

**MACAU INSURANCE COMPANIES ORDINANCE**

**Decree-Law no. 27/97/M**

of 30 June

## PREFACE

As more than eight years have passed since the publication of Decree-Law no. 6/89/M of 20 February, it is felt that there is a need to update the legal framework of access to and exercise of the insurance activity in the territory of Macau, so as to reinforce prudent supervision and set out new solutions adequate for the present realities.

In terms of prudent supervision, the important aspects relate to the control of qualified shareholding, competence of shareholders with such a shareholding and of members of management bodies, including the professional experience of such members and also the supervision of financial groups on a consolidated basis.

As for the introduction of new solutions, it is important to highlight the regulation of conditions for the formation and establishment of reinsurers in the Territory, the preservation and microfilming of documents relating to insurance activity and the setting up of suboffices and representative offices with the respective scope of activity well demarcated.

With regard to infringements and to powers of intervention in case of insufficient financial guarantees, the model of the Legal Framework of the Financial System, approved by Decree-Law no. 32/93/M of 5 July, has largely been adopted.

In this way, it is intended to create the necessary conditions for development in the Territory of a modern insurance industry capable of protecting, with efficacy, the legitimate interests arising from insurance contracts and operations.

Hereby;

After hearing the Consultative Council;

The Governor of Macau decrees, under the terms of Article 13 paragraph 1 and Article 31 paragraph 3 c) of the Macau Organic Statute, that the following shall be enforced as law in Macau:

## CHAPTER I

### General Provisions

#### Article 1

(Scope)

1. The present law regulates the conditions of access to and the carrying on of insurance and reinsurance activity in the territory of Macau.
2. The law also regulates the process, on which the authorisation of the Governor shall be based, for the establishment of any form of representation overseas on the part of insurers or reinsurers with head office in the Territory.

#### Article 2

(Terminology)

In this Ordinance, unless the context otherwise requires:

- a) **Insurance activity** - means the regular performance of acts relating to the acceptance and fulfilment of insurance or reinsurance contracts or insurance operations, including any related or supplementary acts and contracts, namely those relating to salvage, reconstruction of and repair to damaged immovable property and vehicles, maintenance of clinical services and application of technical provisions, reserves and capital, excluding insurance intermediary business, under the terms of the applicable legislation;
- b) **AMCM** - means the abbreviated designation of Autoridade Monetaria e Cambial de Macau;
- c) **Insurance contract** - means a contract by the terms of which the insurer undertakes, against payment of a premium and upon occurrence of the event covered by the contract, to indemnify, within the agreed limits, the loss or damage so produced to the insured or settle a capital sum, a rent or other payments stipulated therein;
- d) **Suboffice** - means a supplementary office in the territory of Macau, devoid of legal personality and designed to service the public, which, belonging to an insurer with head office in the Territory, or to an insurer with head office overseas operating in Macau in the form of a branch, effects directly, in whole or in part, operations inherent to the activity of such insurers;
- e) **Representative office** - means an office, representing an insurer or a reinsurer with head office in the territory of Macau or with head office overseas, which is not permitted to conduct, directly and in its name, any operations which come within the scope of activity of such insurer or reinsurer;
- f) **Gross loss ratio** - means the percentage of gross claims, including provision for claims, to gross premiums for the same financial year;

- g) **Business of insurance intermediaries** - means a professional activity involving the regular performance of market prospecting or of acts leading to the effecting of insurance contracts, including the rendering of technical assistance to the insured;
- h) **Insurance operations** - means the management of pension funds and operations relating to capitalisation;
- i) **Qualified shareholding** - means a shareholding of any shareholder which represents, directly or indirectly, at least 10% of the capital or of the voting rights of the participated insurer, or which, in any other way, bestows the possibility of exercising a significant influence on the respective management, with the following voting rights equalised to those held by the shareholder:
  - i) Those held by the spouse not legally separated, irrespective of the type of marital agreement on property ownership, those held by dependants who are minors and those held by companies controlled by the shareholder or controlled by the persons mentioned earlier;
  - ii) Those held by other persons or entities, in their own name or someone else's name, but for the account of the shareholder;
  - iii) Those held by third parties by virtue of an agreement with the shareholder or with one of the companies controlled by him, by which:
    - The third party is obliged to adopt, through a concerted exercise of his voting rights, a common policy in relation to the management of the insurer; or
    - A provisional transfer of voting rights has been provided for.
  - iv) Those which are inherent to the shares of the shareholder pledged as guarantee, except when such rights are held by the creditor and the creditor has declared his intention to exercise those rights, in which case the said voting rights shall be considered as belonging to the creditor;
  - v) Those which are inherent to the shares of which the participant has the usufruct;
  - vi) Those which, by virtue of an agreement, the shareholder or one of the persons or entities mentioned in the preceding sub-paragraphs has the right to acquire, solely on its own initiative;
  - vii) Those which are inherent to the shares deposited with the shareholder and which the latter can exercise as he deems fit, in the absence of specific instructions from the respective shareholders.
- j) **Retained portion** - means the capital insured less the amount of reinsurance ceded;

- l) **Class of insurance** - means any class, group or groups of classes as contained in the Schedule annexed to this Ordinance;
- m) **Reinsurance** - means a contract of insurance by which an insurer reinsures, in turn, part of the risk so assumed;
- n) **Insurer** - means the entity, either an insurance company incorporated in the Territory or a branch of an overseas insurance company established in the Territory, which accepts the risk;
- o) **Abnormal loss ratio** - shall be considered as such when:
  - i) Under non-life insurance the gross loss ratio of any insurer is at least 50% higher than the gross loss ratio recorded by the entire non-life sector under the same classes of business;
  - ii) Under life insurance a substantial variation is verified in the amounts of the mortality tables so utilised by any insurer transacting this class.
- p) **Controlled company** - means any company in which the shareholder holds more than half of the voting rights, or of which is a partner and:
  - i) Has the right to nominate or remove more than half of the members of the administrative board or of the supervisory board; or
  - ii) By virtue of an agreement entered into with other partners of this company, has the exclusive control of the majority of the voting rights;

and to the voting rights of the shareholder, of nomination or of dismissal, shall be added the rights held by the company controlled by him, including the rights held by any person or entity acting in its own name but for the account of the shareholder or of the company controlled by him;
- q) **Branch** - means an establishment in the Territory of an insurer with head office overseas, or an establishment overseas of an insurer with head office in the Territory which, devoid of legal personality, effects directly the operations inherent to the activity of the head office;
- r) **Policyholder** - means a person - individual or body corporate - who, on his own account or on the account of one or several persons, enters into an insurance contract with the insurer, being responsible for the payment of the premium.

### **Article 3**

(Prior authorisation)

1. The activity referred to in Article 1 paragraph 1 may only be carried on by insurers or

reinsurers duly authorised to be formed or established in the Territory, as the case may be, by Executive Order of the Governor, and after obtaining the opinion of AMCM, which shall specify the class(es) of insurance the respective entity may transact.

2. Insurers may freely accept reinsurance contracts in the class(es) of insurance so authorised and also reinsurance its insurance contracts or insurance operations with entities authorised for such purpose, even if the said entities have not been formed or established in the territory of Macau.

**Article 4**  
(Exclusive object)

1. The sole object of insurers shall be the carrying on of the activity referred to in Article 2 paragraph a).
2. It is not permissible to carry on life and non-life business concurrently.

**Article 5**  
(Jurisdiction)

Only the Macau Courts are competent to give judgements on actions arising from insurance contracts or insurance operations entered into in the Territory or in respect of persons or entities who, on the date of such contracts or insurance operations, were resident or domiciled in the Territory, or in respect of the assets located therein or of the risks situated therein.

**Article 6**  
(Contracts or insurance operations with unauthorised insurance companies)

1. Without prejudice to the provision of the following paragraph 3, any liability arising from contracts or insurance operations to which the preceding Article refers, when entered into with an insurer not authorised to operate in the territory, shall not be enforceable, nor shall the judgements of foreign courts on such contracts or insurance operations be enforceable in the Territory.
2. In the circumstances referred to in Article 460 of the Commercial Code, if the insurer had not been authorised to carry on business in the Territory, the rules of collation, informality and recision in respect of acts performed in prejudice of creditors shall apply as to the sums insured, if they exceed the amount received by such insurer.
3. The provisions of paragraph 1 of this Article shall not apply to contracts or insurance operations which insurers authorised to carry on business in the Territory were unwilling or unable to accept provided, however, the aforesaid contracts or operations were entered into without objection from AMCM, to whom notice of such contracts or operations shall be given by the proponent at least 15 days in advance.

**Article 7**

**(Use of names)**

Only insurers authorised to carry on the activity in Macau are permitted to use and include in their firm or company name the words “seguradora”, “companhia de seguros” or words of similar meaning, the Chinese expressions “•••” and “••••” and the corresponding Romanization in Cantonese “pou him ian” and “pou him cong si” and in Mandarin “bao xian ren” and “bao xian gong si”, so too the English designations of “insurance company” and “insurer” or similar names in any other languages, except where the respective use does not manifestly suggest the idea of carrying on of insurance business.

**Article 8**

(Use of official language)

Any applications and the respective supporting documents or communications issued by insurers shall be presented in at least one of the official languages of the Territory.

**CHAPTER II**

Supervision, co-ordination and inspection of insurance activity

**Article 9**

(Powers of the Governor)

1. The authority to supervise, co-ordinate and inspect the insurance activity rests with the Governor.
2. The Governor is empowered to regulate, by Executive Order and without prejudice to the particularities of specific situations, the general and specific conditions, the technical basis and the tariff rules for compulsory insurances or for other classes of insurance where standardisation is considered necessary, and also to issue directives or adopt necessary measures deemed appropriate for the execution of the authority referred to in the preceding paragraph.

**Article 10**

(AMCM)

1. The duties of supervision, co-ordination and inspection referred in the preceding Article shall be carried out by AMCM, in accordance with the provisions of the present Ordinance and its respective statutes.
2. As far as it relates to the insurance activity, AMCM shall be vested with powers, namely:
  - a) To issue notices, to be published in the Official Gazette, and instructions binding on insurers, reinsurers and insurance intermediaries, with a view to correlating the insurance market to the economic, financial and social policies of the Territory;

- b) To authorise the wordings and the respective alteration of any policies under the class of insurance already authorised, as well as to carry on new insurance operations;
  - c) To cancel, as and where requested by an insurer, the authorisation to carry on business of a class of insurance or insurance operation;
  - d) To give its opinion on petitions for the transfer of insurance portfolios, on alterations to the statutes and on the terms and conditions of termination of insurers and reinsurers;
  - e) To carry out inspections of insurers and reinsurers so as to regularise the technical, financial, fiscal and legal aspects of the respective activity;
  - f) To carry out extraordinary inspections of companies pertaining to any other sectors of the economy when such companies are strongly suspected of having carried on the activities reserved for insurers, reinsurers or insurance intermediaries, or when the examination of their operations is indispensable to clarify the activity of a certain insurer, reinsurer or insurance intermediary, or also when it is necessary to evaluate the financial situation of the group wherein the insurer, reinsurer or the intermediary is inserted;
  - g) To commence and conduct infringement proceedings and submit to the Governor its opinion on the application or suspension of the respective sanctions, and also to effect the collection of fines as and where imposed;
  - h) To receive, analyse and give its opinion on complaints so lodged against probable violations of the regulatory norms of the insurance sector;
  - i) To submit to the Governor proposals of laws to regulate the matters which are under its supervision.
3. AMCM may request any entity, public or private, namely third parties who have had dealings with the insurers or with insurance intermediaries, to submit directly to AMCM the information or explanations deemed necessary to execute its functions, so too make use of the services of other entities, resident or not in the Territory.
4. The duties and powers of AMCM, in respect of entities subjected to supervision, shall continue to be operative in cases of caducity or revocation of the respective authorisations, including suspension or cessation of activity for whatever reason, until all the creditors have been compensated or the process of liquidation has been concluded.

