



S. TOMÉ E PRÍNCIPE

SUMMARY

Council of Ministers

Decree-Law 47/98

It regulates conditions of access to the insurance business and lays down operational rules for its respective market.

COUNCIL OF MINISTERS

Decree-Law 47/98

Within the policy of opening up the country's financial system, it is important to fill in the gap which exists in the insurance business area, by defining conditions of access and by laying down operational rules for its respective market;

Since the important role that the insurance sector plays in the development of any economy is undeniable, by attracting savings and by compensating any damages, we need to prevent the occurrence of disturbing malfunctions;

So, it is important to stress, in the insurance supervision area, which is explicit behind the philosophy and the wording of this document, the financial guarantees that have been set up, the control of qualified shares, the probity of any shareholders holding such shares and of members of company bodies, as well as the professional experience of the latter; it is also worth emphasizing the enactment of laws for the record-keeping and microfilming of all documents pertaining to the insurance business and the system of sanctions.

Under these terms, by using the powers granted by paragraph *d)* of article 99 of the Constitution, the Government of the Democratic Republic of S. Tomé e Príncipe so proclaims and I publish the following:

CHAPTER I

General Provisions

Article 1

Scope

1. The present decree regulates the conditions of access and of pursuance of the insurance business in the Democratic Republic of S. Tomé e Príncipe.
2. This document also regulates the process upon which depends the authorization by the Central Bank of the Democratic Republic of S. Tomé e Príncipe to establish any means of representation by insurance companies with their head office in this country.

Article 2

Terminology

For the purposes of this document, the words below have the following meaning ascribed to them:

- a) **Insurance business** – the regular practice of acts pertaining to the acceptance and compliance of insurance or re-insurance contracts and insurance operations, as well as the practice of acts and contracts linked to or complementary to the former, namely those pertaining to salvaged goods, re-construction and repair of buildings and vehicles, maintenance of clinical posts and application of provisions, reserves and capital, excluding insurance brokerage, under the terms of the applicable legislation;
- b) **CB** – the abbreviation for Central Bank of the Democratic Republic of S. Tomé e Príncipe;
- c) **Insurance contract** – under which the insurance company undertakes, in exchange for the payment of a premium and should the event whose verification is the object of cover occur, to compensate, within the defined limits, the damage to the insured or to meet the capital, the income or other installments envisaged in such a contract;
- d) **Delegation** – any additional business organization, without legal nature and aimed at serving the public that, belonging to an insurance company with its head office in the Democratic Republic of S. Tomé e Príncipe or to an insurance company with its head office abroad but which operates here as a branch, directly undertakes, either totally or partially, operations that pertain to the latter's activities;
- e) **Gross accident rate** – the ratio between gross compensations and gross premiums processed in the same accounting period; in the former are included the provisions for accidents;
- f) **Insurance brokers** – a professional activity that involves a regular market search or acts that may lead to the materialization of insurance contracts, as well as to providing technical assistance to the insured;
- g) **Insurance operations** – the management of pension funds and capitalization operations;
- h) **Qualified shares** – whenever any shareholder holds, directly or indirectly, at least 10% of the equity capital or of voting rights of the participated insurance company or has in

any other way the possibility of exerting a meaningful influence on its management, the voting rights held by the shareholder are equal to the following:

- I) Those held by a spouse who is not legally separated, whatever the couple's type of asset ownership contract, those held by underage offspring and those held by companies controlled by the shareholder or controlled by the individuals mentioned above;
 - II) Those held by other people or bodies, on their own behalf or on behalf of others, but on the shareholder's account;
 - III) Those held by a third party due to an agreement entered into with the shareholder or with one of the companies controlled by the latter, through which:
 - a) the third party is compelled to adopt, by a concerted pursuit of his/her respective voting rights, a common policy regarding the management of the insurance company; or
 - b) a provisional transfer of the voting rights may be envisaged.
 - IV) Or that are inherent to the shareholder's shares handed over as guarantee, except when the creditor holds such rights and states his/her intention to carry them out, in which case the above-mentioned voting rights are considered to belong to the creditor;
 - V) Those that are inherent to the shares of which the shareholder may have the usufruct;
 - VI) Those that, because of an agreement, the shareholder or one of the other individuals or bodies mentioned in the previous paragraphs may have the right to acquire by their own initiative;
 - VII) Those that are inherent to shares entrusted to the shareholder and which the latter may exert as he/she may wish in the absence of specific instructions from their respective holders.
- i) **Retention plan** – the insured capital deducted from the amount to be re-insured;
 - j) **Insurance area** – any area, group or groups of business areas defined in the table attached to this document;
 - k) **Reinsurance** – the contract according to which an insurance company insures, in its turn, part of the risks that it has accepted;
 - l) **Insurance company** – the body underwriting the risk; this term covers either the insurance companies set up in the Democratic Republic of S. Tomé e Príncipe or the branches of insurance companies from abroad established here;
 - m) **Abnormal accident rate** –where:

- I) In general business areas, the gross accident rate of any insurance company is at least 50% higher than the gross accident rate of all the insurance companies operating in those business areas;
 - II) In life insurance, there are substantial deviations to the values appearing in the actuarial tables adopted by any insurance company working in that business area.
- n) **Controlled partnership** –where the shareholder holds more than half of the voting rights or of which he/she is a partner and:
- I) Is entitled to appoint or dismiss more than half of the members of management or supervision bodies; or
 - II) Has exclusive control of most of the voting rights by virtue of an agreement entered into with other partners of such partnership; to the shareholder's voting rights, rights of appointment or of dismissal must be added those rights held by controlled partnership by him/her and also the rights held by any individual or body acting on their own behalf, but on the account of the shareholder or of a partnership controlled by him/her.
- o) **Branch** – the establishment, in the Democratic Republic of S. Tomé e Príncipe, of an insurance company with its head office located abroad or the establishment abroad of an insurance company with its head office in the Democratic Republic of S. Tomé e Príncipe which, having no legal nature, directly carries out all operations inherent to the head office's business;
- p) **Insurance proponent** – the individual or company that, on his/her/its own account or on the account of one or several people, enters into an insurance contract with the insurance company and is responsible for paying the premium.

Article 3

Previous Authorization

1. The business which item 1 of article 1 refers to may only be pursued by insurance companies whose constitution or establishment have been authorized in the Democratic Republic of S. Tomé e Príncipe following a ruling from the CB Governor, specifying the insurance business area or areas that each one is allowed to pursue.

Insurance companies may freely accept re-insurance contracts in the business area or areas they are authorized to work in, as well as to undertake the re-insurance of their insurance contracts or operations with bodies authorized for this, even though the latter may not have been constituted or established in the Democratic Republic of S. Tomé e Príncipe.

Article 4

Exclusivity of Social Purpose

1. The exclusive social purpose of insurance companies is the business mentioned in paragraph a) of article 2.
2. The simultaneous pursuance of life insurance and general insurance business areas is allowed.

Article 5

Jurisdiction

The appropriate forum for any litigation arising from insurance contracts or operations entered into in this country or pertaining to people or bodies that were residing or were domiciled here on the date of such contracts or operations, is the Democratic Republic of S. Tomé e Príncipe.

Article 6

Insurance Contracts or Operations Entered into with Unauthorized Insurance Companies

1. Without prejudice of the provisions of item 2, the obligations arising from insurance contracts or operations which the previous article refers to are not demandable in court, when entered into with insurance companies that have not been authorized to pursue their business in the Democratic Republic of S. Tomé e Príncipe, nor are the rulings of foreign courts based on such insurance contracts or operations executable.
2. The provisions of the previous item are not applicable to insurance operations or contracts that insurance companies authorized to pursue their business in the Democratic Republic of S. Tomé e Príncipe may not have wanted or been able to accept, if they have been entered into without the CB's opposition; the proponent must inform the CB of his/her intention of entering into such a contract at least fifteen days in advance.

Article 7

Use of name

Only those insurance companies that are authorized to pursue their business in the Democratic Republic of S. Tomé e Príncipe are allowed to use and include in their firms or names the words "insurer", "insurance company" or others with a similar meaning, as well as equivalent expressions in any other language, except if their respective use does not expressly suggest the idea of insurance activity.

Article 8

Official Language

Any petitions and respective preliminary proceedings documents or notices issued by the insurance companies must be submitted in Portuguese.

CHAPTER II

Insurance Business Supervision, Coordination and Control

Article 9

Responsibility of the CB Governor

1. The insurance business supervision, coordination and control are the responsibility of the CB.
2. It is up to the CB Governor to define, by means of a ruling and without prejudice of any details relative to specific situations, the general and special conditions, technical bases and compulsory insurance rates or of others whose uniformity he may deem necessary, as well as to define any directives or to adopt any measures that he may consider appropriate to the responsibility conferred on him by the previous item.

