party, the policyholder, with a service stipulated in the contract should an uncertain event occur that, as the case may be, the insured party or beneficiary does not wish to occur.

Article 5: Insurance interest

Any person who has an interest in preserving a property may have it insured. Any direct or indirect interest in not having a risk occur can be the subject of an insurance cover.

Article 6: Insurance proposal

An insurance proposal is a written offer to take out insurance from the contracting party. The offer shall become binding only upon acceptance by the insurer. The offer is not binding on either the insured party or insurer: only the policy or cover note establishes their reciprocal commitment.

Any proposal sent by letter or by any other means with acknowledgement of receipt shall be deemed as accepted if the insurer does not respond to the said proposal within fifteen days of receipt.

The provisions in the second paragraph do not apply to life and health insurance.

Article 7: Information to the contracting party

Before signature of the contract, the insurer shall send the contracting party a copy of the contract draft or an information sheet on the contract providing a detailed description of the cover, exclusions, insured party's obligations and contribution payable by the insured party.

Any deviations from the information supplied in the contract draft or information sheet shall not be binding on the insured party.

Article 8: Evidence of change to the contract

The insurance contract is established in writing. It is signed by the insurer, the contracting party or policyholder.

Any addition or change made to the initial insurance contract shall be recorded by an amendment signed by all contracting parties.

These provisions shall not impede, even prior to issuance of the contract or amendment, the insurer and insured party from being bound to each other upon remittance of a cover note.

Article 9: Contract form and compulsory stipulations

The insurance contract is written in simple terms and legible characters. Any ambiguous clauses shall be interpreted in favour of the insured party.

Under penalty of unenforceability, any clauses that restrict the insured party, whether they stipulate nullities or forfeiture, establish the rules on compensation or relate to exclusions of liability, must be put in bold or in visible characters.

The insurance contract shall be dated on the day it is established.

It indicates:

1. the names and residences of the contracting parties;
2. the insured property or person;
3. the nature of the risks covered;
4. the quality of experts to be called upon for a particular claim;
5. the moment from which the risk is covered and the duration of coverage;
6. the limit of liability
7. the insurance contribution to be paid by the insured party;
8. terms of an extension;
9. terms of a cancellation;
10. the insured party's obligations upon taking out and during the contract with regard to the declaration of the risk's nature, of other insurances taken out for the same risk and applicable sanctions;
11. terms and conditions of the claim following a loss and any sanctions in the event of a late or false claim;
12. the period within which the insurer must propose a settlement and the period within which the indemnity must be paid;
13. the procedure and principles used to set the indemnity;
14. the limitation period for a claim as well as when the said limitation period can be interrupted or suspended.

Mutual insurance company contracts must stipulate that insured members shall be sent the company's complete articles of association.

Article 10: Mandate – Omnibus insurance

Insurance may be contracted under a general or special mandate or on behalf of a specific person, even without a mandate. In the latter case, the insurance benefits the person on behalf of whom it was taken out, even if ratification only takes place after a loss.

Insurance may also be taken out on behalf of whom it will belong. The clause serves as both insurance for the policyholder and a third party for the benefit of the known or potential beneficiary of the said clause.

Only the person taking out an insurance on behalf of whom it will belong must pay the premium to the insurer. Any exceptions binding the policyholder are also binding on any beneficiary of the contract.

Article 11: Insurance contract transfer

Insurance contracts other than life insurance contracts may be to a designated person, to order or to bearer.

Contracts to order are transferred by endorsement, even in blank.

Life insurance contracts may be to order. The endorsement of a life contract must be dated, indicate the endorsement beneficiary's name and be signed by the endorser, under penalty of being null and void.

Article 12: Enforceability of exceptions

The insurer may enforce any exceptions binding on the original policyholder against the insurance contract bearer or third party who claims the benefit of said contract.

Chapter 2: Parties' obligations**Section 1: Insured party's obligations****Article 13: Risk declaration**

The insured party must provide accurate responses to the questions asked by the insurer in the risk declaration form so that the insurer may assess the risks it will cover.

Article 14: Reluctance or voluntary false declaration

Notwithstanding standard nullity clauses, the insurance contract shall be deemed null and void should the insured party show reluctance or intentionally provide a false declaration where this reluctance or false declaration changes the nature of the risk or lowers the insurer's assessment, even when the risk omitted or altered by the insured party does not impact the claim.

Premiums paid shall be retained by the insurer as damages.

Article 15: Omission or involuntary false declaration

An insurance contract shall not be deemed null and void in the event of an omission or false declaration without proof of the insured party's bad faith. Where an omission or false declaration are discovered before a claim, the insurer may either maintain the contract by means of a premium increase accepted by the insured party, or cancel the contract ten days after notifying the insured party by registered mail or any other means with acknowledgment of receipt, and refund the insured party of the portion of contribution paid for the period no longer on cover.

Where discovery takes place after a claim, the indemnity shall be reduced by applying the rate of premiums paid to the rate of premiums that should have been paid if the risk had been fully and accurately declared.

Article 16: Payment of premium

The premium is payable at the insurer's or the intermediary's address under the conditions stated in Article 496 of this Act. The effective date of the contract depends on payment of the premium by the policyholder.

Insurance companies may not, under penalty of sanctions, underwrite or renew an insurance contract with outstanding premium.

By way of derogation from the principle stated in the previous paragraphs, a maximum term of payment of sixty days from the effective or renewal date of the contract may be granted to the policyholder, for risks which premium exceeds ninety times the guaranteed minimum wages with the exception of contracts of Motor, Health and Goods in Transit classes.

However, the policyholder shall sign an explicit agreement to pay the premium of the contract before expiry of the term provided. When the explicit agreement to pay the premium is reflected by a negotiable instrument, the maximum term stated cannot exceed the sixty days period mentioned hereinabove.

Failure to make the payment within the agreed period, the contract is cancelled as of right. The portion of premium utilised shall be retained by the insurer, without prejudice to any proceedings and recovery costs.

The provisions of paragraphs 3 to 4 do not apply to life insurances.

Article 17: Increase and modification of risk

In the course of the contract, the insured party must declare any new circumstances that may increase or lower the risk or create new risk and therefore render the information given to the insurer at the signing of the contract inaccurate.

The insured party must declare these circumstances by registered mail or any other means with acknowledgement of receipt within fifteen days of acquiring knowledge of them.

If new circumstances declared in the course of the contract are of a nature that, had they been declared at the signing of the contract, the insurer would not have concluded the contract or would have set a higher premium.

The insurer may then cancel the contract by returning the portion of premium corresponding to the unutilised policy period, or offer a new premium amount.

The provisions of the previous paragraph shall not apply to life insurance or health insurance where the insured party's state of health changes during the course of the contract.

If the premium was set by taking into account special circumstances mentioned in the contract that aggravate the risks, and these circumstances should disappear during the policy period, the insured may cancel the contract, without compensation and with the right to a refund of the portion of premium corresponding to the unutilised period, if the insurer does not agree to a decrease in premium corresponding to the reduction of risk.

The insurer may no longer invoke the aggravation of risks where, having been informed of this by any means, it has accepted to maintain the insurance.

Article 18: Declaration of loss

The insured must inform the insurer of any loss that may implicate the insurer's liability immediately after acquiring knowledge of the said event. This contractual period may not be less than eight working days except in the case of theft or death of livestock, where the contractual period will be reduced to five days. These periods may be extended by mutual agreement between the contracting parties.

Any insured who, acting in bad faith, files an inaccurate claim for the purpose of altering the insurer's assessment and receiving an undue advantage shall not be entitled to the insurance benefit.

Article 19: Penalties in case of late declaration and forbidden forfeiture clauses

The contract may stipulate the forfeiture of the insured for late declaration with regards to the periods stipulated in Article 19 paragraph 1, but such forfeiture may only be enforced against the insured if the insurer provides proof that the delay has been damaging. Any contrary clause shall be deemed non-written.

Shall be void:

1. any general clause pertaining to the insured's forfeiture in the event of a breach of laws and regulations, unless this breach is an offence.
2. any clause pertaining to the insured's forfeiture, due to their delay in remitting the notice of claim to the competent authorities, without prejudice to the insurer's right to claim an indemnity proportionate to the losses caused by this delay,
3. any clause enacting nullities, forfeitures or exclusions not mentioned in bold and visible characters.

Section 2: Insurer's obligations**Article 20: Obligation to inform and advise**

In compliance with Article 7 of this Act and subject to the sanction stipulated for reluctance, the insurer must provide the policyholder with any information and advice required to sign the contract.

The insurer must send the insured party a written copy of the contract as stipulated in Article 8 of this Act, the information sheet sent to the former and the proposal completed and signed by the insured party, contracting party or policyholder.

Article 21: Claim settlement

Upon occurrence of an insured risk or on expiry of the contract, the insurer must provide the benefit stipulated by the contract within the agreed period and may not be bound beyond this.

Upon receipt of a claim, the insurer must immediately inform the insured party of the documents to supply in order to complete the claim for compensation and carry out any assessments required while keeping the insured party informed and inviting them to participate in these assessments. Should the insurer consider that the claim may not be accepted, it must immediately provide the insured with its reasons for doing so.

If the risk is covered by the contract the insurer must present the insured party a compensation offer detailing the heads of damage within three months upon receiving all information required to examine the claim. Should the insurer overrun this time-limit, the compensation shall be increased by late payment interests calculated based on twice the Central Bank of the Congo's policy interest rate on the last day the compensation offer should have been legally made.

Where the sum of a claim hasn't been finalised within six months after receiving the claim, the insurer must provide the insured party or victim with a provisional reasonable offer to be deducted from the final settlement. If the provisional settlement offer is not sufficient, the insurer must pay, in addition to the compensation, a penalty calculated based on twice the Central Bank of the Congo's policy interest rate on the date the offer was made. If no provisional settlement offer is made within six months of the claim, the insurer shall owe late payment interest calculated based on twice the Central Bank of the Congo's policy interest rate on the final day the offer should have been made.

In the event that the insured party, assignee or beneficiary should accept a settlement offer or payment to be deducted from the final settlement, they are entitled to retract within seven days following their acceptance.

The insurer must pay the agreed sum within fifteen days following the end of the retraction period. Any late payment shall put the insurer at risk of paying interest calculated based on twice the Central Bank of the Congo's policy interest rate on the expiry date of the legal payment period.

Article 22: Notice of maturity

For contracts that may be renewed by tacit renewal, at the end of each policy period, the insurer must, at least thirty days in advance, send a notice to the last known address of the insured party or person responsible for paying the premiums informing said persons of the contract's maturity date and premium amount to be paid to renew the said contract.

Article 23: Exclusions

Cover exclusions and forfeitures shall be written in visible characters.

Loss and damage caused by unforeseeable circumstances or caused by the insured party's negligence shall be covered by the insurer, except for formal exclusions and limits stipulated in the contract.

However, the insurer shall not be liable for any loss or damage caused by wilful or deceitful misconduct on the part of the insured party. The burden of proof regarding the intentional or deceitful nature of the fault rests on the insurer.

The insurer shall not be liable for claims occurred after expiry or suspension of the contract cover.

Chapter 3: Duration and cancellation of contract

Article 24: Contract duration

The duration of the contract is stated in visible characters.

Should its duration be over one year, the contract will also mention that it can be cancelled by the insured party on the anniversary of the cover's inception and that the duration of the tacit renewal may not exceed one year.

Article 25: Right to cancel on the contract's anniversary date

Subject to the provisions of paragraph 4 of this article, where the contract is valid for more than one year, notwithstanding any clause to the contrary, the insured party may cancel the contract each year, without indemnity, on the anniversary of the date it took effect, by giving at least one month's notice.

Each contract shall contain a clause stipulating the insured party's right to cancel at each anniversary.

The insurer has the same right under the same conditions except for Health Insurance contracts, Life insurance contracts and Construction insurance contracts.

The insurer and insured party may waiver, by means of a clause added to the contract, their right to cancel the contract each year if the insured party is a company that wishes to take out a multiannual contract.

Article 26: Prohibition to cancel after a loss

Given that the very object of an insurance contract is for the insurer to pay claims, any clause that authorises the insurer to cancel the contract after the occurrence of a loss shall be deemed as unwritten.

Article 27: Cancellation for modification or termination of risk

In accordance with Article 16 of this Act, the insurance contract may be cancelled by each of the parties provided the purpose of the contract is to cover risks directly related to the previous situation and that do not apply to the new situation.

It is the case where one of the following events occurs:

1. change of residence;
2. change of profession;
3. retirement or final termination of professional activity;
4. change of situation or matrimonial status.

The contract may only be cancelled within three months of the event. It shall take effect one month after the other party receives notice.

There shall be no indemnity to be paid to the insurer should a contract be cancelled under the terms of this article.

The date at which the cancellation period begins due to the occurrence of one of the aforementioned events shall be the date on which the new situation begins.

However, in the case of retirement or final termination of professional activity the period shall begin the day after the previous situation ended.

Where one of the events referred to in paragraph 1 is established by judicial decision, or where the legal effects can only be inferred from an exequatur or probate, the date chosen shall be the date this judicial deed becomes final.

In the event of cancellation, the insurer must refund the insured party of pro-rated premiums paid for the unutilised period.

The provisions of this article shall not apply to life insurance contracts.

Article 28: Form of cancellation

The party that wishes to cancel an insurance contract must advise the other party by any of the following means: registered mail with acknowledgment of receipt, declaration countersigned or with acknowledgment of receipt, extrajudicial act or by any other means stipulated in the contract.

If the cancellation request follows on one of the events mentioned in the previous article, the requesting party must indicate the nature and date of the said event and provide any detail that can establish the cancellation is directly related to this event.

Article 29: Disappearance of insured property prior to conclusion of the contract

The insurance shall be null and void if, upon concluding the contract, the insured property has already perished or is no longer exposed to risk.

The insured must be refunded any premiums paid, after deducting costs incurred by the insurer other than those for fees reclaimed from the agent or broker.

If it is proven that one of the parties acted in bad faith upon concluding the contract, this party must pay the other party twice the amount of premium for one year of insurance.

Article 30: End of contract in case of total loss of the insured property

In case of total loss of the insured property due to an event not stipulated by the contract the insurance shall automatically end and the insurer must reimburse the insured party the portion of the premium paid in advance covering the period during which the risk no longer existed.

If the contract grants several covers and the insured property can be compensated for total loss under one of these covers, the insurer must refund the insured party pro-rated premiums pertaining to the other covers for the unutilised period.

Article 31: Transfer or cancellation of contract in case of the insured's death or the insured property's disposal

In the event of death of the insured party or transfer² of the insured property, the insurance shall automatically continue to the benefit of the heir or purchaser provided that they fulfil all the obligations binding the insured party towards the insurer under the contract.

However, the purchaser, heir or insurer may cancel the contract within three months of the day the final beneficiary of the insured property requests that the contract be transferred to their name.

Any indemnity payable to the insurer cannot be provided for in the aforementioned cases of cancellation. The premium portion corresponding to the unutilised period must be refunded by the insurer.

In case of disposal of the insured property, whoever disposes of it remains bound to pay any due premiums to the insurer, however they are exempted, even as guarantor of future premiums, from the moment they have informed the insurer of the disposal by registered letter or any other means with acknowledgment of receipt.

Where there are several heirs or several purchasers, if the insurance continues, they must jointly and severally pay the premiums.

The provisions of this article shall not apply to the disposal of a motor land vehicle.

Article 32: Disposal of motor land vehicles

The insured party must inform the insurer, by mail or any other means with acknowledgment of receipt, of the date the motor land vehicle, its trailer or semi-trailers are disposed of.

Where a motor land vehicle, its trailers or semi-trailers are disposed of and only with regard to the disposed vehicle, even in the absence of a declaration from the insured party, the insurance contract shall be automatically suspended at midnight of the fifth day of disposal. It may be cancelled by either party by means of a ten-day notice.

Should the parties agree to not reinstate or cancel the contract, the cancellation shall automatically take effect upon expiry of a six-month period starting from the date of disposal.

The insurer must reimburse the pro-rated premium corresponding to the period between the date of this cancellation and the due date. No indemnity shall be paid to the insurer in any of the cancellation cases referred to in the preceding paragraph.

² Official translation: Alienation - the transfer of the ownership of property rights

Article 33: Insolvency, bankruptcy or liquidation of the insured

The insurance shall subsist in case of insolvency, bankruptcy or liquidation of the insured.

The liquidator is entitled to cancel the contract during a three-month period starting from the date of bankruptcy or liquidation. The premium portion pertaining to the time during which risk is no longer covered the risk shall be refunded by the insurer.

Chapter 4: Competent courts and limitation period**Article 34: Competent courts**

For any dispute over the defining or settling of indemnities due after a loss, the competent court is that of the insured party's residence whatever type of insurance concerned.

However:

1. for movable and immovable property, the defendant shall be summoned before the court of the place where the risk is located.
2. for insurance against accidents of any kind, the insurer may be summoned before the court of the place where the harmful event occurred.

Article 35: Limitation period

Any action deriving from an insurance contract shall lapse after two years following the event that initiated the said action.

This lapse is extended to five years for life insurance contracts where the beneficiary is a separate person from the policyholder, and for personal accident insurance contracts where the beneficiaries are the eligible claimants of the deceased insured.

However, this period shall only begin:

1. in the case of reluctance, omission, false or inaccurate declaration of the risk, on the day the insurer acquires knowledge of it;
2. in the event of a loss, on the day concerned parties acquire knowledge of it, if they can prove they had no knowledge of this beforehand.

When the insured party's action against the insurer is due to a third party's claim, the lapse period shall only begin on the day the third party begins court proceedings against the insured or has been compensated by the latter.

Article 36: Interruption and suspension of the limitation period

The limitation period shall be interrupted or suspended due to one of the causes stipulated by Articles 636 to 644 of the Congolese Civil Code Book III and by the appointment of experts following a claim.

The limitation period of the legal action may also be interrupted by the means of a registered letter or any other means with acknowledgement of receipt from the insurer to the insured as regards the action for premium payment or from the insured to the insurer as regards claim or benefits settlement.

TITLE III: RULES REGARDING GENERAL INSURANCE

Chapter 1: General provisions

Article 37: Principle of indemnity

Property insurance is an indemnity contract.

The indemnity owed by the insurer to the insured may not exceed the value of the insured property at the time of the loss.

The contract may provide that the insured shall remain their own insurer up to a given amount or percentage, or be imposed a pre-fixed deductible on the claim's indemnity.

The principle of indemnity shall not prevent the parties from agreeing to stipulate a value which may not be disputed after loss for the insured property when concluding the contract, nor that the property shall be replaced after a loss at their current market price.

Article 38: Damage caused by persons or properties for which the insured is liable

The insurer is liable for loss or damage caused by persons for which the insured is liable regardless of the nature or extent of these persons' wrongful acts, or by properties in its custody.

Article 39: Coinsurance

If several insurers cover the same risk under a single contract, each insurer is bound but without solidarity and only to the portion of the sum they insure, which constitutes the extent of their commitment.

Article 40: Cumulative insurance

Any person insured by several insurers under several contracts for the same interest against the same risk must immediately inform each insurer about the other insurers. The insured must also indicate the name of the insurer with whom another insurance has been contracted and the amount insured.

Where several insurances for the same risk have been taken out in a fraudulent or malicious manner, the sanctions stipulated in Article 19 of this Act shall apply.

In the absence of fraud, each insurance shall have effect within the limits of the contractual liabilities and in compliance with the provisions of Article 37 of this Act, whatever the date on which the insurance had been taken out. Within these limits the contract's beneficiary may receive compensation for damages by contacting the insurer of their choice.

Regarding relations between the insurers, each insurer's contribution shall be determined by applying to the amount of damages the ratio between the compensation they would have paid had they been the only insurer and the cumulative amount of compensations each of them would have paid had they been the only insurer.

Article 41: Overinsurance

Where an insurance contract has been granted for a sum greater than the value of the insured property the contract shall remain valid but only up to the real value of the insured property and the insurer may not receive premiums for the surplus. Only premiums due shall remain earned as well as the premium for the current year when it becomes due.

If either party acts in a fraudulent or deceitful manner the other party may cancel the contract and claim damages.

Article 42: Underinsurance

Unless otherwise provided, if estimations result in the insured property's value exceeding the sum insured on the day of the loss, the insured is deemed to remain their own insurer for the excess and therefore shall bear a proportional part of the damage.

Article 43: Risk of war

Risk of war or riot is excluded from the cover.

The insurer may however cover loss or damage caused either by a foreign war, civil war, riot or civil unrest.

Where these risks are not covered by the contract the onus is on the insurer to prove that the loss resulted from one of these excluded events.

Article 44: Insured property's inherent defect

Unless otherwise provided, the insurer shall not be liable for wastage, reduction, loss and shrinkage incurred by the insured property as a result of said property's inherent defect or dilapidated condition.

Article 45: Subrogation of the insurer

Any insurer who pays insurance indemnity shall be subrogated, up to the sum of this indemnity, to the rights and actions of the insured against third parties who caused the damage resulting in the insurer's payment of indemnity.

The insurer may be absolved of all or part of their liability towards the insured where the subrogation may no longer be applied in favour of the insurer due to an act of the insured.

Notwithstanding the previous provisions, the insurer shall have no recourse against children, descendants, parents, direct relatives by blood or marriage, agents, employees, workers or domestic employees, and generally any person who usually lives in the insured party's home, except in the event of malicious act committed by one of these persons.

Article 46: Creditors' rights on insurance indemnity

Indemnities due by the insurer following a loss shall be attributed, without any express delegation needed, to privileged creditors or mortgagees according to their rank. Payments made in good faith to the insured before objection shall nevertheless be valid.

The same shall apply to indemnities owed in the event of a loss by a tenant or neighbour responsible for a fire unless the latter can prove that it was caused by an unforeseeable event or force majeure, a building flaw, or that it spread from a neighbouring house.

Under tenant's insurance or in the event of legal actions from neighbours, the insurer pays all or part of the sum owed to the owner of the rented property, the neighbour or third party subrogated in their rights, provided that the said owner, neighbour or subrogated third party have not received settlement of the loss, within the limit of said sum.

Chapter 2: Fire insurance

Article 47: Insured damage

Insurers covering fire shall be liable for all material damage caused by conflagration, blaze or simple combustion.

However they shall not be liable, unless otherwise stipulated, for damage caused only by heat or by direct and immediate contact with a flame or a flammable substance if there has been no fire, or the break out of a fire likely to get out of control and cause a large fire.

Article 48: Insurer's obligation

Unless otherwise provided, only material damage directly resulting from fire or the break out of a fire shall be payable by the insurer.

Should the parties fail to agree to an assessment, damages shall be determined by an expert chosen by the parties.

If, within three months following remittance of the statement of losses accompanied by supporting documents, the expert report has not been completed due to an act of the insurer or expert appointed by the latter, the insured party shall be entitled to have interest accrue as from the demand for payment. If the report has not been completed within six months, either party may apply to the competent court.

Article 49: Emergency assistance and rescue measures

Material damage to property insured under the insurance contract due to emergency assistance and rescue measures shall be treated as material and direct damage.

Article 50: Disappearance of insured property during fire

Notwithstanding any provision to the contrary, the insurer shall be liable for the loss or disappearance of insured property that occurred during a fire unless they can prove that said loss or disappearance is the result of theft or concealment.

Article 51: Insured property's inherent defect

In accordance with Article 47 paragraph 2 of this Act, the insurer shall not be liable for loss or damage to the insured property due to an inherent defect; but they shall be liable for fire damage resulting from this defect, unless they have sufficient grounds to cancel the insurance contract for intentional false declaration.

Article 52: Fire resulting from disasters

Insurers shall cover the consequences of fires whatever their causes. However, they may exclude from the cover, subject to provisions of Article 51 of this Act, those of fires caused by natural disasters such as earthquakes, volcanic eruptions, gales, hurricanes or cyclones and the consequences of manmade disasters such as:

1. foreign or civil war;
2. riot or uprisings;
3. nuclear damage caused by weapons or devices designed to explode due to changes to the structure of the atomic nucleus, or any nuclear fuel, radioactive product or waste, or any other source of ionising radiation, for which a nuclear installation operator is liable.

Article 53: Storms, lightning, cyclones

In addition to covering Fire and business interruption caused by fire, the insurer may cover insured property against other risk, including damage caused by wind, including storms, lightning, hurricanes or cyclones, for a justified additional premium.

Chapter 3: Liability insurance

Article 54: Cause – Claim from injured party

In respect of liability insurance the insurer is only liable if, as a result of a tort stipulated in the contract, the injured party shall make an amicable or judicial claim against the insured party.

Article 55: Contract clauses

Insurance contracts that cover civil liability risk stipulate, with regard to this cover, that failure of the insured to meet their obligations after the claim may not be binding on injured third parties or their assignees.

The contracts shall not contain any clause prohibiting the insured party from challenging the insurer or calling the latter in guarantee for the settlement of a claim.

Article 56: Recognition of liability and settlement

The insurer may stipulate that it may not be bound by any recognition of liability or settlement made without its agreement. Admission of material facts shall not be treated as recognition of liability.

Article 57: Direct action – legal costs

The insurer shall only pay all or part of the sum it owes to the injured third party, provided that this third party has not received settlement, within the limit of the said sum, for the pecuniary consequences of the harmful event involving the insured party's liability.

The injured third party or its assignees may directly initiate action for damages against the insurer of the liable party.

Unless otherwise agreed, legal costs resulting from any action for damages against the insured party shall be payable by the insurer.

Chapter 4: Marine, river, lake or inland waterway transport insurance

Section 1: General provisions

Article 58: Insurance concerned

All general insurance contracts covering risk related to marine, river and lake transport activities and insurance contracts on ships, vessels and boats only covered while in port or harbour or another place, whether they are afloat or in dry-dock, or under construction, are governed by these provisions.

These provisions shall not apply to insurance contracts related to leisure boating activities, which are subject to general insurance rules.

Article 59: Covers

Marine, river and lake insurance cover the vessels themselves or small boats, hull and marine cargo insurance.

Those goods may not be covered by insurance where prohibited by the law of the contracting parties or of the place where the contract is concluded or carried out.

Article 60: Bottomry loan

Bottomry loans may be insured but only by or on behalf of the lender.

Article 61: Specification of risks

Constitute navigation risk:

1. standard navigation risk,
2. war risk,
3. civil unrest risk.

The policy shall list covered and excluded risks. Any ambiguity shall be interpreted against the insurer.

Article 62: Scope of risks

The following are considered as navigation risk:

1. gale, shipwreck, stranding, boarding, striking a grounded, mobile or floating object, fire, explosion and generally any event at sea or on inland waterways;
2. theft, pillage, piracy;
3. acts, errors or negligence committed by the captain or crew;
4. lack of news, under the terms and periods outlined in Article 83;
5. release overboard and other sacrifices or contributions in general average caused by the risks listed above;
6. forced entry into port, forced change of route, voyage or vessel not prejudicing the insurance, these risks remain covered in exchange for a premium surcharge where agreed.

The following are considered as war risk:

1. molestation, capture, piracy, kidnapping, seizure, arrest, holding, embargo, property seizure, and acts of hostility, retaliation or war operations by any foreign government, recognised or not as a friend or enemy;
2. all acts of civil war, revolution, revolt, military unrest that occur outside national territory;

3. any action of a mine, torpedo, bomb, missile or generally any war device whatever the origin;
4. all sacrifices and contributions in general average caused by the risks listed above, without distinguishing whether they have occurred before, after or without a declaration of war or whether the nation was involved in said war;

The following are considered as risk of civil unrest:

1. strikes,
2. riots,
3. pillages,
4. uprising,
5. lock-outs,
6. malicious or sabotage acts by individuals or groups taking part in uprisings, social conflict or labour disputes.

Article 63: Time and place of risk

The time and place of risk are determined differently for hull and marine cargo.

Maritime risk means the risks that occur at sea, in ports and harbours, in their channels that directly communicate with the sea and in river estuaries to the upstream limit determined by maritime legislation.

River, lake or internal waterways risks mean those that occur on internal navigable or floatable waterways, river waters being considered as such starting from the downstream point set out in laws on rivers.

War risk means the acts outlined in Article 62, paragraph 2 of this Act that take place on marine, river or lake waters as defined above, and not simply the state of war.

Article 64: Attachment of risk

The insurance shall have no effect where risk has not begun within two months of the parties' agreement or the date set for this to take effect.

This provision shall apply to open policies for the first shipment only.

If there is no attachment of risk to the insured property by the insured's actions, the contract is terminated and the insurer is entitled to retain as indemnity 15% of the premium's amount.

If the failure to execute the contract is the result of a third party's act or act of God, the contract shall be cancelled without indemnity.

Article 65: Requirement of uncertainty of the risk

Any insurance incepted after a loss or the arrival of insured property or carrier vessel, ship or boat shall be null and void, if the news thereof was known prior to the conclusion of the contract, at the place where it was signed or at the insurer's or insured's location.

Insurance policies³ shall be null and void if it is determined that before the signing of the contract the insured personally knew of the loss or the insurer of the arrival of the insured property.

Article 66: Insured value

In the absence of fraud, the contract shall be valid up to the insured property's real value and, if agreed, for the full insured sum.

Expected profit is a legitimate interest that may be included in the insured value.

However, expected profit and cargo to be received may only be insured for a sum that does not exceed 20% of the value of the property to which they pertain.

Article 67: Estimation of insured value

The insured sum may not exceed the real value of the insured object.

The estimation is based on:

1. For cargo: either the value at the time and place of loading, increased by duties paid and on board expenses, freight paid in advance, insurance premium and other transport disbursements, or the destination value;
2. for hulls, boat equipment, apparels, supplies, armaments and other accessories, their value on the day the attachment of risk takes effect.

Value fluctuations and premium adjustments shall be recorded by endorsement.

Article 68: Contracting parties

Insurance may be contracted either on behalf of the policyholder or on behalf of a specific person or on behalf of the person to whom it will belong.

The declaration that the insurance has been contracted on behalf of whom it will belong shall be valid as insurance in favour of the policyholder and as a benefit to a third party in favour of the beneficiary of said clause.