## **Article 11**

(Professional secrecy)

The members of AMCM• statutory boards, so too its employees, auditors, specialists and other persons who are rendering or have rendered their services on a permanent basis or occasionally shall keep professional secrecy regarding the facts which have come to their knowledge exclusively in the course of their duties.

**Article 12**  
(Obligation to provide information)

1. Insurers and the reinsurers are required to deposit with AMCM, by the last day of the month following the respective quarter, a trial balance drawn up to the end of each quarter; however, for the last quarter of the year the relevant trial balance may be deposited by the end of following February.
2. For the purpose of formal approval by AMCM, insurers and reinsurers are required to complete a set of accounting and statistical forms relating to the preceding year and deposit the same with the said entity at least 30 days prior to the annual general body meeting wherein the annual accounts are to be approved.
3. In addition to other similar obligations set out in the present law, insurers and reinsurers with head office formed in the Territory shall deposit with AMCM, within the period fixed in the preceding paragraph, the following:-
  - a) The full names, in all possible versions, of the persons who during the respective financial year were members of the Board of Directors and the Supervisory Committee, of the general representative, as well as of the person in charge of the accounting department;
  - b) A copy of the report and accounts of the Board of Directors or equivalent together with the report of the Supervisory Committee and of the external auditing firm.
4. Insurers and reinsurers with head office overseas shall also be required to deposit annually with AMCM a report on its consolidated accounts relating to the preceding year.
5. AMCM may request insurers and reinsurers to furnish any other particulars and information deemed necessary for a complete execution of its functions.

**Article 13**  
(Inspection)

1. The inspection of insurers' activity may be carried out on their own premises.
2. For such inspections, AMCM may, directly or through persons or entities duly

authorised for this purpose, examine at any time, with or without prior notice, the transactions, books, accounts and other records or documents, verify the existence of any type of valuables, and also copy all that is considered necessary to verify the observance, by the insurer or reinsurer, of the legal and regulatory provisions governing the insurance sector.

3. During the course of the inspections, referred to in the present Article, AMCM may seize any documents or valuables which constitute object of infringement, or which are necessary to start the respective infringement proceedings.

**Article 14**  
(Publication of authorisations granted)

In the month of January of each year AMCM shall publish in the Official Gazette a list of insurers and reinsurers' authorised to operate in Macau and the respective class(es) of business they are permitted to transact.

**Article 15**  
(Supervisory fee)

1. Insurers and reinsurers authorised to carry on their activity in the Territory shall be subject to the payment of an annual supervisory fee of an amount not less than twenty thousand patacas nor higher than one hundred thousand patacas.
2. In the year of commencement or cessation of business the supervisory fee payable shall correspond to the months during which it has carried on the respective activity.
3. The amount of supervisory fee for each year shall be fixed by AMCM by way of notice, to be published in the Official Gazette in the month of December of each year, and the payment and collection of such fee, which shall constitute income of AMCM, shall be effected through this entity during the following month of January.

**CHAPTER III**  
Conditions of access to insurance activity

**SECTION I**  
Insurers with head office in the Territory

**SUBSECTION I**  
Formation

**Article 16**  
(Company form)

Insurers with head office in the Territory shall be constituted as commercial companies under the form of a joint-stock company with limited liability and the respective shares shall be nominative or registered to the bearer.

**Article 17**  
(Share capital)

1. The minimum share capital of an insurer shall not be less than fifteen million patacas for the carrying on of non-life business or thirty million patacas in the case of life business.
2. At the time of formation, 50% of the share capital shall have to be realised in cash and deposited in favour of AMCM with a credit institution authorised to operate in the Territory, with an express declaration of the amount subscribed by each shareholder, and such deposit may only be withdrawn after commencement of insurance activity and authorisation of AMCM.
3. The remaining 50% of the share capital shall have to be realised within a maximum period of 180 days from the date of the deed of constitution.

## **Article 18**

(Shares and debentures)

1. Insurers shall not acquire their own shares or trade them.
2. The issuing of debentures or other securities on the part of insurers shall be subject to prior authorisation of the Governor, which shall set out the respective conditions, after hearing the opinion of AMCM.
3. Insurers are prohibited from issuing debentures in order to cover their liabilities of a technical nature.

## **Article 19**

(Conditions and criteria for the granting of authorisation)

1. Authorisation for the formation of an insurance company shall be granted in accordance with the criteria of opportunity and convenience, basically those concerning the needs of the local market or the economic and financial benefit that would revert to the Territory as a result of such a formation.
2. In the appraisal of the petition for authorisation, in so far as it relates to the opportunity and convenience of setting up of an insurer, the following factors shall be taken into account:
  - a) Possibility of the applicant to improve the variety or the quality of the services rendered to the public;
  - b) Integrity of the founder members which may, directly or indirectly, have a significant influence on the local insurance activity and management of the insurer;
  - c) Integrity, qualification and professional experience of the persons who effectively manage the insurer;
  - d) Sufficiency of technical support and financial resources to back up the activity in the class(es) of insurance the applicant intends to transact;
  - e) Compatibility between the development prospects of the insurer and the maintenance of healthy competition in the insurance market.

## **Article 20**

(Integrity)

1. In appraising the integrity referred to in the preceding Article, it shall be considered relevant, among others, the fact that the person:

- a) Had been sentenced or has been indicated for crimes of robbery, theft, breach of trust, issuing cheques without funds, fraud, forgery, embezzlement, bribery, extortion, usury, corruption false declarations or unauthorised receipt of deposits or other repayable funds;
  - b) Had been declared, by sentence transited in “rem judicata”, bankrupt or insolvent or judged as being responsible for the bankruptcy of companies controlled by him or of which he had been administrator, director or manager;
  - c) Had been held responsible for committing infringements of the legal and regulatory norms which govern the activities of the institutions subject to the supervision of AMCM, when the respective seriousness or the repeated failure to comply is considered relevant.
2. The provision of the preceding paragraph shall be applicable, with necessary adaptations, to the members of the supervisory board and of the board of general assembly of the insurer.

### **Article 21** (Professional experience)

For the purposes of Article 19 paragraph 2 c), a person shall be considered as having adequate professional experience if he has previously performed, with competence, functions of responsibility in the financial and technical fields, and the length of time during which such functions were performed shall also be considered relevant.

### **Article 22** (Authorisation procedure)

1. The persons - individuals or corporate entities - who intend to form an insurer shall submit the respective petition to AMCM, together with the following documents:
- a) Memorandum, duly substantiated, of economic and financial reasons justifying the formation of the company, which demonstrates the respective viability and the possibility of incorporating its activity in the objectives of the economic and financial policy of the Territory;
  - b) Indication of the name of the company, at least in the official languages of the Territory, in such form or expression which unequivocally suggests that its sole object is the carrying on of insurance activity;
  - c) Draft of the Memorandum and Articles of Association, drawn up in accordance with current legal and regulatory provisions;
  - d) Personal and professional identification of the founder members indicating their

respective share in the capital and a well-founded memorandum on the suitability of the shareholding structure for the stability of the insurer;

- e) No Criminal Record Certificate for each of the founder members with qualified shareholding, issued less than 90 days before the date of application;
  - f) Declaration, under oath, from the founder members with qualified shareholding certifying that at no time neither they nor any of the companies or firms under their control or of which they were administrators, directors or managers, as the case may be, were declared insolvent or bankrupt;
  - g) Details of material, technical and human resources to be utilised;
  - h) Indication of the general conditions and the respective technical basis of the policies under the class of insurance the applicant intends to transact.
2. Where the founder members are corporate entities with qualified shareholding, the following information shall be submitted in relation to every such corporate entity:
- a) Memorandum and Articles of Association;
  - b) Reports and accounts of the last three financial years;
  - c) Identification of the members of the administrative bodies, together with biographical details;
  - d) Composition of share capital and a list of shareholders with 10% or more of the said capital;
  - e) List of other companies in whose capital the corporate entities hold a qualified shareholding, and the structure of the respective group.
3. The petition for authorisation shall also outline the business plan which shall contain, at least, the following information:
- a) Reinsurance program, detailing the business strategy to be adopted in respect of reinsurance inward and outward;
  - b) Estimation of organisation and preliminary expenses, namely those relating to the administrative and commercial aspects of the business;
  - c) Estimation for each of the first three years of activity in respect of the following particulars:
    - 1st- Administrative expenses, namely commissions and general expenses, in respect of each class of insurance;

- 2nd- Number of employees by place of recruitment and their respective salaries;
- 3rd- Premiums, claims and technical reserves in respect of direct business and reinsurance;
- 4th- Half yearly position of cash in hand and at bank;
- 5th- Solvency margin position calculated in accordance with the current legal provisions;
- 6th- Financial resources to guarantee the responsibility assumed.
4. In addition to the information referred to in the preceding paragraphs, AMCM may request the applicant to submit complementary information and documents considered necessary to complete the application process.
  5. After verifying the required technical and legal conditions for the formation of an insurance company, AMCM shall submit the respective application, together with its reports, to the Governor for decision.

**Article 23**  
(Caducity of authorisation)

The authorisation so granted shall lapse if the deed of constitution is not signed within 120 days from the date of publication of the Executive Order of authorisation, or if the insurer has not commenced business within 180 days from the date of signing of the said deed; however, in duly justified cases the Governor may extend the latter time limit for a further period not exceeding 1 year.

**Article 24**  
(Execution of the business plan)

1. During the three years of activity, in respect of which a business plan has been filed pursuant to paragraph 3 c) of Article 22, insurers are required to submit to AMCM, every six months, a detailed report on the execution of the business plan.
2. Where the financial condition of an insurer is considered to be inadequate, the insurer in such a situation shall be required to reinforce the financial guarantees as directed, or be subject to the revocation of the authorisation granted.
3. Any changes to the said business plan shall be subject to prior authorisation of the Governor after hearing the opinion of AMCM.

**SUBSECTION II**  
Qualified shareholding

**Article 25**

(Acquisition or increase of qualified shareholding)

1. No person, individual or corporate body, shall acquire, directly or indirectly, a qualified shareholding in an insurer with head office in the Territory, or increase its shareholding in a proportion equal to or higher than 5% of the capital or of the voting rights, in one or more acts, without obtaining prior authorisation of AMCM, except if, by nature, this is not possible, in which case the respective acquisition shall be communicated within a maximum period of 30 days from the date of such acquisition or increase.
2. AMCM may oppose the acquisition or increase of the qualified shareholding if it considers that the shareholder has failed to demonstrate that he meets the conditions necessary to guarantee a proper and prudent management of the insurer.
3. The opposition may be based, among other factors, on the following:
  - a) The way the person normally conducts his business or if the nature of his professional activity demonstrates a marked propensity for accepting excessive risks;
  - b) Inadequacy of the economic and financial situation of the person, verified on the basis of the amount of shareholding which he has proposed to hold;
  - c) Where AMCM has well-founded doubts on the legality of the source of the funds destined for the acquisition of the shareholding or on the real identity of the owner of such funds;
  - d) If the structure and the characteristics of the business group wherein the insurer will be integrated are not conducive for a proper supervision;
  - e) The fact that the person has failed to demonstrate his willingness to comply or give assurances that he will comply with the conditions necessary to set right the situation of this insurer, as laid down in advance by AMCM.
4. The approval shall be deemed to have been given if AMCM does not comment within a period of 2 months from the date of the petition.
5. Where AMCM has not opposed, it may fix a period for the realisation of the proposed operation.