Article 10

CB

1. The supervision, coordination and control actions mentioned in the previous article are carried out through the CB, in accordance with the provisions of the present document and of its respective statute.
2. With regards to the insurance business, it is up to the CB, namely:
 - a) To issue notices, to be published in the Government Gazette, and instructions binding insurance companies and insurance brokers, aimed at fitting the insurance business into the political, financial and social policies in force in the Democratic Republic of Tomé e Príncipe;
 - b) To authorize the wording of any policies in an insurance business area that may already have been authorized and any respective alterations to it, as well as the pursuance of new insurance operations;
 - c) To cancel, at the insurance company's request, the authorization to pursue one insurance business area or operation;
 - d) To issue recommendations on insurance portfolio transfers, changes to articles of association and conditions for closing down insurance companies;
 - e) To inspect insurance companies in order to check the technical, financial, supervisory and legal soundness of their respective business;
 - f) To extraordinarily inspect bodies belonging to any other economic sectors whenever there are any well-founded suspicions of any acts that are reserved for insurance companies or brokers, or whenever a review of their operations becomes indispensable to clarify the business of a certain insurance company or broker, or

whenever it becomes necessary to assess the financial situation of the group in which the insurance company or broker is inserted;

- g) To start and prepare preliminary proceedings for violation, applying the respective sanction or suspending its execution, as well as to undertake the settlement of any applied fines;
 - h) To attend to, analyse and provide recommendations on complaints lodged for alleged breach of regulatory insurance business norms;
 - i) To submit draft legal proposals on matters related to its jurisdiction.
- 3 The CB may request any public or private entity, namely third parties that may have carried out operations with insurance companies or insurance brokers, to directly provide it any elements or information needed in order to fulfill its duties, as well as to resort to the services of other bodies, whether they are resident in the Democratic Republic of S. Tomé e Príncipe or not.
 - 4 The CB's rights and jurisdiction regarding the bodies that have been submitted to its supervision are maintained should the authorizations expire or be annulled, or should their business be suspended or cease, until all creditors have been satisfied or it is decided that the winding up of those bodies has been concluded.

Article 11

Secrecy Duty

Members of the CB statutory organs, as well as its employees, auditors, experts, representatives and other people who render or may have rendered any services to it on a permanent or a casual basis are subject to secrecy duty regarding any facts which they may know about exclusively due to their own positions.

Article 12

Obligation to Provide Information

- 1 Insurance companies are obliged to forward to the CB, by the last day of the following month, the trial balance relative to the previous quarter, except the one referring to the last quarter, which is forwarded by the last day of the following February.
- 2 For the purpose of concession of the respective formal authorizations by the CB, insurance companies are obliged to forward it, 30 days before the annual general meeting held for approval of the accounts, all accounting tables and statistics relative to the previous accounting period.
- 5 Besides other identical situations defined in the present document, insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe must forward to the CB, within the period of time defined in the previous item, the following elements:

- a) Complete names of the people who, during the respective accounting period, were part of the Board of Directors and of the Supervisory Board, of their general representative, as well as of the person responsible for the accounting department;
 - b) A copy of the report and accounts of the Board of Directors or equivalent documents, accompanied by recommendations from the supervisory board and external auditors.
3. Insurance companies with their head office abroad must forward to the CB, on an annual basis, the report and consolidated accounts relative to the previous accounting period.
 4. The CB may request from the insurance companies any other elements and information which it may need to fully carry out its duties.

Article 13

Inspections

1. The insurance business inspection may be done at their own premises.
2. Under these terms, the CB may, either directly or through individuals or bodies duly appointed for such purpose, review at any moment with or without prior notice, any transactions, books, accounts and other records and documents, verify the existence of any class of values, as well as photocopy, wholly or partially, whatever it deems necessary in order to verify the compliance, by the insurance company, with all legal and regulatory provisions concerning the insurance business.
3. During the inspections which the present article refers to, the CB may seize any documents or assets that may be evidence of any transgression or that may be necessary to the start of the respective proceedings.

Article 14

Publication of Granted Authorizations

Every January, the CB publishes in the Government Gazette the list of insurance companies that are authorized to pursue their business in the Democratic Republic of S. Tomé e Príncipe, with an indication of the business areas they can pursue.

Article 15

Supervision Tax

1. Insurance companies authorized to pursue their business in the Democratic Republic of S. Tomé e Príncipe are subject to the annual payment of a supervision tax that may not be lower than one hundred thousand dobras nor higher than five hundred thousand dobras.
2. In the first year of business and in the year of its respective suspension, the supervision tax is proportional to the number of months such business may have been pursued.

3. The value of the supervision tax in relation to each accounting period is defined by notice from the CB to be published in December of every year and its payment and collection is made by the CB over the following January, becoming its revenue.

CHAPTER III

Conditions of Access to the Insurance Business

SECTION I

Insurance Companies with their Head Office in the Democratic Republic of S.

Tomé e Príncipe

SUB-SECTION I

Constitution

Article 16

Type of Company

Insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe are established as trading companies, as limited liability joint-stock companies, and their respective shares are registered nominative shares or registered bearer shares.

Article 17

Equity Capital

1. The equity capital of insurance companies may not be lower than two hundred and fifty million dobras in the case of general insurance business areas, or than five hundred million dobras in the case of life insurance.
2. When the company is formed, 50% of the equity capital must be realized in cash and deposited at the order of the CB at a credit institution authorized to operate in the Democratic Republic of S. Tomé e Príncipe, together with an express indication of the amount subscribed by each shareholder; such deposit may only be withdrawn after the commencement of business of the insurance company and with the CB's authorization.
3. The remaining equity capital must be realized 180 days, at the most, from the date of the company's deed of constitution.

Article 18

Shares and Bonds

1. Insurance companies may not purchase their own shares or carry out operations on them.

2. The issuing of bonds or other securities by insurance companies is dependent upon the CB's prior authorization, which defines the respective conditions for it.
3. The issuing of bonds aimed at providing for the insurance companies' liabilities of a technical nature is not allowed.

Article 19

Conditions and Criteria for Granting the Authorization

1. The authorization for the constitution of an insurance company is granted according to opportunity and convenience criteria, basically related to the economic, financial or market interest that such constitution may have for the Democratic Republic of S. Tomé e Príncipe.
2. When evaluating the opportunity and convenience of the constitution of any insurance company whose authorization has been requested, the following factors are specifically considered:
 - a) Possibility that the insurance company improves the diversity or the quality of services rendered to the public;
 - b) Probity of founder shareholders regarding whatever may, directly or indirectly, bear a significant influence upon the insurance company business and management;
 - c) Probity, professional skills and experience of the people who will effectively manage the insurance company;
 - d) Sufficiency of technical and financial resources allocated to the insurance business areas that the insurance company may wish to pursue;
 - e) Compatibility between the insurance company's development prospects and the maintenance of a healthy competition in the market.

Article 20

Probity

1. When evaluating the probity mentioned in the previous article, it is important, among other factors, the fact that the individual:
 - a) May have been convicted of or indicted for theft, larceny, breach of trust, issuing unpaid cheques, fraud, falsification, embezzlement, bribery, extortion, usury, corruption, misrepresentation or unauthorized reception of deposits or other reimbursable funds;
 - b) May have been declared, by means of an executory sentence, bankrupt or insolvent or deemed to be responsible for the bankruptcy of companies whose control he/she may have been responsible for or of which he/she may have been administrator, director or manager;

- c) May have been responsible for violating legal or regulatory rules governing the activities of institutions subject to the CB' supervision, whenever the seriousness or repetition of such action justifies it.
2. The provisions of the previous item applies, with any necessary adaptations, to the members of the insurance company's supervision body and the general meeting board.

Article 21

Professional Experience

For the purposes envisaged in paragraph c) of item 2 of article 19, it is assumed that the person in question has appropriate professional experience and that he/she has previously held, in a competent manner, positions of responsibility in the financial and technical fields; and that the period of time over which such positions were held is also relevant.

Article 22

Initial Proceedings for the Authorization Process

1. Individuals or companies that intend to establish an insurance company must submit their respective application to the CB, accompanied by the following elements:
 - a) Well-founded account of the economic and financial reasons justifying the establishment of the insurance company, showing its respective feasibility and how its activity fits into the economic and financial policy objectives of the Democratic Republic of S. Tomé e Príncipe;
 - b) Indication of its name, at least in the official language, which must include an expression that unequivocally indicates that its purpose is the insurance business;
 - c) Draft Articles, compiled in accordance with legal provisions in force;
 - d) Personal and professional identification of founder shareholders, specifying the capital subscribed by each one and a well-founded explanation of how shareholder structure fits into the stability of the insurance company;
 - e) Police clearance certificate of founder shareholders with qualified shares, issued in the last 90 days;
 - f) Declaration by founder shareholders with qualified shares, under a pledge of honour, that neither themselves nor partnerships nor companies whole control they may have had or of which they may have been administrators, directors or managers, were declared insolvent or bankrupt;
 - g) Specification of physical, technical and human resources to be used;
 - h) Presentation of general conditions of policies in those insurance business areas that they intend to pursue and of their respective technical bases.