Article 69: Insured events

The insurer shall be liable for material damage sustained by insured property caused by any perils of the sea or any act of God, and for accidental material damage sustained by property in transit on sea, river or lake routes or during non-maritime routes, by inland waterways that preceded or followed the maritime transit or inland waterways.

³ 'Bonnes ou mauvaises nouvelles'

The insurer is also liable for:

1. the contribution of insured property to the general average, unless caused by a risk excluded in the insurance;
2. costs incurred due to a risk covered to protect the insured property from material damage or to limit said damage.

Article 70: Fault of the insured

The risks insured shall remain covered, even in the event of fault of the insured or their employees on land, unless the insurer proves that the damage is a result of a lack of reasonable care taken by the insured to protect said property from the risks that occurred.

The insurer shall not be liable for any loss or damage caused by serious, intentional or inexcusable misconduct of the insured. They may retain or claim the premium if they have begun to cover the risk.

Article 71: Fault of the captain

Risk shall remain covered under the same terms as those of the previous article in the event of the captain's or crew's wilful misconduct.

However, the insurer of the hull of a vessel, ship or boat shall not cover damage caused by intentional misconduct of the captain.

Article 72: Change of route

Insured risk shall remain covered even in the event of forced change of route, voyage, vessel or boat, or in the event of a change decided by the captain without the ship-owner or insured.

Article 73: Risk not covered

Unless otherwise stipulated, the insurer shall not cover risk of:

1. Civil or foreign war, mines or any war devices;
2. piracy;
3. kidnapping, capture or holding by any government or authority whatsoever;
4. Civil unrest: strikes, riots, uprisings, lock-outs, sabotage or individual or group terrorist acts.

Article 74: Evidence of cause of loss

Where it is not possible to determine whether the loss was caused by a war risk or a risk at sea or on inland waterway, it shall be deemed to be the result of an event at sea or on an inland waterway.

Article 75: Damage not covered

The insurer shall not be liable for:

1. material damage or loss as a result of the insured property's inherent defect, unless this is the hidden defect of a vessel or boat;
2. material damage or loss resulting from fines, confiscations, sequestrations, requisitions, sanitary or disinfection measures or those subsequent to breach of blockade, smuggling, prohibited or clandestine trade.
3. Damages or other indemnities due to any seizures or bonds given to release seized property;
4. damage that does not constitute material damage or loss directly affecting the insured property, such as unemployment, delay, exchange rate differences, obstacles to insured's business;
5. damage caused by insured property to other property or persons, unless in the event of the vessel being boarded and up to the value of the vessel as specified in Article 70 of this Act;
6. loss due to direct or indirect effects of explosion, heat, irradiation from the transmutation of atomic nuclei or radioactivity, and loss due to the effects of radiation caused by the artificial acceleration of particles.

Article 76: Default on a premium payment

Default on a premium payment shall entitle the insurer to either suspend the insurance or request its cancellation.

Suspension or cancellation shall only take effect eight days after notice to the insured at their last known address by registered mail with acknowledgment of receipt, by formal notice to pay, by countersigned mail or by any other means with acknowledgment of receipt.

Where the insured's residence is not in the Democratic Republic of Congo, the notice shall be validly sent if addressed to the broker through whom the contract was signed.

Article 77: Effects of suspension or cancellation on third parties

The suspension or cancellation for premium payment default shall not affect third parties acting in good faith, beneficiaries of the insurance under a transfer prior to notice of suspension or cancellation.

In the event of a loss, by means of an explicit clause in the endorsement documentation, the insurer may demand that said beneficiaries pay accordingly the premium on the insurance whose benefit they claim.

Article 78: Insolvency, recovery or liquidation

In the event that the insured party undergoes insolvency, recovery or judicial liquidation, the insurer may cancel the current policy if payment has not followed the notification, but this cancellation shall not have effect on third parties acting in good faith, beneficiaries of the insurance under a transfer prior to notice of cancellation.

In the event of license withdrawal, recovery procedures or liquidation of the insurer, the insured shall have the same right of cancellation.

Article 79: Contribution to salvage

The insured must contribute to the salvage of insured property and carry out all measures necessary to preserve their rights against liable third parties.

They are liable to the insurer for damage caused by the non-performance of this obligation as a result of their fault or negligence.

Article 80: Indemnity payment

Damage and losses are paid by average, unless the insured decides on abandonment in the cases stipulated by law or by contract. The indemnity is paid in cash or in securities at cash value, the insurer may not be obliged to repair or replace the insured property.

The insurance indemnity is payable within a one month period following the request to the insurer accompanied by supporting documents.

The insurer shall be notified simply by the expiry of this period and shall owe the default interest as agreed or else at twice the Central Bank of the Congo's policy interest rate on the year of the indemnity's amount.

Article 81: Free of average clause

The *Free of average* clause shall exempt the insurer from all averages, whether general or particular, except for cases that lead to abandonment.

The *Free of particular average unless...* clause shall exempt the insurer from all particular averages unless for those caused by one of the events listed in the clause and cases that lead to abandonment.

Article 82: General average contribution

The insurer shall reimburse the general average contribution, whether temporary or permanent, as well as costs of assistance or salvage in proportion to the value they insure less, where applicable, any particular average payable by the insurer.

Article 83: Abandonment

Abandonment of insured property may be made by:

1. Sinking;
2. Shipwreck with debris;
3. Un-seaworthiness on the sea or on inland waterways;
4. Loss or deterioration of insured property, if said loss or deterioration reaches three quarters of their value;
5. Capture, seizure or confiscation, requisition, impoundment, detention or arrest by a foreign power or authority;
6. Lack of news under the conditions stipulated in Article 87, paragraph 1.

Abandonment of insured property may not be partial or conditional. It may only extend to property that is the subject-matter of the insurance and risk.

Abandonment is made to insurers within a period of six months from the day news of the loss is received. The insurer shall be notified of the abandonment by registered mail or by any other means with acknowledgement of receipt or by extrajudicial deed.

When abandoning property, the insured must declare any insurance that they have or have had contracted on the insured property, and those that, to their knowledge, would have been made by other parties on the same property. Upon failure to do so, the term of payment outlined in Article 81 shall be suspended until the day they will have notified the said declaration, without this resulting in any extension of the term set to complete the abandonment.

Once the notified abandonment has been accepted or deemed valid, the insured property shall become the property of the insurer as backdated to the day of the abandonment. The insurer may not, under the pretext of returning the vessel or boat, avoid paying the insured sum.

Article 84: Abandonment in case of loss, capture, confiscation

In the event of loss, capture, confiscation or requisition of property, such as arrest, detention or seizure, the period to carry out the abandonment shall only start from the day the expropriation or dispossession deed becomes certain and final in compliance with international maritime law.

In the absence of such confirmation, the appropriate period to operate the abandonment shall take effect at the end of the first three-month waiting period if the expropriation or dispossession deed was made in Congolese territorial waters, or of a six-month period if this took place further afield.

Where the abandonment concerns perishable goods, the waiting period shall be halved.

During these periods, insured parties must carry out all measures depending on them to obtain the release of measures affecting the interests of which they are expropriated or dispossessed.

Insurers may, independently, separately or in collaboration with the insured parties carry out any measure for this purpose.

Article 85: Abandonment for lack of news

Upon failure of having received news from a ship, boat or cargo, despite the existence of communication means, the insured may abandon the property three months after the departure of the vessel or boat, or the day on which the last news was received for coastal journeys and after six months for long-distance journeys.

The nature of the loss shall be deemed sufficiently proven by serious, precise and concordant presumptions drawn from the prevailing factual consequences of the vessel's normal route and the date the last news was received.

Voyages are deemed to be long distance or coastal depending on whether they take place outside or under the limits defined in Article 178 of the Marine Code.

Lack of news during a navigation route on inland waterways or river, lake or boarder river waters shall be governed as stipulated above for coastal navigation.

Article 86: Abandonment for un-seaworthiness

A vessel or boat may not be abandoned for un-seaworthiness if said vessel or boat has run aground and can be raised or, if damaged, can be repaired to a state where it is able to continue its route to reach its destination.

Article 87: Limitation period

All actions arising from insurance contracts shall lapse after two years. The limitation period shall run against minors and other incapable persons.

Limitation periods of actions arising from insurance contracts shall run:

1. with regard to the premium payment action, from the due date;
2. with regard to the action of average, from the date of the event resulting in this action; for goods, from the ship or other transport vehicle arrival date or else from the date it should have arrived or, if the event occurs after this date, from the date of said event;
3. for abandonment, from the date of the event that led to it or, if a period is fixed to launch the action, from the date this period expires;

4. where the insured's action arises from the general average contribution, the remuneration of assistance or third party' recourse, from the date on which legal proceedings against the insured are brought or from the date of payment.

For the action of recovery of any sum paid under the insurance contract, the period shall run from the date of the undue payment.

Section 2: Specific regulations for various transport Insurances

Sub-Section 1: Hull insurance

Article 88: Coverage

Hull insurance shall cover material damage to and loss of vessels and its insured extensions caused by shipping accidents, acts of God or perils of the sea, save for the formal exclusions and limits stipulated in the insurance contract.

Hull insurers shall also cover, within the limit of the hull value, the reimbursement of material damage to which the insured party is liable under third party's recourse in the event of an insured vessel being boarded or struck against a building or stationary, moving or floating object.

This liability coverage shall not include damage to persons or cargo held in the vessel's insured hull.

Article 89: Inherent defect

Except in the case of hidden defect, the insurer shall not cover damage or loss resulting from the vessel or boat's inherent defect.

The insurer shall not cover loss or damage when the vessel or boat undertakes a journey in a condition that renders it unseaworthy or insufficiently armed or equipped.

Likewise, it shall not cover loss or damage caused by the normal wear and tear of the vessel or its age.

Article 90: Agreed value

Notwithstanding the provisions of Articles 37 and 66 of this Act, the parties shall not accept any other estimation when the insured value of the vessel or boat is an agreed value.

Article 91: Insurance on safe arrival

Under penalty of nullity, insurance on safe arrival may only be contracted with the agreement of the vessel's insurers. When a sum is insured in this respect, the insurable interest is evidenced by the acceptance of the sum thus covered.

The insurer shall be liable only for total loss or abandonment of the vessel as a result of a risk covered by the policy; it shall have no rights to the abandoned property.

Article 92: Insurer's right to premium

With regard to insurance for travel or several consecutive journeys, the insurer shall be entitled to the full premium once the risks have begun to run.

For any fixed term insurance the premium stipulated for the term of the cover shall be earned in the event of total loss or abandonment covered by the insurer. If the insurer is not liable for total loss or abandonment it shall earn the premium according to the period of time up to the total loss or notification of abandonment.

Article 93: Average adjustments

For average adjustments the insurer shall only reimburse the cost of replacement and repairs recognised as necessary to make the ship or boat seaworthy again, excluding all other compensation for depreciation, unemployment or any other cause whatsoever.

Article 94: Coverage per event

Whatever the number of events that occurred during the term of the contract, the insured shall be covered for each event up to the amount of insured capital, except for the insurer's right to request an additional premium after each event.

Article 95: Abandonment

A vessel may be abandoned in the following cases:

1. total loss;
2. repairs that would reach three quarters of the agreed value;
3. impossibility to repair;
4. no news for over three months; the loss is deemed to have taken place on the date of the last news.

Article 96: Transfer or bareboat chartering

In the event of transfer or bareboat chartering of the ship or boat, the insurance shall continue *ipso jure* in favour of the new owner or charterer, which makes it their responsibility to inform the insurer within the ten days period and to fulfil all of the insured's obligations towards the insurer under the contract.

However, the insurer shall be free to cancel the contract within one month of the day on which it received notice of the transfer or chartering. This cancellation shall only take effect fifteen days after notification thereof.

The transferor or charterer shall continue to be liable for the payment of premiums owed prior to the transfer or the chartering. The same shall apply for the transfer of the majority of a ship's shares in co-ownership.

Subsection 2: Cargo insurance

Article 97: Coverage

Cargo insurance shall cover material loss or damage caused to goods by any shipping accident or act of God, except the formal exclusions and limits stipulated in the insurance contract.

Article 98: Damage not covered

The insurer shall not be liable for damage or loss that the sender or receiver, acting in this capacity, caused by intentional or unjustifiable negligence. They shall not be liable either for damage resulting from the goods' inherent defect, its internal deterioration, shrinkage, leakage or from the absence or poor quality of packaging, wastage in transit or due to rodents.

Article 99: Contracts' categories

Goods shall be insured under either a policy effective for a single journey or a policy referred to as floating or open policy, supported by declarations of successive shipments made by the insured party.

Article 100: Insurance per journey or by time

Ship insurance shall be taken out for either a single journey or several consecutive journeys, or for a determined period.

With regard to insurance per journey, the guarantee shall start from the beginning of loading to the end of unloading and no later than fifteen days after the ship arrives at its destination. In the event of a ballast journey, the guarantee shall start from the moment the ship begins its journey until it is moored upon arrival.

With regard to time insurance, risk from the first to last day shall be covered by insurance. Days shall be counted under a twenty-four hour clock based on the time of the country in which the policy was issued.

Article 101: Continuity of coverage

Goods shall be insured continuously, regardless of where they are located, within the limits of the journey defined by the contract or declaration of shipment.

Article 102: Combined or multimodal transport

Where part of a journey is carried out at sea, the marine insurance rules shall apply to all of the transportation, even for the parts of the journey carried out on land, by river or by air.

Article 103: Abandonment

Cargo may be abandoned in the event that the goods are:

1. totally lost;
2. lost or deteriorated for up to three quarters of their value;
3. sold on route due to material average to insured property by a covered risk.

Cargo may also be abandoned in the following events:

1. Un-seaworthiness of vessel and if the shipment of the goods was not able to start within three months by whatever means of transport;
2. no news of the ship for over three months.

Article 104: Sanctions of insured's obligation

In the event that the insured party who has contracted an open policy does not comply with its contractual obligations to declare all its shipments, the contract may be immediately cancelled upon the insurer's request, insurer who, furthermore, is entitled to premiums for non-declared shipments.

If the insured party acted in bad faith, the insurer may exercise their right of recovery on the payment of indemnities they made for losses regarding shipments subsequent to the insured party's first wilful omission.

Paragraph 3: Civil liability**Article 105: Subsidiarity**

Liability insurance, which purpose is to repair the damage caused to third parties by the ship and covered under the terms of Article 88 of this Act, shall only be effective if the sum insured under the hull policy is insufficient.

Article 106: Coverage per event

Regardless the number of events that occurred during the liability insurance period, the sum underwritten by each insurer shall constitute the limit of their commitment per event.

Article 107: Compensation of injured third party

The insurer shall only pay the injured third party all or part of the sum owed, provided that said third party has not received settlement up to said sum for the pecuniary consequences of the harmful event that involved the insured's liability.

TITLE IV: COMPULSORY INSURANCE AGAINST DAMAGE

Chapter 1: Compulsory insurance for civil liability of motorised land vehicle owners

Section 1: Scope of compulsory insurance

Article 108: Persons and vehicles requiring compulsory insurance

Any natural or legal person whose liability may be incurred due to damage sustained by a third party as a result of personal injury or damage to property from events in which a motorised land vehicle and its trailers or semi-trailers are involved must, in order to operate said vehicles, be insured by such a liability type of cover under the terms stipulated by this Act.

Insurance contracts covering the liability defined in paragraph 1 shall also cover the liability of any person who has custody of or who drives said vehicle, even without authorisation, except repair, sales or inspection motor professionals, as well as the liability of passengers of the vehicle subject-matter of the insurance.

Contracts shall cover, in addition to the civil liability of persons mentioned in paragraph 1, that of the policyholder and vehicle owner.

The insurer shall be subrogated to the creditor's rights of indemnity against the person responsible for the accident where the custody or the operation of the vehicle has been obtained without the owner's knowledge or against their will.

Vehicles owned by the central power, provinces or decentralised territorial entities shall be subject to compulsory insurance, including the army, police and railway vehicles save for those intended for operations and those driven on the rail tracks.

Article 109: Repair and sales professionals

Automobile repair, sales and technical check professionals must have insurance for their own liability, the liability of their employees and that of the persons having custody or operating the vehicle, as well as that of any passenger.

This obligation applies to the liability that the persons mentioned in the previous paragraph may incur due to damage caused to third parties by vehicles entrusted to the contract's policyholder due to their position, and those used as part of the policyholder's professional activity.

Article 110: Trailers

The compulsory insurance shall apply to motorised land vehicles and their trailers and semi-trailers.

Except in the event of reluctance or intentional false declaration, the addition of small trailers or semi-trailers to a motorised land vehicle constitutes under the terms of Articles 15 and 17, an aggravation of the risk covered by the contract covering the vehicle.

Article 111: Territorial scope and minimum sum insured

The insurance stated in Article 108 of this Act comprises a liability coverage extending to the entire national territory.

The insurance shall be taken out without limit to the sum regarding bodily harm and for a sum to be set per vehicle and per material loss by Prime Minister Decree, following a proposal from the Minister in charge of the insurance sector, after consulting with the Insurance Regulatory and Supervisory Authority.

Article 112: Covered events

Insurance shall cover compensation for personal injury or damage to property resulting from:

1. accidents, fire or explosions caused by vehicles, trailers, accessories and products used to operate said vehicle, and objects and substances they carry;
2. the fall of said accessories, objects, substances or products.

Article 113: Authorised exclusions

Cover shall not extend to the reparation of damage sustained by:

1. the vehicle's driver;
2. the family members of the driver, of the insured, of the policyholder and of the owner of the vehicle;
3. employees of the insured, during work hours, liable for damages provided this damage is already covered by legislation pertaining to accidents at work;
4. the thief of the insured vehicle or by its accomplices even when aboard said vehicle;
5. victims, following the aggravation of the damage caused by weapons or devices designed to explode by the modification of the nucleus of the atom's structure or by any nuclear fuel, product or radioactive waste or by other source of ionising radiation and for which a nuclear facility operator is exclusively liable;
6. buildings, property or animals owned or rented by the vehicle owner or driver, or entrusted to said owner or driver under any capacity whatsoever;
7. transported goods and property, except for damage to clothing of transported persons where this damage is incidental to a personal injury;

8. victims of the loading or the unloading of the vehicle.

Article 114: Driving license

Insurance contracts may, without deviating from the provisions of Article 108 of this Act, contain clauses allowing a coverage exclusion when:

1. the driver, at the time of the loss, is underage or doesn't hold a valid driving license as required by current regulations regarding the driving of the vehicle, except in the event of theft, violence or use of vehicle without the insured knowing;
2. transportation has not been carried out under the safety conditions set by the vehicle manufacturer or by regulations laid down by competent authorities with regard to damage to transported persons.

The exception outlined in the first paragraph cannot be invoked against the driver holding a driving license declared to the insurer when taking out or renewing the contract, when this certificate is invalid due to reasons related to the holder of the driving license's place or duration of residence or when the restrictive conditions of use - other than those related to categories of vehicles, written on the license have not been fulfilled.

Article 115: Other exclusions

Shall be deemed as valid, without the person subject to the compulsory insurance being exempted from this obligation in the cases stated below, contract clauses with the object of excluding coverage of the insured party's liability for damage:

1. occurred during tests, races, competitions or trials that under current regulations require prior approval from public authorities.
Any person who participates in one of these tests, races, competitions or trials as a competitor or organiser shall only be deemed to have fulfilled the provisions of the present chapter if their liability is covered by a specific insurance under the terms required by applicable regulations;
2. to paying passengers, except for contracts taken out by passenger transport operators for vehicles used for their business;
3. caused by the vehicle when transporting flammable, explosive, corrosive or oxidising substances and when these substances have caused or aggravated the loss; however, non-insurance shall be excluded for the transportation of oils, fossil fuels or similar products, that do not exceed five hundred kilograms or six hundred litres, including liquid or gaseous fuel supply for the engine;
4. caused by the vehicle when transporting sources of ionising radiation designed to be used for a nuclear facility where said sources have caused or aggravated the loss.

Article 116: Deductible

The insurance contract may stipulate that the insured shall remain liable for part of indemnity owed to the injured third party.

Article 117: Exceptions unenforceable against third party victims of bodily injury

The following exceptions shall not apply to third party victims of bodily injury or their assignees:

1. coverage limit stipulated in Article 116 of this Act;
2. coverage exclusions stipulated in Articles 113 and 115 of this Act;
3. forfeitures, except for the suspension of the coverage for non-payment of premium;
4. applicable indemnity reduction in application of Article 15 of this Act.

In all aforementioned cases, the insurer shall pay the indemnity on behalf of the liable insured party.

They may initiate proceedings against the latter for the reimbursement of any sums that they have paid or placed in reserve on their behalf.

Article 118: Drunk driving

Any clause providing for the lapse of liability coverage of the insured in case the latter has been found guilty of driving while drunk or under the influence of illegal substances shall be deemed as unwritten.

However, such clause may be binding on the insured for non-compulsory coverage.

Section 2: Monitoring of compulsory insurance**Article 119: Insurance certificate**

All drivers of a vehicle mentioned in Article 108 of this Act must, under the terms stated in this Act, be able to present a document leading to the presumption that they have fulfilled the insurance obligation.

This presumption shall be based on the presentation of an insurance certificate in compliance with the provisions of Articles 122 and 123 of this Act, to officers or agents qualified to establish violations to traffic police.

At every inspection, vehicle drivers must be able to present said insurance certificate given by the insurer to the insured party when taking out or renewing the contract. Upon failure to do so, they shall provide the legal authorities with justification by any means.

The insurance certificate does not bind insurers to any coverage obligation; they are only bound by the insurance contract itself.

Article 120: Delivery of certificate and temporary certificate

The insurance certificate mentioned in the previous article shall be delivered within ten days from the date the contract is taken out and renewed upon payment of subsequent premiums or portions of premiums.

Should the insurance company fail to immediately deliver this document it shall issue, free of charge, when the contract is taken out, a temporary certificate that attests to the presumption of insurance for a determined period that may not exceed one month.

Article 121: Insurance certificate wording

The insurance company shall issue, free of charge, an insurance certificate for each of the vehicles covered by the insurance contract.

The same applies for every trailer and semi-trailer.

For insurance contracts regarding the persons mentioned in Article 108 of this Act, insurance companies must issue the insurance certificate in as many copies as specified in the contract.

The insurance certificate must mention:

- 1) the insurance company's name and address;
- 2) the policyholder's first, post and last names and address;
- 3) the insurance contract number;
- 4) the insurance period corresponding to the premium or portion thereof paid, by clearly indicating the date the coverage takes effect and its cancellation date;
- 5) the vehicle's features, particularly its nature, type, brand, license plate number or if not available its engine or chassis number;
- 6) the policyholder's profession;
- 7) the names of the countries in which the contractual coverage applies, when the cover extends beyond national territory.

Article 122: Form of insurance certificate

The document given to the insured must be clearly titled either Insurance Certificate or Temporary Insurance Certificate.

The insurance certificate's size and colour shall be determined by the Insurance Regulatory and Supervisory Authority.

Article 123: Vehicles not subject to compulsory insurance

Vehicles not subject to compulsory insurance in compliance with the last paragraph of Article 108 of this Act must hold an ownership certificate issued by the competent authority.

Article 124: Theft or loss of insurance certificate

Should an insurance certificate be lost or stolen, the insurer shall deliver a duplicate at the request of the person for whom the original certificate was issued.

Article 125: Vehicles in international traffic

Pursuant to the provisions of the international, bilateral or multilateral agreements duly ratified and published in the Democratic Republic of Congo on motor civil liability insurance, vehicles in international traffic in the Congolese territory, if they're not registered in the latter, must be covered by a motor civil liability insurance.

Compliance with this obligation shall be evidenced by the presentation of the international civil liability insurance card.

If failing to present this card, the vehicles mentioned in the paragraph hereinabove shall take out –at the DRC's borders, an insurance which underwriting conditions are set by order of the Minister in charge of the insurance sector, on proposal from the Insurance Regulatory and Supervisory Authority.

Article 126: International card wording and validity

The international motor civil liability insurance card shall at least include the details referred to in Article 121 of this Act.

The cover provided by the international motor civil liability insurance card includes the liability incurred by the card's holder in accordance with the provisions of this Act.

The international insurance card is issued for a period set in advance and, not exceeding one year, without taking into account the number of travels to be made.

This card shall be valid for one vehicle only and may not in any circumstances be transferred to another vehicle.

Section 3: Scale of liabilities**Article 127: Scale of liabilities**

The scale of liabilities pertaining to vehicles involved in a single accident depending on the circumstances of said accident shall be determined by Prime Minister Decree on proposal from the Minister in charge of the insurance sector after consulting with the Insurance Regulatory and Supervisory Authority.

The following scale shall be used:

1. for the payment of material damage occurred in accidents involving several vehicles, either that these vehicles are only covered by civil liability insurance or that at least one of them being insured for damage, the insurer shall ensure that they seek recourse against the liable third party or parties.
2. in the event of bodily injury, to determine the respective rights to recourse of the insurers having compensated the victims in compliance with this Act.

Article 128: Disclosing scale of liabilities to insured

Each insured party must be provided with a scale of liabilities when first presented with their motor insurance contract.

Section 4: Compensation of victims of accidental bodily injury

Subsection 1: Legal regime for compensation

Article 129: Persons concerned

The provisions regarding compensation shall apply to all victims of bodily injury caused by an accident involving a motorised land vehicle and its trailers or semi-trailers. They also apply to cases in which victims were transported under a transportation contract.

They shall not apply to material damage caused by motor accidents, which remain governed by ordinary civil liability law.

Article 130: Unenforceability of fault of victims⁴

Acts of God or of third parties may not be enforced against victims injured in an accident, including drivers, by the driver or person in custody of the vehicle involved in said accident.

Article 131: Unenforceability of fault of victims

Victims of accidental bodily injury involving one or several motorised land vehicles, including drivers, shall be compensated for damage resulting from personal injuries without their own fault being enforceable against them except where they sought the injuries sustained.

Fault committed by a victim shall only limit or exclude compensation for damage to property that said victim may have sustained at the same time as their bodily injuries.

Where the vehicle driver is not the owner the driver's fault may be enforced against the owner for compensation of the damage caused to the owner's vehicle.

The owner may seek remedy against the driver.

Article 132: Injured persons under the victim's responsibility

⁴ Error in the French text. Should read "Unenforceability of an act of God or of third parties".

Damage sustained by natural persons who prove to be living with the direct victim of the accident may be entitled to seek compensation within the following limits:

1. in the event of serious injury that fully diminishes the direct victim's abilities, only the spouse shall be entitled to seek moral compensation within a maximum of ten times the annual Guaranteed Inter-professional Minimum Wage in force at the time of payment of said compensation, for all beneficiaries;
2. in the event of the direct victim's death, the indirect injured person shall be assimilated, according to their age, as an adult or minor child. In this capacity the person shall become one of the beneficiaries listed in Articles 168 and 169 of this Act. The compensation said person may claim falls within the limits defined by these texts.

Subsection 2: Settlement offer proceedings

Article 133: Principle

Settlement offer is compulsory. The insurer must offer it under any circumstance.

Article 134: Offer of compensation presentation period

Irrespective of the claim that a victim may make, insurers covering the civil liability resulting from a motorised land vehicle accident must, within six months of the accident, make an offer of compensation to the victim having sustained bodily injury. In the event of the victim's death, the offer shall be made to their assignees as defined in Articles 167 to 169 of this Act.

The offer shall include all compensable items of the damage, including items related to property damage where they have not been the object of prior settlement.

With regard to bodily injury, the offer shall be established in compliance with Articles 160 to 166 of this Act.

This offer may be provisional where the insurer has not been informed of the stabilisation of the victim's condition within five months of the accident. The final compensation offer must be made within three months following the date on which the insurer was informed of said stabilisation.

Where several vehicles were involved in a single accident and they are not insured by the same insurer, the offer shall be made by the insurer who is liable for compensation in application of Articles 170 to 177 of this Act.

Article 135: Sending reports

A copy of any police reports or accident reports related to traffic accidents causing injury must be automatically sent to insurers involved in the said accident by the judicial police officers or agents having reported the accident. Said documents must be sent within one month from the date of the accident.

Article 136: Contents of offer

The compensation offer must indicate, other than the information stipulated in Article 134, an assessment of each prejudice and the sums owed to the beneficiary in application of Articles 160 to 169 of this Act.

Article 137: Informing the victim of third party payers' recourse

The compensation offer must indicate, other than the information stipulated in Articles 134 and 136 of this Act, each third party payer's claim and the sums to be paid to the beneficiary. This offer shall be accompanied by a copy of the accounts produced by the third party payers.

If the victim or their assignees have not sent the insurer a list of third party payers, the payment shall be final and third party payers must address their recourse against the victim or their assignees beneficiaries of the compensation.

Article 138: Offer to disclose reports and victim's rights

At the time of their first correspondence with the victim insurers must, under penalty of nullity of the settlement, inform the victim that they may be, on request and at no cost, provided with a copy of the competent authority's enquiry report and remind said victim that they have the choice, at their cost, *subject to the insured contracting a Defence and legal action cover*, to be assisted by the legal counsel of their choice.

The insurer must also indicate the name of its employee assigned to follow-up on the accident and remind the interested party of the consequences of failing to reply or sending an incomplete reply.

Article 139: Penalty for late offer

Where the offer has not been made within the periods stipulated in Article 134, the amount of the indemnity shall bear interest ipso jure at twice the Central Bank of the Congo's policy interest rate from expiry of said period and until the date on which the offer becomes final.

This penalty shall be reduced or cancelled under circumstances for which the insurer is not liable, particularly where the latter does not have the victim's address despite of an active search.

Article 140: Protection of minors and incapable persons

Insurers must submit any planned settlement regarding a minor or incapable person to a youth court or family council, depending on the case, for the latter to authorise said settlement. They must, without formalities, notify the youth court or family council at least fifteen days before the payment of the first annuity instalment or of any sum to be paid as compensation to the legal representative of the protected person.

Payments not preceded by the required notice or settlements that have not been authorised may be cancelled at the request of the officer of the public prosecutor's office or any interested party except the insurer.

Any clause in which the legal representative vouches for the approval by the minor or incapable person of one of the deeds mentioned in the first paragraph shall be null and void.