**Article 26**

(Prohibition of voting rights)

1. Without prejudice to the sanctions applicable, any acquisition or increase of a qualified shareholding, without the person concerned having obtained the approval of AMCM, shall determine the prohibition against the use of the acquired voting rights.
2. Where AMCM has knowledge of any of the facts mentioned in the preceding paragraph, it shall inform the administrative body of the insurer about such facts and the inherent prohibition.
3. The said administrative body of the insurer shall communicate the information of AMCM to the meeting of shareholders, including the facts in respect of such prohibition which have come to its knowledge through other sources.
4. The resolution in which the shareholder has exercised his voting rights of which he is prohibited, under the terms of the preceding paragraph 1, shall be nullified, except if it is proved that the resolution would have been passed even without the said votes.
5. If, in spite of the provision of paragraph 3, the shareholder exercises his voting rights of which he is prohibited, the direction of his vote shall be registered in the minutes of the meeting.
6. The decision to annul may be taken by the shareholders, by the supervisory body, in general terms, or by AMCM.
7. The pending action of annulment of the resolution in respect of the election of the administrative and supervisory boards shall constitute sufficient basis for refusal of the registration laid down in Article 48 paragraph 1 o), the use of the voting rights, covered by the prohibition, which were responsible for the passing of the resolution.

**Article 27**  
(Cessation of prohibition)

In case of non-compliance with the provision of Article 25 paragraph 1, the prohibition of the voting rights shall cease if the interested party communicates, subsequently, the act performed and there is no objection from AMCM.

**Article 28**  
(Reduction in qualified shareholding)

Any person, individual or corporate body, who intends not to maintain the qualified shareholding in an insurer with head office in the Territory, or wishes to reduce it in a proportion equal to or higher than 5% of the share capital or of the voting rights, shall inform AMCM in advance and shall communicate to this entity the new value of his shareholding.

**Article 29**

(Communication by insurers)

Insurers with head office in the Territory shall:

- a) Communicate to AMCM the alterations referred to in Articles 25 and 28 as soon as they have knowledge of the same.
- b) Deposit with AMCM, in the month of April of each year, a list of shareholders with qualified shareholding.

**SUBSECTION III**  
Representation overseas

**Article 30**  
(Prior authorisation)

The setting up of branch offices or any other forms of representation overseas by insurers with head office in the Territory shall be subject to prior authorisation of the Governor, which shall be granted by Executive Order after hearing the opinion of AMCM.

**Article 31**  
(Authorisation procedure)

1. The application to be presented to AMCM shall contain the following elements:
  - a) Notarised copy of the minutes of the general meeting, which relate to the discussion on the setting up of representation overseas;
  - b) Indication of the country or territory wherein the representation will be established;
  - c) Type of establishment;
  - d) A well-founded report detailing reasons of economic and financial nature to justify the decision taken, with an indication of the type of operations to be carried out;
  - e) Address of the proposed establishment in the receiving country;
  - f) Identification and professional resumé of the person responsible for the establishment, together with a declaration stating that such person shall be vested with powers sufficient to bind the insurer in relation to third parties and to represent such insurer in dealings with the authorities and the courts.
2. The provision of Article 22 paragraphs 3 and 4 shall be applicable, with necessary adaptations, to the petitions for authorisation to establish overseas.

3. The provision of Articles 20 and 21 shall be applicable, with necessary adaptations, to the provisions of paragraph 1 f).

**SECTION II**  
Insurers with head office overseas

**Article 32**  
(Form of local representation)

The activity of insurers with head office overseas, who are authorised to establish in the Territory, shall be conducted through branch offices and representative offices.

**SUBSECTION I**  
Branch

**Article 33**  
(Branch)

The branch office shall be an individualised functional unit in terms of premises, staff, issuing of policies, recording of reinsurance transactions, settlement of claims and accounting.

**Article 34**  
(Regime)

1. Insurers with head office overseas shall only be permitted to carry on in the Territory the class(es) of insurance for which they hold a valid licence and effectively transact in the country or territory of origin.
2. Such insurers shall be subject to the laws currently in force in the Territory of Macau in respect of its operations therein, and, where expressly stated, the provision of the present decree shall equally apply.
3. Insurers with head office overseas shall not conduct in the Territory of Macau the activity or the operations, even if the same are permitted by their Memorandum and Articles of Association, which are contradictory to the present law or other legislation in force in the Territory.

**Article 35**  
(Conditions and Criteria for the granting of authorisation)

1. Authorisation for the establishment of insurers with head office overseas shall depend whether they have been constituted and in operation for at least five years, and whether their respective capital is not less than the minimum amounts fixed under Article 17 paragraph 1.

2. The granting of the authorisation mentioned in the preceding paragraph shall also depend on the analysis of the criteria of opportunity and convenience, namely the following:
  - a) Possibility of the insurance company to improve the variety or the quality of the services rendered to the public;
  - b) Economic and financial data of the applicant relating to the historical development of the company in terms of underwriting, capital, reserves and surplus, application of funds and retention capacity;
  - c) Type and level of controls in the area of supervision, co-ordination and inspection of insurance activity in the country or territory where its head office is located;
  - d) Level of economic and financial ties between Macau and the country or territory where the head office of the applicant is located;
  - e) Adequate reinsurance program for its operations in Macau;
  - f) Geographical distribution of insurers based on their respective nationality;
3. The minimum conditions to be laid down for the granting of any authorisation shall cover the following areas:
  - a) Effective establishment of business as reflected by sufficiency in terms of own office premises, technical assistance and financial and human resources;
  - b) Recruitment of local staff to fill the majority of the vacancies so created by the commencement of business of the new insurer and in addition guaranteeing the continued technical training of such staff;
  - c) Co-operation with other entities of the Territory in order to improve the quality of services connected with insurance activity, namely those relating to medical and hospital care and prevention and safety measures against fires, other inherent perils, occupational accidents and occupational diseases.

**Article 36**  
 (General representative)

1. The management of a branch shall be entrusted to a general representative whose moral and professional competence is acceptable to AMCM, and who shall be conferred with necessary powers to deal and to decide finally, in representation and on behalf of the insurer, with any public and private entity all matters relating to the respective activity in the Territory, namely to enter into contracts of insurance, reinsurance and work contracts, assuming the obligations resulting therefrom.

2. The general representative shall reside permanently in the Territory.
3. In case of revocation of the Power of Attorney by the insurer, it shall designate immediately a new general representative.
4. The provisions of Articles 20 and 21 shall be applicable, with necessary adaptation, to the provision of the preceding paragraph 1.

**Article 37**  
(Establishment fund)

1. Insurers with head office overseas shall be required to set up, for its operations in Macau, an establishment fund of an amount not less than five million patacas in the case of non-life business and seven and a half million patacas in the case of life business, and such amount shall be, at any point of time, held in the Territory of Macau in the form of certain types of assets as defined by Notice of AMCM.
2. Within a period of 30 days from the date of authorisation for the establishment of the branch, the insurer shall deposit in favour of AMCM with a credit institution authorised to operate in the Territory, half of the amount referred to in the preceding paragraph and such deposit may only be withdrawn after commencement of activity of the branch and authorisation of AMCM.

**Article 38**  
(Authorisation procedure)

1. With necessary adaptations and the particularities contained in the following paragraphs, the procedures laid down under Article 22 shall apply to petitions for authorisation for the establishment of branches in the Territory of insurers with head office overseas.
2. In addition to the documents required under Article 22 paragraph 1 a) and h), the petition to be presented to AMCM shall also contain the following:
  - a) Authorisation to establish in Macau from the general assembly of partners or shareholders or from the legal representatives of the insurer who have sufficient powers for such purpose;
  - b) Memorandum detailing the world-wide activities of the applicant;
  - c) Indication of the name of the company in Chinese;
  - d) Memorandum and Articles of Association, and annual reports and accounts for the preceding three years;

- e) Identification of the members of the administrative bodies, accompanied by brief biographical details;
  - f) Certificate, issued by the appropriate entity of the country or territory where the head office of the insurer is located, declaring that the applicant is legally incorporated and organised under the provisions of the laws in force in such country or territory and that the said applicant holds a valid licence to carry on the class(es) of insurance which the insurer intends to transact in Macau;
  - g) Identification of the general representative, vested with powers in accordance with the provisions of Article 36 paragraph 1;
  - h) Any other information which AMCM may deem necessary for a proper evaluation of the petition for authorisation in question.
3. The petition for authorisation shall also include the details of the business plan as referred to in Article 22 paragraph 3.
4. The information referred to in the preceding paragraphs shall be submitted in the original language, accompanied by the respective translation, dully notarised, into any one of the official languages of the Territory, unless expressly exempted by AMCM.

### **Article 39** (Caducity of authorisation)

The authorisation so granted shall lapse if the branch office of the authorised insurer does not commence its activity within 180 days from the date of publication of the respective Executive Order of authorisation; however, in duly justified cases, the Governor may extend the said time limit for a further period not exceeding 1 year.

### **Article 40** (Application of foreign judgements)

A foreign judgement declaring the bankruptcy or liquidation of an insurer with head office overseas shall be enforceable in respect of the insurer's operations in Macau only after such judgement is reviewed by the competent tribunal in Macau, and after the settlement of the liabilities assumed by the said insurer in the Territory.

### **SUBSECTION II** Representative offices

### **Article 41** (Regime)

1. The regime set out in the preceding subsection, with necessary adaptations and the

particularities contained in the following paragraph and in the Articles which follow, shall be applicable to the petitions of authorisation for the establishment, in the territory of Macau, of representative offices of insurers with head office overseas.

2. The provisions of Article 35 paragraph 3 and of Article 37 shall not be applicable to representative offices.

**Article 42**  
(Activity prohibited)

1. Representative offices are merely mandatories of the insurers they represent and are prohibited from transacting insurance business.
2. While performing their representative role, such representative offices shall not be permitted to acquire immovable property other than what is indispensable for their installation and operation.

**Article 43**  
(Share capital)

The establishment of representative offices, shall not be permitted if the respective share capital of such insurers with head office overseas is less than the amount fixed under Article 17 paragraph 1.

**Article 44**  
(Location of business)

An insurer with head office overseas shall be permitted to establish only one representative office, which shall operate only from one location as an individualised centre, and the establishment of branches or sub-offices of the said representative office shall be prohibited.

**SECTION III**  
Sub-offices

**Article 45**  
(Prior authorisation)

The opening of sub-offices or the shifting of the respective location shall be subject to prior authorisation of AMCM.

**Article 46**  
(Authorisation procedure)

1. The petition to be submitted to AMCM shall contain the following particulars:
  - a) Memorandum detailing the motives for establishing a sub-office;
  - b) Type of operations to be conducted;
  - c) Address of the establishment;
  - d) Identification of the person responsible for the establishment and description of the powers conferred on the said person;
  - e) No Criminal Record Certificate of the person mentioned in the preceding subparagraph d), issued less than 90 days earlier.
2. Alterations to any of the particulars mentioned in the preceding paragraph shall be communicated in advance to AMCM.
3. The provisions of Articles 20 and 21 shall be applicable, with necessary adaptations, to the provision of the preceding paragraph 1 d).