2. Should there be founder shareholders that are legal companies with qualified shares, the following elements pertaining to each one of them should be attached:
 - a) Articles of Associations;
 - b) Reports and accounts from the last three accounting periods;
 - c) Identification of the members of management bodies, accompanied by their respective biographies;
 - d) Distribution of the equity capital and list of holders of 10% or more of such capital;
 - e) List of other companies in whose capital they may hold qualified shares and the structure of their respective group.
3. The authorization request is also accompanied by a program of activities that should include at least the following elements:
 - a) Guiding principles of the re-insurance that has been accepted and ceded, that it intends to follow;
 - b) Forecast of establishment and installation expenses, namely in the administrative and commercial aspects;
 - c) Forecasts pertaining to each one of the first three accounting periods, relative to the following aspects:
 - I) Management charges, namely general expenses and commissions, the latter divided by each insurance business area;
 - II) Number of workers by recruitment site, and respective salaries;
 - III) Premiums, compensations and technical provisions relative to direct insurance and to re-insurance;
 - IV) Six-monthly treasury situation;
 - V) Margin of solvency it must have, in accordance with legal provisions in force;
 - VI) Financial resources aimed at ensuring any commitments undertaken.
4. Besides the elements mentioned in the previous items, any additional elements and information that the CB may consider necessary for the appropriate start of such proceedings must be submitted.
5. After the verification of the technical and legal provisions for the constitution of such company, the CB Governor makes his decision within 30 days.

Article 23

Authorization Expiry

The authorization expires if the constitution deed has not been granted within 120 days from the date of publication of the authorization ruling, or if the insurance company does not commence its business within 180 days from the deed date; the latter deadline may be extended by the CB for a period not exceeding 1 year, in cases that are duly justified.

Article 24

Observance of the Activity Program

1. During the three accounting periods that are the purpose of the forecasts mentioned in paragraph c) of item 3 of article 22, the insurance company must submit to the CB, on a six-monthly basis, a detailed report on the manner the activity program is being carried out.
2. Should there be an imbalance in the financial situation of the insurance company, measures supporting its respective financial guarantees will be imposed; non fulfillment of such measures may lead to the cancellation of the authorization.
3. Any changes to the activity program need to have the prior authorization of the BC.

SUB-SECTION II

Qualified shares

Article 25

Acquisition or Increase of Qualified Shares

1. No individual or company may directly or indirectly acquire a qualified share at an insurance company with its head office in the Democratic Republic of S. Tomé e Príncipe or increase it to a proportion equal to, or higher than 5% of the capital or of the voting rights, at a single or more acts, without having previously obtained the approval of the CB, except if, by nature, this is not possible, in which case he/she/it must report such acquisition within 30 days at the most, from the date when it may have occurred.
2. The CB may oppose the acquisition or the increase of the qualified shares if it does not consider proven that the shareholder meets the conditions for guaranteeing a healthy and prudent management of the insurance company.
3. As grounds for this opposition, among others, are the following:
 - a) The way the individual/company normally undertakes his/her/its business or the nature of his/her/its professional activity, should he/she/it reveal a marked propensity for taking on excessive risks;
 - b) The inadequacy of the individual's/company's economic and financial situation, judged depending on the amount of the shares that he/she/it proposes to hold;

- c) The CB may have justified doubts about the legitimacy of the origin of the funds for the acquisition of the shares or about the true identity of the holder of such funds;
 - d) The structure and the characteristics of the business group where the insurance company would be inserted, if they make an appropriate supervision impossible;
 - e) The fact that the individual/company may not be willing to comply with, or give assurances of complying with any conditions necessary to the insurance company's economic and financial improvement, that may previously have been defined by the CB.
4. The approval is considered to automatically granted whenever the CB does not issue a statement within 2 months from the date in which it was applied for.
 5. When there is no opposition, the CB may stipulate a period for achieving the planned operation.

Article 26

Prohibition of Voting Rights

1. Without prejudice of applicable sanctions, the acquisition or the increase of a qualified share, if the interested party has not obtained the approval of the CB, will lead to the prohibition to exercise the acquired voting rights.
2. When it becomes aware of any of the facts mentioned in the previous item, the CB will report those and the inherent prohibition to the insurance company's management.
3. Management must provide the information from the CB to the shareholders' meeting, as well as any facts pertaining to the prohibition of which it may be aware by other means.
4. Any resolution where the shareholder may have exercised any voting rights to which he/she/it is forbidden under the terms of item 1 is cancellable, except if it is proven that the resolution would have been approved without such votes.
5. If, despite the provision of item 3, the shareholder exercises his/her/its voting rights to which he/she/it is forbidden, the way he/she/it voted must be registered in the minutes.
6. The annulment may be discussed by the shareholders, by the supervisory body, under the general terms, or by the CB.
7. Should any annulment of a resolution regarding the election of management or supervisory bodies be pending, the exercise of voting rights covered by the prohibition that may have been a determining factor for the approval of the resolution, represents a motive for refusing the registration envisaged in paragraph o) of item 1 of article 44.

Article 27

Suspension of the prohibition

In the case of non-compliance with the provisions of item 1 of article 25, the prohibition of the above-mentioned voting rights is suspended if the interested party afterwards reports such acts and the CB does not oppose.

Article 28

Reduction of Qualified Shares

Any individual or company that intends to cease holding a qualified share at an insurance company with its head office in the Democratic Republic of S. Tomé e Príncipe or reduce it in a proportion equal to, or higher than 5% of the equity capital or of the voting rights, must inform the CB beforehand and also and inform it of the new value of his/her/its share.

Article 29

Notices by Insurance Companies

Insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe must:

- a) Report to the CB any changes which articles 25 and 28 refer to, as soon as they become aware of them;
- b) Forward to the CB, by April of every year, the list of shareholders who have qualified shares.

SUB-SECTION III

Representation abroad

Article 30

Previous Authorization

The establishment of branches or any other means of representation abroad by insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe is dependent upon a previous authorization by the CB Governor.

Article 31

Start of Proceedings for the Authorization Process

- 1 The application to be submitted to the CB is accompanied by the following elements:
 - i. Authenticated photocopy of the minutes of the general meeting, regarding the establishment of representation abroad;
 - ii. Indication of country or territory in which one intends to establish the above;

- iii. Type of establishment;
 - iv. Well-founded explanation of the reasons of an economic and financial nature justifying this intention, with an indication of the type of operations that it is proposing;
 - v. Business address in the host country or territory;
 - vi. Identification and professional curriculum of the individual responsible for such an organization,
 - vii. as well as a statement that he/she will be given sufficient powers to bind the insurance company before third parties and to represent it before the authorities and the courts.
- 2 On any requests for authorization towards the establishment of the organization abroad are applicable, with any necessary adaptations, the provisions of items 3 and 4 of article 22.
- 3 For the purpose of the provisions of paragraph f) of item 1 is applicable, with any due adaptations, what has been envisaged in articles 20 and 21.

SECTION II

Insurance Companies with their Head Office Abroad

Article 32

Form of Social Representation

The activity of insurance companies that have their head office abroad and that are authorized to set up business in the Democratic Republic of S. Tomé e Príncipe will be carried out through branches.

Article 33

Branches

The establishment of a branch must be translated into a individualized centre, covering premises, staff, policy issue, reinsurance processing, settlement of claims and accounting.

Article 34

System

- 1 Insurance companies with their head office abroad are only allowed to pursue the insurance business for which they are authorized and which they actually pursue in their home country or territory.

- 2 These insurance companies are subject to the legislation in force in the Democratic Republic of S. Tomé e Príncipe regarding all operations referring to the above; the provisions of the present law are applicable to such insurance companies, except regarding whatever is expressly laid down for such entities.
- 3 Insurance companies with their head office abroad may not pursue any business, nor undertake any operations in the Democratic Republic of S. Tomé e Príncipe, even if these are envisaged in their articles of association, that are contrary to the present document or to the additional laws in force therein.

Article 35

Conditions and Criteria for Granting the Authorization

- 1 The authorization for the establishment of insurance companies with their head office abroad is dependent upon the fact that they have been established and have commenced business for at least five years and upon the fact that their equity capital is not lower than the minimum values laid down in item 1 of article 17.
- 2 The granting of the authorization mentioned in the previous item is also dependent upon a review of opportunity and convenience criteria, as follows:
 - a) The possibility that the insurance company improves the diversity or the quality of services rendered to the public;
 - b) The applicant's economic and financial indicators pertaining to its development regarding production, equity capital, applications and retention capacity;
 - c) Means and degree of accomplishing the supervision, coordination and inspection of the insurance business in the country or territory where the insurance company's head office is located;
 - d) Degree of economic and financial relations between the Democratic Republic of S. Tomé e Príncipe and the country or territory where the insurance company's head office is located;
 - e) Suitable reinsurance scheme for its operations in the Democratic Republic of S. Tomé e Príncipe.
- 3 The minimum conditions to be laid down as regards the granting of any authorization are the following:
 - a) Actual establishment of the new insurance company translated into adequacy of own premises, technical means and human and financial resources;
 - b) Positions to be created by the commencement of business of the new insurance company mostly filled by residents from the Democratic Republic of S. Tomé e Príncipe; their respective technical training to be duly guaranteed;

- c) Support to be rendered to other Democratic Republic of S. Tomé e Príncipe entities, bearing in mind the improvement of the quality of services connected to the insurance business, namely in medical and hospital structures and in services pertaining to fire prevention and safety, natural risks, accidents at work and occupational diseases.