Article 141: Right of settlement denunciation

The victim may, by mail or any other means with acknowledgment of receipt, withdraw from the settlement within fifteen days of its conclusion on the grounds of non-compliance with the provisions relating to the settlement offer procedure.

Any clause of the settlement in which the victim forfeits its right of withdrawal shall be null and void.

The provisions of paragraphs 1 and 2 must be added in very clear print to the settlement offer under penalty of the latter's nullity.

Article 142: Delayed payment and late interest

Payment of the agreed amounts must intervene within fifteen days after expiration of the period of notice stated in Article 141 of this Act. Failing that, the unpaid amounts shall generate *ipso jure* interest at twice the Central Bank of the Congo's policy interest rate.

Article 143: Coverage exception and payment on behalf

Where the insurer invokes the legal or contractual coverage exception stipulated in Article 117 of this Act, it must comply with the provisions of Articles 133 to 142 hereinabove.

The settlement may be contested before a judge by the person on behalf of whom it was made, the sums awarded to the victim or their assignees not being called into question.

Article 144: State vehicles

The Central authorities shall be assimilated to an insurer with regard to army and police vehicles designed for operations.

Regarding the settlement of bodily injury in which their vehicles are involved, they must comply with the periods and procedures stipulated by the present Section and calculate indemnities awarded to victims in compliance with Articles 160 to 169 of this Act.

Article 145: Court referral

If the insurer covering civil liability and the victim fail to reach an agreement on the compensation, the dispute may be referred to the competent court but not before expiry of the period outlined in Article 136 of this Act.

The judge shall determine the compensation owed by the insurer according to the terms stipulated in Articles 162 to 171 of this Act.

Article 146: Documents to be supplied by victims of bodily injury

The victim must, at the insurer's request, provide the latter with the following information:

1. their first, middle and last names;
2. their date and place of birth;
3. their professional activity and the address of their employer(s);
4. their professional income with supporting documents;
5. a description of injuries sustained accompanied by the initial medical certificate and other supporting documents in the event of stabilisation;
6. a list of third party payers contributing to pay benefits to the victim, and their addresses;
7. the place where any correspondence must be sent to them.

Furthermore, the victim must also, at the insurer's request, produce the following documents:

1. identity document;
2. birth certificate or document in lieu thereof;
3. marriage certificate.

Article 147: Documents to be supplied by victim's assignees

Where the offer of compensation is presented to the victim's assignees, spouse or to the persons outlined in Article 132 of this Act, each of these persons must, at the insurer's request, provide the latter with the following information:

1. their first, post⁵ and last names;
2. their date and place of birth;
3. the first and last names, date and place of birth of the victim;
4. their relationship with the victim;
5. their professional activity and the address of their employer(s);
6. their professional income with supporting documents;
7. a description of their loss, particularly costs of any kind to which they were exposed due to the accident;
8. a list of third party payers contributing to pay benefits to the victim, and their addresses;
9. the place where all correspondence must be sent to them.

Furthermore, the same persons must also, at the insurer's request, produce the following documents:

⁵ n.b 'Post-nom' is usually in reference to first name or surname in the DRC

1. victim's death certificate or any other document in lieu thereof;
2. certificate of succession;
3. life certificate of assignees;
4. certificate detailing the nature of victim's death or any other document in lieu thereof;
5. civil status documents of assignees and their identity documents.

Article 148: Notice of medical examination given to the victim

Where a medical examination is required for the offer of compensation outlined in Article 136 of this Act, the insurer or its representative shall notify the victim at least fifteen days in advance of the identity and title of the medical staff assigned to perform said examination, the object, date and place of the examination, and the name of the insurer on behalf of whom it shall be carried out. At the same time the insurer shall inform the victim that they may be accompanied, at their cost, by a doctor of their choice.

Article 149: Sending the medical report

Within twenty days of the medical examination, the doctor shall send its report to the insurer, the victim and, where applicable, the doctor who assisted the victim.

Subsection 3: Extension or suspension of periods**Article 150: Delay in informing the insurer of an accident**

Where the insurer covering civil liability for a motorised land vehicle has not been informed of a traffic accident within thirty days of the accident taking place, the period stipulated in the first paragraph of Article 134 of this Act to present the offer of compensation shall be suspended from expiry of the thirty-day period until the insurer receives said notification.

Article 151: In case of death following the accident

Should the victim of a traffic accident die more than one month after the day of the accident, the period stipulated in Article 134 of this Act to present the offer of compensation to the victim's assignees shall be extended by the time past between the accident and the date of death.

Article 152: Delay in sending supporting documents

If, within a six-month period starting from the date of presentation of the correspondence by which the insurer requests information to be sent to it in accordance with Articles 146 and 147 hereinabove, the insurer has not received any reply or an incomplete reply only, the period stipulated in the first paragraph of Article 134 of this Act shall be suspended from expiry of the six-week period until receipt of the letter containing said requested information.

The same shall apply if the insurer has not received any reply or an incomplete reply only within six weeks of presenting the correspondence in which, having been informed of the stabilisation of the victim's condition, they request that the latter provide the information stated in Article 146 of this Act required to present the offer of compensation.

Article 153: Insurer's new request and period of offer in case of incomplete reply

Where the victim or their assignees only provide some of the information requested by the insurer and the incomplete reply means it is impossible to establish the compensation offer, the insurer shall have one month from the date it received the incomplete reply to present the interested party with a new request specifying the missing information.

If the insurer does not comply with this period, the suspension of periods outlined in the previous article shall end at the expiry of a one-month period from date of receipt of the incomplete reply, where this occurred after the six-week period mentioned in the said Article. Where the incomplete reply arrives within the six-week period mentioned in the previous Article and the insurer has not requested the necessary information within fifteen days of receipt, there will be no suspension of the periods stipulated in Article 134 of this Act.

Article 154: Refusal of medical examination or contestation of choice of doctor

Where the victim does not attend the medical examination mentioned in Article 148 of this Act or contests the choice of doctor without being able to come to an agreement with the insurer, the appointment at the insurer's request of a doctor acting as an expert, mutually agreed on by the insurer's doctor and the victim's doctor, shall extend the period given to the insurer to present the compensation offer by one month.

Article 155: Disagreement over expert report's conclusions

If there is any disagreement over the conclusions of the medical examination, the insurer's expert and the expert appointed by the victim shall mutually appoint a third party expert. The latter's ruling shall be binding. The period given to the insurer to present the compensation offer shall be extended by one month.

Article 156: Additional periods in case of foreign residency

If the victim resides overseas the periods stipulated in Article 152 of this Act shall be extended by one month. The period given to the insurer to present the compensation offer shall also be extended by one month.

Subsection 4: Third party payers' recourse

Article 157: Benefits entitling to third party payer's recourse

The following compensatory benefits entitle to a remedy against the person liable for compensation:

1° In the event of death:

- 1) death benefits paid by the National Social Security Institute;
- 2) annuity and pensions paid out by said institute to surviving spouses and children of the victim.

2° In the event of injury:

- 1) benefits paid by the National Social Security Institute for medical costs and rehabilitation expenses and cash benefits for temporary or permanent disability;
- 2) wages and wage supplements maintained by the employer;
- 3) compensatory benefits paid by an insurer under a cover;
- 4) illness;
- 5) benefits paid by an insurer as part of a recourse advance payment contract.

Article 158: Lodging of third party payer's claims

An insurer's request sent to a third party payer to lodge their claims shall indicate the victim's first, post and last names, address, professional activity and address of their employer(s).

The third party payer must specify to the insurer for each sum for which they request reimbursement, the legal or contractual provision by virtue of which this sum is owed to the victim.

In all cases, failure to lodge third party claims within two months of the insurer sending the request shall disqualify said third parties from their rights against the insurer or perpetrator of the damage.

In the event that the request sent by the insurer does not mention the stabilisation of the victim's condition, claims produced by third party payers shall remain provisional.

Subsection 5: Limitation

Article 159: Limitation period

Actions for extra-contractual civil liability, available to accident victims involving motorised land vehicles, shall lapse after a fifteen days period from the date of the accident by derogation from Article 647 of the Congolese Civil Code, Book III.

Subsection 6: Terms of compensation of injury sustained by the direct victim

Article 160: Compensable damage

Only the damage stipulated in Articles 161 to 168 of this Act may be indemnified in compensation for bodily harm sustained during an accident involving a motorised land vehicle.

Article 161: Medical treatment expenses arising from the accident

Expenses of any kind required to treat the victim may be, either reimbursed to the victim upon presentation of supporting documents, or paid directly by the insurer of the vehicle involved in the accident. However, costs reimbursed or paid by the insurer shall be limited to the sums fixed by Decree of the Minister in charge of insurance on proposal from the Insurance Regulatory and Supervisory Authority.

Reasonable future costs required to maintain the victim's condition after stabilisation shall be subject to a fixed-rate assessment based on the advice of a medical expert.

Article 162: Temporary disability

The duration of temporary disability shall be set by a medical report. Compensation shall only be due if the disability continues for longer than eight days.

In the event of loss of income, the injury assessment shall be based:

- 1) for salaried staff, on their net pay received for the six months preceding the accident;
- 2) for non-salaried staff with income, on their tax declarations for the two years preceding the accident;
- 3) for persons of full age that cannot provide proof of income, on the Guaranteed Minimum Inter-professional Wage.

In the first two cases, the maximum monthly indemnity to be paid shall be set by the Minister in charge of insurance based on the Insurance Regulatory and Supervisory Authority's proposal.

Article 163: Permanent disability

In the event of permanent disability, only the physiological and economical damage entitle to compensation.

As far as physiological damage is concerned, the disability rate is determined by a medical report taking into consideration the reduction of physical capacity. This rate varies between 0 and 100 % in reference to the disability rating scale set by the Minister in charge of insurance on proposal from the Insurance Regulatory and Supervisory Authority.

Compensation to be paid to the victim is calculated using the disability percentage rating scale, the base rate being set by the Minister in charge of insurance on proposal from the Insurance Regulatory and Supervisory Authority.

Economic damage is only compensated if the victim maintains, after stabilisation, a permanent disability rate of at least 50 %.

Compensation is calculated:

- 1) for salaried employees, according to real and justified loss of future income;
- 2) for non-salaried workers, according to established and justified loss of income.

In all cases, compensation is limited to a sum set by the Minister in charge of insurance on proposal from the Insurance Regulatory and Supervisory Authority.

Article 164: Third party assistance

The victim is entitled to compensation to receive assistance from a third party provided that the permanent disability rate is at least equal to 80 % based on the scale mentioned in Article 163 and that said assistance is explicitly prescribed by a doctor and confirmed by the medical report. Compensation awarded for this purpose shall be limited to 25 % of the compensation set for permanent disability.

Article 165: Physical suffering and disfigurement

Physical suffering (or *pretium doloris*) and disfigurement shall be compensated separately. They are qualified by the medical report and compensated based on the scale set by the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

Article 166: Damage to career

Damage to career is understood as the loss of:

- 1) a clear career opportunity that a pupil or student may reasonably expect;
- 2) career experienced by a person already engaged in the professional life.

In both cases the compensation rate shall be determined using a scale set by the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

The compensation stipulated for both cases above may not be accumulated.

Subsection 7: Terms of compensation for damage sustained by the deceased victim's assignees

Article 167: Funeral expenses

Necessary funeral expenses shall be reimbursed upon presentation of supporting documents and within the period set by regulation by the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

Article 168: Economic loss of the deceased victim's assignees

The deceased's assignees shall receive a sum equal to the product of a percentage of the deceased victim's annual income, duly proven, and the price value of one annuity franc corresponding to each assignee's age based on the conversion table to be determined by the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

Economic loss sustained by the aforementioned persons shall be calculated, under the same conditions, using a fictitious income set by the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

Capitalisation is limited to twenty-one years for children unless they can justify pursuing higher education in which case this limit is extended to twenty-eight years.

The distribution of the deceased's income shall be carried out in compliance with the Family Code.

Overall compensation owed to assignees as economic loss shall be set by the Minister in charge of insurance on the Insurance Regulatory and Supervisory Authority's proposal.

Article 169: Moral damage of the deceased victim's assignees

Only the moral damage of the deceased victim's spouse, adult or minor children, ascendants and brothers and sisters shall be compensated.

The compensation base rate shall be set by the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

Compensation for all beneficiaries hereinabove shall lead to proportional reduction in accordance with a decree of the Minister in charge of insurance, on the Insurance Regulatory and Supervisory Authority's proposal.

Subsection 8: Compensation on behalf of others

Article 170: Involvement of several vehicles

Where an accident involves only one vehicle the offer procedure falls upon the liability insurer of that vehicle's owner regardless of the victim's status: transported person, driver or travelling third party, particularly pedestrians, cyclists, and horse riders.

Where several vehicles are involved in the same accident the offer of compensation to victims of bodily injury shall be carried out under the terms stipulated in Articles 171 to 177 of this Act.

Article 171: Choice of insurer leading the offer procedure

In the event of an accident involving several vehicles, the offer procedure falls upon:

- 1) with regard to transported passengers including the driver, the civil liability insurer of the owner of the vehicle in which they were seated;
- 2) with regard to travelling third parties, the insurer of the vehicle that collided with the victim. If this vehicle cannot be identified, the offer shall be presented by the insurer of the vehicle with the oldest license plate.

At any moment, the insurer who considers that the primary liability lies with their insured party may request to manage the insurance file.

Article 172: Liability of payer on behalf of

An insurer who intervenes on behalf of others shall be authorised to act as if their own interests were concerned. Said insurer shall be liable for interest on late payments caused by their failure to respect the legal periods provided in this Act.

Article 173: Subrogation of payer on behalf of

An insurer who pays sums owed to the victim and third party payers shall be subrogated in the rights of compensated persons up to the limit of the payments made.

Those payments cannot give rise to dispute.

Article 174: Competence of experts

Doctors or technical experts appointed by the mandated insurer must provide proof of either of the following:

- 1) possession of appropriate degrees;
- 2) their capacity as legal expert recorded on the list established for this purpose;
- 3) five years of uninterrupted experience in the appropriate field.

Article 175: Insurers contribution

Contributions from insurers of the different vehicles, after compensation of victims by the mandated insurer, shall be established, with regard to each victim, according to each driver's share of liability. These liabilities shall be established according to the scale set by the Minister in charge of insurance on the Insurance Regulatory and Supervisory Authority's proposal.

Where it is impossible to determine the scope of liabilities incurred, the total amount of compensated damage shall be evenly shared between the liability insurers. Any share not paid by an uninsured co-perpetrator shall be borne by the Automobile Guarantee Fund.

Article 176: Remedy between insurers

Disputes arising from remedy between insurers must be submitted to arbitration with the Arbitration Commission, whose organisation and functioning are stated by decree of the minister in charge of insurance on the Insurance Regulatory and Supervisory Authority's proposal.

Article 177: Interests on late payment

Sums claimed and due in case of remedy after payment on behalf, and not reimbursed, shall incur interest based on twice the Central Bank of the Congo's policy interest rate from thirty days after the date of the request.

Section 5: Insurer's obligation to insure**Article 178: Pricing Commission's role**

Any person subject to compulsory insurance who has been refused cover may bring the matter before the Pricing Commission, a review body whose organisation and functioning are determined by decree of the minister in charge of insurance on the Insurance Regulatory and Supervisory Authority's proposal.

This Commission's sole role is to set the premium amount in return for which the solicited insurance company must cover the proposed risk.

The insurer must present their effective rate to the Commission, at the latter's request.

The Commission, with regard to the circumstances of the risk and proposing party's loss record, may set a premium surcharge regarding the insurer's usual rate, limited to up to 200 % of this rate. The Commission may also impose a deductible on the insured.

Article 179: Reinsurers' obligation

Shall be considered null and void any clause of reinsurance treaties that exclude certain risks of reinsurance coverage due to the price rates adopted by the Pricing Commission or a decision of this Commission.

Article 180: Penalties for refusal to comply with the Pricing Commission decision

Any insurance company licensed to cover civil liability resulting from the ownership of motorised land vehicles, that continues to refuse to cover a risk which premium has been determined by the Pricing Commission shall be deemed not to perform in accordance with current regulations. It shall be subject to either a partial or total withdrawal of license or else administrative sanctions laid down in this Act.

Section 6: Sanctions**Article 181: Sanctions for absence of insurance**

Any person who, in breach of the provisions of Article 108 of this Act, has driven or kept a motorised land vehicle, its trailers or semi-trailers on the road without being covered by an insurance covering its civil liability shall be liable to a fine equal to half the annual insurance premium payable for the civil liability cover of the driven vehicle and for the use of which it is used.

The vehicle in question shall be clamped or impounded at the owner's costs by police authorities until the owner has paid the insurance premium requested by an insurance company of its choice and the fine for lack of proper insurance.

Article 182: Withdrawal of driving license

The driver of a vehicle on the road without insurance may, depending on the case, have their driving license temporarily or permanently withdrawn.

Article 183: Dispute

If a dispute regarding the existence of validity of insurance is brought before a civil or commercial court, the criminal court called upon to rule on the proceedings instituted for non-respect of the insurance obligation shall stay the proceedings until a final ruling has been rendered on the dispute.

Chapter 2: Air carrier civil liability insurance

Article 184: Companies subject to the obligation and coverage amounts

All air carriers or aircraft operators who hold an operating license for this purpose must take out an insurance contract covering their civil liability with regard to passengers, luggage, cargo and third parties.

Civil liability coverage with regard to passengers, in the event of death, injury or any other bodily harm, shall address all risks related aviation activity, including loading and unloading operations.

Insurance coverage granted by the insurance contract must be at least equal to the compensation amounts set by International agreements that govern air transport and by the Civil Aviation Code.

Article 185: Insurance certificate

All aircrafts used by a company operating a public air transport service must carry on-board an insurance certificate certifying that this compulsory insurance was taken out as well as the validity period of the coverage. This certificate must be presented whenever requested by the competent authorities or persons authorised to monitor air service companies' compliance with their obligations under current laws and regulations.

In all cases, where there has been a breach of this compulsory insurance under Article 186⁶ of this Act, the competent Civil Aviation services, after consultation with the Insurance Regulatory and Supervisory Authority, must prevent an aircraft from taking off until the air carrier or aircraft operator has provided proof of adequate insurance.

⁶ Article 184. Error in the French text.

Article 186: Sanctions

Any company that contravenes the obligation to insure its third party liability exposes itself to a fine set by Inter-ministerial Decree of the Ministers in charge of insurance and transports, on proposal from the Civil Aviation Authority and the Insurance Regulatory and Supervisory Authority.

These sanctions may take the form of a withdrawal of the operating license or, for foreign-registered aircrafts, refusal to bestow landing rights on national territory.

Article 187: Market failure

In the event of exceptional failure of the insurance market, insufficient capacity or any other reason, the Ministers in charge of insurance and transports, after consultation with the Insurance Regulatory and Supervisory Authority and the Civil Aviation Authority, shall determine the appropriate measures to ensure air carriers and aircraft operators are able to comply with the obligation to insure provided in this Act.

Chapter 3: Civil liability insurance for maritime, lake and river carriers or for inland waterways**Article 188: Persons subject to compulsory insurance**

Any natural or legal person who provides public passenger transportation service on national territory by sea, river or lake and is therefore subject to control from the Marine and Waterways Department must insure their civil liability with regard to paying passengers.

Article 189: Coverage amounts

The insurance coverage granted by the maritime carrier's compulsory civil liability insurance contract must be at least equal to the compensation amounts set by International agreements governing international transportation of passengers and their luggage by sea, river or lake.

The compulsory civil liability insurance coverage of a carrier operating an inland waterway or lake service may not be less, per passenger and their luggage, than the amounts set by Inter-ministerial Decree of the Ministers in charge of insurance and transports, on proposal from the Insurance Regulatory and Supervisory Authority and the Marine and Waterways Department.

Article 190: Settlement of damage

Compensations granted to the victims in the event of an accident or shipwreck shall be calculated according to current civil liability regulations.

Within the coverage limit per passenger, the insurer must reimburse any medical costs for the treatment of victims and pay the compensations due for temporary or permanent disability and other injuries sustained by the victims. It must also compensate deceased victim's assignees' economic or moral losses.

Public maritime, lake or river carriers' compulsory civil liability insurance shall not cover goods transported on the vessel even if accompanied by a passenger.

The amount and terms of the insurance coverage may be modified by Inter-ministerial Decree of the Ministers responsible for the insurance and transportation sectors, on proposal from the Marine and Waterways Department and Insurance Regulatory and Supervisory Authority.

Article 191: Insurance certificate

All operators of a vessel used to transport paying passengers and subject to control by the Marine and Waterways Department must be able to present, when requested by the personnel authorised by said Department, an insurance certificate certifying a civil liability insurance was taken out in compliance with the requirements of this Act and specifying the cover's validity period.

Article 192: Sanctions

Any public maritime, river or lake, carrier subject to compulsory civil liability insurance with regard to its passengers shall face, if unable to provide proof of insurance in compliance with this Act, a fine set by Inter-ministerial Decree of the Ministers in charge of insurance and transports, on proposal from the Marine and Waterways Department and the Insurance Regulatory and Supervisory Authority.

Chapter 4: Compulsory construction works insurance

Section 1: Construction damage insurance

Article 193: Compulsory insurance against damage

Any constructor, whether a natural or a legal person, whose civil liability may be incurred due to damage of any kind that may affect the construction, restoration or rehabilitation of a work must contract, before beginning said work and without any determination of liability, an insurance to cover all professional risk.

Article 194: Scope of guarantee

The insurance shall cover the total value of the work. It also covers damage resulting from the use of unsuitable or faulty materials, faulty work, design or calculation errors and damage caused by theft.

The insurance shall cover damage affecting the solidity of a building's equipment items where these are inseparable to the work's sustainability, foundations, structure, core and shell.

Shall be defined as being inseparable to the work any equipment item that cannot be disposed of, dismantled or replaced without materially damaging or removing the said work.

Article 195: Duration of cover

Any insurance contract subscribed by virtue of Article 193 of this Act, notwithstanding any clause to the contrary, shall be deemed to contain a clause maintaining coverage for the full duration of the liability of persons subject to compulsory insurance.

The terms and conditions for the application of the preceding paragraph shall be set by the Prime Minister's Decree debated by the Council of Ministers, on proposal from the Minister in charge of insurance.

Article 196: Proof of contract

When opening a worksite, operators stipulated in Article 193 of this Act must be able to provide proof they have taken out a professional civil liability insurance.

Article 197: Coverage period of works

For construction work the cover shall extend from the opening of the worksite to the final acceptance of the work.

Section 2: Decennial liability⁷ insurance**Article 198: Compulsory decennial liability insurance**

Decennial liability under Article 439 of the Civil Code Book III must be covered by insurance, taken out by the constructor, which takes effect from the date of the final acceptance of the works.

This cover shall benefit the constructor or successive owners of the works until expiry.

⁷ Inherent Defects Insurance

Article 199: Single insurance policy

The contractor shall contractually require that operators who are on the same works subscribe a single policy covering their liability and verify the performance of this clause.

Article 200: Technical inspection

The insurance laid down in Articles 193 and 198 hereinabove is supported by an agreement for technical inspection of the design and the construction works' performance, made with a professionally qualified natural or legal person.

The technical inspector's mission in particular is to contribute to the prevention of technical mishaps that may occur during construction works. He shall give his opinion to the contractor, insurer and operators regarding any technical problems, especially those related to the solidity of the construction and personal safety.

The implementing terms and conditions of the previous paragraphs shall be set by an Inter-ministerial Decree of the Ministers in charge of insurance and public works.

Article 201: Scope of coverage

The insurance coverage shall be set according to the value of the works constructed, subsequent to the final cost of the works.

This coverage shall run from the day the works receive final acceptance by the main contractor or their representative and extend for an uninterrupted period of ten calendar years.

Article 202: Starting point of decennial liability

The technical specifications shall determine the periods in which the final acceptance is supposed to effectively take place. In the event of silence or disagreement between the parties, the deed or event signalling the beginning of the decennial liability period shall be understood as either one of the following:

1. the single and effective acceptance of the works;
2. the taking or occupation of the works by the Main Contractor or their representative;
3. the handing over of the works by the constructor to the Main Contractor or their representative.

Article 203: Main contractor's action in guarantee

The main contractor may only claim to benefit from the cover established by Article 198 of this Act where they have an action in warranty from the constructors' individual or group contractual liability, in compliance with Article 439 of the Civil Code Book III.

Article 204: Automatic appearance of insurer

The criminal court referred to by public action may order the insurer's appearance.

Section 3: Common provisions**Article 205: Derogations to the insurer's obligation**

The insurance obligations stipulated in Articles 193 and 198 of this Act shall not apply to the central power, provinces, decentralised territorial entities or legal persons under public law.

They shall not apply to individuals for private residence buildings either, under the conditions set by Prime Minister Decree, on proposal from the Minister in charge of the insurance sector.

Are not subject to the compulsory insurance outlined in Articles 193 and 198 of this Act:

1. Road, port, airport, heliport and railway infrastructures, maritime, river, lake, canal and waterway structures, urban waste, industrial waste and wastewater treatment facilities and the equipment of any one of these structures;
2. Pedestrian structures, car parks, various networks, lines or cables and their supports, transportation, production, storage and water, fluid, liquid and electricity distribution infrastructure, telecommunication infrastructure and uncovered sports facilities, and their equipment.

Article 206: Claim settlement

The insurer must pay the compensation due to the insurance beneficiary within three months of the date set by the expert's report, mutual assessment or arbitration and, when appropriate, within three months as of the date on which the ruling has acquired the authority of res judicata.

Should the insurer fail to pay within the period stipulated in the preceding paragraph, they shall also be bound to pay interest on late payment calculated at twice the Central Bank of the Congo's policy interest rate.

Article 207: Transfer of works and transfer of insurance

The free or remunerated transfer of the works or the death of the main contractor before expiry of the insurances stipulated in Articles 193 and 198 of this Act shall automatically entail the transfer of said insurances' benefits to the new acquirer or the main contractor's successors even if the latter must make themselves known to the insurer by mail or any other means with acknowledgement of receipt within thirty days of said transfer or death.

Article 208: Sanctions

Violation of the provisions of Articles 193, 198 and 200 of this Act shall be liable to a transactional fine.

The transactional fine may not be greater than the insurance premium. The fine shall be collected as direct tax and paid to the Treasury.

If there are insufficient elements to assess the insurance premium this may be determined by referral to premiums related, depending on the case, to construction work, completed works of equal value, nature, construction, coverage, use and contiguity or in the absence of which, by the Pricing Commission stipulated in Article 209 of this Act.

Article 211: Pricing Commission

Any person subject to compulsory insurance who has been refused cover after having solicited the conclusion of a contract with an insurance company whose articles of association do not prevent it from covering risks, may bring the matter before the Pricing Commission, the organisation and management of which shall be determined by the Minister in charge of insurance on the Insurance Regulatory and Supervisory Authority's proposal.

Chapter 5: Compulsory Fire Insurance**Article 210: Principles**

Shall be covered by a compulsory fire insurance, any building or edifice or category of edifices used as an administrative, cultural or health centre or school, concert or recreational halls, rental properties for an industrial, agro-industrial, artisanal or commercial use in general.

Their nature, location, specific characteristics and features are restrictively specified by Prime Minister Decree debated by the Council of Ministers on proposal from the Minister in charge of insurance and after recommendation from the Insurance Regulatory and Supervisory Authority.

Insurance coverage may be extended to the contents of the building as well as costs specified in the contract's clauses.

Article 211: Persons concerned

Owner-operators or third party operators are subject to the compulsory insurance.

Article 212: Insured property

Buildings must be insured, as a minimum, for their reconstruction value less wear and tear; equipment and furniture for their replacement value; goods for their cost price at the current market rate.

Article 213: Covered damage

The compulsory insurance covers fire damage caused to insured buildings, their contents at the time of the fire and neighbours' and/or third parties' recourse.

Article 214: Bodily injury

Without prejudice to the provisions of Articles 258 to 260 of the Civil Code Book III on civil liability, the compulsory insurance provided in Article 210 of this Act shall also extend to bodily injury resulting from fire.

Unless explicitly stipulated in the contract, said injuries shall give rise to a redress according to the terms of 'jus commune'.

The insurer shall be informed of all cases of death, physical disability or simple bodily wounds caused by the fire within fifteen days of the event occurring, and duly certified by a State doctor or licensed doctor.

The insurer may, at their own expenses, seek supplementary expert opinion, within eight days from the date on which the claim notice is received by the insurer or by their representative.

Article 215: Insurance coverage and proportionality

The insurance coverage shall be in proportion to the contractual insured value.

Unless explicitly stipulated in the contract, the insured is deemed to be, in the event of involuntary insufficiency of insured value, their own insurer for the excess and shall bear their proportionate share of the damage.

In the event of wilful insufficiency the insured's rights to compensation shall be revoked. Premiums paid shall be retained by the insurer as damages.

Is deemed wilful insufficiency, an inadequacy of the insurance greater than 33 % of the insured property's value, unless otherwise stipulated in the specific terms that the insurance company waives this rule.

Article 216: Insured's compensation

In the event of a loss, the loss sustained by the insured and, if applicable, by their neighbours shall be paid in cash, except for the rebuilding clause of buildings or replacement of property therein.

In the latter case, the insured party must rebuild, repair or reconstruct the property in question at the insurer's cost within the limits of the policy coverage and within a maximum of two years following the date of loss.

The insurer is entitled to verify that the sum in question is used for this purpose.

Article 217: Inapplicability of reconstruction or reconstitution clauses

Clauses providing for the reconstruction or reconstitution shall not apply when, following unusual circumstances beyond the insured's or beneficiary neighbour's control, they should seriously harm the insured and/or third parties or breach legal and regulatory provisions. Nevertheless, the compensation shall be stated as payable by the insurer within sixty days following the completion of the expert's report, subject to the forfeiture clauses provided in this Act.

Article 218: Several insurances

If the insured party has signed several insurance contracts for a single risk and the same property, the total of compensations paid may not exceed the loss sustained.

Article 219: Exclusion of compensation accumulation

The insured party may not be compensated twice for the same loss.

Where there are several insurance policies, only the most advantageous to the insured party or victims shall be invoked.