**CHAPTER IV**  
Special registration

**Article 47**  
(Special registration)

1. Insurers, reinsurers, branches of insurers with head office in the Territory, representative offices and sub-offices shall not commence business without effecting a special registration with AMCM.
2. The provision of the preceding paragraph does not prejudice any other registration obligations which insurers and reinsurers may be legally subject to.
3. Summarised certificate of registration and amendments thereto shall be issued to those whose request demonstrates legitimate interest.

**Article 48**  
(Insurers and reinsurers with head office in the Territory)

1. The register of insurers headquartered in the Territory shall contain the following particulars:
  - a) Name of the insurer in the different authorised versions;
  - b) The Executive Order which authorised its formation;
  - c) Class of insurance authorised and the corresponding policies;
  - d) Date of incorporation;
  - e) Date of registration with the Commercial Registry;
  - f) Income-tax registration number and the number of the corporate entity, as and when the latter is made compulsory;
  - g) Share capital, authorised and paid-up;
  - h) Names of the shareholders with qualified shareholding and the respective value;
  - i) Address of the head office;
  - j) The agreements between shareholders regarding the exercise of voting rights;
  - l) Names of the members of the board of directors, the supervisory board and the main board at the general meeting of shareholders, so too of any other attorneys with managerial powers;
  - m) Name of the auditing firm;
  - n) Memorandum and Articles of Association, by depositing the respective notarised copy;

- o) Any subsequent changes to the above particulars.
2. The provision of the preceding paragraphs shall be applicable, with necessary adaptations to the branches of insurers with head office in the territory of Macau and to the reinsurers formed therein.

### **Article 49**

(Branches of insurers with head office overseas)

In the case of insurers with head office overseas, the register shall contain the following particulars:

- a) Name of the insurer in the different authorised versions;
- b) The Executive Order which authorised its establishment in the Territory;
- c) Class of insurance authorised and the corresponding policies;
- d) Date of registration with the Commercial Registry;
- e) Income-tax registration number and the number of the corporate entity, as and when the latter is made compulsory;
- f) Share capital, reserves and accumulated surplus;
- g) Address of the head office;
- h) Establishment fund of the branch in Macau;
- i) Name of the general representative in the Territory;
- j) Address of the branch office;
- l) Name of the auditing firm;
- m) Any subsequent changes to the above particulars.

### **Article 50**

(Representative offices)

1. In the case of representative offices of insurers, the register shall contain the following particulars:
- a) Name of the insurer in the different authorised versions;
  - b) The Executive Order which authorised the establishment of the representative office in the Territory;

- c) Address of the head office;
  - d) Date of registration with the Commercial Registry;
  - e) Name of the general representative in the Territory;
  - f) Address of the establishment;
  - g) Any subsequent changes to the above particulars.
- 2. The provision of the preceding paragraph shall be applicable with necessary adaptations, to the representative offices of reinsurers.

**Article 51**  
(Sub-offices)

In the case of sub-offices, the following particulars shall be subject to special registration with AMCM:

- a) Address of the establishment;
- b) Name of the person responsible for the establishment;
- c) Date of commencement of the respective activity;
- d) Any subsequent changes to the above particulars.

**Article 52**  
(Additional particulars)

In addition to the particulars laid down in the preceding Articles, AMCM may request the submission of additional information for the purpose of special registration.

**Article 53**  
(Time limits)

1. The petition for registration shall be submitted within 30 days from the date of constitution in the Territory of the insurer or reinsurer, of establishment overseas of branches or representative offices, or of authorisation for establishment in the Territory of branches, representative offices or sub-offices, as the case may be.
2. The petition for registration of alterations to the particulars of the special registration, where prior authorisation is not required, shall be made within 30 days from the date of such alterations.

**Article 54**  
(Refusal of registration)

1. The initial registration and the subsequent alterations shall be denied whenever any of the conditions necessary to obtain authorisation for the formation of insurers or reinsurers, for the respective establishment in the Territory or overseas or for the carrying on of the respective activity is found to be lacking.
2. Where the petition or the documentation presented is deemed to contain omissions or irregularities which can be made good by the interested parties, the said parties shall be notified that within the period laid down such omissions or irregularities shall be rectified, failing which the petition for the initial registration or the subsequent alterations shall be refused.

## **CHAPTER V**

### Conditions for the carrying on of insurance activity

#### **SECTION I**

##### Financial guarantees

##### **Article 55**

###### (Financial guarantees)

In addition to other guarantees required under the present law, insurance companies shall cause to provide the following financial guarantees, directly linked to their activity:

- a) Technical reserves;
- b) Margin of solvency.

#### **SECTION II**

##### Technical reserves

##### **Article 56**

###### (Technical reserves)

Authorised insurers are required to set up:

- a) Claims reserve;
- b) Mathematical reserve, where the insurer carries on the business of life insurance;
- c) Unearned premium reserve, where the insurer carries on the business of non-life insurance;
- d) Loss ratio variation reserve, where the insurer carries on the business of credit insurance (commercial risks).

##### **Article 57**

###### (Claims reserve)

1. The claims reserve shall correspond to the foreseeable amount of costs in respect of unadjusted claims and/or adjusted claims but still outstanding at the end of the year, including the estimated liability for claims incurred but not reported.
2. Without prejudice to the provision in paragraph 4 of this Article, the claims reserve shall be calculated claim by claim.
3. As regards adjusted claims which are still outstanding at the end of the year, the amount of the reserve shall correspond to the total of the indemnities fixed.

4. Under those classes of insurance where it is considered appropriate for technical reasons, insurers may calculate the reserves for unadjusted claims based on the average cost of such claims, and the respective system of calculation showing the formulas utilised to update and ascertain the current average cost of claims and the method of application shall be submitted in advance to AMCM for approval.

**Article 58**  
(Mathematical reserve)

1. The mathematical reserve, calculated in accordance with the technical basis as normally utilized, shall correspond to the difference between the actual values of reciprocal liabilities of the insurer and the persons who have entered into contracts of insurance with the said insurer and such reserve shall be certified by an actuary of the insurer.
2. In certain justified cases, AMCM may authorise the "zillmerization" of the mathematical reserve.

**Article 59**  
(Unearned premium reserve)

1. The unearned premium reserve shall be the amount set aside by an insurer, in respect of every contract of insurance in force under non-life business, to guarantee the risks borne by such insurer including the expenses resulting therefrom after the end of the financial year and up to the maturity date of the respective contract.
2. Without prejudice to the provision of the following paragraph, this reserve shall be calculated contract by contract by applying the "pro-rata temporis" method of calculation.
3. Subject to prior communication to AMCM, an insurer may, in respect of every non-life class of business so conducted, calculate the unearned premium reserve on an overall basis by applying a percentage to the total gross premium written during the year under the respective class, net of returns and cancellations.
4. The percentage referred to in the preceding paragraph shall be laid down by AMCM, by way of Notices, to be published in the month of December of each year.

**Article 60**  
(Loss ratio variation reserve)

The loss ratio variation reserve serves to compensate any eventual underwriting loss that would result at the end of a financial year, due to a higher than the average loss ratio for this class of insurance and shall be calculated under the terms as defined by AMCM by way of Notice.

**Article 61**  
(Guaranteeing of technical reserves)

1. The technical reserves shall be guaranteed by equivalent and congruent assets located in the Territory; however, in duly justified cases and according to predetermined conditions, AMCM may authorise the utilisation of assets located overseas or originating therefrom.
2. The assets guaranteeing the technical reserves shall take into account the type of operation effected by the insurer, so as to guarantee the security, income and liquidity of the investments of such insurer and also to assure an adequate diversification and dispersion of such investments.
3. The nature, conditions of acceptance and the percentile limits of the said assets shall be fixed by AMCM by way of Notice to be published in the month of January of each year for the financial year referred to therein and such assets shall be free of any charge or liability.
4. The determination laid down by AMCM, pursuant to the provision of the preceding

paragraph, shall take into account what has been established in the preceding years and shall apply essentially to the amount of increase in the year-end balance of the technical reserves as referred to under adjustment of guarantees.

5. Upon the occurrence of an abnormally high claim, AMCM may permit the insurer to guarantee only that part of the respective claims reserve which corresponds to the said insurer's retention, or another amount as determined by AMCM.
6. The criteria for the application of the provision in the preceding paragraph shall be laid down by AMCM by way of Notice.

### **Article 62**

(Time limit for guaranteeing the technical reserves)

Insurers are required to communicate annually to AMCM, within the period fixed in Article 12 paragraph 2, the guaranteeing of the technical reserves.

### **Article 63**

(Restoration or reinforcement of assets guaranteeing the technical reserves)

Where the assets guaranteeing the technical reserves are reduced due to diminution in value, quotation or for any other reason, the relevant assets shall be restored or reinforced within the period laid down by AMCM.

### **Article 64**

(Registration of the charge  
on immovable property and of mortgage loans)

Where an immovable property or a mortgage loan is pledged as security to guarantee the amount of the technical reserves, the respective charge is subject to registration in accordance with the Property Registration Code.

### **Article 65**

(Special assets)

1. The assets guaranteeing the technical reserves shall essentially secure the credits arising from the contracts or operations of insurance, which shall have a preferential right over those of other creditors in the respective values, and where necessary other corporate assets shall be utilised to secure the balance, if any, of such credits.
2. The assets guaranteeing the technical reserves shall not be attached nor put under restraint other than for the payment of credits referred to in the preceding paragraph.
3. In no case can the assets referred to in the preceding paragraph be pledged to third parties as guarantee, whatever be the juridical form of such guarantee.

**Article 66**

(Disposal of assets guaranteeing the technical reserves)

1. The assets guaranteeing the technical reserves may only be withdrawn or discharged from covering the credits of the insureds in the following cases:
  - a) The part of the assets which exceeds the total of the technical reserves calculated on the last day of the immediate preceding financial year;
  - b) The part necessary to substitute the assets guaranteeing the technical reserves;
  - c) Where the insurer has ceased to carry on the class of insurance to which the technical reserves relate, subject to termination of the respective contracts;
  - d) For the payment and redemption of policies, where the financial condition makes it impossible for the insurer to meet such liability in any other way.
2. Authorisation of the Governor is necessary for the disposal of assets under paragraph 1 d) of this Article.

### **Article 67**

(Improper guarantee or insufficient technical reserves)

1. Where the technical reserves are found to be constituted or guaranteed improperly, the insurer concerned shall proceed to rectify the same according to the instructions given by AMCM.
2. In case of insufficiency of technical reserves, the insurer concerned shall present to AMCM, for its approval and within the period laid down by this entity, a short-term financing plan based on an adequate business plan.
3. In case the financing plan is considered to be inadequate, AMCM may make alterations thereto which shall be binding on the insurer.

### **SECTION III**

Margin of solvency

### **Article 68**

(Margin of solvency)

1. Authorised insurers shall maintain a margin of solvency sufficient to meet the liabilities arising from its activities in the Territory.
2. The margin of solvency shall be calculated based on the state of affairs of the insurer on the last day of the financial year immediately preceding and shall correspond to:-
  - a) The company's equity, in the case of an insurer formed in Macau;
  - b) The net assets of the branch in Macau, in the case of an insurer with head office overseas.
3. For the purposes of the preceding paragraph, the company's equity and the net assets shall be free of any charge or liability and shall not include intangible items as well as those specified by AMCM by way of Notice to be published in January of each year.
4. The assets representing the margin of solvency shall be situated in Macau, excluding, however, those assets which pertain to the activity carried on overseas by the insurer.
5. Without prejudice to what has been established in the preceding paragraph, AMCM may authorise, in duly justified cases and in accordance with the conditions so laid down, the utilisation of assets located overseas or originating therefrom.