Article 36

General Representative

- 1 The management of the branch must be entrusted to a general representative whose moral and professional probity is accepted by the CB, and who should hold the necessary powers to, in representation and on behalf of the insurance company, definitively resolve, with any public or private body, any matter pertaining to its respective business in the Democratic Republic of S. Tomé e Príncipe, namely, to enter into insurance and reinsurance agreements and employment contracts, and taking on any commitments arising from these.
- 2 The general representative must reside on a permanent basis in the Democratic Republic of S. Tomé e Príncipe.
- 3 Should the insurance company annul his/her mandate, it must at the same time appoint a new representative.
- 4 For purposes of the provisions of item 1 is applicable, with any due adaptations, what was envisaged in articles 20 and 21.

Article 37

Establishment Fund

- 1 Insurance companies with their head office abroad are compelled to allocate to their operations in the Democratic Republic of S. Tomé e Príncipe an establishment fund of at least eighty five million dobras for general insurance business areas and one hundred and seventy five million dobras for life; such amount must be, at any moment, invested locally, in certain types of assets to be defined by a CB notice.
- 2 Within 30 days from the granting of the authorization for the establishment of the branch, the insurance company must deposit at the order of the CB, at a lending institution allowed to operate in the Democratic Republic of S. Tomé e Príncipe, half of the sum mentioned in the previous item; such deposit may only be withdrawn after commencement of business of the branch and the authorization from the CB.

Article 38

Start of Proceedings for Authorization Process

- 1 To the requests of authorization for the establishment of branches of insurance companies with their head offices abroad are applicable the provisions of article 22, with

any necessary adaptations, and the special elements included in the following paragraphs.

- 2 The application to be submitted to the CB must be accompanied by the elements mentioned in paragraphs a) and h) of item 1 of article 22 and also by the following elements:
 - a) Authorization from the general meeting of partners or shareholders or legal representatives of the insurance company, if these hold sufficient powers for it to be established in the Democratic Republic of S. Tomé e Príncipe;
 - b) Detailed explanation of the applicant's business internationally;
 - c) Articles of association and reports and accounts from the last three accounting periods;
 - d) Identification of members of management bodies, accompanied by their biographies;
 - e) Certificate issued by the appropriate authority of the country or territory where the insurance company's head office is located, confirming that it has been legally set up and operates in accordance with the legal provisions in force and also that it is authorized to operate in the insurance business area or areas that it intends to pursue in the Democratic Republic of S. Tomé e Príncipe;
 - f) Identification of the general representative whose powers are in accordance with the provisions of item 1 of article 36;
 - g) Any other elements that the CB may deem necessary towards the appropriate start of proceedings of the above mentioned authorization process.
- 3 The authorization application is also accompanied by an activity program composed of the elements mentioned in item 3 of article 22.
- 4 The elements which the previous items refer to are submitted in the original language, accompanied by their respective authenticated Portuguese translation, except if there is an express exemption by the CB.

Article 39

Authorization Expiry

The authorization expires if the branch does not commence business within 180 days from the date of publication of the authorization ruling; this period may be extended by the CB for a period not exceeding 1 year, in cases that are properly justified.

Article 40

Application of Foreign Sentence

Any foreign sentence that orders the bankruptcy or the liquidation of an insurance company with its head office abroad may only be applied to its branch in the Democratic Republic of S. Tomé e Príncipe after being reviewed by the appropriate court of this country and after all its obligations contracted in this country have been met.

SECTION III

Delegations

Article 41

Previous Authorization

The opening of delegations and the changing of their respective location are dependent upon a previous authorization by the CB.

Article 42

Start of Proceedings for the Authorization Process

- 1 The application to be submitted to the CB is accompanied by the following elements:
 - a) Explanation of the reasons why it wishes to establish a delegation;
 - b) Type of operations to be carried out;
 - c) Business address;
 - d) Identification of the individual responsible for the establishment of the organization and description of the powers entrusted to him/her;
 - e) Police clearance certificate of the responsible person mentioned in the previous paragraph, issued less than 90 days ago.
- 2 The alteration of any of the elements mentioned in the previous item must be previously reported to the CB.
- 3 For the purpose of the provisions of paragraph d) of item 1 is applicable, with any necessary adaptations, what has been envisaged in articles 20 and 21.

CHAPTER IV

Special Registration

Article 43

Compulsory Registration

- 1 Insurance companies, branches and delegations are subject to a special registration at the CB, without which they cannot commence business.

- 2 The provision of the previous item does not prejudice any other compulsory registrations that insurance companies are legally subject to.
- 3 Abridged certificates of the registration and of any alterations are issued to whoever expresses a legitimate interest in requesting them.

Article 44

Insurance companies with their head offices in the Democratic Republic of S. Tomé e Príncipe

- 1 In the registration of the insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe the following elements should be included:
 - a) Name of the insurance company, and its various authorized versions;
 - b) Ruling authorizing its formation;
 - c) Authorized insurance business areas and corresponding policies;
 - d) Formation date;
 - e) Date of its enrolment at the Registration and Notary's Office Division;
 - f) Individual or company taxpayer's number, when it becomes compulsory, or as long as it does;
 - g) Authorized and realized equity capital;
 - h) Identification of shareholders who are holders of qualified shares and their respective values;
 - i) Address of the registered head office;
 - j) Agreements regarding the exercise of voting rights;
 - k) Identification of the members of the management and supervisory bodies and of the general meeting presidency, as well as any other representatives with management powers;
 - l) Identification of the auditing company;
 - m) Articles of association, through its respective notary copy;
 - n) Any changes that may occur in the elements mentioned in the previous paragraphs.
- 2 To branches of insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe and to reinsurers included in it are applicable the provisions of the previous item, with all necessary adaptations.

Article 45

Branches of Insurance Companies with their Head Office Abroad

In the case of branches of insurance companies with their head office abroad, the following elements must be included in the registration:

- a) Name of the insurance company, and its various authorized versions;
- b) Ruling authorizing its formation in the Democratic Republic of S. Tomé e Príncipe;
- c) Authorized insurance business areas and corresponding policies;
- d) Date of its enrolment at the Registration and Notary's Office Division;
- e) Individual or company taxpayer's number, when it becomes compulsory, or as long as it does;
- f) Equity capital, reserves and accumulated results;
- g) Address of the registered head office;
- h) Branch establishment fund in the Democratic Republic of S. Tomé e Príncipe;
- i) Identification of the general representative in the Democratic Republic of S. Tomé e Príncipe;
- j) Branch address;
- k) Identification of the auditing company;
- l) Any changes that may occur in the elements mentioned in the previous paragraphs.

Article 46

Delegations

The following elements pertaining to delegations are subject to special registration at the CB:

- a) Business address;
- b) Identification of the individual responsible for the organization;
- c) Date of the respective commencement of business;

- d) Any changes that may occur in the elements mentioned in the previous paragraphs.

Article 47

Additional Elements

For special registration purposes, the CB may request that additional information be provided in relation to that envisaged in the previous articles.

Article 48

Registration Deadline

- 1 A thirty-day deadline is laid down for the registration of the acts envisaged in the previous articles of this Chapter.
- 2 Legal annotations relating to registration changes that do not depend upon an authorization must be requested within 30 days from the date when such changes occurred.

Article 49

Registration Rejection

- 1 The registration and its respective legal annotations are rejected whenever any of the conditions which the authorization for the formation of the insurance company depends upon, for its respective establishment within the Democratic Republic of S. Tomé e Príncipe or abroad or for the pursuance of its respective business, is not met.
- 2 When the application or the documentation submitted show any deficiencies or anomalies that may be supplied by interested parties, the latter are advised to do so, within the deadline that may be given to them, under penalty of having their registration or legal annotation rejected, otherwise.

CHAPTER v

Conditions to Pursue the Insurance Business

SECTION I

Financial Guarantees

Article 50

Financial Guarantees

Besides the other guarantees envisaged in the present document, authorized insurance companies should have the following financial guarantees:

- a) Technical provisions;
- b) Solvency margin

SECTION II

Technical provisions

Article 51

Technical Provisions

Authorized insurance companies are compelled to set up:

- a) Provision for accidents;
- b) Mathematical provision, in the case of life;
- c) Provision for current risks, in the case of general insurance business area;
- d) Provision for deviations from the accident rate, in the case of credit insurance business (commercial risks).