Article 220: Direct action of injured persons against the insurer concerned

Injured persons, other than the insured party, shall have direct action against the insurer within the limits of the rights to which the insured party may claim, notwithstanding their recourse against the latter, in the case of being dismissed by the insurer.

Article 221: Jurisdiction of criminal courts

Where a public action is brought before a criminal court against the insured party, this court shall be competent to rule on the direct action provided in the previous article of this Act.

Article 222: Appearance of insurer

The criminal court before which a public action is brought, as provided in the previous article, may order the insurer to appear.

Article 223: Compulsory wording of the insurance policy

Insurance policies specify the scope of the parties' rights and obligations, the insurance contract cancellation and suspension terms and terms of exclusion and forfeiture.

Article 224: Transfer of the insured property

The free or remunerated transfer of the building or operation covered by the fire insurance, before expiry of the insurance policy, shall entail the automatic transfer of said insurance to the new owner-operator, new occupant or third party operator, even if the new owner-operator, occupant or third party operator must make themselves known

to the insurer by registered letter or any other means with acknowledgment of receipt within thirty days of said transfer.

Death of the owner-operator or third party operator prior to expiry of the insurance policy shall also entail the automatic transfer of said insurance to the heirs or other beneficiaries under the same conditions as those stated in the preceding paragraph.

Article 225: Death of insured and successor's rights

In the event of the insured's death, the insurance cover shall automatically continue in favour of the successor, provided that they make themselves known to the insurer by registered mail or any other means with acknowledgment of receipt within thirty days of obtaining the inherited property. In this case the successor shall be subrogated in the deceased's rights and obligations.

Article 226: Sanction and transactional fine

Breach of the provisions of Articles 210 to 214 of this Act shall be liable to a transactional fine.

The transactional fine may not be greater than the annual insurance premium. The proceeds of the fine shall be collected as direct tax and paid to the Treasury.

Payment of the transactional fine shall not dispense any person legally or contractually bound to take out the insurance policy.

Article 227: Jurisdiction

Only the Public Prosecutor in the High Court or Commercial Court shall be competent to impose the transactional fine.

Article 228: Sending information

Insurance companies, the Ministry of Land Affairs and The Ministry of Finance shall send the Public Prosecutor any document or information that it may require to accurately carry out its mission.

Any person who has any interest whatsoever may denounce any person who does not comply with the provisions of Articles 210 to 214 of this Act.

Article 229: Property transfer

For any building outlined in Article 210 of this Act, registration or transfer documents of the title to such building may only be issued upon presentation of the insurance policy or of a receipt for insurance covering the current year.

The insurance policy or the receipt issued by the insurance company shall also be presented to the Tax Department when paying any real property taxes.

Article 230: Limitation period

Without prejudice to the insurance company's right to bring an action under the contract, the beneficiaries' and/or their assignees' right to bring an action for the payment of damages as well as a general action pertaining to the insurance contract and/or its endorsements shall lapse after two years.

This period runs either from the day of the loss, or from the day of the event that gives rise to the action, or from the day of the last notification sent to the insurance company by registered mail or any other means with acknowledgment of receipt.

If an expert's report or court proceedings are involved, this period may not run before the day the expert's report is completed or the final ruling has acquired the authority of *res judicata*.

Chapter 6: Compulsory imports insurance

Article 231: Scope

Any natural or legal persons that import goods and property by any means of maritime, air, rail, road or multimodal transportation for (in)directly commercial or industrial purposes, shall be subject to an obligation to take out insurance with a licensed insurance company in compliance with the provisions of this Act.

The compulsory insurance shall apply, within the limits of the insured journey, to imported new assets and goods prepared, wrapped and packed for shipping, where these are transported or handled by professionals, carriers or carrier affiliates in compliance with recognised trade practices and subject to the clauses and terms of the policies stipulated by the Insurance Regulatory and Supervisory Authority according to the provisions of Article 239 of this Act.

By virtue of Article 102 of this Act, for multimodal transportation, where part of the journey is made at sea, maritime insurance regulations shall apply to all of the transportation, even for the parts of the journey made by land, river or air.

Article 232: Scope of compulsory insurance

The compulsory insurance does not extend to:

- 1) civil liability insurance with regards to third parties or other contractual parties, regardless of its grounds, that the insured party or other insurance beneficiaries may incur, either by their fault or the fault of their property;
- 2) risk sustained by the insured and other insurance beneficiaries for their business or commercial operation;
- 3) goods and property that are the subject of prohibited or clandestine trade.

Article 233: Derogations

The Prime Minister may, by Decree deliberated by the Council of Ministers, upon proposals of the ministers responsible for the Finance and Economy sectors, dispense with the compulsory import insurance stipulated in Article 231 of this Act, as long as it is permitted by the exchange regulations.

Article 234: Terms of cover

Insured risks shall be determined freely by the parties.

However, in the absence of an “all risk” cover, imported goods and property may not be insured for a sum less than that of the “Free of Particular Average unless” (FPAU) coverage.

Article 235: Complementary covers

Covers complementary to the compulsory insurance’s minimum coverage shall be subscribed, where necessary, with licensed companies in compliance with the provisions of this Act.

Article 236: Insurance certificate

The insurance company must immediately issue an insurance certificate to the insured party upon signing of the contract.

This insurance certificate is prepared in three copies:

1. one copy provided to the insured party
2. one copy kept by the insurance company
3. one copy to be used by Customs Authorities when entering goods or cargo into the customs territory of the DRC.

The insurance certificate shall be delivered by mail.

Where an insurance certificate document is lost or stolen the insurer shall deliver a duplicate at the simple request of the insured party or its representative.

Article 237: Sanctions

Any breach of the provisions of Article 231 of this Act shall incur a fine of 5,000,000 to 10,000,000 Congolese Francs.

Chapter 7: Other compulsory non-life insurance**Article 238: Non-life insurance made compulsory**

Any category of non-life insurance the classes cited in Article 402 of this Act, other than those stated in Chapters 1 to 7 of this Title III, may be made compulsory by Prime Minister Decree debated by the Council of Ministers on proposal from the Minister in charge of insurance after consultation with and recommendation from the Insurance Regulatory and Supervisory Authority.

Article 239: Standard clauses of contracts

For any non-life insurance made compulsory under Article 238 of this Act, the Prime Minister, by Decree deliberated by the Council of Ministers and proposed by the Minister in charge of insurance, shall set out the standard clauses for insurance contracts, determine the scope of the insurance cover, define the rating framework and set the commission rate for insurance brokers.

Article 240: Sending general terms

Insurance companies that perform one of the insurance classes outlined in Article 238 of this Act must send the Insurance Regulatory and Supervisory Authority the insurance contract's general terms, or their modifications, including the standard clauses set out by the Prime Minister decree and their rates for the different classes of compulsory insurance, at least one month before they are applied and released to the public.

Article 241: Minimum terms

Any compulsory insurance contract issued by virtue of this Act by a licensed insurance company and taken out by a person subject to compulsory insurance shall be, notwithstanding any clause to the contrary, deemed to contain cover at least equivalent to that detailed in the standard clauses provided in Article 240 of this Act.

TITLE V: RULES GOVERNING LIFE AND HEALTH INSURANCE AND CAPITALISATION CONTRACTS**Chapter 1: General Provisions****Article 242: Insured capital and flat-rate principle**

With regard to life insurance and personal accident insurance, the insured sums as either capital or annuity shall be determined by the contract.

The guaranteed capital or annuity may be expressed in units of account made up of cash values or movable or immovable assets defined by the contract.

The policyholder or beneficiary may choose, at the end of the contract, between payment in cash or the delivery of its shares or securities. However, where these units of account are made up of unmarketable shares or securities payment may only be made in cash or by bank transfer. Should a risk stipulated in the contract occur the insured party shall only be paid the agreed amount.

However, the corresponding cash value of sums paid by the insurer in the event of a claim may not be less than that of the insured capital or annuity, if this cover was pledged by the insurer as calculated based on the unit of account value on the date the contract took effect, or where applicable, the date of its latest endorsement.

Article 243: Absence of subrogation

In personal insurance, the insurer, after payment of the sum insured, may not be subrogated in the rights of the contracting party or of the beneficiary against third parties as a result of the loss.

However, where it is contractually provided, the subrogatory recourse of the insurer who paid an advance to the victim in compensation of an accident may be exercised against the person liable for compensation, within the limit of the damage sustained by the insured and not yet compensated by the third party liable.

Chapter 2: Life insurance and capitalisation contract

Section 1: General provisions related to the contract

Article 244: Life insurance

A person's life may be insured by the person themselves or a third party who must justify the existence of an interest.

Several people may contract a reciprocal insurance on the life of each person in a single deed.

Article 245: Insured's consent

Death benefit insurance contracted by a third party on the life of the insured party shall be null and void if the latter has not given its written consent indicating the capital or annuity initially insured.

The insured party's consent shall be under penalty of nullity given in writing for all transfers or pledges of the benefit of the contract taken out on their life by a third party.

Article 246: Insurance on the life of an incapable person

Anyone shall be prohibited from contracting death benefit insurance on the life of a minor less than twelve years of age, a person of full age under legal guardianship or a person placed in a psychiatric hospital.

Any insurance taken out in breach of this prohibition shall be null and void.

Nullity shall be decided at the request of the insurer, policyholder or representative of the incapable person.

Premiums paid must be returned in full. The insurer and policyholder shall also be liable, for each insurance policy contracted in deliberate breach of this prohibition, to a 3-month prison sentence and a fine that may not exceed 1.000.000 Congolese francs or either one of these penalties only.

In the case of a death benefit insurance, these provisions shall not in any way prevent the refund of premiums paid for the performance of a life insurance contract concluded on the life of one of the persons mentioned in this Act.

Article 247: Insurance on the life of a minor over twelve years old

Death benefit insurance may not be contracted by another person on the life of a minor over twelve years of age without authorisation from the person with parental Authority, guardian or tutor of said minor.

This authorisation shall not remove the requirement of the minor's consent.

In the absence of said authorisation and consent, the contract shall be declared as null and void at the request of any interested party.

Article 248: Compulsory wording of contract

The life insurance contract indicates, other than the information stipulated in Article 8 of this Act:

1. the insured party or parties' first, post and last names and date of birth;
2. the event or period on which the due date of the insured capital or annuity depends;
3. the periods and terms for payment of insured capital or annuity.

Article 249: Wording of capitalisation title or contract

All capitalisation titles and contracts indicate:

1. the sum of reimbursable capital at expiry;
2. the inception date and expiry date;
3. the amount and due date of contributions;
4. the periods and terms of payment of the capital.

Where the cover of life insurance or capitalisation contracts is referenced over one or several units of account it must be also outlined in the contract.

Said contract must also specify the date at which the premiums paid are converted into units of account and, where applicable, the periodic assessment dates chosen to determine their value throughout the year.

Article 250: Information on fees

Life insurance or capitalisation contracts shall indicate the fees levied by the company. These fees may be denominated in the currency of the contract or calculated as a percentage of the premiums, mathematical reserves, insured capital or cash surrender value.

Other contracts containing cash surrender values must indicate the fees levied for the surrender.

These provisions shall not apply to compulsory group contracts.

Article 251: Right of waiver

Any natural entity that signs an insurance proposal or contract has the right to withdraw from said proposal or contract by registered mail or any other means with acknowledgement of receipt within thirty days from the first payment.

Said withdrawal shall entail the return of premiums paid less the cost of the policy within thirty days maximum upon receipt of the withdrawal. After this period any sums not returned shall automatically incur interest at twice the Central Bank of the Congo's policy interest rate.

The insurance proposal or contract must include a draft letter to be used to facilitate the exercise of this right to withdraw. In particular, it shall indicate for the contracts containing such values, the cash surrender values at the end of each of the first six years at least.

Furthermore, the insurance or capitalisation company issues an information note on the contract's core provisions, the terms for exercising the right to withdraw and the outcome of the death benefit should this right to withdraw be exercised.

Failure to provide the documents and information stipulated in paragraphs 3 and 4 shall automatically extend the period stipulated in the first paragraph until thirty days after said documents have been provided.

A new thirty-day period shall begin on the date the contract is received where this contains reserves or core changes to the original offer, or from the date of the policyholder sends written consent of said reserves or changes.

Article 252: Insured party's suicide

Life insurance shall be null and void if the insured voluntarily ends their life during the first two years of the contract.

Article 253: Murder of the insured by the beneficiary

The insurance contract shall cease to have effect with regard to the beneficiary who has been sentenced for having murdered or attempted to murder the insured party.

The amount of the mathematical reserve must be paid by the insurer to the contracting party or their assignees unless they have been sentenced as the perpetrators or accomplices to the murder of the insured party.

If the beneficiary attempted to murder the insured, the contracting party shall be entitled to revoke allocation of the insurance benefit even if the beneficiary has already accepted the clause made in their favour.

Article 254: Repayment of the mathematical reserve

In the case of reluctance or false declaration outlined in Article 14 of this Act, or where the insured party voluntarily commits suicide during the period mentioned in Article 252 of this Act, or where the contract excludes death benefit due to the reason for the death, the insurer shall pay the contracting party or, in the event of the insured party's death, the beneficiary, a sum equal to the mathematical reserve of said contract.

Section 2: Beneficiary

Article 255: Appointment of beneficiaries

The insured capital or annuity may be payable in the event of the insured party's death to one or several specified beneficiaries.

The stipulation by which the insurance benefit is attributed to one or several persons who, without being appointed by name, are sufficiently defined in this stipulation to be identified at the date the insured capital or annuity are due, is deemed to be made in favour of specified beneficiaries.

The following persons, in particular, are deemed to fulfil this condition:

1. the born or to be born children of the contracting or insured party or any other designated person;
2. heirs and assignees of the insured party or predeceased beneficiary.

The insurance taken out in favour of a spouse shall benefit the person who is qualified as such at the time the benefit is due.

Appointed heirs shall be entitled to the insurance benefit in proportion to their inherited shares. They shall retain this right in the event of a waiver of succession.

Where a beneficiary has not been appointed in the contract or should said beneficiary not accept the contract, the contracting party is entitled to appoint a beneficiary or substitute a beneficiary with another. This designation or substitution may only, under penalty of nullity otherwise, be carried out with the insured's agreement when they are not the contracting party. It may be made by endorsement to the contract or by will.

Article 256: Beneficiary's acceptance

The stipulation by virtue of which the insurance benefit is attributed to a specified beneficiary shall become final upon the latter's explicit acceptance thereof.

Until such acceptance has been given, the person stipulating shall be solely entitled to revoke this stipulation, and as a consequence their creditors or legal representatives may not exercise such right during the person's lifetime.

After the death of the person stipulating, their heirs may exercise said right of revocation only after the due date of the sum insured and no earlier than three months after the beneficiary has been informed by extrajudicial deed to declare their acceptance of the insurance benefit.

Free allocation of the life insurance benefit to a specific person shall be deemed to have been made on the condition that the beneficiary exists at the time of the due date of the insured capital or annuity, unless otherwise stated in the stipulation.

Article 257: Absence of beneficiary

Where death benefits insurance has been contracted without an appointed beneficiary, the insured capital or annuity shall become part of the contracting party's assets or estate.

Article 258: Beneficiary's individual right

The capital or annuity stipulated to be paid at the insured party's death to a specific beneficiary or their heirs shall not be part of the insured party's estate. The beneficiary, regardless of the form or date of their designation, shall be deemed to be the sole person entitled to it from the date of the contract's entry into effect, even if their acceptance is made after the insured party's death.

The capital or annuity insured for a specific beneficiary shall not be subject to either inheritance regulations or those on reduction for infringement of the reserve of the contracting party's heirs. Neither shall said regulations apply to the sums paid by the contracting party as premiums, unless they have been clearly exaggerated with regard to their capacities.

Article 259: Rights of contracting party's creditors

The contracting party's creditors may not claim capital or annuity insured for a specific beneficiary. These creditors shall be solely entitled to request the return of premiums deemed clearly exaggerated with regard to the contracting party's capacities.

Section 3: Payment of premiums**Article 260: Payment of premiums**

The policyholder is liable for the payment of the premium. However, the contracting party may be substituted by any interested party to pay the premiums.

Article 261: Non-payment of premiums

Insurance or capitalisation companies may not bring an action to demand payment of premiums.

Failure to pay a premium may only be sanctioned by the suspension followed by the reduction or pure and simple cancellation of the contract, and, in the latter case, the cash surrender value that said contract may have acquired shall be made available to the insured party.

Where a premium or a portion of premium has not been paid within ten days of its due date, the insurer shall send the contracting party a registered letter or any other document stating that upon expiry of a forty-day period starting from the date said letter was sent the non-payment shall either cancel the contract owing to the absence or inadequacy of the surrender value, or reduce said contract.

Should the insurer send the letter by registered mail or by any other means with acknowledgment of receipt, the premium shall be payable in any event.

Sector 4: Surrender value**Article 262: Surrender value and compulsory value after reduction**

For any life insurance contract including a surrender value and for capitalisation contracts, the surrender value shall be equal to the mathematic reserve less, if applicable, an indemnity that may not exceed five per cent of this mathematical reserve. This indemnity shall be null and void at the end of a ten-year period starting from the date the contract takes effect.

The terms for calculating the reduction value and cash surrender value shall be fixed by general regulations outlined in the contract and established by the insurer after approval from the Insurance Supervisory and Regulatory Authority. As soon as the contract is signed the insurer shall inform the contracting party that such general regulations are at their disposal at their request.

The insurer must send the contracting party, at the latter's request, the general regulations' text.

The insurer may grant the contracting party advance payments within the limit of the surrender value.

The insurer must pay the contracting party, at the latter's request, the cash surrender value within one month at most. After said time limit, unpaid sums shall automatically bear interest at twice the Central Bank's policy interest rate until expiry of this period.

Article 263: Compulsory surrender after reduction

The insurer may automatically substitute surrender for reduction if the cash surrender value of the contract is less than the amount fixed by the general regulations and stipulated in the contract.

Article 264: Informing the insured

For all contracts taken out and for as long as they give rise to the payment of a premium, every year the insurer must inform the contracting party of the respective amounts of the cash surrender value, reduction value, insured capitals and contract premium.

These amounts may not include beneficial interests that are not permanently allocated.

The insurer must clearly and specifically detail in said notice what surrender and reduction transactions mean and their legal and contractual consequences.

For contracts that do not give rise to the payment of premiums, the information outlined above shall only be sent to the contracting party requesting such information, for a given year.

The contract must refer to the obligation to inform provided in the previous paragraphs.

Article 265: Insurance without reduction or surrender

Temporary death benefits insurance and life annuities, whether immediate or in the course of service, may contain neither reduction nor surrender.

Survival capital and survival annuity insurance, life insurance without return of premiums and deferred annuities without return of premiums may not include surrender.

Article 266: Payment in good faith to apparent beneficiary

Where an insurer has no knowledge of the designation of a beneficiary by will, the acceptance of another beneficiary or the revocation of a designation or otherwise, the payment of the capital or annuity guaranteed to the party who, without this designation, would have been entitled thereto, shall constitute discharge for the insurer acting in good faith.

Article 267: Error on the insured party's age

An error on the insured party's age shall render the insurance contract null and void if their true age is outside of the limits set to conclude the contracts by the insurer's rates.

In all other cases if, due to an error on the insured party's age, the premium paid is less than it should have been, the insured capital or annuity shall be reduced in proportion to the premium received and that which would have corresponded to the insured party's true age.

If, on the contrary, due to an error on the insured party's age, the premium paid was too high, the insurer must return the overpaid portion of the premium.

Section 5: Profit sharing

Article 268: Principle of insured party's profit sharing

Life insurance or capitalisation companies must share the technical and financial profits they make with insured parties, under the terms defined by this Act.

The minimum participation shall be determined globally for all types of individual and group contracts signed in the Democratic Republic of Congo, except for group death benefit contracts.

The principle of this Article shall not apply to variable capital contracts or units of account contracts.

Article 269: Participation in operating results account

For each company the minimum profit share to be allocated for a given financial year shall be determined globally using a participation in operating results account.

This account shall contain the expenses and revenue items presented in the life insurance and large and group classes columns of the results sheet per category, excluding sums corresponding to the liquidated participations in profit and premiums ceded to reinsurers headings, and sums corresponding to *net financial income* and *claims and charges incumbent on reinsurers* subtotals.

It shall also contain as expenses the insurer's share of technical management profit, which is made up of 10 % of the credit balance of the previous items. At least 85 % of the financial account stipulated in Article 271 of this Act shall be added to the participation in operating results account revenue. The participation in operating results account shall also contain sums corresponding to the ceded reinsurance balance, calculated in accordance with the provisions of Article 272 of this Act and, if applicable, any negative balance from previous financial year's participation in operating results account.

Article 270: Participation in operating results and profit

The annual minimum amount for participation in operating results is the credit balance of the participation in operating results account defined in the previous Article.

The annual minimum amount for participation in profit is equal to the amount defined in the previous paragraph less the amount of interest credited to the mathematical reserves by virtue of the minimum insured by the contract.

Article 271: Financial account

The financial account stipulated in Article 269 of this Act shall be drawn up according to the rules below.

- a. as income: share of
 - financial products of any kind;
 - added value on realisation on securities and re-evaluations;

- b. as expenditure: share of
- losses on realisation on securities and depreciation;
 - income that the company had to assign to its initial capital to maintain the legal or regulatory solvency margin, upon approval of the Insurance Supervisory Authority and with supporting documents

To draw up this account the portion of financial products to be recorded as income shall be equal to the product of the rate of return of the company's investments made in the Democratic Republic of Congo and the financial year's average gross technical reserves of reinsurance cessions of the contracts concerned.

The rate of return is equal to the ratio of:

1. the investment income net of charges as defined in the results sheet of the insurance chart of accounts, increased by added-value on the transfer of assets net of losses, and the amount of asset re-evaluations made net of any depreciation;
2. to the financial year's average amount of investments and other asset items that may be accepted as representation of technical reserves, except values given by reinsurers.

Article 272: Ceded reinsurance balance

A heading titled *ceded reinsurance balance* shall be included in the participation in operating results account pursuant to Article 269 of this Act.

Only reinsurance of the risk shall be taken into account, namely that in which the reinsurers' commitment concerns solely all or part of the difference between the amounts of capitals in the event of death or disability and that of the corresponding contract's mathematical reserves.

In treaties limited to reinsurance of risk, the ceded reinsurance balance shall be equal to the difference between the amount of claims borne by reinsurers and that of the ceded premiums.

Said balance shall be entered as profit or loss in the participation in operating results account, as the case may be.

In other treaties, the *ceded reinsurance balance* shall be established by isolating the reinsurance of the risk within the reinsurer's commitments.

Article 273: Allocation of profit sharing

The total amount of profit sharing may be directly allocated to the mathematical provisions or credited, in part or in full, to the profit sharing reserve. Sums credited to the latter shall be allocated to the mathematic reserve or paid to insured parties during the five financial years following that in which they were credited to the profit sharing reserve.

Section 6: Loss of contract**Article 274: Loss of a life insurance contract**

Any person who claims to have lost a life insurance contract by misplacement, destruction or theft must inform the insurance company thereof by mail or any other means with acknowledgment of receipt sent to the latter's head office. The company shall send acknowledgement of receipt in the same form to the sender within eight days of receiving said notification; in this acknowledgement the company shall notify the latter that they must, as a precaution and all parties' rights reserved, pay in full at their due date the premiums contracted, provided these have not been paid by third party payer, so as to maintain the full force and effect of the contract subject to opposition.

The declaration outlined in the paragraph above shall bear opposition to the payment of capital and all accessories.

Article 275: Presentation of unenforceable contract

Where the unenforceable contract is presented to the company, the latter seizes it until a court decision has been handed down on the ownership of the contract or until it becomes enforceable again.

An acknowledgment of receipt of the contract seized is issued to the third party bearer where they show evidence of their identity and residence. Failing this, the contract is returned without formalities to the opposing party.

Section 7: Rating**Article 276: Annuity surrender**

Life insurance companies may surrender annuity on contracts subscribed with them, where the corresponding receipts on arrears do not exceed the Minimum Guaranteed Inter-professional Wage.

The scale determining the aforementioned annuity surrender value shall be that of the mathematical reserves.

Article 277: Mortality tables and interest rate

Rates submitted for approval from the Insurance Regulatory and Supervisory Authority by life insurance companies must, subject to the provisions of the previous Article, be based on:

1. TD mortality tables for death benefit insurance and TV for life insurance;
2. Interest rate more or less equal to 3 percent per year.

These rates must include charges allowing the company to recuperate justifiable and reasonable costs.

Article 278: Increased rates and segregated assets

Rates for immediate annuity contract subscribed by persons of at least 65 years of age, and life and capitalisation contracts with a single premium for a minimum duration of ten years, may be established using an interest rate above that of the rate stipulated in the previous article.

In each case, and for each rate, the visa shall be subject to the following terms:

1. assets representative of commitments pertaining to these contracts must be isolated in the company's books;
2. these assets must be able to produce a rate of return higher than at least one third of the said rate's rate of return.

For contracts outlined in the first paragraph of this Article, where the rate of return on new investments made during the financial year allocated in representation of commitments corresponding to a specific rate is less than this increased rate by 33 %, contracts shall cease to be presented to the public.

Chapter 3: Group insurance

Article 279: Definition

Group insurance is an insurance contract subscribed by a legal person or company director with the view to adhere a group of persons meeting the terms defined in the contract, for the cover of risk depending on the duration of human life, risk affecting a person's physical integrity or maternity risks, risk of incapacity to work or risk of unemployment.

Members must have a common link with the policyholder.

Article 280: Transparency of insurance premium

Amounts payable by the member to the policyholder by reason of the insurance must be calculated separately from the ones that the member may owe, in addition, as a result of another contract.

Article 281: Exclusion of a member

The policyholder may exclude a member from the benefit of the group insurance contract only if the link which unites them is broken or if the member ceases to pay the premium.

The departure of a member from a company with group insurance, for retirement or any other reason, shall not break the link with the group for which the insurer is bound to keep health insurance benefits included in the contract with the former employee, provided that the latter continues to pay the premiums it owes to cover said risk.

Should a member cease to pay their premium, the exclusion may only take effect at the end of a forty-day period starting from the date the policyholder sends notification thereof by registered mail or any other means with acknowledgement of receipt. This letter may only be sent ten days after the date on which the outstanding sums should have been paid at the earliest.

At the time of the formal notification, the policyholder shall inform the member that at the expiry of the period stipulated in the previous paragraph, the non-payment of the premium may lead to their exclusion from the contract.

This exclusion cannot prevent, as the case may be, the payment of benefits to the insured in return for the premiums or contributions formerly paid by him.

Where a member ceases to fulfil the membership terms of a group contract with savings, the insurance company must offer to conclude an individual contract with said member or, if refused, pay the latter their rightful amount of the mathematical reserve.

Article 282: Informing a member

The policyholder must:

1. give to the member a document prepared by the insurer explaining the cover, how it will enter into force, as well as any formalities to be fulfilled in the event of loss;
2. inform members in writing of any modifications made, if applicable, to their rights and obligations.

The member may terminate their membership due to these modifications.

However, the right to terminate the membership is not granted to the member when their link with the policyholder makes their membership to the contract compulsory.

The policyholder of a group insurance contract covering lenders may not amend nor cancel said contract without obtaining prior consent from each lender.

Article 283: Persons of full age under legal guardianship

By derogation to Article 279 of this Act, the legal representative of a person of full age under legal guardianship may enter, on behalf of the latter, into a death benefit group insurance contract concluded for the performance of a labour agreement or company agreement.

BOOK II: INSURANCE AND REINSURANCE COMPANIES

TITLE I: LEGAL REGIME AND RULES FOR INCORPORATION AND OPERATION

Chapter 1: General provisions

Article 284: Companies concerned

The provisions of this Book apply to insurance and reinsurance companies that, as part of their usual business, underwrite and issue insurance and reinsurance contracts regulated by this Act.

The provisions of this Book II do not govern special purpose vehicles and limited financial reinsurance-related operations. Their rules for incorporation and operation are determined by a Decree of the Minister in charge of insurance.

Article 285: Types of insurance and reinsurance companies

Any insurance or reinsurance company that solicits a license to operate in the insurance or reinsurance sector must be incorporated as a non-one-person limited liability or mutual insurance company and be registered in the Democratic Republic of Congo.

Foreign companies may only carry out any operation stipulated in Article 402 of this Act or reinsurance activities on national territory if they comply with provisions of the previous paragraph.

However, the Minister in charge of insurance may allow a foreign company to carry out insurance or reinsurance activities once it has been established that no appropriate insurance or reinsurance cover pertaining to a particular risk or risk category exists on the national market, after consultation with the Insurance Regulatory and Supervisory Authority.

Article 286: Direct insurance abroad and with unlicensed companies

It is prohibited to take out a direct insurance abroad for persons, property or liability located in the national territory or with an unlicensed company to carry out insurance operations in the Democratic Republic of Congo, in accordance with the provisions of Article 400 of this Act.

Reinsurance ceded abroad on more than 75 % of a risk regarding a person, property or liability located in the Democratic Republic of Congo, except for the classes stipulated in 4, 5, 6, 11 and 12 of Article 402, requires consent from the Minister in charge of insurance, after consultation with the Insurance Regulatory and Supervisory Authority.

Article 287: Compulsory wording on documents intended for public use

All titles, prospectuses, posters, flyers, nameplates, print-outs and any other documents intended for public use or published by a company mentioned in the previous article must bear the licence number after the company name and legal form.

Article 288: Commercial documents and rates

Companies mentioned in Article 284 of this Act must send the Insurance Regulatory and Supervisory Authority, which may prescribe amendments or modifications required by current regulations, five copies of the general terms of their policies, proposals, application forms, prospectuses and print-outs intended for public use or published or issued to policyholders or members, prior to their use.

Insurance companies must, before applying their rates, obtain approval from the Insurance Regulatory and Supervisory Authority, which shall make a decision within one month from three rate samples being deposited.

Approval requests for rates on life insurance contracts with special clauses covering accidental death and disability shall include technical justifications regarding said clauses.

Within one month from the date of communication of a rate or any other insurance document, the Insurance Regulatory and Supervisory Authority may request amendments be made to the said document or rate. At the end of this period, the document may be released to the public.