### **Article 69**

(Margin of solvency for non-life business)

1. The required margin of solvency for non-life business shall be determined in terms of annual gross premium income recorded during the preceding year, net of returns and

cancellations, in accordance with the following table:-

<b>GROSS PREMIUM INCOME</b>	<b>AMOUNT OF MARGIN OF SOLVENCY</b>
Less than ten million patacas	Five million patacas
Equal to or more than ten million patacas but less than twenty million patacas	50% of the said income in that year
Equal to or more than twenty million patacas	The aggregate of ten million patacas and 25% of the amount by which the said income in that year exceeds twenty million patacas

2. Where an insurer registers an abnormal loss ratio during the preceding three consecutive years or during any three years of the preceding five years, the margin of solvency shall be double the amounts calculated in accordance with the table in the preceding paragraph.

### **Article 70**

(Margin of Solvency for life insurance)

1. The required margin of solvency in respect of life insurance shall be determined on the basis of the amount of the mathematical reserves or the amount of the capital at risk and shall be equal to the aggregate of the results arrived at under the terms of the following paragraphs.
2. The required margin of solvency for the insurance classes A and B of Part 2 of the Schedule of Classes of Insurance shall be equal to the aggregate of the two results obtained under the following terms:
  - a) The first one corresponds to the sum arrived at by multiplying 4% of the amount of gross mathematical reserves set up during the year to the ratio (expressed as a percentage) existing between the amount of mathematical reserves net of reinsurance cessions and the amount of gross mathematical reserves at the end of the last preceding year, with a minimum of 85% if such ratio be lower;
  - b) The second one corresponds to the sum arrived at by multiplying 0.3% of the capital at risk, where such capital at risk is not a negative figure, to the ratio (expressed as a percentage) existing between the amount of capital at risk net of reinsurance cessions and the gross amount of capital at risk at the end of the last preceding year, with a minimum of 50% if such ratio be lower.

3. The percentage of 0.3% referred to in paragraph 2 b) shall be reduced to 0.1% in the case of short-term contracts with benefits payable only on death within a maximum period of 3 years and to 0.15% in relation to contracts with a period of validity more than 3 years but less than 5 years.
4. For the purposes of paragraph 2 b), the capital at risk shall mean the amount payable on death less the mathematical reserves in respect of the principal coverage.
5. The required margin of solvency for the insurance class C of Part 2 of the Schedule of Insurance Classes shall be equal to the aggregate of the two results obtained under the following terms:
  - a) The first one by applying the method stated in paragraph 2 a):
    - i) If the insurer bears an investment risk;
    - ii) Or, if the insurer does not bear such risk, in case the term of the contract exceeds 5 years and if the amount allocated in the relevant contract to cover management expenses is equally fixed for a period exceeding 5 years, the factor of 1% of the amount of gross mathematical reserves set up during the year shall be considered.
  - b) The second one by applying the method stated in paragraph 2 b) if the insurer covers a death risk, and in any case the amount of 0.3% of the capital at risk shall be considered.
6. The required margin of solvency for the insurance class D of Part 2 of the Schedule of Insurance Classes shall be equal to the aggregate of the two results obtained under the following terms:
  - a) By applying the method obtained in paragraph 2 a) for the insurance class D.1. of the said Schedule;
  - b) On the basis of gross premiums for the insurance class D.2. of the Schedule, in accordance with the provision of the preceding Article.
7. The required margin of solvency for the insurance class E of Part 2 of the Schedule of Insurance Classes shall be equal to 1% of the assets of the relevant tontine.
8. The required margin of solvency for the insurance class F of Part 2 of the Schedule of Insurance Classes shall be calculated by applying the method stated in paragraph 2 a).
9. The required margin of solvency for the insurance class I of Part 2 of the Schedule of Insurance Classes shall be calculated according to the provision of paragraph 5.

10. The required margin of solvency for the insurance class J of Part 2 of the Schedule of Insurance Classes shall be equal to 4% of the amount of gross mathematical reserves set up in the year

**Article 71**  
(Insufficiency of margin of solvency)

1. Where the margin of solvency is verified to be insufficient, be it circumstantial or temporary, the insurer in question shall submit to AMCM for approval, within the period so laid down for such purpose, a short-term recovery plan to restore equilibrium to its financial condition.
2. Where the recovery plan is considered inadequate, AMCM may effect necessary modifications which shall be adopted by the insurer.

**SECTION IV**  
Book-keeping

**SUBSECTION I**  
Compulsory books and records

**Article 72**  
(Compulsory books and records)

1. Insurers shall cause to be kept, in addition to the books required of commercial companies, proper and up-to-date registers of policies and claims.
2. By Order published in the Official Gazette, the Governor may cause to be compulsory the keeping of other books and records which are deemed necessary for the execution of the duties as provided for under this decree.

**Article 73**  
(Registers of insurance policies)

1. Insurers shall maintain up-to-date registers of policies, which may be computerised.
2. The registers mentioned in the preceding paragraph shall record all the policies issued and renewed during the year, indicating at least the following particulars:
  - a) Number and date of the policy;
  - b) Name, firm or designation of the policyholder;
  - c) Class of insurance;
  - d) Insured sum.

3. In case of life insurance, the register shall also specify the following:
  - a) Name and age of the person whose life is covered by the insurance;
  - b) Period of insurance.
4. The provision of the preceding paragraph shall be applicable, with necessary adaptations, to the operations relating to capitalisation.

**SUBSECTION II**  
 (Preservation and microfilming of documents)

**Article 74**  
 (Preservation period)

The periods of preservation of records of insurers are:

- a) 10 years for supporting documents of principal accounting records;
- b) 5 years for current account books, insurance proposals and policies and claim files;
- c) 1 year for documents not mentioned in the preceding subparagraphs.

**Article 75**  
 (Counting of preservation period)

1. The preservation periods of documents shall commence from the date such documents are sent for filing.
2. Where litigious cases are still pending, the counting of the periods shall commence only after the transit in "rem judicata" of the respective sentence.

**Article 76**  
 (Rendering the documents ineffective)

1. On completion of the minimum periods of preservation laid down in Article 74, the documents may be rendered ineffective, excluding those classified as having historical interest under the terms of the applicable legislation, which shall be transferred to proper and adequate files.
2. The documents to be rendered ineffective immediately may be destroyed soon after having knowledge of the same or after the necessary follow-up has been completed, without the need for a destruction order.

3. The act of rendering the documents ineffective shall be made in a way that it is impossible to read or reconstruct such documents.
4. With the exception of the documents mentioned in paragraph 2, a destruction order signed by the persons involved in this act shall be required to render the remaining documents ineffective and the said order shall constitute legal proof of disposal of property.

**Article 77**  
(Microfilming)

1. Insurers may microfilm the documents which, according to the terms of the present law and pursuant to the periods of preservation laid down in Article 74, are required to be maintained on file.
2. For all purposes, these microfilms shall substitute the originals.
3. The microfilming and the rendering of documents ineffective shall be decided by the insurer's management body or by the mandatory with sufficient powers, provided such operations have been communicated to AMCM in advance together with the name of the respective person responsible.
4. The operations of microfilming shall be executed with the highest technical rigour so as to guarantee a reliable reproduction of the documents concerned.
5. The operations mentioned in the preceding paragraph shall be regulated by Executive Order of the Governor.

**Article 78**  
(Probatory character of microfilm)

The photocopies and enlargements obtained from the microfilm shall have probatory force of the original in the courts or elsewhere, provided they contain the signature of the person responsible for the microfilming, duly authenticated with the white seal of the insurer.

**Article 79**  
(Application)

The provision of the present subsection shall be applicable to any of the forms of constitution or establishment in the Territory of Macau mentioned in this law.

**SUBSECTION III**  
Accounting of operations

**Article 80**  
(Directives and forms)

1. AMCM shall establish, by way of Notices, the criteria to be adopted by insurers to record the transactions entered into in the course of their business.
2. The balance sheet, trial balance, revenue and profit and loss accounts and any other financial data which may be requested shall be submitted on forms prescribed by AMCM.

**Article 81**  
(Valuation criteria)

AMCM shall establish, by way of Notices, the criteria to be adopted by insurers for the valuation of the respective assets and liabilities.

**Article 82**  
(Depreciation and amortisation)

1. Organisation and preliminary expenses and other similar intangible assets, which shall not exceed 10% of the share capital, shall be totally written off in the subsequent three financial years following the year in which the expenses are incurred.
2. Immovable property and other assets shall be depreciated in accordance with the criteria established under the corresponding legislation.

**Article 83**  
(Financial provisions)

1. In addition to the provisions for bad and doubtful debts, including outstanding premiums, and for the depreciation of assets, insurers shall create provisions which are prudently considered necessary to meet the risks of depreciation or losses which certain types of securities or transactions are especially subject to.
2. For the purposes of the preceding paragraph, AMCM may, by way of Notices, establish conditions for the setting up and utilisation of such provisions.

**Article 84**  
(Reserves)

1. Insurers headquartered in the Territory are required to set up a legal reserve fund based on the following percentages on net profits computed for each financial year:
  - a) 20%, until the total of this reserve equals one half of the minimum share capital fixed under Article 17 paragraph 1, as the case may be;
  - b) 10%, from the time this reserve equals the amount referred to in the preceding subparagraph and until this reserve reaches an amount equal to the said minimum capital, as the case may be.
2. In addition to the legal reserve, insurers may freely set up other reserves.
3. The legal reserve fund can only be incorporated in the share capital or utilised to offset the losses of the year or the accumulated losses which cannot be covered by using other reserves.
4. The incorporation of the legal reserve in the share capital shall be permitted only in relation to the part that exceeds 25% of the share capital.

**Article 85**  
(Distribution of dividends)

1. Insurers with head office in the Territory shall not distribute to their shareholders, by way of dividends or in any other form, amounts which will in any way reduce the respective contribution to the legal reserve fund as fixed in the preceding Article.
2. Insurers are equally prohibited from distributing any amounts in the form of dividends before the annual accounts are approved.

**SUBSECTION IV**  
Compulsory publications

**Article 86**  
(Compulsory publications)

1. In relation to the last preceding financial year, insurers with head office in the Territory shall, within 60 days from the date on which the annual general meeting is held for approving the accounts, publish in the Official Gazette and in two local newspapers, one in Portuguese and the other in Chinese, the following:-
  - a) Balance sheet, revenue and profit and loss accounts;
  - b) Synthesis of the activity report;
  - c) Report of the supervisory board;
  - d) Report of the auditing firm;
  - e) List of companies in which the share held is higher than 5% of the respective share capital, indicating the corresponding percentage value;
  - f) List of shareholders with qualified shareholding and the respective values;
  - g) Names of the members of the management bodies.
2. Insurers who have subsidiaries overseas shall also publish consolidated balance sheet and profit and loss accounts.
3. The branches of insurers with head office overseas shall publish, under the terms referred to in the preceding paragraph 1, the balance sheet, the revenue and profit and loss accounts and the synthesis of the report of the auditing firm, relating to the activity of the branch, including a succinct report on the activity carried on in the Territory.
4. The branches shall also submit to AMCM, within 30 days after publication, a copy of the report and accounts of the respective head office, maintaining another copy at its principal office for public consultation.