Article 52

Provision for Accidents

- 1 The provision for accidents corresponds to the foreseeable value, at the end of the accounting period, of expenses pertaining to accidents that have not been settled yet or those that have already been settled but have not yet been paid, as well as to the foreseeable value of the estimated liability for accidents that have occurred but have not been reported yet.
- 2 Without prejudice of the provisions in item 4, the provision must be calculated accident by accident.
- 3 Regarding accidents that have been settled but have not been paid yet, the provision should correspond to the value of stipulated compensations.
- 4 Regarding accidents that have not been settled yet, insurance companies may calculate the provision, in the business areas where such procedure is technically feasible, from the average accident cost; they should submit to the CB's previous authorization the calculation system and updating formulas of the average accident cost, as well as the application scheme.

Article 53

Mathematical Provision

The mathematical provision corresponds to the difference between present values of the reciprocal liabilities of the insurance company and the people who may have entered into insurance contracts or operations with it, calculated in accordance with the technical bases used, and it should be certified by an insurance company actuary.

Article 54

Provision for Current Risks

- 1 The provision for current risks is aimed at ensuring, in relation to each of the insurance contracts in force, cover for risks taken on and for charges arising from them, during the period from the end of the accounting period to the date of their respective expiry.
- 2 Without prejudice of the provisions in the following item, the provision must be calculated contract by contract, under the “pro rata temporis” formula.
- 3 With respect to each one of the insurance business areas they pursue, insurance companies may, by a prior notice to the CB, calculate this provision in a global manner, based on the application of a percentage on gross revenue from premiums that were processed during the accounting period, without any returns and cancellations,
- 4 The percentage mentioned in the previous item is stipulated by a CB notice, to be published in December of every year.

Article 55

Provision for Accident Rate Deviations

The provision for accident rate deviations is aimed at compensating any eventual technical loss that may be translated, at the end of the accounting period, into a higher than average accident rate for that particular business area and it is calculated in accordance with the terms stipulated by a CB notice.

Article 56

Guarantee of Technical Provisions

- 1 Technical provisions must be guaranteed by equivalent and suitable assets located in the Democratic Republic of S. Tomé e Príncipe; the CB may authorize, in cases that have been duly justified and in accordance with previously defined conditions, the use of assets located abroad or originating therefrom.
- 2 Assets allocated to guaranteeing of technical provisions must take into account the type of operations conducted by the insurance company, so as to ensure the safety, the performance and liquidity of its investment; the latter must ensure a suitable diversification and spread of such applications.
- 3 The nature, acceptance conditions and percentage limits of such assets are defined by a CB notice to be published in January of every year for the accounting period they refer to and these assets should be exempt from any onus or charges.

- 4 The definition which the previous item refers to has to pay attention to the definition established for previous years and basically falls upon the accrued amount of established technical provisions which the guarantee adjustment refers to.
- 5 In the case of an accident whose value is abnormally high, the CB may allow the provision for accidents to be guaranteed by an amount that corresponds to the insurance company retention plan or by any other determined by the CB.
- 6 Criteria pertaining to the application of the provisions of the previous item are defined by a CB notice.

Article 57

Guarantee Reporting Date

The guarantee of technical provisions must be reported to the CB on an annual basis within the deadline envisaged in item 2 of article 12.

Article 58

Reintegration or Strengthening of Assets Allocated to the Guarantee of Technical Provisions

Assets allocated to guaranteeing of technical provisions will be reintegrated or strengthened, within the deadline defined by the CB, whenever they have been reduced due to a decrease in value, quotation or any other reason.

Article 59

Registration of Allocation of Real Estate and Mortgage Credits

The allocation of real estate and mortgage credits to the guarantee of technical provisions is subject to registration, under the terms of the Property Registration Code.

Article 60

Special Patrimony

- 1 The guarantee of technical provisions is aimed at specially protecting any credits arising from insurance contracts or operations, which have preference over those from any creditors, as well as to any additional company assets needed to come up to the value of such credits.
- 2 Assets allocated to the guarantee of technical provisions may not be pawned nor attached, except towards the payment of the credits envisaged in the previous item.
- 3 Assets mentioned in the previous item may not, under any circumstance, be offered to third parties as a guarantee, whatever the legal form such guarantee will take.

Article 61

Mobilization of Assets Allocated to the Guarantee of Technical Provisions

- 1 Assets allocated to guaranteeing of technical provisions may only be withdrawn or removed from such guarantee in the following cases:
 - a) From the part exceeding the calculated amount by comparison to the last day of the preceding calendar year;
 - b) From the part needed for the replacement of assets allocated to the same purpose;
 - c) When the insurance company has ceased to pursue the insurance business areas that the technical provisions refer to and its respective insurance contracts or operations have come to an end;
 - d) Towards policy payment and paying-up, when the financial situation of the insurance company does not allow them to be met in another way.
- 2 The CB's authorization is necessary in the case envisaged in paragraph d) of the previous item.

Article 62

Incorrect Guarantee or Insufficiency of Technical Provisions

- 1 Should the technical provisions be incorrectly created or guaranteed, the insurance company has to correct them in accordance with the instructions given by the CB.
- 2 Should there be an insufficiency of technical provisions, the insurance company has to submit to the CB for approval and within the period determined by the latter, a short-term financing plan based on a suitable activity plan.
- 3 Should it consider this financing plan to be unsuitable, the CB may carry out changes that will bind the insurance company.

SECTION III

Solvency Margin

Article 63

Solvency Margin

- 1 Authorized insurance companies have to set up an adequate solvency margin to guarantee the liabilities arising from the pursuance of their business in the Democratic Republic of S. Tomé e Príncipe.

- 2 The solvency margin is calculated based on the situation of the last day of the preceding accounting period and it should correspond:
 - a) To their property, in the case of insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe;
 - b) To branch assets, in the case of insurance companies with their head office located abroad.
- 3 For purposes of the previous item, property and assets must be exempt from any onus or charges and do not include intangible elements, nor those that have been specified by a CB notice, to be published in January of every year.
- 4 Active values representing the solvency margin have to be located in the Democratic Republic of S. Tomé e Príncipe, except as regards the business pursued by insurance companies abroad.
- 5 Without prejudice to the principle defined in the previous item, the CB may authorize, in properly justified cases and in accordance with previously defined conditions, the utilization of assets located abroad or derived therefrom.

Article 64

Solvency Margin for General Business Areas

- 1 The solvency margin pertaining to general business areas is determined based on the annual amount of gross premiums that are processed in the previous accounting period, without any returns and cancellations, in accordance with the following table:

Gross premium amount	Solvency margin value
Lower than one hundred million dobras	Fifty million dobras
Equal to or higher than one hundred million dobras, but lower than two hundred million dobras	50% of the gross premium amount
Equal to or higher than two hundred million dobras	One hundred million dobras plus 25% of the value exceeding two hundred million dobras in gross premiums

- 2 Should the insurance company register, for three consecutive or five alternate accounting periods, an abnormal accident rate, the solvency margin is the equivalent to double the values calculated by applying the table mentioned in the previous item.

Article 65

Solvency Margin for Life

- 1 The solvency margin pertaining to life is determined based on mathematical provisions or on capital at risk and is equal to the sum of the values obtained under the terms defined in the paragraphs below.
- 2 The solvency margin amount for insurance business areas A and B of Section III of the Insurance Business Areas Table is equal to the sum of the two results obtained under the following terms:
 - a) The first one corresponds to the amount resulting from multiplying 4% of the value of the gross mathematical provisions formed during the accounting period by the rate between reinsurance net and gross values and mathematical provisions referring to the end of the previous accounting period, with a minimum of 85% if such rate is lower than it;
 - b) The second one corresponds to the amount resulting from multiplying 0,3% of the capital at risk, when the latter is not negative, by the rate between reinsurance net and gross values of the capital at risk referring to the end of the previous accounting period, with a minimum of 50% if such rate is lower than it.
- 3 The 0,3% percentage mentioned in paragraph b) of the previous item is reduced to 0,1% in temporary insurance in the case of death with a maximum duration of 3 years and to 0,15% in insurance whose duration is higher than 3 years but lower than 5 years.
- 4 For purposes of paragraph b) of item 2, by capital at risk is understood the insured capital in the case of death after deducting the mathematical provision from the main cover.
- 5 The solvency margin amount for insurance business area C of section II of the Insurance Business Areas Table is equal to the sum of the two results obtained under the following terms:
 - a) The first one through the method shown in paragraph a) of item 2.
 - i. If the insurance company takes on the investment risk;
 - ii. Or, if it doesn't take on such risk, should the duration of the contract be higher than 5 years and if the amount intended to cover management expenses envisaged in it is also set for a period higher than 5 years; the factor of 1% of the gross mathematical provision value formed during the accounting period must be taken into account,
 - b) The second one through the method shown in paragraph b) of item 2 if the insurance company accepts the mortality risk; for any of the cases, the 0,3% value of the capital at risk must be taken into account.
- 6 The solvency margin amount for insurance business area D of Section II of the Insurance Business Areas Table is equal to the sum of the two results obtained under the following terms:

- a) Through the method shown in paragraph a) of item 2 for the insurance of field D.1 of the above mentioned table;
 - b) Depending on gross premiums for the business area D.2 of such Table, in accordance with what was set up in the previous article.
- 7 The solvency margin amount for insurance business area E of Section II of the Insurance Business Areas Table is equal to 1% of the value of the tontine assets.
 - 8 The solvency margin amount for insurance business area F of Section II of the Insurance Business Areas Table is calculated through the method shown in paragraph a) of item 2.
 - 9 The solvency margin amount for insurance business area I of Section II of the Insurance Business Areas Table is calculated in accordance with the provisions of item 5.
 - 10 The solvency margin amount for insurance business area J of Section II of the Insurance Business Areas Table is equal to 4% of the value of gross mathematical reserves formed during the accounting period.