Where a document released to the public is in breach of legal and regulatory provisions, the Insurance Regulatory and Supervisory Authority may decide of its removal or demand its modification.

Approvals issued by the Insurance Regulatory and Supervisory Authority only imply an absence of opposition from the Authority at the dates on which they are given; they may be revoked by said Authority.

Article 289: Amendments to Articles of Association

Companies referred to in Article 284 of this Act must, prior to submitting their articles of association to the extraordinary general meeting for amendment, obtain consent from the Insurance Regulatory and Supervisory Authority, which shall rule within one month of receiving three samples of draft resolutions to amend the articles of association.

At the end of this period, in the absence of remarks from the Insurance Regulatory and Supervisory Authority, the amendments shall be deemed to be accepted. This period is reduced to fifteen days for increases to capital.

Article 290: Notion of company director

The chairman of the Board of Directors, assistant director, general manager, directors and managers, among others, shall be considered as company directors.

Article 291: Approval of directors

To be eligible for the position of director, candidates must have either one of the following:

1. A higher education or academic degree in insurance or actuarial science and provide proof of at least ten years' experience in senior management in an insurance company, insurance organisation, brokerage or insurance supervisory department;
2. A higher education or academic degree focused on economics or law with at least ten years' experience as manager of a financial company;
3. A higher education or academic degree with a minimum of ten years' experience in senior management within a company or a public sector organisation.

Only persons who hold no convictions for attempt or jus commune offence, theft, breach of trust, swindling, theft committed by a person with public authority, extortion, writing returned checks in bad faith, concealment or handling of goods obtained through these offences or no convictions for at least one year of imprisonment may set up, direct, administer, manage or liquidate companies subject to supervision by the Insurance Regulatory and Supervisory Authority and, as a rule, insurance or reinsurance companies of any capitalisation type.

The prohibitions stipulated in the previous paragraph apply to bankrupted persons who have not been discharged and directors and chief executive officers of insurance companies and analogous persons whose license has been withdrawn. These prohibitions may also be imposed by a court against any person convicted for breach of insurance legislation or regulations.

However, to apply the prohibition stipulated above to directors and executive officers of insurance companies and analogous persons whose license was withdrawn, the Insurance Regulatory and Supervisory Authority shall consider their accountability in the said insurance company's bankruptcy.

Article 292: Change of director

Any company licensed under Article 400 of this Act must submit, prior to execution, any change of director for approval from the Insurance Regulatory and Supervisory Authority.

The Insurance Regulatory and Supervisory Authority has one month to reach a decision. If there is no reaction by the end of this period, this shall be deemed to constitute approval.

Article 293: Prohibition to carry out other commercial activities

The purpose of companies subject to supervision instituted by this Act may only be to perform the operations hereby mentioned and those directly related.

They may underwrite insurance contracts on behalf of other licensed companies with which they have signed an agreement for this purpose.

Article 294: Insurance companies' professional association

To carry out insurance, capitalisation or reinsurance activities, licensed companies must form between them a professional association whose articles of association must be approved by Decree from the Minister in charge of insurance. The association can submit any question regarding the profession as a whole to the Insurance Regulatory and Supervisory Authority.

The Insurance Regulatory and Supervisory Authority must be informed of any agreement signed between members of the professional association mentioned in the above paragraph, or as part of this association, with regard to rates, general insurance contract terms and conditions, competition, financial management or application of conventions signed with foreign entities or countries that commit the association.

Such agreement may only be implemented if, within two months from the date of notice, it has not been opposed by the Insurance Regulatory and Supervisory Authority.

After this period, the Insurance Regulatory and Supervisory Authority may suspend the application of the said agreement.

Any agreement concluded within the professional association is binding on its members.

Chapter 2: Limited liability insurance and capitalisation companies**Article 295: Company capital**

Depending on the type of license applied for, insurance and capitalisation companies incorporated as limited liability companies and registered in the Democratic Republic of Congo must have the following minimum capital:

1. 10 000 000 000 Congolese Francs, contributions in kind not included for companies that make commitments whose performance depends on the length of human life or calls for capital in order to obtain funds and incur, in exchange for single or regular direct or indirect payments, determined commitments.
2. 10 000 000 000 Congolese Francs, contributions in kind not included for insurance companies of any kind including companies that carry out support activities and those stipulated in the preceding point.

However, taking into account transactions that the insurance or capitalisation companies intend to carry out and the reserves for their commitments, the Insurance Regulatory and Supervisory Authority may request the constitution of a capital greater than the aforementioned minimum.

Each shareholder must pay at least half the total sum of shares in cash subscribed before the final incorporation.

The remainder must be paid within a period no greater than six months starting from the date of registration with the trade and personal property credit register, depending on the terms defined by the articles of association or as ruled by the Board of Directors.

Article 296: Capital's information on published documents

Prospectuses, posters, flyers, notices, advertisements or documents of any kind, including policies issued by limited liability companies mentioned in this Act must indicate, after stipulation of the company capital, what percentage of this capital has been paid.

Article 297: Loans, advertising, privilege's stipulation

Prospectuses, posters, flyers, notices, advertisements or documents of any kind related to loans of the companies mentioned in Article 284 of this Act, must clearly state that a privilege has been established for the insured parties under Articles 351 to 354 of this Act and following, and indicate that the lender, even insured, does not benefit from any privilege regarding the interests or reimbursement of this loan. Such stipulation must also be conspicuous on debt securities.

Article 298: Statutory auditors: special reports

The Statutory Auditors' report contains, other than the information stipulated by the current laws with regard to agreements, an indication of the total sums paid to administrators and directors as wages or fees for insurance and capitalisation contracts concluded through them.

Article 299: Principle

Prior to its completion, sale transaction that directly or indirectly confer to a legal or natural shareholder or to several legal shareholders bound as parent company and subsidiaries, either equity participation of 20 % or the voting majority at the general meeting of companies stipulated in Article 284 of this Act, must obtain authorisation from the Insurance Regulatory and Supervisory Authority.

Article 300: Authorisation request's file

The file pertaining to this authorisation request shall contain the following:

1. Any information related to the intended transaction, particularly:
 - a. The share of capital or voting rights already held by the buyer or by persons belonging to the same group;
 - b. The nature, total, objectives, expected outcomes and methods of the intended transfer;
2. Any information related to the buyer:
 - a. For natural persons:
 - First, post and last names, domicile, nationality, date and place of birth;
 - Detailed statement of their activities, including information mentioned in Article 407 of this Act;
 - Any information regarding their assets;
 - If they have been or are likely to subject to one of the procedures outlined for the change.
 - b. For legal persons:
 - Company name and head office's address;
 - Any document that can attest it has been properly established under the laws and regulations of the country in which it is incorporated;
 - List of administrators and directors with their first, post and last names, domicile, nationality, date and place of birth;
 - Distribution of share capital and voting rights held by each of them;
 - Description of its activities and duration of its participations in insurance companies;
 - Operating accounts and balance sheets for the past two completed financial years;
 - The subsequent or likely sanctions or financial consequences if it has been or is likely to be the subject of an inquiry or professional, administrative or judicial procedure;
 - Coverage of its solvency margin and regulated commitments in compliance with current legislation in the country of incorporation in case of an insurance company.

Article 301: Insurance Regulatory and Supervisory Authority's authorisation

Upon receiving the complete file, the Insurance Regulatory and Supervisory Authority has one month to reach a decision on the transfer.

The transfer may be carried out immediately upon receiving the Insurance Regulatory and Supervisory Authority's authorisation or, in the absence of any response, at the end of the period stipulated in the previous paragraph.

These provisions shall also apply to share transfers within companies registered in the national territory and whose main activity consists of participating in the companies outlined in Article 400 of this Act.

For any breach of these provisions, the Minister in charge of insurance, after consulting with the Insurance Regulatory and Supervisory Authority, shall suspend any rights attached to illegitimately directly or indirectly held shares until the situation is resolved.

Article 302: Dividends distribution

Dividends may be distributed only after the reserves and provisions stipulated by this Act have been created, once the set-up costs have been fully amortized and the regulatory provisions regarding the solvency margin and regulated commitments coverage have been complied with.

Chapter 3: Mutual insurance companies**Article 303: Definition**

Mutual insurance companies are non-profit groupings. They are formed to cover the risks of their members. In return for payment of a fixed or variable contribution, they guarantee their members that their commitments will be paid in full.

However, mutual insurance companies that provide life insurance or capitalisation operations may not receive variable contributions.

Section 1: Establishment**Article 304: Operating fund**

Without prejudice to legal provisions relating to mutual insurance companies, mutual insurance companies must have the following minimum operating fund, depending on the type of license solicited:

- 3 000 000 000 Congolese Francs, contributions in kind not included, for companies that make commitments whose performance depends on the length of human life or calls for capital in order to obtain funds and incur, in exchange for single or regular direct or indirect payments, determined commitments;

- 3 000 000 000 Congolese francs, contributions in kind not included for insurance companies of any kind, including companies that carry out support activities and any other than those stipulated in point 1 above.

Article 305: Surplus distribution

Budgetary surplus of mutual insurance companies operating in one or several of the classes outlined in 1 to 18 of Article 402 of this Act shall be distributed between the members under the terms defined in the articles of association.

However, this budgetary surplus may only be distributed after creation of the reserves and provisions stipulated by current laws and regulations, after full amortisation of the set-up costs and after compliance with the regulatory provisions regarding the solvency margin and regulated commitment coverage.

Article 306: Compulsory wording

Mutual insurance companies must display in their articles of association all documents stipulated in Article 288 of this Act one of the two following words in uniform print, fixed-contribution mutual insurance company or variable-contribution mutual insurance company, depending on the type of contributions applied to members.

Article 307: Form of incorporation

Mutual insurance companies shall be established by an authentic deed produced in duplicate regardless of the number of signatories.

Article 308: Articles of Association

Articles of association must:

1. Indicate the mutual insurance company's purpose, duration, head office, name and location of its operations;
2. Determine the method and general terms by which commitments are made between the mutual company and its members;
3. Specify the classes of insurance directly covered or reinsured;
4. Define the minimum number of policyholders, which many not be less than five hundred;
5. Define the minimum total of contributions paid by policyholders for their first annual period and specify that these contributions must be paid in full prior to the notarial declaration;
6. Indicate payment method for the management and, if necessary, directors, in compliance with the provisions of Article 319 of this Act;
7. Plan the creation of an operating fund designed to cope with, within the restrictions determined by the business plan attached to the licensing application, expenditure for the first three years and to guarantee the company's liabilities, and specify that the operating fund is paid in full prior to the notarial declaration;
8. Plan the allocating system of excess of income;
9. Plan, for mutual companies operating in life insurance and capitalisation operations, the payment of fixed contributions.

Article 309: Prohibition of specific advantages

No specific advantages may be granted in the articles of association to a group of members.

Article 310: Additional company funds

The articles of association may provide for the creation of an additional company fund intended to give the mutual insurance company solvency elements required by the current regulation. This fund shall be fed by loans or membership fees from new policyholders to finance a business improvement plan or a mid- or long-term development plan.

Members may be requested to take out loans under the terms stipulated in Article 337 of this Act.

The aforementioned membership fee payments must be authorised by the General Meeting conducting business as stipulated in Article 327 of this Act and be the subject of a special resolution, the contents of which must have been submitted for approval from the Insurance Regulatory and Supervisory Authority. The resolution text must include the sum to be paid per member and the total amount prescribed for this operation.

Article 311: Articles of Association's availability to members

Mutual insurance companies must ensure Articles of Association are made available to each of their members.

Article 312: Notarial declaration

Once the conditions outlined in Articles 308 to 311 of this Act have been met, the signatories of the initial deed or their proxy holders shall establish this by a statement verified by a notary.

The following shall be annexed to this statement:

1. Duly certified nominative list of members including their first, post and last names, title and domicile and, where appropriate, the company name and head office of mutual insurance company-members, the total of values insured by each of these and the amount of their contributions;
2. One of the pair of the mutual insurance company's deed or a copy, if passed before a notary other than the one receiving the statement;
3. The statement of contributions paid by each member;
4. The statement of sums paid into the operating fund;
5. A notary certificate stating that the funds have been paid prior to the notarial statement.

Article 313: Constitutive meeting

The first general meeting, summoned by the signatories of the original deed, verifies the veracity of the notarial statement; it appoints the members of the first Board of Directors and, for the first year, the statutory auditors.

The minutes of the sitting records the members' acceptance of the Board of Directors and statutory auditors present at the meeting.

The insurance mutual company is only definitively incorporated after this acceptance.

Section 2: Administration**Article 314: Administration**

The mutual insurance company's administration shall be carried out by a Board of Directors appointed by the General Meeting and made up of at least five members, not including, where applicable, the board members elected by employees in accordance with the provisions of Article 315 of this Act, the number of which must appear in the Articles of Association.

Directors are chosen from members who are up to date with their contributions, except those elected by the employees. They must be replaced immediately if they no longer fulfil this condition.

They may not be appointed for more than six years. They can be reappointed, unless otherwise stipulated in the Articles of Association.

They are dismissible for serious professional fault by the General Meeting.

The Articles of Association must stipulate, for the performance of a board member's duties, an age limit that applies to either all board members or a set percentage of them.

In the absence of explicit provisions in the Articles of Association, the number of board members over seventy years old may not exceed one third of the directors in service.

Any appointment made in breach of the provisions in the previous paragraph shall be deemed null and void.

Article 315: Board of Directors' composition

The Board of Directors may include, other than the board members whose number and appointment method are stipulated by this Act, one or several directors elected by the members' paid staff. The number of these board members, determined by the Articles of Association, may not exceed four nor exceed one third of the other board members'.

Should there be two or more employee-elected board members, executives and analogous positions will hold at least one seat.

Members up-to-date on their contributions may not be subject to any other conditions in the Articles of Association for the election to the Board of Directors.

Any appointment made in breach of this article shall be deemed null and void. This nullity does not cancel the deliberations in which the irregularly appointed board member took part.

Article 316: President and Vice-President

The Board of Directors shall elect a President and a Vice-President from among its members, for a renewable term of three years.

Article 317: Board of Directors' powers: Votes

The Board of Directors' powers are determined by the Articles of Association within the limits of the current laws and regulations.

Deliberations are taken by an absolute majority of Board member votes.

Voting by proxy is allowed.

Article 318: Directors

The Board of Directors may choose among the board members, if the Articles of Association allow, one or several directors from outside the Board. The Board shall be responsible towards the mutual insurance company for managing these directors.

Article 319: Salary

Duties of mutual insurance company board members and trustees are honorary.

If stipulated in the Articles of Association however, the Board of Directors may allocate to board members and trustees, compensatory indemnities for the time spent carrying out their duties and reimburse their travel and childcare expenses, within the limits set by the General Meeting.

Every year, the General Meeting shall be informed of the sum of indemnities allocated and fees reimbursed to board members and trustees. These indemnities and expenses are borne as operating costs.

No salary directly or indirectly related to the mutual insurance company's turnover may be allocated to a director or board member by any means whatsoever.

The director and the employees, other than staff directly responsible for marketing, may only be paid by a regular salary and by ancillary benefits that are of a nature to help or assist themselves or members of their family, or contribute to their retirement funds. Under no circumstances may these benefits constitute allowances that vary with the mutual insurance business, particularly with the contributions amount, total of insured values or number of members.

Ancillary benefits granted to the director or to any other employee, other than those responsible for the placement and underwriting of contracts and those who manage or supervise this activity, may not represent more than 20 % of the total sums allocated by the mutual insurance company to such benefits, nor more than 25 % of the said person's total salary.

No mutual insurance company may assign its management for a set fee to any person or entity whatsoever.

Article 320: Liability of Board members

Board members are civilly and criminally responsible for their managerial acts, in accordance with current statutory provisions.

Article 321: Prohibition to acquire interest

Board members and directors are prohibited from acquiring or holding a direct or indirect interest in any company, contract, treaty or commercial or financial operation carried out with the mutual insurance company or on its behalf, unless authorised by the General Meeting.

Each year, the General Meeting is presented with a special report regarding the performance of contracts, companies, treaties or commercial or financial operations authorised by the Meeting under the terms of the previous paragraph. This special report is the subject of a statutory auditors' report.

Article 322: General Meeting's composition

The Articles of Association determine the composition of the General Meeting.

They also indicate the terms in which General Meetings are summoned.

Article 323: Prohibition of terms on paid access to General Meetings

Statutory clauses that require a specific contribution from members up-to-date with their contributions to participate at the General Meeting or the election of General Meeting members are deemed null and void.

Article 324: Attendance list

An attendance list is established for all General Meetings. It contains attending or represented members' names and domiciles.

The list, duly signed by members or their proxies, and certified to be correct by the bureau of the Meeting, must be deposited at the head office and sent to all who so request a copy.

Article 325: Informing members

Members may, within fifteen days before the sitting of a General Meeting, either themselves or through a proxy, examine at the head office the balance sheet, operating statement, profit and loss account as well as any other documents to be presented at the General Meeting.

Article 326: Frequency of General Meetings

At least one General Meeting is held each year under the terms determined by the Articles of Association. The Board of Directors will present to this General Meeting the balance sheet, operating statement and profit and loss account for the previous financial year.

The Board of Directors may, at any time, summon an Extraordinary General Meeting.

Article 327: Quorum

The General Meeting may validly conduct business if attending or represented members or those using correspondence voting equal at least one quarter of the total number of members. Failing this, a new Meeting shall be summoned according to the terms and times stipulated in Article 324 of this Act. The new Meeting shall validly conduct business whatever the number of members present, represented or using correspondence voting.

Article 328: First General Meeting deliberations

The General Meeting deliberating the nomination of the first Board of Directors' members and the veracity of the declaration made by the signatories of the original deed, is composed of all the mutual insurance company's members.

It validly deliberates where the members present, represented or using correspondence voting form the absolute majority.

Failing this, the Meeting may only make a temporary decision and in this case, a new General Meeting is summoned. Two notices, published eight days apart and at least one month before, will be sent by courier or any other means with acknowledgement of receipt to inform members of the temporary decisions adopted by the first Meeting, and these resolutions shall become final if they are approved by the new Meeting that validly conducts business if the number of members present, represented or using correspondence voting totals at least one fifth of the total number of members.

Article 329: Amendments to the Articles of Association

The General Meeting may modify any provision of the Articles of Association at a majority of two thirds at least of its members' total number.

It may not however, change the nationality of the mutual insurance company, reduce its commitments nor increase its members' commitments resulting from current contracts, unless in the event of an increase in taxes and duties that may be taken from members subject to the provisions of the following paragraph.

Statutory modifications that replace a fixed contribution by a variable contribution are applicable to current contracts, notwithstanding any contradictory clause, at least one month before the insured parties have been notified under the terms stipulated by this Act.

However, within the month following this notification, the insured is entitled to cancel any contracts taken out with the mutual insurance company. In this case the insurer must reimburse the portion of the contribution corresponding to the unutilised period.

Article 330: Notifying of amendments to the Articles of Association

Members shall be informed of any amendment to the Articles of Association, either hand-delivered against receipt, or by registered mail or any other means with acknowledgement of receipt, or no later than with the first contribution payment notice or receipt sent to the same. This modification shall also be mentioned in the amendments to current contracts.

Non-notified amendments to the Articles of Association as laid down in the previous paragraph shall not bind the member.

Article 331: Appointment of Statutory auditors

The General Meeting appoints one or several statutory auditors for five financial years.

The following may not be appointed as a statutory auditor for a mutual insurance company:

1. Mutual insurance company founders and board members, as well as their relatives and partners up to the fourth degree included;

2. Persons and their spouses who receive a salary or any payment whatsoever from those mentioned in point 1 above or a mutual insurance company for duties other than those of statutory auditor;
3. Accounting companies, of which one of the associates is defined in one of the positions stated in points 1 or 2 above.

Accountants may be appointed as board members or directors of a mutual insurance company that they have supervised only five years after they ended their duties. The same prohibition applies to associates of an accountant mutual insurance company.

Article 332: Challenge of Statutory Auditors

Mutual insurance company audits are carried out by one or several Statutory Auditors in accordance with the provisions of the Act on commercial companies.

The right to challenge one or several Statutory auditors and the right to request before a court the appointment of an expert assigned to produce a report on one or several management operations are available to members able to attend General Meetings and who represent at least one tenth of the latter.

The President of the Commercial Court shall decide upon the members' application made against the statutory auditors.

Article 333: Summoning Statutory auditors

The statutory auditors are summoned, along with the directors, to the Board of Directors' meeting that closes the accounts of the financial year just ended.

They are also summoned to all General Meetings.

Article 334: Statutory auditors' fees

The statutory auditors and the mutual insurance company jointly determine the statutory auditors' fees.

The President of the Commercial Court of the place of the head office, ruling on request, has jurisdiction for any dispute related to the sum of said fees.

Section 3: Members' and the mutual insurance company's obligations

Article 335: Limits to members' commitments

Members may not be held liable, unless in application of the provisions of Article 329 of this Act, for more than the contribution stated on their policy for mutual insurance companies with fixed contribution, or for more than the maximum contribution indicated on their policy for mutual insurance companies with variable contributions.

In the latter case, the maximum contribution amount may not be less than one and a half times the normal contribution required to deal with likely charges resulting from claims and management fees.

The normal contribution must be stated on policies delivered to their members by mutual insurance companies with variable contributions.

The portion of the maximum contribution that insured parties of variable-contribution companies may, where appropriate, have to pay above the normal contribution, is determined by the Board of Directors.

These provisions do not apply to life mutual insurance or capitalisation companies.

Article 336: Underwriting

The Board of Directors shall decide on the admissibility and underwriting of any risk outlined by the Articles of Association, subject to the application of current laws and regulations. No preferential treatment may be given to any member.

Article 337: Loans

Mutual insurance companies may only take out loans to create:

1. An operating fund;
2. New operating funds that they may need to create, when soliciting licenses for new classes;
3. Funds that may be required to develop their business and finance new production;
4. The additional company fund.

Loans to be used to create the funds mentioned in points 2 and 3 of the previous paragraph shall receive prior approval from the General Meeting deliberating under the terms outlined by this Act.

Any loan to be used to create, and potentially feed an additional company fund, must be authorised by the General Meeting and be subject to a special resolution, the contents of which must be submitted for prior approval from the Insurance Regulatory and Supervisory Authority that decides upon one of the plans mentioned in Article 310 of this Act. This plan is attached to the resolution text.

At the end of a two-month period from the date of filing of the resolution text and aforementioned document, and in the absence of an explicit decision from the Insurance Regulatory and Supervisory Authority, the authorisation is deemed granted.

The resolution determines which members must take out the loan. They may not be members who held current contract at the time the Articles of Association were modified. Participation from members already registered with the company at the time the latter decides to take out a loan may not exceed 10% of their annual contribution.

Article 338: Subordinated debts and securities

Subordinated debt and securities, as part of the elements constituting the solvency margin, must conform to the following:

1. in the event that the debtor mutual insurance company is liquidated, these securities and debt may only be reimbursed after all other debt existing on the date of the liquidation or contracted for the latter have been paid.
2. The issuing or loan contract does not contain any clause stipulating that the debt must be reimbursed within the agreed timeframe, under determined circumstances other than the liquidation of the debtor mutual insurance company.
3. The issuing or loan contract stipulates that it may only be modified once the Commission has declared that, after verifying that the modified contract will continue to fulfil the terms outlined in the present article, it does not oppose the proposed change.
4. The issuing or loan contract provides for a maturity date of the funds equal to five years at least or, if there is no set term, a notice of at least five years for all repayments.

No later than one year before the term set for the repayment of all or part of the funds outlined in point 1 above, the debtor mutual insurance company shall submit to the Insurance Regulatory and Supervisory Authority, a plan indicating how the solvency margin shall be maintained at a level required by the regulations after the debt is repaid. This plan is not required if the fund included in the solvency margin has been progressively and regularly brought down to zero by the mutual insurance company during at least five years prior to the maturity date.

Funds from fixed-term subordinated debt and securities, as part of the elements constituting the solvency margin, may be repaid early at the debtor mutual insurance company's initiative if the Insurance Regulatory and Supervisory Authority has pre-approved such repayment, after verifying that the solvency margin is not at risk of being brought below the level required to ensure permanent compliance with the margin stipulated by the regulations.

Under the same terms, the Insurance Regulatory and Supervisory Authority may authorise the repayment of funds from subordinated open-end debt and securities, which make up the solvency margin, without application of the notice stipulated in point 4 of paragraph 1.

The debtor insurance company shall submit, at least six months in advance to the Insurance Regulatory and Supervisory Authority, in support of its request for authorisation, a plan indicating how the solvency margin shall be maintained at a level required by the regulations after the debt is repaid. Absence of a decision sent to the insurance company within a six-month period stands as authorisation of the request. Early amortisation by public takeover or exchange offer and the buying back of listed securities on the stock market are, in particular, subject to the provisions of this article; however, an issuer may buy back on the stock market up to five percent of securities issued without prior consent provided that they inform the Insurance Regulatory and Supervisory Authority of the purchases made.

Issuing contracts regarding open-end loans and securities formally stipulating that any repayment is subordinate to prior authorisation from the Insurance Regulatory and Supervisory Authority do not need to apply the minimum notice period outlined in point 4 of paragraph 1.

Article 339: Loans and document of title

The document issued to any member who takes out a loan to create or feed the additional company fund must be established in the form prescribed by the Insurance Regulatory and Supervisory Authority.

Article 340: Mutual insurance company incorporation formalities

Within one month of a mutual insurance company being incorporated, a copy of the deed of incorporation, its annexure and a certified copy of the decisions reached by the General Meeting shall be submitted in duplicate to the Commercial Court or Higher District Court of the head office.

The documents are deposited, within the same period, with the Ministry of Insurance.

Article 341: Extract publication

Within a one-month period, an extract of the documents mentioned in Article 342 of this Act shall be published in the Official Journal.

The extract must contain the name adopted by the mutual insurance company and indicate its head office, the names of persons authorised to manage, administer and sign on behalf of the company, as well as the number of members, the amount of contributions paid below which the company would not be duly constituted, the date of its incorporation, when it must end and the date on which it was filed at the commercial court registrar.

It shall also indicate the sum and means of forming the operating fund and, if appropriate, the admission fee.

The extracts of lodged deeds and documents shall be signed by the notary.

Article 342: Amendments to the Articles of Association's publication

All deeds and decisions to amend the Articles of Association or extend the mutual insurance company beyond the term set as its duration, or dissolve the company before this term, are subject to the formalities of publicity provided in the previous Article.

Article 343: Accessing documents lodged with the Ministry of Justice

All individuals have the right to access documents lodged with the commercial court registrar or even to have an extract sent to them at their own cost by the clerk of the Trade and Personal Property Credit register or by the notary who holds the original.

Any individual may also request that a certified copy of the Articles of Association be sent to the mutual insurance company head office for the corresponding fee.

Article 344: Loans repayment

In accordance with Article 305 of this Act, distributable surplus are allocated in priority to early repayments of the loan outlined in Article 310 above, proportional to each member's subscription.

Should the mutual insurance company take the initiative to strike off a member, the latter may immediately request to be reimbursed for their contribution to this loan. The same applies should a member exercise their right stipulated in Article 27 paragraph 2 of this Act.

These provisions shall not apply to life and capitalisation classes.

Article 345: Losses amounting to half the contracted loans

Should net assets fall below half the total operating fund due to losses logged in the accounting records, the Board of Directors must summon a General Meeting to decide upon whether the mutual company should be dissolved.

Article 346: Mutual insurance company's dissolution

Should a mutual insurance company be dissolved not due to a license withdrawal, the excess of net assets over liabilities shall be allocated by decision of the General Meeting either to other mutual insurance companies or associations recognised to be of public utility.

Section 4: Mutual reinsurance companies**Article 347: General provisions**

Mutual insurance companies may jointly form a mutual reinsurance company whose object is to reinsure risk directly covered by those companies who shall be a part thereof.

Mutual reinsurance companies are subject to the provisions of this chapter. However, they are duly incorporated once they have at least seven member companies.

Their Articles of Association shall determine, with no minimum required, the amount of their operating fund. The General Meeting is made up of all member companies.

Section 5: Nullity

Article 348: Null and void incorporation

Any mutual insurance company incorporated in breach of Articles 307 to 328 of this Act, shall be deemed non-existent and its Articles of Association null and void.

However, neither the mutual insurance company nor its members may, in good faith, claim nullity as stipulated in the above paragraph against third parties.

Article 349: Effects of nullity

Should the company's Articles of Association be declared null and void, the founders responsible for the nullity and acting board members at the time it occurred are jointly liable to third parties and members for any losses incurred by this nullity.

Article 350: Admissibility of nullity action

A General Meeting may be summoned to cover the nullity. In such a case, the nullity action shall be no longer admissible from the date of summons for this meeting.

The nullity action regarding the mutual insurance company or the deeds and decisions made after incorporation shall be extinguished where the cause of nullity has ceased to exist before the filing of the request or, in any case, on the day the court gives a ruling on the merits of the case at first degree.

Notwithstanding settlement of payments, costs of nullity actions previously filed are to be paid by the defendants.

The court with which a nullity action is filed may automatically determine a period to cover the nullities.

Liability claims for costs resulting from the nullity shall also cease to be admissible where the cause of nullity has ceased to exist, either before the filing of the request or on the day the court gives a ruling on the merits of the case at first degree, or within a period given to cover the nullity and once three years have passed since the day the nullity occurred.

The aforementioned nullity actions are prescribed for five years.

TITLE II: FINANCIAL REGIME

Chapter 1: Insured parties' legal privilege

Article 351: Privilege in favour of insured and contract beneficiaries

Insurance or capitalisation companies' movable assets are allocated in priority to the payment of their commitments to insured parties and contract beneficiaries.

This privilege is ranked as per the statutory provisions on the organisation of securities.

For foreign companies, movable assets representing technical reserves and bonds are allocated in priority to the payment of their direct insurance operations for contracts taken out or performed in the Democratic Republic of Congo.

Article 352: Mortgage

Should there be insufficient assets allocated by a company as cover for reserves it must form or should the financial situation of the said company be such that the interests of insured parties and contract beneficiaries be compromised, the company's immovable assets may be encumbered with a mortgage taken out at the request of the Insurance Regulatory and Supervisory Authority.