5. The publication referred to in the preceding paragraph 1 shall be made:
  - a) In the Official Gazette, in any one of the official languages of the Territory;
  - b) In the newspapers, in the language of the respective edition.

**Article 87**  
(Submission of material for publication)

Insurers are required to submit to AMCM a copy of all the material which is due for publication, under the terms of the present subsection, at least 15 days in advance.

**SECTION V**  
External audit

**Article 88**  
(Auditing of annual accounts)

1. The verification of the annual financial statements shall be effected compulsorily by independent auditing firms duly registered with the Finance Department.
2. The audit referred to in the preceding paragraph shall certify:-
  - a) That the balance sheet and the respective accounts have been properly prepared in accordance with the legal and regulatory provisions governing the insurance sector;
  - b) That the balance sheet reflects a true and fair view of the state of affairs of the insurer;
  - c) That the insurer's books of accounts have been maintained in adequate form and contain proper records of its transactions;
  - d) Whether, during any relevant period of time, the insurer failed to comply with what has been laid down in the present Ordinance or under other regulatory provisions regarding assets guaranteeing the technical reserves;
  - e) Whether or not the insurer gave the necessary information and explanations as and when requested and, where appropriate, shall specify the cases where the insurer refused to give the required information and explanation, including falsification of information.
3. The auditor's report shall be submitted together with the accounting and statistical forms referred to in Article 80 paragraph 2.

4. In addition to the information referred to in the preceding paragraph 2, AMCM may request the auditing firm of the respective insurer to furnish any other details and information deemed necessary.

**Article 89**  
(Auditing firms and AMCM)

1. AMCM may call a meeting on its own initiative, or based on a well-justified request of the insurers or the respective auditing firms, in order to discuss the matters relevant to the company's business, and such meetings shall be held or conducted independently of the attendance of the representatives of the insurers, provided all the parties have been duly notified.
2. The provision of the preceding paragraph does not prejudice the possibility, in exceptional situations, of AMCM and the auditing firms dealing directly on any questions relating to the functions attributed to such auditing firms under this law.

**Article 90**  
(Urgent information)

Without prejudice to other obligations to provide information stipulated in the present law or in the general law, the auditing firms shall communicate to AMCM, immediately and in writing, any facts that have been detected in the exercise of their functions which are likely to provoke serious loss to the insurer or to the respective activity in the Territory, namely: -

- a) Involvement of the insurer, the executive members of the respective management bodies or of the employees in any criminal activities or illegal practices;
- b) Irregularities which put the solvency of the insurer at risk;
- c) Carrying on of unauthorised operations;
- d) Other facts which in its opinion are relevant for the purposes of this Article.

**Article 91**  
(Extraordinary audit)

In exceptional cases, duly justified, and after consulting the respective insurer, AMCM may determine the carrying out of an extraordinary audit by the auditing firm contracted or by other entities at the expense of the insurer.

**CHAPTER VI**  
Transformation of insurers

**Article 92**  
(Modification of insurers)

1. Any change of name, alteration of the share capital, merger, amalgamation, division or any other form of transformation of an insurer formed in the Territory shall be subject to prior authorisation of the Governor which shall be granted by Executive Order after hearing the opinion of AMCM.
2. Where the transfer of ownership, merger, amalgamation, division or any other form of company transformation is in respect of an insurer with head office overseas, AMCM shall give its opinion, which shall be ratified by the Governor, on the viability of maintaining the respective insurer's operations in the Territory.

**Article 93**  
(Transfer of insurance portfolio)

1. Any transfer, in whole or in part, of insurance portfolios, that is to say premiums, claims or both shall be subject to prior authorisation of AMCM.

The authorisation mentioned in the preceding paragraph shall be published in the Official Gazette and in two newspapers of the Territory, one in the Portuguese language and the other in the Chinese language.

3. Transfer of life insurance portfolio shall not be authorised where at least 20% of the insureds of the insurance portfolio to be transferred oppose such transfer.

**Article 94**  
(Transfer of technical reserves)

1. In the event of a merger of insurers, the technical reserves shall pass on to the new insurer in the part necessary to make up the required reserves.
2. The provision of the preceding paragraph shall be applicable, with necessary adaptations, to the division of insurers and to the transfer of insurance portfolios.

**Article 95**  
(Reduction of capital)

1. Where the state of affairs of an insurer justifies a reduction of its capital, the Governor may, after hearing the opinion of AMCM, direct or authorise such a reduction and eventually exempt the insurer from meeting some of the requirements applicable to firms in general.
2. The reduction referred to in the preceding paragraph is made by way of deduction, from the respective share capital, of the losses incurred in the preceding years, so too of assets which are stated at a value unacceptable to AMCM.
3. Any such reductions shall not bring the capital below the respective minimum established under Article 17 paragraph 1.

**CHAPTER VII**  
Reinsurance

**SECTION I**  
Reinsurers with head office in the Territory

**Article 96**  
(Regime)

1. The conditions of access to insurance activity set out in Section I of Chapter III shall be applicable, with necessary adaptations and the particularities contained in the following Article, to reinsurers with head office in the territory of Macau.
2. With necessary adaptations and the particularities relating to the margin of solvency, the regime set out in Chapters V, VI and VIII shall also be applicable to such reinsurers.

**Article 97**  
(Share capital)

The share capital of reinsurers with head office in the territory of Macau shall not be less than one hundred million patacas for the carrying on of non-life business or one hundred and fifty million patacas in the case of life business.

**Article 98**  
(Margin of solvency for non-life classes)

- I. The required margin of solvency for non-life classes shall be determined in terms of annual gross premium income recorded during the preceding year, net of returns and cancellations, in accordance with the following table:

<b>GROSS PREMIUM INCOME</b>	<b>AMOUNT OF MARGIN OF SOLVENCY</b>
Less than fifty million patacas	Twenty five million patacas
Equal to or more than fifty million patacas but less than one hundred million patacas	50% of the said income in that year
Equal to or more than one hundred million patacas	The aggregate of fifty million patacas and 25% of the amount by which the said income in that year exceeds one hundred million patacas

2. Where the reinsurer registers an abnormal loss ratio during the preceding three consecutive years or during any three years of the preceding five years, the required margin of solvency shall be double the amounts calculated in accordance with the table in the preceding paragraph.

**Article 99**  
(Margin of solvency for life insurance)

The required margin of solvency for life insurance shall be calculated according to the provision of Article 70, subject to the following:

- a) The minimum percentage referred to in Article 70 paragraph 2 a) shall be read as 50%;
- b) The factor referred to in Article 70 paragraph 2 b) shall be read as 0.1%.

**Article 100**  
(Representative Offices)

The provision of Articles 30 and 31 shall be applicable, with necessary adaptations, to the establishment of representative offices overseas.

**SECTION II**  
Reinsurers with head office overseas

**Article 101**  
(Regime)

1. The regime set out in Subsection I of Section II of Chapter III shall be applicable, with necessary adaptations and the particularities stated in the following paragraph and in the following Articles, to the petitions for authorisation to set up representative offices of reinsurers with head office overseas.
2. The provision of Article 35 paragraph 3 and of Article 37 shall not be applicable to representative offices.

**Article 102**  
(Activity permitted)

1. The representative offices are merely mandatories of the reinsurers they represent and their exclusive object shall be to place the reinsurance contracts with the entities they represent.
2. For the purposes of the preceding paragraph, the representative offices may:
  - a) Accept reinsurance contracts on behalf and for the account of the entities they represent;
  - b) Attend to the interests generated in the Territory as a result of the reinsurance contracts accepted.
3. The representative offices shall not be permitted to:
  - a) Practice acts which transcend or contradict the provision of the preceding paragraph;
  - b) Retain any portion of the premiums in respect of the reinsurance contracts placed with the entities they represent;
  - c) Acquire immovable property other than what is indispensable for their installation and operation.

**Article 103**  
(Share capital)

The establishment of representative offices of reinsurers with head office overseas shall not be permitted if the respective share capital of the head office of such reinsurers is less than the amount fixed under Article 97.

**Article 104**  
(Location of business)

A reinsurer with head office overseas shall be permitted to establish only one representative office, which shall operate only from one location as an individualised centre, and the establishment of branches or sub-offices of such representative office shall be prohibited.

**Article 105**  
(Applicable law and jurisdiction)

The representative offices of reinsurers with head office overseas shall be subject to the legislation in force in the territory of Macau and to the jurisdiction of local courts in respect of all the operations relating to this territory.

**CHAPTER VIII**  
Terms of intervention

**Article 106**  
(Measures applicable)

1. Where as a result of the application of the financial recovery plans pursuant to the provisions of Articles 67 and 71, or as a consequence of non-compliance with the same, the insurer fails repeatedly to present sufficient financial guarantees according to the terms of the present law, the Governor may determine by ruling, after obtaining the opinion of AMCM, the intervention in the management of the insurer concerned.
2. In compliance with the provision of the preceding paragraph, the Governor may suspend, individually or cumulatively, the authorisation to effect new contracts or to carry out new insurance operations, prohibit or restrict free disposal of the insurer's assets, impede the commercialisation of new products and nominate one or more delegates or an administrative committee.
3. The seriousness of the financial situation of an insurer may determine, as a sequence of the terms of intervention, the revocation of the authorisation to conduct the respective activity.
4. The seriousness of the situation mentioned in the preceding paragraph shall be ascertained on the basis of economic viability of the insurer, the soundness of its guarantees, the evolution of its net assets and the resources necessary to carry on its current activity.

**Article 107**  
(Nomination of delegates or of the administrative Committee)

1. The nomination of one or more delegates or of the administrative committee shall determine the suspension of all the measures against the insurer, including fiscal executions and those which relate to the collection of preferential or privileged credits.
2. The nomination mentioned in the preceding paragraph, the powers, effects and the remuneration of the delegate or of the administrative committee shall be fixed by the Governor, by Order published in the Official Gazette, which shall establish the respective period of intervention.

**Article 108**  
(Revocation of authorisation)

The revocation of authorisation shall determine the liquidation of the insurer.

**Article 109**  
(Appeals)

In case of appeals against the decisions of the Governor pronounced under the terms of the present Chapter, it shall be presumed, unless proved otherwise, that the suspension of the effectiveness of the sentence will result in grave injury to public interest.

**Article 110**  
(Application of sanctions)

The adoption of measures laid down in this Chapter shall not impede, in case of infringement, the application of the sanctions provided for in the present law.

**CHAPTER IX**  
Winding up

**Article 111**  
(General provisions)

Winding up of insurers and reinsurers shall be done according to the terms laid down for commercial companies in general, together with the particularities set out in the following Articles.

**Article 112**  
(Credit privilege)

In case of winding up, the credits arising from insurance contracts or operations enjoy credit privilege over movable or immovable assets pertaining to the technical reserves and shall be graded in the first position.

**Article 113**  
(Immediate winding up)

Winding up shall follow immediately where:

- a) An insurer or a reinsurer is dissolved;
- b) The authorisation of an insurer or a reinsurer to carry on insurance business in Macau is revoked.

**Article 114**  
(Form of winding up)

1. In addition to the cases provided for under the general law, judicial winding up shall take place where the authorisation of an insurer or reinsurer to carry on the respective activity is revoked, as a result of infringement proceedings instituted.