Article 66

Insufficiency of Solvency Margin

- 1 Should there be an insufficiency of the solvency margin, even if it is a temporary circumstance, the insurance company must submit to the CB, for its approval within the period determined by it, a short term recovery plan aimed at redressing its financial situation.
- 2 Should the CB consider the recovery plan to be inadequate, it may make changes binding the insurance company.

SECTION IV

Book-Keeping

SUB-SECTION I

Compulsory books and registers

Article 67

Compulsory books and registers

- 1 Insurance companies are compelled to have, besides the books required from trading companies, policy and accident registers whose book-keeping must be kept up to date.
- 2 By ruling published in the *Government Gazette*, the CB may make the presence of other books and registers which it may consider necessary for the pursuance of the responsibilities bestowed on it by the present document, compulsory.

Article 68

Insurance Policy Register

- 1 Insurance companies must keep the register of their policies up to date; this may be done in magnetic media appropriate for computer processing.
- 2 In the register mentioned in the previous item should be included all policies issued or renewed during the year with at least the following indications:
 - a) Policy number and date;
 - b) Name, company or name of the proponent;
 - c) Insurance business area;
 - d) Insured capital.
- 3 Regarding life, the register should also specify the following indications:
 - a) Name and age of the person whose life is being insured;
 - b) Period of contract.
- 4 The provisions of the previous items are applicable, with any necessary adaptations, to capitalization operations.

SUB-SECTION II

Document archiving and microfilming

Article 69

Archiving Periods

The archiving periods for insurance company documents are:

- a) 10 years regarding documents supporting the main book-keeping;
- b) 5 years regarding current account books, insurance proposals and policies and accident proceedings;
- c) 1 year regarding documents that were not mentioned in the previous paragraphs.

Article 70

Archiving Period Count

- 1 Document archiving periods are counted from the date they have been sent for filing.

- 2 Should there be pending litigation, these periods will only be counted from the time when the respective sentence becomes an executory sentence.

Article 71

Document Destruction

- 1 After the minimum archiving periods defined in article 70 have elapsed, documents may be destroyed, except those that have been classified as having an historical interest under the terms of applicable legislation, and those that must be transferred to their own appropriate archives.
- 2 Documents that are to be immediately destroyed may be destroyed as soon as they become known or following the administrative work that they have produced; they do not require a destruction authorization.
- 3 The destruction of documents is made in such a way as to make their subsequent reading or reconstitution impossible.
- 4 With the exception of the documents envisaged in item 2, the destruction of the remaining documents requires a destruction authorization to be signed by the people who may have taken part in them; such authorization is the legal proof of patrimonial destruction.

Article 72

Microfilming

- 1 Insurance companies may microfilm any documents that, under the terms of this document and according to the archiving periods defined in article 69, must be kept in an archive.
- 2 For all intents and purposes, these microfilms replace original documents.
- 3 The microfilming and the destruction of documents must be decided upon by the management body of insurance companies or by a representative endowed with sufficient powers, as long as such operations are previously reported to the CB accompanied by the name of the respective responsible individual.
- 4 Microfilming operations may be undertaken with the greatest technical precision in order to ensure a faithful reproduction of the documents they are copying.
- 5 A specific document regulates the operations mentioned in the previous item.

Article 73

Evidential Nature of Microfilm

Any photocopies and enlargements obtained from microfilming have the same evidential force as the original copies, in court or out of court, as long as they contain the signature of the person responsible for microfilming duly authenticated with the embossed seal of the insurance company.

Article 74

Forgiveness

The provisions of this sub-section are applicable to any of the formation or establishment rules envisaged in this document.

SUB-SECTION III

Accounting of Operations

Article 75

Directives and Models

- 1 The criteria to be adopted by insurance companies regarding the accounting records of their operations are determined by a CB notice.
- 2 Balance sheets, trial balances, activity and profit and loss accounts, statistical tables and any additional elements that may be requested must comply with the models established by a CB notice.

Article 76

Criteria for Value Measuring

The criteria to be observed by insurance companies in measuring the values of their respective assets and liabilities are defined by a CB notice.

Article 77

Amortization and Reintegration

- 1 Formation and installation expenses and other elements from the intangible fixed assets will be completely amortized in the three accounting periods following their materialization and may not exceed 10% of the equity capital.
- 2 Immovable property and other elements of the tangible fixed assets subject to depreciation are reintegrated in accordance with their corresponding legal regulation.

Article 78

Financial Provisions

1. In addition to bad debt provisions, including premiums to be received, and for other asset depreciations, insurance companies must establish the provisions that they may

prudently consider necessary in order to face up to the risk of depreciation or loss that certain types of values or operations may particularly be subject to.

2. For the purpose of the provisions of the previous paragraph, the CB may, by means of a notice, determine criteria relating to the establishment and movement of provisions.

Article 79

Reserves

1. Insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe are compelled to establish a legal reserve, based on the allocation of the following minimum percentages of profits made in each accounting period:
 - a) 20% until the reserve value represents half of the equity capital minimum values envisaged in item 1 of article 17;
 - b) 10% from the moment that the amount mentioned in the previous paragraph may have been reached until such reserve represents a value equal to the minimum values of the above-mentioned equity capital.
2. In addition to the legal reserve, insurance companies may freely set up other reserves.
3. The legal reserve can only be integrated into the equity capital or used to face up to losses from the accounting period or to transferred losses that cannot be covered by using other reserves.
4. The integration of the legal reserve into the equity capital is only allowed on the portion that exceeds 25% of the latter.

Article 80

Unavailability of Dividends

- 1 Insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe may not distribute among shareholders, as dividends or under any other guise, any amounts that reduce, in whatever way, the legal reserve allocation amount defined in the previous article.
- 2 Insurance companies are also prevented from distributing among shareholders any amounts or values on account of dividends before the annual results have been approved.

SUB-SECTION IV

Compulsory publications

Article 81

- 1 Insurance companies with their head office in the Democratic Republic of S. Tomé e Príncipe must publish, within 60 days after the date in which the annual general meeting for approval of the accounts was held, in the *Government Gazette* and in two newspapers, relative to the accounting period ended, the following elements:
 - a) Balance sheet and activity and profit and loss accounts;
 - b) Summary of the activity report;
 - c) Recommendation of the supervisory board;
 - d) Summary of the auditors' opinion;
 - e) List of companies where they may have shares higher than 5% of the respective equity capital, with an indication of corresponding percentage value;
 - f) List of shareholders with qualified shares and respective values;
 - g) Names of company body office-holders.
- 2 Insurance companies that have subsidiaries abroad also have to publish their balance-sheets and their consolidated profit and loss account.
- 3 Insurance company branches with their head-office abroad must publish, under the terms mentioned in item 1, the balance-sheet, the activity and the profit and loss accounts and the summary of the auditors' opinion, referring to branch business, as well as a summarised report on the activity pursued in the Democratic Republic of S. Tomé e Príncipe.
- 4 Such branches also have to submit to the CB, within 30 days following its respective publication, a copy of the report and accounts of their respective head office, and keep another copy for public consultation at their main business address.

Article 82

Forwarding of Elements

Insurance companies are bound to forward the CB a copy of all elements intended for publication, under the terms of the present sub-section, at least 15 days in advance.

SECTION V

External Audit

Article 83

Annual Accounts Audit

- 1 The verification of the annual financial statements of insurance companies is compulsorily made by properly recognized independent auditing companies.
- 2 The audit mentioned in the previous item must certify:
 - a) That the accounts and the balance sheet have been compiled in accordance with legal and regulatory requirements pertaining to the insurance business;
 - b) That the balance sheet accurately reflects the financial situation of the insurance company;
 - c) That the insurance company's accounting books have been adequately kept and correctly register their operations;
 - d) Whether, at any relevant period of time, the provisions of the present document or regulatory provisions regarding the assets allocated to guaranteeing of technical provisions have not been complied with;
 - e) Whether the insurance company rendered the information and explanations that were requested of it or not, by describing in detail the cases where there may have been a refusal to render such information or explanations, as well as of any eventual falsifications.
- 3 The auditors' reports must be submitted, as well as all accounting and statistical tables that item 2 of article 75 refers to.
- 4 In addition to the elements mentioned in item 2, the CB may request from auditors, in relation to audited insurance companies, any other information that it may deem necessary.