This mortgage is taken out should the company have its license withdrawn by the Insurance Regulatory and Supervisory Authority, or for foreign companies, by the Minister in charge of insurance.

Article 353: Secured debt

For companies exercising life insurance and capitalisation activities, debt secured by the legal privilege or mortgage is determined as the mathematical reserve amount less any advance payments on policies including interest, and increased by, if applicable, the amount of the individual profit-sharing account, opened in the insured party's name when this profit is not immediately payable after the liquidation of the financial year in which it was made.

For other insurance companies, secured debt is determined, with regard to direct insurance companies, as compensation due after a loss and as the amount of portions of contributions paid in advance or contribution reserves corresponding to the period in which the risk was not incurred; compensation receivables being paid by preference.

Annuity type of compensation is determined as the mathematical reserve amount.

For reinsurance activities, reserves for debt secured by the aforementioned legal privilege or mortgage are determined as the sum equal to the difference between technical reserves in the liabilities section of the assignee's balance sheet under acceptances and the assignee's total net debt, shown on the same balance sheet under acceptances.

Article 354: Coverage established abroad

When a company incorporated in the Democratic Republic of Congo establishes a cover in a foreign country for creditors obtaining their rights from insurance contracts performed in that country, the privilege outlined in Article 351 paragraph 1 of this Act must not favour these creditors over creditors obtaining their rights from contracts performed in the Congolese territory.

Chapter 2: Regulated commitments

Section 1: General provisions

Article 355: Regulated commitments

Regulated commitments that companies mentioned in Article 399 must make available for assessment at any time, are as follows:

1. technical reserves required to fully cover commitments to insured parties and contract beneficiaries;
2. all liability items corresponding to other privileged debt;
3. agent, policyholder and third party security deposits, if outstanding;
4. a contingency reserve for employees and agents to account for commitments made by the company to its staff and collaborators.

The technical reserves outlined in point 1 are calculated, without deducting reinsurance ceded to licensed or unlicensed companies, under the terms stipulated in Articles 357 to 368 of this Act.

Article 356: Commitments in foreign currency

Where contract covers are stated in a specific currency, in compliance with exchange rate regulations established by the Central Bank of the Congo, the company's commitments outlined in the previous article shall appear in that currency.

Where contract covers are not stated in a specific currency, the company's commitments shall appear in the currency of the country in which the risk is located.

However, this company may choose to state its commitments in the currency in which the contribution is given if, as soon as the contract is taken out, it appears likely that a claim is to be paid not in the currency of the country of the risk but in the currency in which the contribution was stated.

If a claim is reported to an insurer and the services are payable in a currency other than that resulting from the application of the provisions above, the insurance company's commitments are stated in the currency in which the indemnity to be paid to this company was determined by a court decision or an agreement between the insurance company and insured party.

Where a claim has been assessed in a currency known in advance by the insurance company but different to that resulting from the application of the provisions above, the insurance company may state their commitments in this currency.

Section 2: Technical reserves for life insurance and capitalisation activities

Article 357: Technical reserves for life insurance and capitalisation

The technical reserves for life insurance and capitalisation activities are as follows:

1. mathematical reserve: difference between actual values of commitments taken by the insurer and insured respectively;
2. profit-sharing reserve: profit-sharing total allocated to contract beneficiaries when the profit is not immediately payable after the liquidation of the financial year in which it was made;
3. all other technical reserves that may be stipulated by the Insurance Regulatory and Supervisory Authority.

Article 358: Incorporating charges

Mathematical reserves of all life insurance and capitalisation contracts whose coverage are expressed in Congolese Francs or in account units must be calculated taking into account charges for acquisition costs in the premium payer's commitment.

Where these charges are unknown, they are valued at the level selected for calculating cash values as filed in the technical notice deposited for the rate visa. Should this level not be determined in a contract, the provisional value must be at the most equal to 110 % of the commuted value.

The reserve resulting from the above calculation may not be negative, nor less than the contract's cash value, nor less than the reserve corresponding to the reduced capital.

Article 359: Calculation of mathematical reserves

Mathematical reserves of life insurance contracts must be calculated using the mortality tables and interest rate outlined in Article 277 of this Act.

Where the duration of premium payments is less than the duration of the contract, mathematical reserves include a management reserve to cover management expenses for the period during which the premiums are no longer paid. The estimation of these expenses must be justifiable and reasonable and not fall below, each year:

1. for insurance on death: 0.30 % of the insured capital for temporary insurance and 0.75 % of the insured capital for other insurance;
2. for life insurance: 0.75 % of the insured capital. For immediate annuities, 3 % of each arrears total. The deferred annuities are considered a combination of a deferred capital and an immediate annuity.

For insurance simultaneously containing a cover in the event of death and a life cover: the rate outlined in point 2 above applies to the life cover and the rate outlined in point 1 for temporary insurance on death applies to the cover's excess in the case of death over the life cover.

The Insurance Regulatory and Supervisory Authority may, upon justification, authorise a company to calculate the mathematical reserves of all current contracts, except for those outlined in Article 278 of this Act, by applying the technical bases defined in the previous paragraphs during all future annual inventories. Where necessary, the Insurance Regulatory and Supervisory Authority may authorise the company to spread the effects of the changes to the mathematical reserve calculation bases not more than five years.

Article 360: Mathematical reserves of annuities

Mathematical reserves of all individual or collective annuity contracts must be calculated by applying the technical bases defined in Articles 357 to 359 of this Act to the said contracts, at the time of their annual inventories.

Article 361: Mathematical reserves of contracts with increased rates

Mathematical reserves of life insurance contracts and capitalisation contracts are calculated using a rate at least equal to the lowest of following interest rates:

1. either the tariff rate;
2. or the real rate of return less one fifth of assets representative of the corresponding commitments.

Article 362: Premiums paid in advance

The gross total of life insurance premiums paid in advance at the inventory date and due premium portions are credited to the mathematical reserve less the collection fee discounted at the rate.

Section 3: Technical reserves for other insurance activities**Article 363: Technical reserves for other insurance activities (Property & Casualty)**

The technical reserves for other insurance activities are as follows:

1. annuity mathematical reserve: actual value of the company's commitments for annuities and annuity accessories for which it is liable;
2. reserve for current risk: reserve to cover risk and related overheads for each contract with premium payable in advance for the period between the inventory date and next instalment, or failing that, the period stipulated in the contract;
3. reserve for outstanding claims: estimated value of internal and external principal and costs required to settle all outstanding claims, including annuity capital not yet borne by the company;
4. reserve for increasing risk: reserve for insurance against the risks of sickness and disability, equal to the difference between current commitments made by the insurer and the insured respectively;
5. equalisation reserve: reserve formed to face exceptional costs related to operations covering risk due to natural elements, nuclear risk, civil liability risk due to pollution and spatial risk;
6. reinsurance mathematical reserve: reserve formed by insurances companies of any kind that accept to reinsure risk ceded by life insurance companies, equal to the difference between the actual values of commitments made by the reinsurer and the ceding party respectively.
7. all other technical reserves that may be determined by the Insurance Regulatory and Supervisory Authority.

Subsection 1: Reserve for current risks⁸**Article 364: Reserve amount for current risks**

The minimum amount for the reserve covering current risks must be calculated in compliance with the provisions of Articles 365 and 367 of this Act. This reserve must be able to cover risk and related overheads for each contract with premiums or contribution payable in advance, for the period between the inventory date and next instalment, or failing that, the period stipulated in the contract.

⁸ Literal translation, also reads as "reserve for unearned premiums"

Article 365: Terms for calculating the reserve for current risks

The minimum amount of the reserve for current risks is calculated by multiplying by 36 % premiums or contributions of the last financial year, not cancelled at the time of the inventory, and determined as follows:

1. annual premiums or contributions issued during the financial year;
2. semi-annual premiums or contributions issued during the second half of the year;
3. quarterly premiums or contributions issued during the last quarter;
4. monthly premiums or contributions issued in December;

Premiums or contributions in arrears are excluded from the calculation. Premiums or contributions payable in advance are to be understood as including accessories and policy costs.

In addition to the minimum amount set hereinabove, *a reserve for special current risks* shall be formed, pertaining to contracts for which premiums or contributions are payable in advance, for more than a year or for a different period than indicated in points 1, 2, 3 and 4 of the first paragraph. The calculation rate is the aforementioned rate for the current year; for the following years it is equal to 100 % of due premiums or contributions.

Should there be an unequal distribution of premium or contribution instalments or parts thereof during the financial year, the reserve for current risks may be calculated using a *prorata temporis* method.

In such case, the Insurance Regulatory and Supervisory Authority may prescribe a company to take the appropriate measures to calculate the said reserve.

In the case where the ratio of claims or general expenses to premiums or contributions is higher than the regular ratio, the Insurance Regulatory and Supervisory Authority may also prescribe a company to apply a percentage greater than the one set at paragraph 1.

The reserve for current risks shall be calculated separately in each of the classes outlined in Article 402 of this Act.

Article 366: Reinsurance

Under no circumstances may the reserve for current risks relating to reinsurance cessions or retrocessions be entered into the liabilities section of the balance sheet for an amount lower than the one stated in the assets section relating to the retrocessionaire's or reinsurer's share in the reserve for current risks.

Where reinsurance cession or retrocession treaties prescribe in the event of cancellation, the waiver of a portion of premiums paid in advance to the ceding or retroceding party, the reserve for current risks related to acceptances shall not, under any circumstances, be less than the sum of these premium remittals calculated in the event of cancellation of these treaties at the date of the inventory.

Subsection 2: Reserves for outstanding claims

Article 367: Terms for calculating the reserve for outstanding claims

The reserve for outstanding claims is calculated on a per financial year basis.

Known claims are assessed on a per file basis, where the cost of a file includes all separable external charges; to this assessment is added the estimated cost of claims incurred but not yet reported.

The reserve for outstanding claims is calculated for its gross sum, without taking into account any appeals to be made; receivables will be calculated in a separate file.

By derogation of the provisions in paragraph 2 and with the Insurance Regulatory and Supervisory Authority's consent, the company may use statistical methods to assess claims occurred over the past two financial years.

Article 368: Management charges

The reserve for outstanding claims is increased by an assessment of management charges that must be enough to liquidate all claims and may not be less than 5 %, taking into account the elements already included in the reserve.

Chapter 3: Regulation of investments and other assets

Article 369: Cover of regulated commitments

Regulated commitments are represented at all times by equivalent assets placed and located in the Congolese territory.

However, depending on economic trends, an initial maximum ratio of 50 % of the regulated commitments' representative assets, reviewable every five years by the Insurance Regulatory and Supervisory Authority, may be located in other States after consulting with this Authority and receiving consent from the Minister in charge of insurance.

Article 370: Representation of regulated commitments of all insurance companies

Without prejudice to the provisions of Articles 371 to 373 of this Act, regulated commitments of all insurance companies are entered as assets in the balance sheet in the following manner:

1. shall be admitted within an overall limit of 50 % of the total regulated commitments:
 - a. bonds and other securities issued or guaranteed by the State;
 - b. bonds issued or guaranteed by an international public financial institution to which the State is affiliated;
 - c. bonds issued or guaranteed by an international financial institution specialised in development or a multilateral development bank relevant to the State;

2. shall be admitted within an overall limit of 40 % of the total regulated commitments:
 - a. bonds and shares, other than those listed in point 1, subject to a public call for capital and traded on a regularly operating market supervised by the State, as well as included in a list recorded by the Insurance Regulatory and Supervisory Authority after consulting with the Central Bank of the Congo or officially listed on a stock exchange.
 - b. shares and other non-binding securities officially listed on a stock exchange or subject to a public call for capital or traded on a regularly operating market supervised by the State and included in a list recorded by the Insurance Regulatory and Supervisory Authority after consulting with the Central Bank of the Congo, other than those mentioned in (c) and (d) below;
 - c. shares of insurance or reinsurance companies registered in or outside the national territory, but of which the Congolese State is a shareholder;
 - d. shares, bonds, stocks and rights issued by commercial companies registered in the Democratic Republic of Congo, other than the securities mentioned in points a, b, c hereinabove;
 - e. shares of investment companies with a purpose restricted to portfolio management of the securities mentioned in points 1, 2 (a) and (b).;
3. shall be admitted within the same limit of 40 % of the total regulated commitments: property rights of immovable property ⁹located in the Democratic Republic of Congo;
4. shall be admitted within a limit of 20 % of the total regulated commitments: loans obtained or guaranteed by the State;
5. shall be admitted within an overall limit of 20 % of the total regulated commitments:
 - a. first mortgages to natural or legal persons whose residence or head office is located in the Democratic Republic of Congo territory under the conditions stipulated by Article 377 of this Act;
 - b. loans obtained or guaranteed by credit institutions registered in the national territory, financial institutions specialised in development or multilateral development banks relevant to the Democratic Republic of Congo;

⁹ Literally reads as “rights in rem in immovable property of immovable property”.

6. shall be admitted for a minimum of 10 % and within the limit of regulated commitments:
 - a. accounts opened with a banking institution in the Democratic Republic of Congo;
 - b. cash in hand.

Accounts are held by credit institutions, treasury accountants or post office banks. They are opened in the name of the insurance company or of its branch in the Democratic Republic of Congo through which the contracts were taken out and may only be debited with consent from a manager, general representative or person assigned for this purpose.

Interest due or accrued on the investment listed above are treated as the said investments.

Where payment of one or several claims, the cost of which exceeds 5 % of written premiums, leads to the share of the assets stated in point 6 being brought below the minimum 10 %, the situation must be rectified within three months.

Article 371: Representation of regulated commitments of companies performing life and capitalisation activities

The regulations outlined by the previous article are applicable to regulated commitments of companies that perform life insurance and capitalisation activities.

Admitted in representation of regulated commitments of life insurance and capitalisation companies are advance payments on outstanding contracts or premiums or contributions of no more than three months, within the respective limits of 30 % and 3 % of mathematical reserves.

Article 372: Outstanding premiums of less than one year

The reserve for current risks of companies performing the activities detailed in classes 1 to 18 of Article 404, except classes 4 to 7, 11 and 12, may be represented up to 30 % of its total, by premiums or contributions net of taxes and fees, of less than one year.

Technical reserves related to classes 4 to 7, 11 and 12 may be represented, up to 30 % of their total, by premiums or contributions net of taxes and fees, of less than one year.

Article 373: Dispersion

The balance sheet value of the following assets relating to the total regulated commitments may not exceed, unless otherwise authorised by the Insurance Regulatory and Supervisory Authority on a case-by-case basis:

1. 5 % for all securities issued and loans obtained by a single entity, except securities issued and loans obtained by the State. However, the jus commune ratio of 5 % may rise to 10 % for securities of a single issuer, provided that the total value of securities of all issuers whose issuances are admitted above the 5 % ratio does not exceed 40 % of the total defined above;
2. 15 % for a single property or for shares or units of a single real estate company;
3. 2 % for the values detailed in point 2 (d) of Article 370, issued by said company;
4. 20 % for sums deposited within a single banking institution.

An insurance company may not assign more than 50 % of all shares issued by a single company to its regulated commitments.

Article 374: Receivable from reinsurers

Technical reserves related to business ceded to a reinsurer may only be represented by cash deposits equal to the amount guaranteed.

To represent technical reserves corresponding to classes 4 to 7, 11 and 12 of Article 402 of this Act, reinsurance receivables are admitted within a limit of 20 %.

Article 375: Reinsurance acceptances

Technical reserves pertaining to reinsurance acceptances are represented in assets by cash receivables due from the ceding companies under said acceptances.

Article 376: Immovable property rights

Companies may not acquire property subject to rights in rem representing more than 65% of their value, nor assign rights in rem to their immovable property, unless exceptionally authorised by the Insurance Regulatory and Supervisory Authority.

Article 377: Senior loans

Mortgage loans mentioned in point 5 (a) of Article 370 of this Act must be guaranteed by a senior mortgage on a property located in the national territory, or on a ship or aircraft. The total of first liens and mortgages may not exceed 65 % of the market value of the property, ship or aircraft pledged as security for the loan, as valued on the day the contract is concluded.

Article 378: Securities

Securities must be either recorded in an account or a deposit with an institution stated in Article 372 of this Act or recorded in the issuing institution's accounts, provided that the latter is located in the territory of the Democratic Republic of Congo.

Security ownership deeds and loan or debt deeds and titles must be held in the territory of the Democratic Republic of Congo.

Article 379: Guarantee for receivables from reinsurers

The guarantee for reinsurance receivables is formed from either cash deposits, letters of bank credit or the pledging of securities stated in points 1 and 2 of Article 370 of this Act.

The pledged securities are measured in accordance with the provisions of Articles 380 and 381 of this Act.

The letters of bank credit mentioned in paragraph 1 may only be issued by credit institutions residing in the Democratic Republic of Congo and that do not belong to the same group as the ceding company nor reinsurer.

Article 380: Depreciable securities

The depreciable securities listed in points 1 and 2 (a) and (b) of Article 370 shall be measured at their lowest value resulting from the comparison between the purchase value, redemption value and market value.

Article 381: Terms of assets valuation

Except for the values measured in accordance with the previous article, assets mentioned in Article 373 of this Act will be measured twice by:

1. a valuation based on purchase price or cost price first:
 - a. securities are stated at their purchase price
 - b. immovable property are stated at their purchase price or cost price unless they have been revaluated by the Insurance Regulatory and Supervisory Authority, in which case the revaluated value is used. Values are expressed less amortisation at the regulatory annual rate. An immovable property's cost price is the cost of construction and improvements excluding pure maintenance work;
 - c. loans, bare-ownership and usufruct are evaluated following the rules determined by the Insurance Regulatory and Supervisory Authority. In all cases, any reimbursements and depreciation reserves shall be deducted.

2. then a valuation of investments' realisable value:
 - a. unlisted shares are stated at their market value corresponding to the price that should be obtained under normal market conditions and according to the utility of the property for the company;
 - b. listed shares are stated at their latest listed price on the date of the inventory;
 - c. immovable property are stated at their realisable value under the terms defined for each case by the Insurance Regulatory and Supervisory Authority.
3. the balance sheet value stated is that resulting from the application of point 1.

Should the estimated realisable value of all investments laid down in point 2 be less than this value, a reserve for depreciation equal to the difference between these two values shall be formed.

Article 382: Expert reports

The Insurance Regulatory and Supervisory Authority may commission an expert report to set the value of all or part of the companies' assets and particularly any immovable property and shares of real estate companies that they may own or to whom they have granted a loan or opened a mortgage.

The expert report's value must appear in the measurement of investments' realisable value under point 2 of the previous article. This value may also be entered in the assets section of the balance sheet within the limits and under the terms set for each case by the Insurance Regulatory and Supervisory Authority.

The expert report's fees are borne by the insurance company.

Chapter 4: Investment income

Article 383: Maintaining the net income of investments

Life insurance or capitalisation companies maintain the net income of their investments at an amount equal at least to that of the interests to which the mathematical reserves are credited.

Article 384: Calculating investment income

Net investment income on depreciable securities is calculated by adding the coupons' amount net of taxes to the additional income from the excess of the securities' redemption price over their reserve allocation value.

Where the allocation value of securities is higher than their net redemption price, the loss of income corresponding to the difference is deducted from the coupons' amount.

The income gain or loss is calculated using a discount rate equal to the average rate for reserves.

Investment income other than from depreciable securities is represented by coupons or rent from the previous known financial year net of taxes and duties.

Article 385: Interest credited to mathematical reserves

The amount of interest credited to mathematical reserves is obtained by multiplying the sum of the companies' reserves by the interest rate used as a base for calculating underwriting rates.

Where the mathematical reserves are calculated by assessing the party's effective commitments at an interest rate lower than the rate, the calculation rate for reserves may replace the rate.

The amount of interest assigned to profit-sharing reserves is calculated by multiplying the sum of these reserves by the interest rate set in the corresponding contracts.

The average rate for reserves is obtained by dividing the interest amount to be used for reserves by the total amount of reserves.

Article 386: Increase of mathematical reserves

Where the total investment income is less than the total interest amount credited to the reserves, these need to be increased to counter the current and future imbalance of investment income pertaining to current contracts.

This increase is added to the liabilities section of the balance sheet under the heading 'mathematical reserves'. It must be at least equal to ten times the current reserve deficit and reduced, if appropriate, by the gain accumulated from investments at the date set for the calculation of estimated investment income under the terms of Article 384 of this Act.

Exceptionally, the Insurance Regulatory and Supervisory Authority may grant a period within which to reach this increase.

Article 387: Derogations

Companies are only bound to perform the calculations outlined in Articles 384 to 386 above when their annual income, not including profit from sales or conversions, is less than the interest amount to be credited to the mathematical reserves. The calculations are made on 31 December by the companies. They may be recalculated each year.

Chapter 5: Solvency

Section 1: General provisions

Article 388: Principle

Any company licensed to carry out insurance or reinsurance activities in the Democratic Republic of Congo should evidence a sufficient solvency margin related to all its activities.

Article 389: Elements composing the solvency margin

The solvency margin outlined in the previous article is made up, after deduction of losses and outstanding depreciation of commissions, set-up or development costs and other intangible assets, of the following elements:

1. paid company capital or formed initial capital;
2. half the unpaid portion of the company capital or the outstanding amount on the loan established for the initial capital;
3. loan(s) for additional capital funds; however, after half the duration of the loan, it will only be included in the solvency margin for its progressive value decreased each year by a constant amount equal to twice the loan total divided by the number of years it has been contracted for;
4. any regulated or free reserves that do not pertain to commitments;
5. profit brought forward;
6. gains that may arise from an underestimate of assets and the overestimate of liabilities, provided that such gains are not exceptional, upon request and justified by the company, with the Insurance Supervisory and Regulatory Authority's consent;
7. funds received from the issuing of subordinated securities or loans; such securities and loans must meet the terms, particularly with regards to duration and repayment, stated in Article 338 of this Act; these funds may be admitted for up to 50 % of the solvency margin. However, funds from fixed-term securities or loans are only admitted for up to 25 % of the said margin. Any irregular repayment may incur sanctions from the Insurance Supervisory and Regulatory Authority.
8. membership fees taken from new mutual insurance company members in accordance with Article 310 of this Act.

Article 390: Minimum solvency margin for Property & Casualty companies

For classes mentioned in points 1 to 18 of Article 402, the minimum regulatory solvency margin is equal to the highest result obtained in application of the following methods:

1. Calculation based on premiums or contributions: the ratio between the total claims for which the company is liable for after cession and retrocession in reinsurance and the gross amount of reinsurance claims for the previous financial year, is applied to the value of 20% of the total premiums or contributions, whether direct or placed in reinsurance, written during the financial year, and net of cancellations, provided that this ratio is no less than 50%.
2. Calculation based on annual average claims cost: both the claims paid as reinsurance or retrocession acceptances during the past three financial years and reserves for outstanding claims made during the last financial year, for direct business as well as reinsurance acceptances shall be added to the total claims paid for direct business for the same financial years, including claims borne by reinsurers and retrocessionnaires. From that sum shall be deducted both the recoveries paid during the three financial years and the reserves for outstanding claims formed at the beginning of the second financial year preceding the last financial year, for direct business as well as reinsurance acceptances. 25 % is applied to one third of the resulting figure.

The result under the second method shall be reached by multiplying the sum calculated in the previous paragraph by the ratio, for the previous financial year, between the total claims borne by the company after reinsurance cession and the total claims gross of reinsurance, provided that the said ratio is no less than 50 %.

Article 391: Minimum solvency margin for Life companies

For classes outlined in points 20 to 22 of Article 402, additional insurance not included, the minimum regulatory solvency margin is calculated with regard to the mathematical reserves. This amount is equal to 5 % of the mathematical reserves, pertaining to direct insurance activities without deduction of reinsurance cessions and acceptances, multiplied by the ratio, for the previous financial year, between total mathematical reserves after reinsurance cession and total mathematical reserves gross of reinsurance, provided this ratio is less than 85 %. To the minimum regulatory amount shall be added the amount corresponding to additional insurances calculated using the method defined in Article 390 hereinabove for non-Life classes.

For insurance underwritten as units of account, the minimum solvency margin is limited to 1 % of the mathematical reserves pertaining to these insurance.

Section 2: Additional conditions for a reinsurance or mutual insurance company solvency

Article 392: Life and non-life reinsurance companies

The solvency margin requirement applicable to life and non-life reinsurance activities is calculated from the annual total of premiums or contributions, namely based on the average cost of claims over the past three financial years.

Companies that simultaneously carry out life and non-life reinsurance activities must have an available solvency margin equal to the total sum of the solvency margin requirements applicable respectively to life and non-life reinsurance activities; failing that, the companies are deemed to be in difficulty or in an irregular situation.

Where the financial position of a reinsurance company is deteriorating and its contractual obligations are threatened, the Insurance Regulatory and Supervisory Authority may oblige this company to have a solvency margin higher than the minimum requirement stated in the previous paragraph.

However, the entire amount of the solvency margin required may not be more than twice the minimum requirement.

Should a reinsurance company's solvency margin not reach the regulatory amount, the Insurance Regulatory and Supervisory Authority, without prejudice to the use of its powers under the terms of the present Code, shall request a recovery plan to be submitted for the Authority's approval within one month.

It appoints a supervisor who must be permanently informed by the company of the recovery plan's progress. The company shall inform the supervisor of the implementation of decisions and measures contained in the plan, with the latter ensuring it is so.

Article 393: Guarantee fund

Reinsurance companies' guarantee fund is made up of one third of the solvency margin requirement. The minister in charge of insurance shall, on a proposal from the Insurance Regulatory and Supervisory Authority, set the minima for this fund depending on whether it is a public limited liability company or mutual reinsurance company.

If the guarantee fund is not duly formed, the Insurance Regulatory and Supervisory Authority shall request a short term financing plan to be submitted for the Authority's approval within one month.

Article 394: Reinsurance companies in difficulty

Reinsurance companies shall implement procedures enabling them to detect any deterioration of their financial conditions and immediately inform the Insurance Regulatory and Supervisory Authority should this occur.

The Insurance Regulatory and Supervisory Authority shall restrict or prohibit the free disposal of assets and may demand a financial recovery plan from reinsurance companies in difficulty or in an irregular situation.

Should the Insurance Regulatory and Supervisory Authority temporarily suspend, restrict or prohibit the free disposal of all or part of a reinsurance company's assets, it may also apply the mortgage outlined in Article 352 of this Act to the company's property.

If a reinsurance company that conducts business directly or through a branch does not comply with the legal provisions, the Insurance Regulatory and Supervisory Authority may ask the company to end the irregular situation. Should the breach remain, it may act to prevent or sanction new irregularities. Under exceptional circumstances, the license may be withdrawn.

BOOK III: INSTITUTIONAL FRAMEWORK AND STATE CONTROL**TITLE I: INSTITUTIONAL FRAMEWORK****Article 395: Regulation and Supervision of Insurance**

The Insurance Regulatory and Supervisory Authority shall be a technical public institution whose creation, organisation and operating shall be set by decree of the Prime Minister, deliberated in the Council of Ministers, on proposal of the Minister in charge of insurance.

Article 396: Insurance Regulatory and Supervisory Authority's missions

The Insurance Regulatory and Supervisory Authority shall ensure the protection of the rights of insured parties and insurance contracts beneficiaries, the soundness of insurance and reinsurance companies' financial position as well as their ability to honour their commitments.

In this respect, it has the following missions, among others:

1. Decide on all issues pertaining to insurance, reinsurance, capitalisation and assistance, as well as those relating to operations carried out in these areas;
2. Control insurance and reinsurance companies as well as professions related to the insurance industry and monitor their activities;

3. Study of technical and economic issues relating to the development of the insurance industry and its organisation;
4. Cooperate with all the national and international bodies in charge of supervising and monitoring the finance industry;
5. Ensure compliance of provisions on core insurance principles, standards and guidelines providing a framework compliant with international requirements on the insurance industry's monitoring;
6. Exchange information with bodies in charge of competition as part of their respective missions.

Article 397: Insurance Advisory Council

The advisory council is an advisory Body, whose creation, organisation and operating shall be set by decree of the Prime Minister deliberated in the Council of Ministers, on proposal of the Minister in charge of insurance.

Article 398: Insurance Advisory Council's missions

The mission of the Insurance Advisory Council is notably to assess and provide recommendations on referred issues and those relating to the situation of the insurance industry and its organisation, as well as the means likely to improve its services.

TITLE II: STATE CONTROL

Chapter 1: Scope

Article 399: Object and scope of control

State control is carried out in the interests of the insured, policyholders and insurance and capitalisation contract beneficiaries. It draws on a forward-looking approach based on risk. This includes constant monitoring of the insurance or reinsurance activity's smooth operation, and insurance and reinsurance companies' compliance with the provisions applicable to this control.

The following are subject to this control:

1. direct insurance companies that contract commitments whose performance depends on the length of human life, that undertake to pay a capital in the event of marriage or birth or that involve a call for capital and incur specific commitments, in exchange for direct or indirect, single or regular payments;
2. all insurance companies, including companies that provide support and others than those mentioned in point 1;
3. companies registered in the Democratic Republic of Congo that exclusively conduct reinsurance activities.

Chapter 2: Licenses

Section 1: Insurance company licenses

Subsection 1: License issuance

Article 400: License

Insurance and reinsurance companies, subject to State control under Article 399 of this Act, may only begin their activities after obtaining a license issued by the Insurance Regulatory and Supervisory Authority.

The license shall be granted at the company's request, for activities in one or several classes of insurance. The company may only practice the activities for which it is licensed.

The license may pertain to activities stated

1. in point 1 of Article 402 exclusively;
2. in point 2 of Article 402 exclusively;

Article 401: Nullity of concluded contracts

All contracts concluded in breach of the previous article shall be deemed null and void.

However, this nullity may not apply to insured, policyholders and contract beneficiaries if they are in good faith.