2. In the case of extrajudicial winding up, the Governor shall be competent to fix the period for the completion of the winding up procedures and approve the final accounts and the liquidation report.

**Article 115**  
(Extrajudicial winding up)

In case of dissolution or revocation of authorisation of the insurer or reinsurer subject to the measures applied within the scope of the terms of intervention, extrajudicial liquidation shall follow under the terms of the following Article.

**Article 116**  
(Procedure for extrajudicial liquidation)

1. The liquidators shall be nominated by Order of the Governor or, in the absence of such Order, the delegate(s) or the members of the administrative committee shall be considered as liquidators.
2. The liquidators are empowered to conduct all acts necessary for the winding up and the Governor shall grant the authorisations which, under the legal and statutory terms, pertain to the shareholders.
3. The Governor shall fix the period for the completion of the winding up and also approve the final accounts and the report prepared by the liquidators.
4. The remuneration of the liquidators shall be fixed by Order of the Governor.

## **Article 117**

(Branches of insurers with head office overseas)

1. The winding up of the branches of insurers with head office overseas, including the nomination of the respective liquidator, shall be communicated to AMCM within a period of 3 working days from the date of occurrence of any of the said events.
2. The winding up mentioned in the preceding paragraph shall apply solely to the operations relating to the Territory and the assets pertaining to such operations, irrespective of their location.

## **Article 118**

(Status of insurers and reinsurers during winding up)

1. The insurers in the process of winding up shall not undertake new insurance operations or effect new contracts, renew or extend the existing policies or increase the respective amounts.
2. The reinsurers in the process of liquidation shall not renew or extend the reinsurance contracts accepted or increase the respective amounts.

## **CHAPTER X**

Infringements

### **SECTION I**

Penal provisions

## **Article 119**

(Crime of unlawful transaction of insurance business)

1. Individuals who carry out acts or operations inherent to the carrying on of insurance activity, whether in their own name or as representatives or office bearers of a corporate entity, even if constituted improperly, or of an association without legal personality, where in either case its object does not provide for the carrying on of such activity, shall be subject to imprisonment of up to 2 years
2. Where the crime referred to in the preceding paragraph is carried out by corporate entities, the penalty shall be a fine of up to 360 days.

### **SECTION II**

Infringements and respective proceedings

## **Article 120**

(Infringements)

1. Any violation of the norms of the present law, the regulatory provisions contained in the notices or circulars of AMCM, including acts and omissions which disturb or

frustrate the normal conditions of operation of the insurance market, shall constitute infringements punishable under the terms of the following Articles.

2. The following shall constitute infringements of a serious nature:
  - a) Carrying on of any activity by an insurer or reinsurer which is not included in its respective object;
  - b) Unlawful use of designations referred to in Article 7;
  - c) Utilisation of services of unauthorised intermediaries by an insurer;
  - d) Non-compliance with the obligation of communication and prior authorisation, in the cases where the same is required;
  - e) Realisation of the share capital or of the respective increase under terms different from those authorised;
  - f) Non-compliance with the applicable accounting norms;
  - g) Refusal or delay in furnishing information, including the compulsory periodical information to AMCM;
  - h) Submission or exhibition to AMCM of any false information or documents;
  - i) Non-compliance with the obligations relating to matters of special registration;
  - j) Disrespect of the regime on the transfer of insurance portfolio;
  - l) Failure, in whole or in part, to constitute and guarantee the technical reserves or to reinforce such guarantees within the period laid down by AMCM;
  - m) Opposition to or obstruction of the supervisory activity of AMCM;
  - n) Existence of facts constituting an infringement after application of the respective sanction, when the irregularity is not set right within the period fixed by AMCM.

### **Article 121** (Sanctions)

1. The infringements referred to in the preceding Article shall be subject to the following penalties, which shall be graded according to their respective gravity.
  - a) Fine
  - b) Suspension of the administrative body or of other body with similar functions for a period of from 6 months to 5 years;

- c) Temporary suspension, partial or total, of the authorisation granted for the carrying on of insurance activity;
  - d) Revocation of the authorisation granted for the carrying on of insurance activity.
2. The penalties referred to in the preceding paragraph may be applied cumulatively.

**Article 122**  
(Additional sanctions)

Together with the sanctions laid down in the preceding Article, the following additional sanctions may also be applied:

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

**Article 123**  
(Grading of sanctions)

1. The sanctions shall be graded taking into account the objective and subjective gravity of the infringements in question.
2. The objective gravity of an infringement shall be determined, in particular, according to the following circumstances:
  - a) The risk of actual loss to the insurance activity, the economy of the Territory or to the policyholder;
  - b) The casual or repeated nature of the infringement.
3. In appraising the subjective gravity of the infringement, the following circumstances, among others, shall be taken into account:
  - a) Position of responsibility of the infringer in the insurer or reinsurer;
  - b) Economic situation of the infringer;
  - c) Past conduct of the infringer;
  - d) Amount of economic benefit obtained or intended by the infringer;
  - e) Behaviour adopted by the infringer which makes it difficult to verify the truth;
  - f) Reparatory behaviour adopted by the infringer to undo the damage caused.

**Article 124**  
(Repeated failure to comply)

It shall be considered as a repeated failure to comply where a defaulter commits any infringements mentioned in the present law within a period of 1 year from the date of the transit in "rem judicata" of the punitive sentence.

**Article 125**  
**(Incomplete offence and negligence)**

Incomplete offences and negligence shall also be punishable, but the minimum and maximum limits of the penalty shall be reduced to half.

**Article 126**  
**(Warning)**

1. Where the infringement can be set right and it does not result in significant losses to the insurance sector, to the economy of the Territory or to the policyholders, AMCM may opt to give a simple warning to the infringer, notifying him to set right the said infringement within the period fixed.
2. In case of failure to set right the infringement within the period fixed, the relevant infringement proceedings shall be commenced with the application of the corresponding sanction.

**Article 127**  
**(Liability for committing infringements)**

1. The liability for committing infringements referred to in this chapter may fall, jointly or not, upon individuals or companies, even if the latter were constituted irregularly, and associations without legal personality.
2. The companies and associations mentioned in the preceding paragraph shall be liable for the infringements committed by the members of the respective bodies in the exercise of their duties, so too for the infringements committed by the representatives through acts carried out in the name and for the benefit of such corporate entities.
3. The liability referred to in the preceding paragraph shall subsist even in the cases where the constitution of a representative is considered null and void.
4. The liability of the body corporate does not exclude the individual liability of the persons mentioned in paragraph 2.
5. The fact that a determined unlawful act or omission under the law demands certain personal elements and such elements are only verified in relation to the person so represented, or demands that the agent carry out an act or omission in his own interest while the representative has in effect acted in the interest of the person represented, shall not impede the responsibility of the individuals who represent others.

**Article 128**  
**(Fines)**

1. The amount of the fine shall be not less than ten thousand patacas nor higher than one million patacas.
2. In the case of repeated failure to comply, the minimum and maximum limits of the fines shall be doubled.
3. Where the financial benefit obtained by the infringer is higher than five hundred thousand patacas, the maximum limit fixed in paragraph 1 shall be twice the amount of such financial benefit.
4. In case of accumulation of infringements, the accumulation of fines shall be permitted, without exceeding, however, the maximum limits fixed in the present Article.

### **Article 129**

(Time limit for the payment of fines)

1. The fines, which shall constitute income of AMCM, shall be paid within 10 days from the date of transit in "rem judicata" of the punitive sentence.
2. Where the fines are not paid voluntarily within the period fixed, AMCM shall send a certificate of the punitive sentence to the competent tribunal for the purpose of collection of the respective amount according to the system of collection of fiscal debt.

### **Article 130**

(Joint responsibility for payment)

1. The directors, general mandatories and persons responsible for the establishment of insurers, reinsurers or other companies shall be jointly and severally liable, as the case may be, for the payment of fines so imposed on such insurers, reinsurers or other companies for infringements under the terms of Article 127, even though, on the date of the respective punitive sentence, these entities had been dissolved or were in the process of liquidation.
2. The companies in whose name or for whose benefit the infringement was committed shall be jointly and severally liable for the payment of fines imposed on individuals.
3. Those persons who have explicitly opposed or disagreed with the carrying on of acts deemed to be infringements of law shall not be held responsible for the infringements as provided for in the preceding paragraphs.

### **Article 131**

(Suspension of authorisation)

1. The suspension of authorisation in relation to a particular class or the entire activity of an insurer or reinsurer shall be applicable to serious infringements which do not justify a permanent cessation of the respective activity.

2. The suspension mentioned in the preceding paragraph determines the temporary prohibition to underwrite new insurance contracts or operations under the class(es) affected, but shall not affect the validity of those pending at the date of suspension which, meanwhile, cannot be renewed, extended nor the respective amounts increased.

**Article 132**  
(Revocation of authorisation)

1. The revocation of authorisation in relation to a particular class of insurance or the entire activity of the insurer or reinsurer shall be applicable to serious infringements which justify the permanent cessation of the respective activity.
2. The provision of paragraph 2 of the preceding Article shall be applicable, with necessary adaptations, to the revocation of authorisation.
3. Total revocation of the authorisation shall imply judicial liquidation of the insurer or reinsurer.

**Article 133**  
**(Authority for the imposition of penalties)**

The authority for the imposition of penalties referred to in this Chapter rests with the Governor, who shall confer such power on AMCM by Order published in the Official Gazette, when an infringement is punishable only with a fine.

**Article 134**  
**(Procedure)**

1. AMCM is empowered to commence and prepare the respective process relating to the infringements referred to in the present law.
2. If after the preparation of the respective infringement process, it is decided not to close the case, the relevant charge shall be drawn up indicating therein the name of the infringer, the facts attributable to him and the respective circumstances of time and place, including the laws which regulate and penalise such acts and omissions.
3. The infringer and the entities who, under the terms of Article 127, can be held liable for the fines shall be notified of the charge, with the indication therein that they may present their defense in writing and submit the respective proof if any, only within the given period, together with a list of a maximum of 5 defence witnesses for each infringement.
4. The period mentioned in the preceding paragraph shall be fixed between 10 and 30 working days, taking into account the address of the infringer and the complexity of the case.
5. The notification shall be made by registered post with acknowledgement due or through the police department or by 30 days notices published in the Official Gazette and in two newspapers of the Territory, one in the Portuguese language and the other in the Chinese language, depending whether or not the infringer can be contacted, refuses to acknowledge the notification or his address is unknown.
6. On completion of all the procedures deemed necessary as a result of the defence put forward and in case the authority for the imposition of penalty is not delegated to AMCM under the terms of the preceding Article, the case shall be presented to the Governor for decision, together with the opinion of AMCM on the infringements which are proved to have been committed and the respective sanctions applicable.

**Article 135**  
**(Preventive suspension of functions)**

Where the investigation relates to individual responsibility of the persons mentioned in Article 127 paragraph 2, the Governor may, by Order, determine the preventive suspension of

the respective functions, as and where such measure is deemed necessary to conduct the proceedings of the case or to safeguard the interests of the insurance activity.

**Article 136**  
(Suspension of sanction)

1. The execution of any sanction may be declared suspended by the entity applying such sanction, after taking into consideration the degree of culpability of the infringer, his past conduct and the circumstances in which the infringement was committed, with the relevant order indicating the reasons for such suspension.
2. The suspension may be conditional upon the fulfilment of certain obligations which are considered necessary to set right the irregular situations.
3. The period of suspension shall not be less than 1 year nor exceed 3 years after the date of transit in "rem judicata" of the punitive sentence.
4. Where the period of suspension has terminated without the infringer committing a new infringement and it is ascertained that the obligations so imposed have been complied with, the relevant sentence shall cease to have effect, while in cases to the contrary the respective sanction shall be applied.