Article 84

Urgent Information

Without prejudice of any other information obligations envisaged in the present diploma or in the general law, auditors must immediately report to the CB, in writing, any facts that were detected whilst they were performing their work that may be liable to cause serious damage to the insurance company or to its respective business in the Democratic Republic of S. Tomé e Príncipe, namely as follows:

- a) Involvement of insurance company office-holders or of workers, in any criminal or unlawful activities;
- b) Any anomaly that endangers the solvency of the insurance company;
- c) Carrying out any unauthorized operations;
- d) Other facts that, in their opinion, may be relevant for the effects envisaged in this article.

Article 85

Extraordinary Audits

In exceptional cases, that must be properly justified, and after the insurance company has been consulted, the CB may determine that an extraordinary audit be carried out, made by the auditing company engaged for this or by another body, at the insurance company's expense.

CHAPTER VI

Transformation of Insurance Companies

Article 86

Modification of Insurance Companies

- 1 Any change in the name of any insurance company established in the Democratic Republic of S. Tomé e Príncipe, or any alteration of its capital, any merger, split or any other means of transformations is dependent upon a previous authorization from the CB, by means of a ruling.
- 2 In the case of a transfer of ownership of an insurance company with its head office abroad or of its merger, split or any other form of company transformation, the CB will issue a recommendation on whether its continuous operation in the Democratic Republic of S. Tomé e Príncipe is feasible.

Article 87

Portfolio Transfers

- 1 Any total or partial insurance portfolio transfers, comprising premiums, accidents or both, are subject to a previous authorization from the CB.
- 2 The authorizations mentioned in the previous paragraph will be published in the *Government Gazette* and in two newspapers.
- 3 Any life insurance portfolio transfer may not be authorized when at least 20% of the insured individuals of the portfolio to be transferred are opposed to it.

Article 88

Technical Provisions Transfer

- 1 In the case of a merger between insurance companies, the technical provisions set up will be carried over to the new insurance company as regards the portion necessary to complete its respective provisions.

- 2 The provisions of the previous paragraph, with any necessary adaptations, are applicable to the split between insurance companies and to the insurance portfolio transfer.

Article 89

Reduction of Equity Capital

- 1 Whenever the financial situation of an insurance company makes it advisable for it to reduce its equity capital, the CB may impose or authorize this, with an eventual exemption from complying with some of the provisions that are applicable to companies in general.
- 2 The reduction mentioned in the previous paragraph is carried out by deducting, from the respective equity capital, any losses incurred in previous accounting periods, as well as deducting any assets that the CB may be consider to have an unacceptable value.
- 3 From this reduction there cannot be any equity capital that is lower than the minimum values defined in item 1 of article 17.

CHAPTER VII

Intervention System

Article 90

Applicable Measures

- 1 Whenever, as a result of applying the financial improvement plans envisaged in articles 63 and 67 or as a result of the non fulfillment of such plans, an insurance company persists in not showing sufficient financial guarantees, under the terms envisaged in the present document, the CB may order, by ruling, an intervention in the management of the company.
- 2 In compliance with the provisions of the previous paragraph, the CB may, either separately or cumulatively, suspend the authorization for new insurance contracts or for new insurance operations, interdict or restrict the free availability of insurance assets, prevent the commercialization of new products or appoint one or more delegates or an administrative committee.
- 3 The seriousness of the financial situation of an insurance company may determine, as a result of the intervention system, the cancellation of the authorization for pursuing the business.
- 4 The seriousness of the situation mentioned in the previous paragraph is evaluated depending on the insurance company's economic feasibility, on the reliability of its guarantees, on the evolution of its net situation and on the cash holdings needed to pursue its current business.

Article 91

Appointment of Delegates or of an Administrative Committee

- 1 The appointment of one or more delegates or of an administrative committee does not imply the suspension of all attachments against the insurance company, including fiscal attachments and those that are aimed at collecting preferential or privileged credits.
- 2 The appointment envisaged in the previous paragraph, the powers, purpose and remuneration of the delegate or of the administrative committee are fixed by a ruling from the CB to be published in the *Government Gazette*, which also stipulates the respective intervention period.

Article 92

Cancellation of Authorization

The cancellation of the authorization implies the liquidation of the insurance company.

Article 93

Appeals

Appeals against CB decisions issued under the terms of the present Chapter are possible.

Article 94

Application of Sanctions

The adoption of measures envisaged in this chapter does not prevent, should there be any transgression, the sanctions defined in the present diploma from being applied.

CHAPTER VIII

Liquidation

Article 95

General Provisions

The liquidation of insurance companies and reinsurers is done in accordance with the terms envisaged for trading companies in general with details included in the articles below.

Article 96

Credit Privilege

In the case of liquidation, any credits arising from any insurance contracts or operations enjoy a credit privilege on movable or immovable assets allocated to guaranteeing of technical provisions, and are ranked first.

Article 97

Immediate Liquidation

The following will immediately be in liquidation:

- a) Any dissolved insurance companies;
- b) Any insurance companies that may have had the authorization to pursue this business in the Democratic Republic of S. Tomé e Príncipe annulled.

Article 98

Means of Liquidation

In addition to the cases envisaged in the general law, a judicial liquidation is possible when the insurance company or reinsurer has had the authorization to pursue the business annulled, following the institution of proceedings for transgression.

Article 99

Extra-Judicial Liquidation

In the case of dissolution or cancellation of the authorization for the insurance company or the reinsurer subject to any measures applied in accordance with the intervention system, an extra-judicial liquidation is possible under the terms envisaged in the following article.

Article 100

Extra-Judicial Liquidation Proceedings

- 1 The liquidators are appointed by a BC ruling; should such ruling be absent, it is understood that the delegate or the administrative committee members will be the liquidators.
- 2 The liquidators are empowered to perform all acts that may be necessary for the liquidation; any authorizations that, under the legal or statutory terms, belong to the shareholders, will be granted by the CB.
- 3 It is incumbent upon the CB to define the period in which the liquidation must be finalized and also to approve the final accounts and the report submitted by the liquidators.
- 4 The liquidators' remuneration is fixed by a ruling from the CB.

Article 101

Branches of Insurance Companies with their Head Office Abroad

1. The liquidation of branches of insurance companies with their head office abroad, as well as the appointment of the respective liquidator, must be reported to the CB within eight days (illegible).
2. This liquidation only covers operations pertaining to the Democratic Republic of S. Tomé e Príncipe and to the assets allocated to them, wherever they might occur.

Article 102

Insurance Companies under Liquidation

Insurance companies under liquidation may not pursue new insurance operations, renew or extend existing insurance or reinsurance contracts and raise their respective values.

CHAPTER IX

Transgressions

SECTION I

Penal Clauses

Article 103

Crime for Illegally Pursuing the Insurance Business

1. Any individuals who perform any acts or operations inherent to the pursuance of the insurance business, either on their own behalf, or as representatives or office-holders of company bodies, even if such company has been illegally established, or of any association without legal nature, when they have not as their social purpose such pursuance, will be punished with a prison sentence of up to 2 years.
2. Whenever the crime envisaged in the previous paragraph is made by legal entities, the penalty is a fine of up to 360 days.

SECTION II

Violations and their Respective Proceedings

Article 104

Violations

1. Non compliance with the rules of the present document, with the regulatory clauses included in CB notices or circulars and with any acts or omissions that may disturb or distort normal operating conditions of the insurance business are considered violations to be punishable under the terms of the articles below.
2. The following are specially serious violations:
 - a) The pursuance, by an insurance company, of a business that is not included in its social purpose;
 - b) Improper use of the names envisaged in article 7;
 - c) The use, by an insurance company, of the services rendered by unauthorized insurance brokers;
 - d) Non compliance with the requirements relating to information and previous authorization, whenever they are required;
 - e) The realization of the equity capital, its respective increase and reduction under different terms from those that have been authorized;
 - f) Non compliance with applicable accounting regulations;
 - g) Refusal or delay in rendering information or forwarding elements that should compulsorily be forwarded to the CB;
 - h) Showing or forwarding false information to the CB;
 - i) Non compliance with special registration obligations;
 - j) Contempt for the rules for portfolio transfers;
 - k) Non establishment and guarantee of technical provisions or the reinforcement of respective assets allocated to such guarantee, within the deadlines laid down by the CB;
 - l) Preventing or hindering the CB from carrying out its supervisory duty;
 - m) Persistence of any facts that represent a transgression following the application of a penalty, when the anomaly is not rectified within the deadline laid down by the CB.

Article 105

Sanctions

The violations envisaged in the previous article are punishable with the following penalties, to be rated depending on their seriousness:

- a) Fine;

- b) Suspension of the management body or of any other body with similar functions, for a 6 month to 5 year period;
 - c) Temporary partial or total suspension of the authorization granted for the pursuance of the insurance business;
 - d) Cancellation of the authorization granted for the pursuance of the insurance business;
- 2 The penalties envisaged in the previous paragraph may be cumulatively applied.

Article 106

Additional Sanctions

In conjunction with the penalties envisaged in the previous paragraph, the following additional sanctions may be applied:

- a) Loss of capital applied in the operations carried out;
- b) Publication of the sanctions.