Article 402: Insurance classes

The license stipulated in Article 400 of this Act is granted on a class-per-class basis. Accordingly, insurance activities are classified into lines of business as follows:

1° Property & Casualty Class

1. Accidents, including work accidents and occupational illness:
 - a. flat benefits;
 - b. compensatory benefits;
 - c. combinations;
 - d. transported persons.
2. Illness:
 - a. flat benefits;
 - b. compensatory benefits;
 - c. combinations.
3. Land vehicles (other than railway rolling stock):

Any damage to:

 - a. motorised land vehicles;
 - b. non-motorised land vehicles.
4. Railway rolling stock:

- Any damage to railway vehicles.
5. Aircraft stock: any damage to aircraft.
 6. Ships (sea, lake, river and canal vessels): any damage to:
 - a. river vessels;
 - b. lake vessels;
 - c. sea vessels.
 7. Transported merchandise including merchandise, luggage and all other goods: any damage to transported merchandise or luggage whatever the transportation.
 8. Fire and natural events: any damage to property, other than property listed in classes 3, 4, 5, 6 and 7, when caused by:
 - a. fire;
 - b. explosion;
 - c. storm;
 - d. natural event other than storm;
 - e. nuclear power;
 - f. landslide.
 9. Other damage to property: any damage to property, other than property listed in classes 3, 4, 5, 6 and 7, and when caused by hail or frost as well as any other event such as theft, other than those included in class 8.
 10. Motorised land vehicle civil liability:

Any liability in respect of the use of motorised land vehicles.
 11. Aircraft liability:

Any liability in respect of the operation of aircraft.
 12. Sea, river and lake vehicle civil liability:

Any liability in respect of the use of sea, river or lake vessels.
 13. General civil liability:

Any liability other than those mentioned in points 10, 11 and 12.
 14. Credit:
 - a. general insolvency;
 - b. export credit;
 - c. hire-purchase;
 - d. mortgage credit;
 - e. agricultural credit.

15. Surety:
 - a. direct surety;
 - b. indirect surety.
16. Various pecuniary loss:
 - a. employment risk;
 - b. (general) income shortfall;
 - c. bad weather;
 - d. loss of profit;
 - e. persistence of overheads;
 - f. unexpected commercial expenses;
 - g. loss of market value;
 - h. loss of rent or income;
 - i. indirect commercial loss, other than those mentioned above;
 - j. non-commercial pecuniary loss;
 - k. other pecuniary loss.
17. Legal protection;
18. Assistance:

Assistance to persons in difficulty, particularly when travelling.
19. Any other risk.

2° Life classes

20. Life-death:

Any activity bearing commitments whose execution depends on the duration of human life.
21. Insurance related to investment funds:

Any activities bearing commitments whose execution depends on the duration of human life and are related to an investment fund.

The classes outlined in points 20 and 21 involve additional insurance to the main risk, particularly insurance whose object is to cover accidental death or disability.
22. Capitalisation:

Any activity that involves a call for capital and incurs commitments of specified duration and amount, in exchange for single or regular, direct or indirect payments.

Article 403: Accessory risk

Any company that obtains a license for a principal risk belonging to a class stated in points 1 to 18 of the previous Article may also cover risk in another class without a license being requested for these risks, provided that they pertain to the principal risk, are related to the object covered against the main risk and are insured by the contract that covers the principal risk.

However, risk included in the classes stated in points 14 and 15 of the previous Article may not be considered as accessory to other classes.

Article 404: Additional risks

Companies licensed to conduct business in the classes outlined in points 20 and 21 of Article 402 of this Act may directly provide, as accessory insurance part of the life insurance contract and in exchange of a contribution or separate contribution, additional insurance for risk of bodily harm, including occupational invalidity, accidental death or disability due to an accident or illness. In this case, the contract shall specify that these additional guarantees end at the same time as the main guarantee.

Requests for life insurance rate approvals containing additional insurance for the risk outlined in the first paragraph, which companies must present in accordance with Article 288 of this Act, shall be supported by technical justifications pertaining to these accessory guarantees.

Subsection 2: License terms**Article 405: Criteria for granting or refusing licenses**

All documents accompanying license requests shall be written in French.

To make their decision, the Insurance Regulatory and Supervisory Authority shall consider:

1. the technical and financial means proposed and their suitability for the company's activity programme;
2. the good repute and qualification of persons responsible for the company's management;
3. the distribution of capital for companies outlined in Article 295 of this Act or the terms for forming their initial capital;
4. the overall market organisation.

Any unfavourable decision shall be justified and notified by the Insurance Regulatory and Supervisory Authority.

An unfavourable decision implementing a total or partial refusal of the license may only be issued if the company has been previously advised by registered mail or any other means with acknowledgement of receipt to present any explanations in writing within fifteen days.

Within three months from the date the license application was duly filed, the company may submit an appeal to the Minister in charge of insurance within two months of notification of a full or partial license refusal or in the absence of such notification.

Article 406: Licensing terms for companies incorporated in the Democratic Republic of Congo

Any license request filed by a company incorporated in the Democratic Republic of Congo must be produced in five copies and contain:

1. a list drawn up in accordance with Article 402 of this Act, of the classes the company intends to do business in;
2. where appropriate, an indication of foreign countries in which the company intends to operate;
3. one of the duplicates of the company's certified memorandum of association or a copy of these;
4. minutes of the constituent general meeting;
5. two copies of the articles of association, a bank deposit certificate and bank account statement recording payments made to pay the company's capital and initial start-up capital;
6. a list of board members and directors, and any other person performing equivalent duties detailing their first, post and last names, domicile, nationality, and date and place of birth.

The aforementioned persons must produce a copy of their criminal record of less than three months old or any equivalent document issued by a competent authority.

Furthermore, should they be of foreign nationality, they must meet the legal and regulatory provisions on immigration police.

7. A programme of activities containing the following items:
 - a. a document specifying the nature of the risk that the company intends to cover;
 - b. two copies of the policies and printouts to be distributed to the public or published for each class in the license request;
 - c. two copies of rates for each of the classes in the license request.

Where it concerns insurance activities bearing commitments whose execution depends on the length of human life, activities associated to such commitments, the company must state the rate applied to all of these activities and include a technical note presenting the rating process and the calculation bases of the various premium categories.

If this concerns calls for capital in order to obtain funds, the company must present the full premium or instalment rate, accompanied by tables stating at least for each and every year the mathematical reserves and corresponding cash values as well as a technical note outlining, in addition to the procedure for calculation, the following items:

- a. The guiding principles that the company intends to follow with regard to reinsurance
- b. The company's computerisation plan, provisions for set-up costs of administrative services and productions network as well as financial capacity to cover them;
- c. For the first three financial years:
 1. Projected management expenses other than set-up costs
 2. Overheads and fees
 3. Projected premiums and claims
 4. Expected cash flow situation
 5. Projected balance sheets, income statement, cash flow statement and financial and fiscal statement
- d. For the same financial year:
 1. Projected financial capacity to cover commitments
 2. Projected solvency margin required from the company under the provisions of this Act;
- e. In the case of a public limited liability company, the list of main shareholders as well as the share of capital held by each of them; in the case of a mutual insurance company, the financial procedure of the initial capital;
- f. The name and address of the main banking establishment where the company's accounts are domiciled;
- g. in case of a license extension request, the documents outlined in points 3, 4 and 5 are not required. The company must indicate, if applicable, any changes made regarding the application of the provisions of point 6, and those subsequent, and evidence a solvency margin at least equal to the regulatory requirement.

Article 407: Professional quality and experience

When assessing the license application, the Insurance Regulatory and Supervisory Authority shall review the professional qualification and experience of persons mentioned in point 6 of the previous article. The latter must provide a descriptive statement of their activities. In particular, they must indicate:

1. the nature of their current professional activities and those performed over the ten years prior to the license request;

2. disciplinary sanctions imposed on them by a supervisory authority or competent professional organisation, or a refusal to register them on a professional list;
3. any dismissal or similar measure for misconduct;
4. whether they have been a director or board member of companies that went into receivership or liquidation, involved personal or corporate bankruptcy or any equivalent proceedings in the Democratic Republic of Congo or abroad.

Article 408: License request by a foreign company

Any foreign company authorised to underwrite a risk in the Democratic Republic of Congo territory, under the provisions of paragraph 3 of Article 285 of this Act, may only start its activities after having obtained a temporary license as acceptance of a special agent meeting the requirements defined in Article 409 hereinafter and the credibility and solvency conditions set by the Insurance Regulatory and Supervisory Authority.

The Insurance Regulatory and Supervisory Authority may subject the temporary license to the deposit, as guarantee, of a portion of the solvency margin relating to the underwriting of risk located in the Democratic Republic of Congo.

Article 409: Special agent

The special agent shall be natural person who has the capacity and professional experience required by this Act. They must elect temporary domicile in the Democratic Republic of Congo territory and produce a sworn statement by which they declare to have no convictions abroad.

Article 410: Performance reports

For each semester during the three financial years as required in point 7 (c) and (d) of Article 404 of this Act, the company shall present a performance report of the business plan to the Insurance Regulatory and Supervisory Authority.

If such reports reveal that the company is seriously financially unstable, the Insurance Regulatory and Supervisory Authority may, at any time, take measures to reinforce the financial guarantees deemed essential and, upon failure to do so, withdraw the license.

Section 2: Reinsurance companies' license and activities

Article 411: Access to reinsurance activities

Access of a company to reinsurance activities exclusively shall be subject to prior granting of a license issued by the Insurance Regulatory and Supervisory Authority, according to the provisions of Book III, Title II, chapter 2 of this Act.

However, as for operations of reinsurance acceptances, such a license is not required.

The previous paragraph's provisions do not concern:

1. reinsurance activity conducted by a company whose operations are entirely guaranteed by the State on the ground of public interest;
2. foreign reinsurance companies authorised to carry out, wholly or partly, reinsurance transactions under the provisions of Article 285 paragraph 2 of this Act;
3. African or inter-African regional reinsurance companies acting to the benefit of bilateral or intergovernmental agreements to which the Democratic Republic of Congo is a party.

Article 412: Granting or refusing license to a reinsurance

To grant or refuse a license to a reinsurance company, the Insurance Regulatory and Supervisory Authority applies the requirements defined in Article 405 of this Act.

The Insurance Regulatory and Supervisory Authority may subject the grant of a license to fulfilment of commitments entered into by the company requesting it.

It shall refuse the license where the exercise of the company's supervisory mission is likely to be hindered either by the existence of direct or indirect links of capital or control between the requesting company and other natural or legal persons, or by the existence of statutory, regulatory or administrative provisions of a foreign State to which one or several of these persons belong.

It shall set the list of documents to produce supporting a licensing request.

Article 413: Types of reinsurance activities

At the reinsurance company's request, a license is granted:

1. regarding any type of reinsurance activity classified according to the direct lines of business provided by Article 402 of this Act, classified in *property & casualty* non-life reinsurance, life and capitalisation reinsurance, any type of reinsurance, non-life and life;

2. regarding an entire line of business or part of the risks pertaining to this line if the requesting company so chooses.

Any reinsurance company shall limit its purpose to the reinsurance activity for which it has been licensed and to the related operations.

Article 414: Terms of reinsurance activities

The Insurance Regulatory and Supervisory Authority shall set the terms governing the reinsurance activity, financial monitoring principles and methodology, solvency verification, technical reserves and equalisation reserves, guarantee funds, assets, transfer of portfolio, recovery measures as well as all other conditions deemed necessary to maintain the sustainability and solvency of reinsurance companies.

Article 415: Qualifying holding¹⁰

Each acquisition or disposal of a qualifying holding in reinsurance companies shall first be communicated to the Insurance Regulatory and Supervisory Authority, which proceeds to the assessment in a collaborative manner.

The Insurance Regulatory and Supervisory Authority shall consider the seriousness of the proposed acquirer, the effect it may have and the acquisition's financial stability.

Article 416: Recovery plan

Where the Insurance Regulatory and Supervisory Authority requires a recovery plan from a reinsurance company, it must, for the next three financial years, contain among others a detailed description of the items and supporting documents pertaining to:

1. Estimated management expenses, particularly overheads and fees;
2. Detailed plan of projected income and expenses;
3. Projected balance sheet;
4. Projected financial capacity to cover commitments and solvency margin requirement;
5. General policy regarding ceded reinsurance.

Section 3: Advertising, suspension and termination of license

Article 417: License publication

The license decision shall be published in the Official Journal.

Article 418: Termination of license after transfer of portfolio

In the event of a transfer of portfolio executed in application of the Insurance Regulatory and Supervisory Authority sanctions under with this Act and pertaining to all contracts within a particular class or sub-class, the license shall automatically cease to be valid for this class or sub-class.

¹⁰ any direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, or any other possibility of exercising a significant influence over the management of the investment firm in which that holding subsists

Article 419: Suspension and termination of license after failure to underwrite

Should a company having obtained a license for a class or sub-class not have begun any corresponding activities within two years of the license decision's publication in the Official Journal, or if a company has not concluded any contract belonging to a class or sub-class for which it is licensed within two consecutive financial years, the license automatically ceases to be valid for the relevant class or sub-class.

Article 420: Termination of license for renunciation

At the request of a company which undertakes to no longer conclude new contracts in one or several classes or sub-classes in the future, the Insurance Regulatory and Supervisory Authority may, by decision published in the Official Journal, declare the termination of the license for the said classes or sub-classes.

Section 4: Transfer of portfolio**Article 421: Voluntary transfer procedure**

Companies operating the activities outlined in Article 402 may, with the Insurance Regulatory and Supervisory Authority's consent, transfer all or part of their contract portfolio with its rights and obligations to one or several licensed companies.

Creditors shall be informed of the transfer request by a notice published in the Official Journal, which grants them at least three months in which to present their remarks to the Insurance Regulatory and Supervisory Authority. The latter shall inform accordingly the Ministry in charge of insurance.

Insured parties shall have one month to cancel their contract as from this notice's publication in the Official Journal. However, the Insurance Regulatory and Supervisory Authority shall approve the transfer if it esteems that it is in line with the interests of the creditors and insured parties. This approval shall make the transfer enforceable to insured, policyholders, contract beneficiaries and creditors.

Article 422: Automatic transfer

Should the Insurance Regulatory and Supervisory Authority decide to enforce the automatic transfer of a company's insurance contract portfolio, this decision shall be communicated to all the insurance companies by a notice published in the Official Journal. From this notice, companies accepting to take over the portfolio in question, have fifteen days to make themselves known to the Insurance Regulatory and Supervisory Authority.

The company appointed by the Insurance Regulatory and Supervisory Authority to take over the transferred insurance contracts portfolio shall be informed of this appointment by courier or any other means with acknowledgement of receipt.

The decision declaring the transfer shall define its terms and set the effective date.

Subsection 5: Recovery and safeguard procedure

Article 423: Safeguard measures

Where the financial situation of a company is such that the interests of the insured parties and contract beneficiaries are compromised or likely to be so, the Insurance Regulatory and Supervisory Authority may take one of the following emergency measures:

1. place the company under permanent monitoring;
2. restrict or forbid the free disposal of all or part of the company's assets;
3. appoint a temporary administrator to whom all powers required to manage and direct the company are transferred. This appointment shall be made either at the directors' request, should they feel no longer able to perform their duties normally, or at the initiative of the Insurance Regulatory and Supervisory Authority or its representative where the company's management can no longer be maintained under normal conditions or where the Insurance Regulatory and Supervisory Authority has imposed a sanction under its powers.

The measures outlined in points 2 and 3 shall be lifted or confirmed by the Insurance Regulatory and Supervisory Authority, after adversary proceedings, within four months. The Insurance Regulatory and Supervisory Authority shall inform the Minister in charge of insurance.

During the period mentioned in the previous paragraph, the company's directors may be heard. They may be assisted by a lawyer or insurance professional of their choice.

Article 424: Recovery plan

Where a company subject to an audit does not meet the provisions outlined in Articles 370 and/or 390 of this Act, the Insurance Regulatory and Supervisory Authority shall order it to undergo, within one month:

1. a recovery plan outlining the measures required to reinstate within three months a cover compliant with the regulations, if the company does not meet those for technical reserves;
2. a short-term financing plan able to restore within three months the solvency margin if it does not meet the regulatory minimum.

The Insurance Regulatory and Supervisory Authority reserves the right to extend the periods provided hereinabove.

It may block or restrict the free disposal of the company's assets and/or assign a commissioner to permanently monitor the company. The latter shall be invested with full power of investigation for this purpose. They must in particular be immediately notified of any decisions made by the Board of Directors or the company's management.

If the company does not submit the required plan in due time or if the plan submitted is not approved by the Insurance Regulatory and Supervisory Authority or if the approved plan is not implemented under the specified terms and within the specified periods, the Authority shall impose the sanctions provided by Book III Title III of this Act.

Article 425: Supervisory Board

When in application of the provisions of Article 423 point 3 of this Act, a temporary administrator is appointed to a company subject to the supervision of the Insurance Regulatory and Supervisory Authority pursuant to Article 399 of this Act, a supervisory board shall be established by the Minister in charge of insurance.

The supervisory board is composed of the Insurance Regulatory and Supervisory Authority's general manager or their representative, a delegate from the Ministry of Justice or their representative and a representative of the Central Bank of the Congo. It is presided by the Insurance Regulatory and Supervisory Authority's general manager or their representative.

It shall continuously monitor the company's management and must be in particular notified of all decisions made by the temporary administrator prior to their implementation.

It shall approve of the financial statements established by the temporary administrator as well as the management report drawn up by the statutory auditors.

Article 426: Restriction or prohibition of free disposal of assets

In the event the Insurance Regulatory and Supervisory Authority or Minister in charge of insurance are compelled to restrict or ban the free disposal of a company's assets, one or several of the following measures may be taken:

1. instruction to any issuing or depository company or body, by letter or any other means with acknowledgement of receipt, to refuse the execution of any transaction on accounts or securities owned by the concerned company, as well as the payment of interest and dividends pertaining to the said securities;
2. subjecting the aforementioned transactions to prior approval from a commissioner or any other person authorised to do so;

3. registration of the mortgage outlined in Article 352 of this Act on the company's buildings;
4. instruction to registrars, by letter or any other means with acknowledgement of receipt, to refuse the transcription of any deeds, the registration of any mortgage on buildings belonging to the company as well as the striking off of a mortgage granted by third parties to the company;
5. deposit in a bank of large mortgaged loans issued by the company;
6. transfer to a bank of any funds or securities held or owned by the company, under terms to be defined, to be deposited in a blocked account. Withdrawals may only be made from this account on the order of the accountholder with the explicit authorisation from the Insurance Regulatory and Supervisory Authority or Minister in charge of insurance, and only for a set amount;

Company managers who do not carry out the transfer outlined in the previous paragraph shall be liable to the criminal sanctions provided in this Act.

Article 427: Life insurance or capitalisation company

If necessary the Insurance Regulatory and Supervisory Authority may order a company to suspend cash value payments or policy loans.

Article 428: License withdrawal

The decision of the Insurance Regulatory and Supervisory Authority pronouncing the complete licensing withdrawal results in the prohibition for any company to operate in the national territory, from the date of its publication in the Official Journal.

Section 6: Initiating the liquidation proceedings

Article 429: Collective procedures in settlement of liabilities

The bankruptcy of a company governed by this Act may be pronounced at the request of the Insurance Regulatory and Supervisory Authority.

The tribunal may examine the matter of its own motion or such matter may be referred to the tribunal by the Public Prosecutor or by any other person concerned by the initiation of proceedings, after obtaining the assent of the Insurance Regulatory and Supervisory Authority.

Article 430: Liquidator

The liquidator acts under their sole responsibility. Subject to the provisions of this chapter, they have the broadest powers to manage, liquidate, sell off both movable and immovable assets, and to pay off liabilities, in view of the unpaid claims. Any legal action concerning moveable or immoveable property may only be taken or brought against the liquidator.

Article 431: Publication

The Insurance Regulatory and Supervisory Authority shall publish the decision declaring full withdrawal of license upon its notification to the insurance company's managers.

Within ten days of the liquidator's appointment and at their request, the order from the competent court shall also be published in the form of extract in the Official Journal.

Article 432: Admission of creditors

The liquidator shall automatically admit certain debts as liabilities; with the judge's approval, the liquidator shall provisionally record disputed debts as liabilities if the alleged creditors have already brought proceedings before the competent court or initiated proceedings within fifteen days upon receiving notification that their debts were not automatically admitted, by courier or any other means with acknowledgement of receipt.

Article 433: Liquidator's obligations

The liquidator shall establish a statement of the liquidated company's assets and liabilities and present it to the judge and the Insurance Regulatory and Supervisory Authority.

Furthermore, each quarter, they shall send to the aforementioned a progress report on the liquidation and deposit a copy with the registrar of the competent court.

A copy of this report shall be sent to the President of the Court, the Public Prosecutor and Minister in charge of insurance.

This report must include at least one quarterly statement of accounts, a detailed statement of sold assets, liabilities paid off and the prospect of a solution for the ongoing liquidation's operations.

Should the liquidator be informed of any of the actions provided in Article 447 of this Act committed by de jure or de facto directors of the company in liquidation, they shall immediately inform accordingly the Public Prosecutor, judge and Insurance Regulatory and Supervisory Authority.

Article 434: Employees' privileges

Without prejudice to the privileges granted to employees under the Labour Code, in the event of a liquidation carried out under the terms outlined in Article 419 of this Act, wages for the last sixty days of work and owed holiday pay, limited to thirty working days, must be paid, notwithstanding the existence of any other privilege.

Article 435: Execution of employees' privileges

Notwithstanding the existence of any debt, debts guaranteed by employees' privileges must be paid by the liquidator, under judge's order, within ten days of the Insurance Regulatory and Supervisory Authority's decision to fully withdraw the license, provided the liquidator has the necessary funds available.

However, before any amount of this debt is calculated, the liquidator must, with the judge's consent and within the limit of available funds, immediately pay employees, as a temporary measure, a sum equal to one month of unpaid salary, based on their last payslip.

In the event of lack of funds, the sums due by virtue of the two previous paragraphs must be paid from the first funds collected.

Where the said sums are paid through an advance payment, the rights of the interested parties shall be subrogated to the lender who must be reimbursed as soon as the necessary funds have been collected, without opposition from any other creditor.

Article 436: Distributions

The liquidator shall carry out all distributions with the judge's consent. They shall take into account the creditors' privileges; between creditors of equal rights and between unsecured creditors, distributions shall be made proportional to their debt.

Upon the appointment of a liquidator, all individual proceedings shall stay.

Should the creditors not validly initiate proceedings with a competent court within the prescribed period, disputed or unknown debt shall not be included in the distributions. If the debt is acknowledged at a later date, debtors may not make any claims to distributions already authorised by the judge but in future distributions, they will be entitled to take interest on their debt from the assets yet to be distributed.

Sums that may be distributed to disputed debtors who have validly initiated proceedings with the competent court within the stipulated period shall be held in reserve until final decision is made on their debt; creditors shall have the right to take interest pertaining to their debt from sums held in reserve during the first distributions, without prejudice to their rights in later distributions.

Article 437: Transactions and disposals

The liquidator may, with the judge's consent, compromise on the existence or amount of disputed debt on the company's debt.

The liquidator may only dispose of the immovable assets owned by the company and of unlisted securities by means of sales by public auction.

Notwithstanding any provision to the contrary, foreign company's securities and immovable assets outlined in Articles 353 and 355 of this Act may be sold by the liquidator and the funds used by the same to honour contracts.

Article 438: Closure of liquidation proceedings

The presiding judge of the competent court shall pronounce the closure of liquidation proceedings, based on the liquidator's report, once all privileged debt with rights from the performance of insurance, capitalisation or savings contracts have been satisfied or once the operations have ceased due to assets deficiency.

Article 439: Liquidator's and judge's fee

The liquidator shall receive a fee, to be paid by the liquidated company, set by the Insurance Regulatory and Supervisory Authority.

Article 440: License withdrawal and termination of general insurance contracts

Where a license is withdrawn for a company outlined in points 2 and 3 with regards to its part concerning insurance operations other than life and capitalisation of Article 399 of this Act, all contracts concluded by the company shall automatically cease to have effect on the fortieth day at midnight following the publication in the Official Journal of the Insurance Regulatory and Supervisory Authority's withdrawal decision.

Premiums or contributions due before the date of this decision and not paid at this date shall be due in full to the company, but may only be earned by the latter in proportion to the period covered up to the date of payment.

Premiums or contributions that expire between the date of the decision and the date the contracts are automatically cancelled are only due in proportion to the period covered.

Article 441: License withdrawal and termination of life insurance contracts

After publication in the Official Journal of the Insurance Regulatory and Supervisory Authority's decision declaring the withdrawal of a license granted to a company outlined in point 2 of Article 404 of this Act, with regard to its part concerning life insurance and capitalisation operations, contracts concluded by the company remain governed by their general and specific terms so long as the decision of the Insurance Regulatory and Supervisory Authority provided in the following paragraph¹¹ has not been published in the Official Journal.

However, the liquidator may, with the judge's consent, postpone the payment of claims, debt and cash values. Premiums received by the liquidator shall be paid into the special account, subject to a separate liquidation.

At the liquidator's request and judge's report, the Insurance Regulatory and Supervisory Authority shall set the date for which the contracts shall cease to have effect, authorise their full or partial transfer to one or several companies, extend their period, and decide on the reduction of sums payable for life or death, benefits allocated and cash values, so

¹¹ Please refer to the 3rd paragraph instead of the 2nd.

that the value of the company's commitments are lowered to the amount the liquidation makes it possible to cover.

The provisions of this Act shall not apply until the Insurance Regulatory and Supervisory Authority has set a date at which the contracts shall cease to have effect, and the ten-day period outlined in Article 431 paragraph 2 shall only begin upon publication of this decision in the Official Journal.

Article 442: Nullity of operations subsequent to license withdrawal

At the Insurance Regulatory and Supervisory Authority's request, the presiding judge of the competent court may declare null and void one or several operations carried out by the managers of a company assigned a liquidator after withdrawal of its license; it shall be for the Insurance Regulatory and Supervisory Authority to provide proof that the persons who have entered into contracts with the company were aware of the license withdrawal.

Article 443: Reversal of fees by brokers and agents

Should a company providing motorised land vehicle insurance have its license withdrawn, the natural and legal persons carrying out insurance brokerage through which contracts covering the compulsory civil liability for motorised land vehicle owners were taken out with this company must pay the liquidation one quarter of the total fees received for any reason whatsoever under the said contracts from 1 January of the year preceding that in which the license was withdrawn.

The same provision applies to self-employed agents of the same company who were not bound to exclusively provide contracts to the latter.

TITLE II: SANCTIONS

Article 444: Breach of the provisions relating to licensing of directors

Any breach of the provisions of Article 293 of this Act shall be liable to six months to two years imprisonment and a fine of 300.000 to 3.000.000 Congolese Francs or either one of these sanctions only.

Article 445: Breach of the provisions of Article 286

Any breach of the provisions of Article 286 of this Act shall be liable to a fine of 50 % of the sum of premiums issued.

In the event of a repeat offence, the fine shall be raised to 100 % of the same amount. The ruling is published at the cost of the civilly liable companies or party convicted.

Article 446: Breach of the provisions of Articles 289, 291, 298 and 310

Shall be liable to eight to fifteen days imprisonment and a fine of 200.000 to 1.000.000 Congolese Francs or either one of these sanctions only, company directors that ignore the obligations or bans stipulated in Articles 289, 291, 298, 310 of this Act, those related to sending statutory auditors' reports and all accounting documents, and those related to recordkeeping and archiving accounting items.

In the event of a repeat offence, the imprisonment may be raised to one month and the fine from 400.000 to 2.000.000 Congolese Francs.

Article 447: Bankruptcy

Shall face the penalties for bankruptcy stipulated in Article 86 of the Congolese Penal Code, the president, board members, managing directors, members of the management board, directors, managers or liquidators of any company and, in general, any person that directly or indirectly administered, managed or liquidated the company, under the cover of or on behalf of their legal representatives who, in this capacity and acting in bad faith, either:

1. used sums belonging to the company by carrying out mere chance or fictitious transactions;
2. used ruinous means to obtain funds with the intention of delaying the withdrawal of the company's license;
3. irregularly paid or had a third party irregularly pay a creditor after the withdrawal of the company's license;
4. had the company undertake, on behalf of another party and without receiving values in exchange, commitments deemed to be outsized with regard to its situation at the time it contracted the said commitments;
5. held the company's accounts in an irregular situation, or requested or allowed such situation;
6. or embezzled or hid or tried to embezzle or hide part of their assets or fraudulently placed themselves as debtors of sums that they were not owed in order to subtract all or part of their holdings in the company in liquidation or those of company associates or creditors;

The penalties outlined in the previous paragraph shall be doubled if the persons mentioned fraudulently either:

1. removed the company's books;
2. embezzled or hid part of its assets;
3. or recognised the company as debtor of sums that it did not owe, in its accounting entries, by public deeds or private contracts, or in its financial statements.

Article 448: Liquidator's prohibitions and legal proceedings

The liquidator and all those who have participated in administering the liquidation process are prohibited from personally obtaining, directly or indirectly, by amicable agreement or judicial sale, all or part of the movable or immovable assets of the company undergoing liquidation.

Any liquidator or any person having participated in administering the liquidation who, in breach of the provisions of the above paragraph, directly or indirectly obtains company property for their own behalf, shall face the sanctions provided in Article 95 of the Congolese Penal Code.

Any liquidator found guilty of misconduct in their management shall face the same penalties.

Article 449: Publication of sentences and convictions

All convictions and sentences issued by virtue of Articles 457 and 458 paragraph 2 of this Act, shall be displayed and published in the Official Journal at the cost of the convicted parties.

Article 450: Costs of proceedings

Costs of proceedings initiated by a creditor shall be borne by the Public Treasury in the event of a conviction, unless an action is filed against the debtor under the terms outlined in Article 456 of this Act and, if there is acquittal, by the creditor pursuing the action.

Article 451: Penalties pertaining to incorporation and underwriting regulations

Shall be liable to 1 to 5 years imprisonment and a fine of 8.000.000 to 15.000.000 Congolese Francs or either one of these penalties only, those who knowingly:

1. in the declaration required for the company to be validly incorporated, state policy purchases they knew to be fictitious or declared payments of sums that had not been conclusively made available to the company;
2. obtain, try to or have tried to obtain the purchase of policies by simulation or publication or allegation of purchased policies that do not exist or of any other false fact;
3. in order to obtain the purchase of policies, publish the names of persons falsely designated as being or expected to be linked to the company in any capacity whatsoever;
4. make any other false declarations or concealments in any documents presented to the Insurance Regulatory and Supervisory Authority or made public.