**Article 137**  
(Obligation to attend)

1. Any person duly notified to intervene in the proceedings of the case who does not attend on the appointed day, hour and place, nor justifies his absence within the next 5 days shall be punished with a fine of from one hundred patacas to ten thousand patacas.
2. The payment shall be effected with AMCM within a period of 10 days from the date of notification, or the same shall be subject to compulsory collection.
3. Without prejudice to the provision of the preceding paragraph, AMCM may request the appropriate judicial body to order the attendance, under custody, of the person who has unjustifiably failed to attend.

**Article 138**  
(Fulfilment of omitted obligations)

Where the infringement is a result of omission of an obligation, the application of the sanction and the payment of the relevant fine shall not exempt the infringer from fulfilling such obligation, if this be still possible.

**Article 139**  
(Limitation of action)

1. The procedure for the imposition of sanctions laid down in this section shall become ineffective after 3 years from the date on which the offence was committed.
2. However, the period mentioned above shall be counted:
  - a) In the case of permanent infringements, from the day on which the consummation is ceased;
  - b) In the case of continuous or habitual infringements, from the day of execution of the last act relating to wrongful conduct;
  - c) In case of attempted infringements, from the day of the last attempted act;
3. The sanctions set out in this section shall lapse 5 years after the transit in "rem judicata" of the punitive sentence.

**Article 140**  
(Application)

The provision of the present section shall be equally applicable to the acts or omissions committed in the Territory and to those committed overseas by entities subject to the supervision of AMCM.

**Article 141**  
(Supplementary legislation)

The provisions of the Administrative Procedure Code, the Penal Process Code and respective complementary legislation shall be applicable, supplementarily, to the infringement proceedings referred to in this Section.

**CHAPTER XI**  
Final and transitional provisions

**Article 142**  
(Activities of insurance intermediaries)

1. Insurers and reinsurers are not permitted to carry on the activities of insurance intermediaries in the Territory.
2. The activities of insurance intermediaries are governed by a specific regulatory decree.

**Article 143**  
(Pension Funds)

The setting up and operation of pension funds shall be subject to special legislation,

**Article 144**

("Off-shore" insurance activity)

The carrying on of "Off-shore" insurance activity shall be subject to special legislation.

### **Article 145**

(New classes of insurance or new insurance operations)

The petition for authorisation to carry on new classes of insurance or new insurance operations shall be submitted according to the terms defined by AMCM by way of Notice.

**Article 146**  
 (Compliance with the present legislation)

1. Insurers with head office in the Territory already constituted on the date of enactment of the present law shall be subject to the provisions of Articles 17, 69 and 70, and shall have a period of eighteen months from the said date of enactment to comply with the respective provisions.
2. The branches of insurers with head office overseas already established on the date of enactment of the present law shall have a similar period mentioned in the preceding paragraph to comply with the provisions of Articles 37, 69 and 70.
3. In relation to the infringement proceedings pending on the effective date of the present law, the provisions of the previous legislation shall be applicable.
4. For the purposes of Article 70 paragraph 2 b), the factors 0.0%, 0.1% and 0.2% shall be considered respectively for the financial years 1997, 1998 and 1999.

**Article 147**  
 (Supplementary legislation)

The provisions of the Commercial Code, Civil Code, Administrative Procedure Code, Penal Process Code and respective complementary legislation on this matter shall be applicable, supplementarily, to the insurance activity.

**Article 148**  
 (Revocation of previous legislation)

1. All the regulations which contradict the provisions of this Ordinance, namely Decree-Law no. 06/89/M of 20th February, Decree-Law no. 43/89/M of 26th June, Decree-Law no. 66/90/M of 12<sup>th</sup> November and Decree-Law no. 26/93/M of 31st May, are hereby revoked.
2. Any remissions to the norms hereby revoked shall be considered to have been made to the provisions of the present law.

**Article 149**  
(Effective date)

This Ordinance shall come into effect on 1st September 1997.

Approved on 23 June 1997

To be published

The Governor

Vasco Rocha Vieira

**SCHEDULE  
OF  
CLASSES OF INSURANCE**

**PART 1  
PRELIMINARY**

1. The classes of insurance specified in Parts 2 and 3 of this Schedule shall constitute the classes of insurance that are relevant for the purposes of this Ordinance.
2. Any authorisation granted under Article 3 paragraph 1, may be done so by reference to the appropriate groups specified in Part 4 of this Schedule.
3. If an insurer authorised to carry on life business effects and carries out a contract of insurance which combines life business and additional business of the nature specified in Part 3 of this Schedule in relation to class 1 or 2, the additional business shall as respects that contract be regarded as life business and not as non-life business.
4. Subject to paragraph 5, an insurer authorised to carry on a class of non-life business may, in effecting and carrying out a contract of insurance against a risk ("the principal risk") within that class, include in the contract provision whereby the insurer incidentally assumes liability against a risk ("the ancillary risk") that is not within that class.
5. Paragraph 4 shall apply only if:-
  - a) The assumption of liability against the ancillary risk is included in the same contract as that providing for the assumption of liability against the principal risk;
  - b) The ancillary risk is related to the principal risk and to the object, state, condition or person that is insured against the principal risk; and
  - c) The ancillary risk is not of the kind of which class 14 or 15 relates and is otherwise such that insurance against it constitutes non-life business.
6. In classes 6 and 12 the term "vessels" includes hovercraft.

**PART 2**  
**CLASSES OF LIFE INSURANCE**

<b>Class</b>	<b>Description</b>	<b>Nature of insurance</b>
<b>A</b>	<b>Life and annuity</b>	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within class C below.
<b>B</b>	<b>Marriage and birth</b>	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
<b>C</b>	<b>Linked long term</b>	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
<b>D</b>	<b>Health</b>	
<b>D.1.</b>	<b>Long term</b>	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that -  a) Are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and  b) Either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.
<b>D.2.</b>	<b>Short term</b>	Effecting and carrying out contracts of insurance providing specified benefits against risks of loss attributable to an accident, sickness or infirmity and which do not fall within class D.1..

<b>E</b>	<b>Tontines</b>	Effecting and carrying out tontines.
<b>F</b>	<b>Capital redemption</b>	Effecting and carrying out capital redemption contracts.
<b>G</b>	<b>Pension fund management (Type 1)</b>	Effecting and carrying out contracts to manage the investments of pension funds:  a) Under the terms of which the contributions are entrusted to a management entity, and such entity is required to apply, directly or indirectly, the assets of the fund, so as to execute the corresponding retirement plans; and  b) Which guarantee a stipulated capital or return.
<b>H</b>	<b>Pension fund management (Type 2)</b>	Effecting and carrying out contracts to manage the investments of pension funds:  a) Under the terms of which the contributions are entrusted to a management entity, and such entity is required to apply, directly or indirectly, the assets of the fund, so as to execute the corresponding retirement plans; and  b) Which do not guarantee a stipulated capital or return.
<b>I</b>	<b>Pension fund management (Type 3)</b>	Effecting and carrying out contracts of insurance to manage the investments of pension funds which guarantee, directly or indirectly, benefits in accordance with the retirement plans (other than the contracts specified in classes G or H above).
<b>J</b>	<b>Operations of capitalisation</b>	Operations effected and carried out by way of contracts under the terms of which, upon payment of a single lump sum or periodical instalments, the insurer provides to pay the subscriber or the legal holder of the deed which forms the basis of such contracts, a determined capital on the expiry of a stipulated number of years also predetermined; the capital may be determined on the basis of a "reference value"

constituted by a single "unit of account" or by the combination of various "units of account".

**PART 3**  
**CLASSES OF NON-LIFE INSURANCE**

<b>Class</b>	<b>Description</b>	<b>Nature of insurance</b>
<b>1</b>	<b>Accident (personal and occupational)</b>	Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the persons insured: <ul style="list-style-type: none"> <li>a) Sustaining injury as the result of an accident; or</li> <li>b) Dying as the result of an accident; or</li> <li>c) Becoming incapacitated in consequence of disease; Inclusive of contracts relating to occupational accidents and occupational diseases but exclusive of contracts falling within class 2 below or class D above.</li> </ul>
<b>2</b>	<b>Sickness (Short term insurance)</b>	Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss attributable to sickness or infirmity, but exclusive of contracts falling within class D.1. above.
<b>3</b>	<b>Land vehicles</b>	Effecting and carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles, but excluding railway rolling stock.
<b>4</b>	<b>Railway rolling stock</b>	Effecting and carrying out contracts of insurance against loss of or damage to railway rolling stock.
<b>5</b>	<b>Aircraft</b>	Effecting and carrying out contracts of insurance against loss of or damage to aircrafts and respective machinery, tackle, furniture or equipment.
<b>6</b>	<b>Ships</b>	Effecting and carrying out contracts of insurance against loss of or damage to vessels used on the sea or on inland water, or to the respective machinery, tackle, furniture or equipment of such vessels.

<b>7</b>	<b>Goods in transit</b>	Effecting and carrying out contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.
<b>8</b>	<b>Fire and natural forces</b>	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
<b>9</b>	<b>Damage to property</b>	Effecting and carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 above relate) due to hail or frost or to any event (such as theft) other than those mentioned in class 8 above.
<b>10</b>	<b>Motor vehicle liability</b>	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of motor vehicles on public roads, including risks in connection with the transportation of cargo.
<b>11</b>	<b>Aircraft liability</b>	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of aircraft, including risks in connection with the transportation of cargo.
<b>12</b>	<b>Liability for ships</b>	Effecting and carrying out contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including risks in connection with the transportation of cargo.
<b>13</b>	<b>General liability</b>	Effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which class 10, 11 or 12 above relates.
<b>14</b>	<b>Credit (commercial risks)</b>	Effecting and carrying out contracts of insurance against risks of non-payment, including bankruptcy and insolvency.
<b>15</b>	<b>Suretyship</b>	<p>Effecting and carrying out:</p> <p>a) Contracts of insurance against risks of loss arising from the failure to perform contracts of guarantee;</p>

- b) Contracts for fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee.
- 16      Miscellaneous (financial loss)** Effecting and carrying out contracts of insurance against any of the following risks:
- a) Risks of loss attributable to interruption or or or reduction of economic activity;
  - b) Risks of loss attributable to unforeseen expenses;
  - c) Risks which neither fall within paragraphs a) or b) above nor can be considered under any other class.
- 17      Legal expenses** Effecting and carrying out contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

**PART 4  
GROUPS**

<b>Number</b>	<b>Designation</b>	<b>Composition</b>
I	<b>Accident</b> (personal and occupational) and health (short term insurance)	Class 1 and 2
II	<b>Motor</b>	Class 1 a) and b)(to the extent that the relevant risks are risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and classes 3, 7 and 10.
III	<b>Marine and transport</b>	Class 1 a) and b) (to the extent that the relevant risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and classes 4, 6, 7 and 12.
IV	<b>Aviation</b>	Class 1 a) and b) (to the extent that the relevant risks are risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and classes 5, 7 and 11.
V	<b>Fire and other damage to property</b>	Classes 8 and 9.
VI	<b>Liability</b>	Classes 10, 11, 12 and 13.
VII	<b>Credit (Commercial risks) and suretyship</b>	Classes 14 and 15.
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