Article 107

Rating of Sanctions

1. Sanctions are rated depending on the objective and subjective seriousness of the transgression at stake.
2. The objective seriousness of the transgression is determined in accordance with the following circumstances:
 - a) Risk of damage to the insurance business, to the country's economy or to the proponent;
 - b) Occasional or repeated nature of the transgression.
3. When evaluating the subjective seriousness of the transgression, the following circumstances will have to be borne in mind:
 - a) Transgressor's level of responsibility at the insurance company;
 - b) Transgressor's economic situation;
 - c) Transgressor's previous behaviour;
 - d) Amount of economic value gained or intended by the transgressor;
 - e) Adoption of behaviour that may make the discovery of the truth difficult;

- f) Adoption of behaviour that makes amends for any damages caused.

Article 108

Recidivism

Any individual who perpetrates any transgression envisaged in the present document during the one-year period from the date the punitive ruling comes into force is a recidivist.

Article 109

Attempted Transgression and Negligence

Any attempted transgression and negligence is punishable but the maximum and minimum limits of the fine are reduced to half.

Article 110

Warning

1. When any solvable problem, that may not have resulted in meaningful losses for the insurance business, for the Democratic Republic of S. Tomé e Príncipe economy or for the insurance proponents, is at stake, the CB may decide to issue a simple warning to the transgressor, notifying him/her to solve the problem within the period that has been stipulated by it.
2. Should this not be solved within the stipulated period, this implies the continuation of the proceedings toward the application of the corresponding sanction.

Article 111

Responsibility for Committing Transgressions

1. For any transgressions envisaged in the present chapter may be considered responsible, either jointly or not, any individuals and companies, the latter even if they have been illegally set up, and any associations without legal nature.
2. The companies and associations mentioned in the previous paragraph are responsible for the transgressions committed by the members of their respective company bodies while carrying out their duties, as well as for the transgressions committed by their representatives during acts made on their behalf and in the interest of the collective body.
3. The responsibility envisaged in the previous paragraph will subsist even though the representation relationship is invalid or ineffective.
4. The responsibility of the collective body does not exclude the individual responsibility of the individuals mentioned in item 2.

5. The fact that any illegal act requires certain personal elements and that these can only be found in the represented body or the fact that the agent performs such an act in its interest, the representative having acted on behalf of the represented body, is not an obstacle to the responsibility of individuals who represent others.

Article 112

Fine

1. The values of fines are fixed between one hundred thousand dobras and ten million dobras.
2. In case of recidivism, the minimum and maximum fine limits are doubled.
3. Whenever the economic benefit obtained by the transgressor is higher than five million dobras, the maximum limit laid down in item 1 increases to double such benefit.
4. In the case of accumulation of transgressions, an accumulation of fines may occur, although the maximum limits laid down in the present article cannot be exceeded.

Article 113

Deadline for Payment of Fines

1. The fine, which represents an income for the CB, will be paid within 10 working days from the date the punitive ruling becomes an executory sentence.
2. Should the fine not be paid within the prescribed period, the CB will forward a punitive ruling certificate to the appropriate authority for collection of this amount in accordance with the collection system for fiscal debts.

Article 114

Joint Responsibility for Payment

1. Insurance company directors, general representatives or people responsible for setting up such companies are jointly responsible, depending on the case, for the payment of any fine applied to insurance companies or to any other bodies responsible for committing any transgression under the terms of article 112, even if on the date of the punitive ruling these companies may have been dissolved or be under liquidation.
2. The bodies on whose behalf or benefit the transgression may have been committed are jointly responsible for the payment of fines applied to individuals.
3. To those that have expressly opposed or disagreed with committing any acts that constitute a transgression cannot be ascribed the responsibility envisaged in the previous paragraphs.

Article 115

Suspension of Authorization

1. The suspension of the authorization pertaining to a certain area of business or to the whole insurance business is applicable to serious transgressions that do not justify the (illegible) of its respective business.
2. The suspension envisaged in the previous paragraph implies the temporary interdiction of new insurance contracts or operations in the affected business areas but does not affect the validity of those which are outstanding on the suspension date; however, these may not be renewed, extended or have their values increased.

Article 116

Cancellation of Authorization

1. The cancellation of the authorization pertaining to a certain area of business or to the whole insurance business is applicable to transgressions that justify its respective suspension.
2. The cancellation of the authorization is applicable, with any necessary adaptations, to the provisions of item 2 of the previous article.
3. The total cancellation of the authorization implies the legal liquidation of the insurance company or of the reinsurer.

Article 117

Punitive Jurisdiction

The Governor of the CB is responsible for applying the sanctions envisaged in this section.

Article 118

Proceedings

1. The responsibility for starting and preparing proceedings for violation envisaged in the present document falls upon the CB.
2. Once the preliminary proceedings are finished, and should there be a decision not to archive the process, the indictment is drawn up, in which the transgressor, the unlawful facts that are ascribable to him/her and their respective time and place are indicated, as well as the law that foresees and punishes them.
3. The transgressor and those bodies that, under the terms of article 113, may be responsible for paying the fine, are notified of the indictment; in it is indicated the period of time within which, under penalty of not being accepted, they may present their defence in writing and submit their evidence; they cannot call up more than five witnesses for each transgression that is ascribable to them.

4. The period of time that the previous paragraph refers to is between 10 and 30 working days, taking into account the transgressor's address and the complexity of the process.
5. The notification is made by registered mail with an acknowledgement of receipt, by police authorities or by 30-day advertisements published in the Government Gazette and in two newspapers, depending on whether the transgressor is found or not, refuses to acknowledge the notification or is unknown at his/her address.
6. After the necessary arrangements have been made as a result of the presentation by the defence, the process is submitted to the CB Governor for his decision in relation to the transgressions that must be considered to be proven and the sanctions that may be applicable to them.

Article 119

Preventive Suspension of Duties

Whenever the evaluation of the individual liability of the people mentioned in item 2 of article 114 is at stake, the CB Governor, by ruling, may order the preventive suspension of their respective duties whenever this becomes necessary for the start of proceedings or to safeguard the interests of the insurance business.

Article 120

Suspension of Sanction Execution

1. The entity with jurisdiction to decide may suspend the execution of any sanction as long as it justifies its decision bearing in mind the transgressor's degree of culpability, his/her previous behaviour and the circumstances of the transgression.
2. The suspension may be dependent upon the fulfillment of the obligations deemed necessary to the normalization of the anomalous situations in question.
3. The suspension period may not be lower than 1 year nor higher than 3 years and is counted from the date the punitive ruling becomes an executory sentence.
4. Should the suspension period laid down elapse without the transgressor having committed a new transgression and once the obligations imposed have been fulfilled, the conviction is considered to be without effect; otherwise, the penalty is carried out.

Article 121

Obligation to Appear in Court

1. Any individual who has been notified to take part in the start of proceedings and who does not appear on the stipulated day, time and place nor justifies such absence within the 5 following days is punished with a twenty thousand dobras to one hundred thousand dobras fine.

2. Payment is made at the CB within 10 days from notification; otherwise there will be coercive collection of such fine.
3. Without prejudice of the provisions of item 1, the CB may request the appropriate legal body to order the appearance, under custody, of those who were unjustifiably absent.

Article 122

Fulfillment of Neglected Obligation

Whenever the transgression is the result of a neglected obligation, the application of the sanction does not exempt the transgressor from fulfilling it, should this still be possible.

Article 123

Lapse

1. The procedure for applying the sanctions that are envisaged in this section becomes void after 3 years have elapsed after the date in which the transgression may have been committed.
2. The deadline envisaged in the previous item applies only:
 - a) In permanent transgressions, from the day the consummation stops;
 - b) In continued and customary transgressions, from the date the last act that is part of such transgression was committed;
 - c) In any attempted transgressions, from the day the last act was committed.
3. The application of the sanctions that are envisaged in this section becomes void after 5 years have elapsed after the date the punitive ruling becomes an executory sentence.

Article 124

Application in Space

The provisions of the present section are applicable either to acts committed in the S. Tomé e Príncipe Democratic Republic or to acts committed abroad for which bodies subject to the supervision of the CB are responsible.

Article 125

Subsidiary Rights

To the start of proceedings that this section refers to are applicable, in addition, the Penal Process Code and other branches of process law.

CHAPTER X

Final and Temporary Measures

Article 126

Insurance Brokerage

1. Insurance companies may not pursue the insurance brokerage business.
2. Insurance brokerage is regulated by a specific law.

Article 127

Pension Funds

The creation and business of pension funds is the object of a special law.

Article 128

Offshore Insurance Business

The offshore insurance business is the object of special legislation.

Article 129

New Insurance Areas or New Insurance Operations

Authorization applications for the pursuance of new insurance areas or for new insurance operations will be submitted under the terms to be defined by a CB notice.

Article 130

Subsidiary Law

The provisions included in the Commercial Code, the Civil Code, the Penal Process Code and respective complementary legislation are also applicable to the insurance business.

Article 131

Coming into Force

The present document comes into force in accordance with all legal terms and is effective from 1 July 1998.