Article 452: Penalties pertaining to operating regulations

Shall be liable to 1 to 5 years imprisonment and a fine of 8.000.000 to 15.000.000 Congolese Francs or either one of these penalties only, the president, managing directors, board members, managers or directors of non-commercial companies outlined in Article 299 of this Act, who knowingly:

1. publish or present an inaccurate balance sheet to the general meeting in order to conceal the company's true situation;
2. use the company's property or credit for purposes they knew to be contrary to its interests, for personal gain or to favour another company in which they directly or indirectly had an interest;
3. use their powers or votes they held in this capacity in such a manner they knew to be contrary to the company's interests, for personal gain or to favour another company in which they directly or indirectly had an interest;

These provisions shall apply to any person who directly or indirectly carried out the direction, administration or management of the said companies under the cover or on behalf of their legal representatives.

Article 453: Penalties pertaining to liquidation regulations

In the event of a liquidation carried out under the terms stipulated in Article 429 of this Act, the following provisions shall apply:

1. If the financial situation of a company dissolved due to the withdrawal of its license reveals insufficient assets to cover the liabilities that require payment during the liquidation, the court may decide, where poor management had contributed to this lack of assets, at the liquidator's request or automatically, that the company's all or part of debt shall be borne, with or without solidarity, by all or some of the de jure or de facto directors, whether they are paid or not.

The action shall lapse after three years starting from the date the liquidator's eighth quarterly report is filed with the Registry.

2. Managers found guilty of the actions outlined in Article 447 of this Act may be sentenced to penalties fixed for personal bankruptcy.

Article 454: Penalties pertaining to regulations on clauses for the contribution and non-production of documents for supervisory authorities

Any breach of the regulations related to clauses for the contribution and non-production of documents to supervisory authorities shall be punished by a fine of 400.000 to 2.000.000 Congolese Francs.

With regard to breaches of the provisions of Article 239 of this Act, the fine shall be stated for each breach found, with a total limit of the fines incurred of 15.000.000 Congolese Francs.

The same penalties shall apply for the non-production of documents to the Insurance Supervisory and Regulatory Authority.

Article 455: Breach of the regulations on company form, publicity, license and recovery proceedings

Any breach of the regulations regarding the company form, publicity, license and recovery proceedings outlined in Articles 285, 288, 400 and 428 of this Act shall be liable to 1 month to 5 years imprisonment and a fine of 400.000 to 4.000.000 Congolese Francs or either one of these penalties only.

Article 456: Offence of obstruction – sanctions

Any obstacle made to the Insurance Supervisory and Regulatory Authority's mission shall constitute an offence of obstruction. This breach shall be liable to 1 to 6 months imprisonment and a fine of 1.000.000 to 2.000.000 Congolese Francs or either one of these penalties only.

BOOK IV: GENERAL AGENTS, BROKERS AND OTHER INSURANCE INTERMEDIARIES

TITLE I: COMMON RULES FOR PRESENTING INSURANCE AND REINSURANCE OPERATIONS

Chapter 1: General principles

Article 457: Presentation of an insurance and reinsurance operation

Shall be deemed to be the presentation of an insurance or reinsurance operation carried out by the companies mentioned in Article 399 of this Act, the fact for any natural or legal person to solicit or obtain the purchase of an insurance or reinsurance policy, or to present the coverage terms of said policy orally or in writing to a potential policyholder.

The aforementioned operations carried out by the companies referred to in the previous paragraph are presented to the public either directly by these companies or through the intermediary of authorised persons referred to as insurance brokers.

Article 458: Persons authorised to present insurance operations

Those authorised to present insurance operations are:

1. natural or legal persons registered with the Trade and Personal Property Credit Register for insurance or reinsurance brokerage licensed by the Insurance Supervisory and Regulatory Authority and, with regards to legal persons, associates and third parties who have the power to direct or manage;

2. natural or legal persons who either:
 - hold an insurance general agent's mandate or temporarily bestowed insurance general agent's duties for a two-year non-renewable period;
 - or are company directors or hold a reinsurance company mandate.
3. natural persons employed for that purpose either:
 - a. by an insurance or reinsurance company;
 - b. or by person or company mentioned in point 1 hereinabove.
4. self-employed natural persons, appointed and paid on a commission basis.

Article 459: Presentation of an insurance company's staff

The operations carried out by a company mentioned in Article 400 of this Act may be presented by the company's paid staff members or by a natural or legal person stipulated in point 1° or 2° of the previous article:

1. at the company's head office or residence of the said person;
2. in any production office of the said company or person whose manager meets the qualifying requirements for insurance brokers or general agents.

Article 460: Derogations for individual insurance

Operations hereinafter defined may be presented, as either purchases of individual insurance or enrolments to group insurance, by the persons respectively announced for each case:

1. insurance covering death, disability, loss of employment or professional activity explicitly and exclusively taken out to serve as a guarantee or repayment of a loan: the lender or persons who contribute to the grant of this loan;
2. river freight or cargo transportation insurance: freight broker;
3. insurance covering mainly expenses of travel assistance carried out by third parties: the managers, travel agency staff, banks and finance institutions and their agents;
4. licensed banks, finance institutions, micro-finance institutions, savings banks and the post office may present insurance operations at their counters provided that the person doing so has been authorised to present these operations in accordance with Article 469 of this Act.

Article 461: Derogations for group insurance

Enrolments to group insurance defined in Article 282 of this Act may be presented by the underwriter, their agents or representatives and any natural or legal persons explicitly appointed for this purpose in the group insurance contract.

Article 462: Insurer's liability for the fault of its agents

Where an insurance operation is presented by a person authorised under the terms stated in Article 459 of this Act, the employer or principal is civilly liable for any loss caused by the fault, carelessness or negligence of its employees or agents acting in this capacity, who are regarded as agents, notwithstanding any agreement to the contrary.

Chapter 2: Requirements of good repute**Article 463: Conditions for good repute**

May not exercise the profession of insurance broker or general agent, any person subject of:

1. a final conviction and sentence of imprisonment for intentional crime;
2. a personal bankruptcy or any other restriction measure relating to a company's recovery or judicial liquidation;
3. a measure of removal from their public prosecutor functions by virtue of a judicial ruling.

The sentences and measures referred to in the previous paragraph prohibit all company agents and employees, general agents, brokers and brokerage companies from presenting insurance operations.

These bans may also be ruled by courts against any person sentenced for breach of the insurance legislation.

Article 464: Exception

The operations practiced by the companies outlined in Article 401 of this Act may only be presented by foreign persons in the categories defined in Article 460 above under the terms and circumstances stipulated by Articles 461 to 463 of this Act, provided that these persons are not deemed inept under the provisions of Article 467 below.

Chapter 3: Professional competence requirements**Article 465: Professional competence requirements**

Without prejudice to Articles 460 and 461 of this Act, natural persons mentioned in Article 458 must:

1. be of legal age;
2. be of Congolese nationality, with foreign nationals subject to conditions of reciprocity;

3. meet the professional competence requirements outlined for each category and set by the Insurance Supervisory and Regulatory Authority after consultation with professional bodies representing insurance companies;
4. not be deemed incapable under the provisions of Article 463 of this Act.

To present an insurance or a reinsurance operation as defined in Article 457 of this Act any person mentioned in paragraph 1 may at all times provide proof that they meet the conditions required in the said paragraph.

Insurance or capitalisation contracts taken out in breach of the provisions of Article 461 of this Act and those of the first paragraph as well as purchases of such contracts obtained in breach of these provisions may, for a two-year period starting from the date of said purchase, be cancelled at any time by the policyholder or member after a one month notice at least. In this case, the insurer shall only be entitled to the part of the premium corresponding to the period covering the risk until the cancellation and shall pay back any surplus received.

Article 466: Supervision of personal professional competence

Any person who, in a company mentioned in Article 399 of this Act or a brokerage company or general agency, has authority over persons assigned to present insurance or capitalisation operations, must ensure that the latter meet the terms laid down in Articles 461 and 465 of this Act.

In an insurance company, any person who mandates an insurance general agent or a person assigned the latter's duties must first present the Insurance Supervisory and Regulatory Authority with the declaration stipulated by Article 463 and have verified that documents sent to them attest that the said person meets the required terms of age, nationality and professional competence required in paragraph 1 of Article 465 of this Act.

Article 467: Supporting documents

The natural persons mentioned in points 2 and 4 of Article 458 and the persons stipulated in point 4 of Article 460 of this Act must produce a business card issued by the Insurance Supervisory and Regulatory Authority.

Article 468: Terms relating to insurance brokers and general agents

Insurance brokers, associates and third parties who manage or administer an insurance brokerage company and insurance general agents must, before taking office, provide proof that they either:

1. hold a degree included on a list from the Insurance Supervisory and Regulatory Authority after consultation with professional bodies representing insurance companies, and have completed a professional internship;

2. have held a full-time position for at least 2 years in the internal or external departments of an insurance company, brokerage or insurance brokerage company, performing duties related to the production or application of insurance contracts, and have completed a professional internship or have held full time for at least 1 year the position of executive or manager in the same companies;
3. have carried out for at least 2 years a position of responsibility as executive or director within an industrial or commercial company, and have completed a professional internship;
4. or, have held for 2 years a position of responsibility as executive in an insurance supervisory board.

Article 469: Terms relating to employed or self-employed agents

The intermediaries outlined in points 3 and 4 of Article 458 of this Act, except for employed natural persons who hold a position of production manager or who are responsible for managing a production network, must provide, prior to taking office, proof that they either:

1. hold a degree included on a list from the Insurance Supervisory and Regulatory Authority after consultation with professional bodies representing insurance companies, and have completed a professional internship;
2. have held a full-time position for at least 6 months in the internal or external departments of an insurance company, brokerage or insurance brokerage company, performing duties related to the production or application of insurance contracts, and have completed a professional internship.

Article 470: Terms relating to professional internships

Professional internships mentioned in Articles 468 and 469 of this Act must be completed in a single period. They contain a theoretical instruction period and a practical training period in an authorised institution that specialises in insurance courses. The theoretical instruction must be given by qualified professionals prior to the practical training, which may not exceed half the total duration of the internship.

The practical training shall be carried out under the permanent and direct surveillance of persons authorised to present insurance and capitalisation operations.

Professional internships may take place in an insurance company, brokerage or insurance brokerage company, insurance general agent or a training centre chosen by bodies representing the profession.

Professional internships must be of reasonable and sufficient duration.

Article 471: Declaration to the Insurance Regulatory and Supervisory Authority

To be able to verify the requirements of good repute stipulated under Article 466 of this Act, a declaration shall be made to the Insurance Regulatory and Supervisory Authority under the terms laid down by Article 472 of this Act notably concerning all natural persons defined within one of the categories in Article 458 points 1 to 3 of this Act before this person may present insurance operations as defined in Article 457 of this Act.

Article 472: Persons subject to the declaration obligation

The obligation to present¹² the declaration to the Insurance Supervisory and Regulatory Authority applies to:

1. the concerned parties themselves, with regards to insurance brokers, associates or third parties with the power to direct and administer an insurance brokerage company;
2. the companies offering to provide the mandate of insurance general agents, with regards to the latter;
3. the employer or principal company, with regards to intermediaries mentioned in points 3 and 4 of Article 458 of this Act.

Article 473: Amended declaration

Any change of the details provided in the declaration stated in Article 472 hereinabove, any termination of duties of a person subject to the declaration, any mandate withdrawal must be declared to the Insurance Supervisory and Regulatory Authority, appointed under Article 471 of this Act by the person or company under the obligation to provide said declaration.

Article 474: Supervision by the Insurance Regulatory and Supervisory Authority

Upon receiving the declaration provided by Articles 472 and 473 of this Act, the Insurance Regulatory and Supervisory Authority shall ensure that the person subject to this declaration has not been or is not deemed incapable under the provisions of Article 466 of this Act and, where appropriate, shall henceforth inform:

1. if this concerns a broker or associate or third party with the power to direct or manage an insurance brokerage company, the relevant registrar for the insurance brokerage's registration with the Trade and Personal Property Credit Register;
2. if this concerns an insurance general agent, the declaring company;
3. if this concerns an intermediary mentioned in points 3 and 4 of Article 458 of this Act, the declaring party.

The Insurance Supervisory and Regulatory Authority may withdraw the said person's professional card.

Article 475: Compulsory information for all intermediaries

The name of any person or company mentioned in Article 458 of this Act through which an insurance policy was purchased or enrolled must appear on a copy of the policy or any equivalent document given to the policyholder or member.

¹² Literally "the obligation to take out the declaration". Error in the French text.

Article 476: Compulsory information for all commercial documents

All correspondence and advertising by a person or company mentioned in point 1 of Article 458 of this Act, acting in this capacity, must contain a heading with the name of this person or company followed by the words insurance broker or insurance brokerage company. All advertising of any form issued by a person or company concerning the purchase of a policy with an insurance company or the enrolment of such a policy or exposing, for the purpose of this purchase or enrolment, the terms of coverage of this policy, must indicate the corporate name of the said company.

Any correspondence or advertising from persons other than those mentioned in point 1 of Article 458 of this Act and who are likely to propose the purchase of a policy with a particular insurance company or the enrolment of such a policy or to expose, for the purpose of this purchase or enrolment, the terms of coverage of this policy, must indicate the name and position of the person making this proposition and the corporate name of the said company.

TITLE II: FINANCIAL GUARANTEE**Article 477: Financial guarantee**

Any general agent, broker or brokerage must be able at all times to provide a financial guarantee.

This guarantee shall result of a surety issued by credit institution authorised to do so or a licensed insurance company.

Article 478: Amount

The amount of the financial guarantee may not be less than 24.000.000 Congolese Francs and double the average monthly funds received by the general agent, broker or insurance brokerage company, calculated on the basis of funds received over the twelve months preceding the month of the date of the surety's undertaking or renewal.

The calculation defined in the previous paragraph shall take into account the total funds entrusted to the general agent, broker or insurance brokerage company by the insured parties in order to be paid to insurance companies, or any other natural or legal person in order to be paid to the insured parties.

Article 479: Surety – duration – guarantor's requirements – certificate

The surety shall be taken out for the duration of each civil year; it shall be renewed by tacit renewal on the 1st January of each year.

The amount of the guarantee shall be reviewed at the end of each yearly period.

The guarantor may request to be sent any registers or accounting books they deem necessary to determine the amount of the guarantee.

The guarantor shall issue a financial guarantee certificate to the guaranteed person. This certificate shall be renewed yearly at the time the surety is renewed.

Article 480: Payment processing

The financial guarantee shall be processed on the grounds that the agent, broker or insurance brokerage company is defaulting, and the guarantor may not oppose the creditor's benefit of discussion.

The guaranteed person's default shall be recognised one month after receiving by courier or any other means with acknowledgement of receipt a request for the payment of sums due or a summons to pay that has remained unheeded.

It shall also be recognised by a ruling announcing judicial liquidation.

The guarantor shall make the payment at the end of a three-month period as from the date the first written request was presented.

If other requests are received during this period and their total amount exceed the amount of the guarantee, payments shall be distributed proportionately.

Article 481: Termination

The guarantee shall cease upon expiry of the contract. It shall also cease by the death or end of business of the guaranteed person or, in the case of a legal person, when the company is dissolved.

Under no circumstances may the guarantee end before the expiry of a three day period after publication of a notice in the Official Journal at the request of the guarantor.

However, the guarantor shall not carry out the advertising formalities prescribed in this article should the guaranteed person provide evidence of a new financial guarantee taking after the previous guarantee without interruption.

In all the cases provided in the previous paragraphs, the creditor may not be opposed the termination of the guarantee, for debt created during the surety's validity period.

TITLE III: SPECIFIC REGULATIONS REGARDING GENERAL AGENTS AND INSURANCE AND REINSURANCE BROKERS

Chapter 1: General Agents

Article 482: End of mandate

Open-ended contracts signed between insurance companies and their general agents may be cancelled by either one of the contracting parties.

Nevertheless, a unilateral cancellation without valid ground of only one contract may give rise to damages.

Chapter 2: Insurance brokers and insurance brokerage companies

Article 483: Status

Insurance brokers are traders, regardless of whether their acts are of civil or commercial nature.

They are subject as such to all traders' obligations.

Article 484: Authorisation – professional association

The performance of the profession of insurance or reinsurance broker is subject to the Insurance Supervisory and Regulatory Authority's consent. The latter shall establish and update a list of brokers and send these to licensed companies at their request.

Insurance companies may not underwrite insurance contracts through unauthorised brokers under the penalty of the sanctions provided by this Act.

Insurance brokers authorised to conduct business must form between themselves a professional association whose articles of association, internal regulations and code of conduct shall be approved by the Insurance Supervisory and Regulatory Authority.

The brokers' professional association shall work towards improving the image of the profession and have its members act with integrity, loyalty and honesty in their relations with consumers, insurance companies, other intermediaries and public authorities.

Article 485: Authorisation – documents

The Insurance Supervisory and Regulatory Authority shall review the authorisation request after the interested party has filed the original or certified copy of the following documents:

1. For natural persons:

- a. birth certificate or substitute birth certificate;
 - b. criminal record of less than three months old;
 - c. diplomas and professional certificates mentioned in Title I hereinabove;
 - d. proof of registration with the Trade and Personal Property Credit Register;
 - e. declaration file for persons authorised to present insurance operations to the public endorsed by the Public Prosecutor at the Higher District Court;
 - f. certificate of nationality; subject to the principle of reciprocity, in addition to the above documents, a residency card is required for foreign nationals;
 - g. any other document deemed necessary.
2. For legal persons:
- a. company articles of association;
 - b. notarised deed or statutory auditor's certificate indicating the company capital paid;
 - c. any documents listed in (d) and (e) of point 1 hereinabove;
 - d. list of shareholders indicating their nationality and amount of their shares;
 - e. list of board members, general directors and managers indicating their nationality, depending on the type of company;
 - f. for presidents, general directors, managers or legal representatives of the company, documents listed in (a), (b), (c) and (f) of point 1 hereinabove;
 - g. detailed projected statements for the first 3 financial years;
 - h. any other document deemed necessary.

Article 486: Incompatibilities

Without prejudice to the statutory or regulatory provisions governing the exercise of certain professions, shall be incompatible with the insurance broker's profession the activities carried out by:

1. board members, managers, inspectors and employees of insurance or reinsurance companies;
2. car manufacturers and their subsidiaries, garages, car dealers or mechanics, car loan companies and agents;
3. public works contractors and architects;
4. representatives of industrial and commercial companies;
5. chartered accountants, legal and fiscal advisors and insurance experts;
6. real estate agents, property managers, agents selling or renting commercial property, administrators and agents of building or property development enterprises;
7. natural or legal persons with any company for the negotiation or purchase of insurance contracts for that company or its subsidiaries.

General agents are prohibited from directly or indirectly managing or directing a brokerage company and more generally hold any interest in such a company.

Under the principle of reciprocity, the same ban applies to insurance or reinsurance brokers and brokerage companies.

Insurance or reinsurance general agents and brokers are prohibited from carrying out any other industrial or commercial activity, unless otherwise authorised by the Insurance Supervisory and Regulatory Authority.

Article 487: Authorisation or withdrawal

The authorisation decision¹³ to carry out the insurance brokerage profession as well as the withdrawal decision shall be issued by the Insurance Supervisory and Regulatory Authority.

They shall be published in the Official Journal.

Article 488: Contradictory report

Should a broker or brokerage company be audited, directly on site or through documentation submitted, a contradictory report shall be drawn up. The broker shall be informed of the auditor's comments.

The Insurance Supervisory and Regulatory Authority shall read through these comments and the broker's responses. It shall send the results of these audits to the broker.

Article 489: Injunctions and disciplinary sanctions

In the event of a breach of the insurance regulations, the Insurance Supervisory and Regulatory Authority shall ask the broker or brokerage company to rectify any breaches noted within one month.

Should these injunctions not be followed through, the Insurance Supervisory and Regulatory Authority may decree one of the following disciplinary sanctions:

1. warning
2. suspension
3. automatic resignation of responsible managers
4. withdrawal of license.

However, these sanctions may only be imposed upon completion of a contradictory procedure during which the brokerage company or broker is invited to present their observations.

¹³ Literally reads as "the decision of withdrawal of authorisation". Error in the French text.

Upon declaring the withdrawal of a license the Insurance Supervisory and Regulatory Authority shall submit the matter to the President of the Court to appoint a liquidator in compliance with the rules applicable to commercial companies.

Article 490: Lapse of authorisation

An authorisation is deemed to have lapsed in the following cases:

1. for natural persons:
 - a. death of broker;
 - b. non-performance of the brokerage profession for a continuous twelve-month period;
 - c. bankruptcy of broker.
2. for legal persons:
 - d. non-performance of the brokerage profession for a continuous six-month period;
 - e. bankruptcy or liquidation of brokerage company;
 - f. dissolution of brokerage company.

The Insurance Supervisory and Regulatory Authority shall note the lapse of the authorisation and initiate the procedure to withdraw said authorisation. The broker or brokerage company for whom the authorisation has lapsed may no longer exercise the profession of insurance and reinsurance broker. For outstanding activities, the Insurance Supervisory and Regulatory Authority, taking into account the interests at hand, shall dictate the measures to be taken to ensure they are completed.

Article 491: Death, resignation and new authorisation

In the event of death or resignation of the brokerage company's legal representative or manager, that company must within three months following the death or resignation, put forward the candidature for a new legal representative or manager for approval from the Insurance Supervisory and Regulatory Authority.

Chapter 3: Professional liability

Article 492: Professional indemnity insurance

Any insurance or reinsurance broker or brokerage company must be able at any time to provide proof that they hold a professional indemnity insurance policy.

Article 493: Professional indemnity insurance policy

The professional indemnity insurance policy outlined in the previous article shall include liabilities that may not be less than the covered liabilities defined hereinafter¹⁴.

The policy shall provide a guarantee of 20.000.000 Congolese Francs per claim and per year for a single insured insurance broker or brokerage company.

The policy may fix a deductible per claim that must not exceed 20 % of the sum of indemnities due. This deductible is not enforceable against victims.

¹⁴ Literally reads as "that may not be to the cover to those defined hereinafter". Error in the French text.

It shall guarantee the insured party against all claims presented between the date of inception and the date of expiry, whatever the date of the harmful event involving their liability, provided that the insured did not know of the event when purchasing the cover.

It shall guarantee compensation of any loss known by the insured party within a maximum period of 12 months starting from the end of the policy, provided that the event causing the loss occurred during the valid policy period.

Article 494: Duration – certificate

The contract shall be tacitly renewed each year on the anniversary date of its entry into effect.

The insurer shall issue a certificate of professional liability insurance to the covered party. This certificate shall be renewed annually at the time the policy is renewed.

Article 495: Compulsory wording

Any document for professional use issued by a broker must contain the terms financial guarantee and professional indemnity insurance in accordance with Articles 477 and 492 of this Act.

Chapter 4: Premium collection prohibition

Article 496: Mandate requirement

Brokers and brokerage companies are prohibited from collecting premiums or parts of premium, without the explicit authorisation from the insurance or reinsurance company.

Brokers and brokerage companies are prohibited from withholding their fees from collected premiums, without the explicit authorisation from the insurance or reinsurance company.

Article 497: Payment period

Premiums or parts of premium collected by brokers and brokerage companies must be paid to the insurance companies within a maximum period of 10 working days following collection.

Article 498: Cover note

Brokers and brokerage companies are prohibited from issuing a cover note without the explicit authorisation from the insurance or reinsurance company.

Article 499: Commissions

Fees owed to brokers must be paid within 10 working days after receipt of the premiums by the insurance company.

The Insurance Supervisory and Regulatory Authority is authorised to set the minimum and maximum rates for brokers' and brokerage companies' fees.

Brokers and brokerage companies are prohibited from charging for their benefit a fee or any additional costs, higher than the maximum fee rates set in accordance with the previous paragraph.

TITLE IV: PENALTIES

Article 500: Breaches – sanctions

Any person who carries out the activities defined in Article 457 in violation of the provisions in Articles 459 to 461 of this Act shall be liable to a fine of 500.000 to 1.000.000 Congolese Francs.

Any person referred to in Article 466 who employed, or due to a lack of surveillance, allowed a person under their authority to employ, any person who does not meet the terms defined in Articles 459 to 465 of this Act, shall also face the sanctions stipulated in the previous paragraph.

Any person who presents, in order to conclude or have contracts concluded on behalf of a company that is not licensed for the class in which these contracts are categorised, shall be liable to a fine of 500.000 to 2.700.000 Congolese Francs, and in the event of a repeat offence a fine of 1.000.000 to 5.400.000 Congolese Francs and 6 months to 3 years imprisonment or either one of these penalties only.

Any broker or any brokerage company that does not fulfil the provisions of Article 434 of this Act shall also face the sanctions stipulated in the previous paragraph of this Article.

The stipulated fine shall be established for each presented or concluded contract, without the total amount of fines exceeding 500.000 Congolese Francs and, in the event of a repeat offence, 5.400.000 Congolese Francs.

BOOK V: SPECIFIC INSURANCE ESTABLISHMENTS

Chapter 1: Motor Guarantee Fund

Article 501: Constitution of a Motor Guarantee Fund

A Motor Guarantee Fund shall be established, where the person liable for the damage remains unknown or is not insured, except in case of statutory derogation to compulsory insurance, to cover, within the limits set by the regulations proposed by the Insurance Regulatory and Supervisory Authority and issued by the Minister in charge of insurance, all medical costs and compensation of victims for damage to their person resulting from an accident caused by a moving motorised land vehicle and its trailers or semi-trailers.

The Motor Guarantee Fund shall pay victims or their assignees, the indemnities that cannot be covered under any circumstances in the event of an accident entitling to compensation.

It is subrogated to the rights of compensated victims against any identified liable party, particularly motorists driving without insurance.

Article 502: Funding of the Motor Guarantee Fund

The Motor Guarantee Fund's resources shall include the following contributions:

1. a compulsory contribution from all insurance or reinsurance companies licensed to carry out in the Democratic Republic of Congo insurance operations against all kinds of risks resulting from use of motor land vehicles.

For companies mentioned in paragraph 1 hereinabove, this contribution is proportional to earned premiums in Democratic Republic of Congo for the last financial year, net of cancellations, taxes and duties.

The contribution payable for the first time by an insurance and reinsurance company newly licensed shall be based on the average estimated amount of projected premiums of the first three financial years stated in the licensing request file constituted under Article 406 of this Act.

The compulsory contribution shall be paid by the interested companies and collected by the Motor Guarantee Fund by 30 June of the following year at the latest;

2. a contribution from the insured parties, which is added to the amount of insurance premiums relating to vehicles, based on all premiums paid by the insured to insurance companies;
3. a levy borne by motor vehicle owners in breach of the provisions of Article 108 of this Act;
4. recoveries carried out on indemnity debtors;
5. the Fund's investment income;
6. repayments and realisations of movable and immovable assets ;
7. donations, legacies and others;
8. any other resource that could be allocated to the Funds.

Article 503: Operating terms

The financing and operating of the Motor Guarantee Fund shall be established by decree of the Prime Minister deliberated by the Council of Ministers on proposal from the Minister in charge of insurance.

Chapter 2: Other Guarantee Funds

Article 504: Other Guarantee Funds

Other compulsory insurance Guarantee Funds may be established by decree of the Prime Minister deliberated by the Council of Ministers on proposal from the Minister in charge of insurance.

BOOK VI: ACCOUNTING AND FISCAL REGIMES

Chapter 1: Accounting regime

Article 505: Principle

Insurance companies shall apply the accounting standards stipulated by the relevant legislation.

Article 506: Principles, rules and accounting framework applicable to insurance

The principles, rules and accounting framework applicable to the insurance sector shall be set by Decree of the Prime Minister deliberated by the Council of Ministers on proposal from the Minister in charge of insurance.

Chapter 2: Fiscal regime

Article 507: Principle

Insurance companies shall be subject to *jus commune* for fiscal matters, excluding exceptions laid down in Article 508 hereinafter.

Article 508: Non-taxable premiums

Shall not be subject to taxes:

1. the savings portion of life insurance premiums;
2. sickness insurance premiums;
3. direct foreign insurance premiums, provided they were authorised by the Minister in charge of insurance;
4. Reinsurance premiums.

BOOK VII: FINAL AND TRANSITIONAL PROVISIONS AND REPEALS

Article 509: Authorisation compliance

The insurance company¹⁵, insurance brokers and brokerage companies that conduct business in the Democratic Republic of Congo must file a request with the Insurance Regulatory and Supervisory Authority to regularise their authorisation in accordance with the provisions of Articles 400 or 485 of this Act accordingly.

¹⁵ Here, SONAS

Article 510: Period to comply

All natural or legal persons who carry out insurance, insurance brokerage or general agent activities must ensure compliance with the provisions of this Act within 3 months of the date it comes into force.

Article 511: Repeals

Shall be repealed:

1. Law dated 25 June 1930 on the supervision of life insurance companies,
2. Ordinance-Law No. 66/622 dated 23 November 1966 on the creation of compulsory insurance,
3. Ordinance-Law No. 66-97 dated 14 March 1966 on the insurance codes for marine, river and lake transport,
4. Ordinance-Law No. 67/18 dated 17 January 1967 on the modification of Ordinance-Law No. 66/622 of 23 November 1966,
5. Ordinance-Law No. 67/240 dated 02 June 1967 granting the monopoly insurance to the *Société Nationale des Assurances*, or SONAS¹⁶
6. Law No. 73-013 dated 5 January 1973 on compulsory civil liability insurance for use of land motor vehicles,
7. Ordinance-Law No. 74-007 dated 10 July 1974 on compulsory civil liability insurance for constructors,
8. Law No. 74-008 dated 10 July 1974 on compulsory fire insurance for specific buildings.
9. Any previous provisions contrary to this Act.

Article 512: Final provision

This Act shall enter into force a year after its promulgation.

Kinshasa, on

Joseph KABILA KABANGE

¹⁶ National Insurance Company