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## Control of Insurance Order, 1973

Kings Order in Council 33 of 1973

Legislation as at 1 December 1998

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## Control of Insurance Order, 1973

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## eSwatini

# Control of Insurance Order, 1973

## Kings Order in Council 33 of 1973

Assented to on 21 August 1973

Commenced on 11 January 1974

*[This is the version of this document at 1 December 1998.]*

A King's Order-in-Council to provide for the control of insurance.

### 1. Short title

This King's Order-in-Council may be cited as the Control of Insurance Order, 1973.

### 2. Interpretation

In this Order, unless the context otherwise requires—

“**approved security**” means a security issued by the Government and such other securities as the Minister may by notice in the *Gazette* approve;

“**Corporation**” means the Swaziland Royal Insurance Corporation established under Order No. 32 of 1973;

“**friendly society**” means an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependants, and which does not at any time after the commencement of this Order employ or remunerate any person for the purpose of inducing other persons to become members of such association or for collecting contributions or subscriptions from members thereof;

“**insurance business**” means the business of, or in relation to, the issue of, or the undertaking of, liability under, life policies, or to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event;

“**insurer**” means any person carrying on any class of insurance business in Swaziland prior to the commencement of this Order;

“**life policy**” means a policy of insurance on human life or a contract to pay annuities on human life;

“**long-term insurance business**” means business of any of the following classes and includes insurance business carried on as incidental only to any such class or business, namely—

- (a) effecting, carrying out, and issuing policies on human life or contracts to pay annuities on human life;
- (b) effecting, carrying out, and issuing contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or of diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from the taking effect thereof or are expressed to be so terminable before the expiry of such period only in special circumstances therein mentioned; and
- (c) effecting, carrying out, and issuing of insurance whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future, not being such contracts as fall within paragraph (a) or (b) hereof;

“**Minister**” means the Minister for Finance and Economic Planning;

“**policy**” means any written contract of insurance whether contained in one or more documents;

“**resident in Swaziland**” means residing in Swaziland, other than for the purpose of a visit to, or transit through Swaziland as provided for in section 20(2) of the Immigration Act [No. 32 of 1964](#).

*[Amended K.O-I-C. 24/1974]*

“**short-term insurance business**” means any insurance business other than long-term insurance business.

### 3. Prohibition against carrying on insurance business in Swaziland

- (1) Subject to [section 5](#) no person, other than the Corporation, shall from a day to be appointed by the Minister by notices published in the *Gazette* carry on any kind of insurance business in Swaziland:

Provided that such notices may relate to different kinds of insurance businesses.

- (2) For the purpose of subsection (1) “carrying on insurance business” includes the receipt of proposals for, or issuing of policies of insurance, in respect of a person resident in Swaziland by an insurer or through an agent or as agent, whether resident in Swaziland or not, but does not include—

- (a) the collection or receipt in Swaziland of renewal premiums under a policy issued outside Swaziland to a person resident outside Swaziland at the date of issue of the policy who is not resident in Swaziland; or

*[Amended K.O-I-C. 24/1974]*

- (b) the making of payments due under any such policy; or

- (c) reinsurance of risks carried by the Corporation, by a company or any association of underwriters; or

- (d) the collection of premiums, any adjustments and satisfaction of claims and other servicing of policies subsisting at the date of the commencement of this Order.

- (3) An insurance policy, entered into prior to the 1st January, 1974, other than a life policy, shall for the purpose of this Order, be assumed to have terminated on its first renewal date (being the date on which the risk is terminable by the insurer after 1st January, 1974, or 1st January, 1975, whichever date is the earlier) and any such renewal shall be regarded as the issue of a new policy.

- (4) The provisions of section 8(1)(c)(i) of the Income Tax (Consolidation) Act, [No. 84 of 1959](#) shall not apply to any premiums paid in respect of any life policy issued after the 1st day of January, 1974 by any insurer other than the Corporation.

- (5) No person resident or carrying on business in Swaziland shall, without the written consent of the Minister enter into any contract of insurance with any person, whether resident or carrying on business in or outside Swaziland, other than the Corporation or an insurance business whose application made under [section 5](#) has been granted by the Minister.

*[Amended K.O-I-C. 24/1974]*

- (6) Any person contravening this section shall be guilty of an offence and liable on conviction to a fine of two thousand rand.

### 4. Subsisting policies excluded from the ambit of the Order

Subject to [section 3\(3\)](#), nothing in this Order shall in any respect affect the validity or the terms of, or the conditions contained in, any policy subsisting at the date of the commencement of this Order.

## 5. Control of existing and continuing insurance businesses

- (1) Any person wishing to carry on insurance business in Swaziland after the commencement of this Order, and any person wishing to act as agent for the collection of insurance premiums on behalf of any insurer, whether resident in Swaziland or not, may apply to the Minister for permission so to do:

Provided that any person carrying on such business prior to the date of the commencement of this Order shall make such application within thirty days from the date of the commencement of this Order:

And provided further that any application referred to in this subsection shall be accompanied by such information and documents as the Minister may require.

- (2) The Minister may after receipt of an application referred to in subsection (1), either grant or refuse the application:

Provided that the Minister shall not grant any such application unless the applicant can prove to his satisfaction that he is financially sound and capable of carrying on such insurance business or agency and of keeping proper and sufficient records and accounts of his transactions.

- (3) The Minister in granting any such application referred to in subsection (1) may impose such terms and conditions as he thinks fit, and, without derogating from the generality of the foregoing, may require—

- (a) that such person submits accounts at regular intervals to the Minister showing the scope of the business carried on by him, the amount of the premiums received by him, the amount of the commission earned by him and the manner of the disposal by him of any funds of the said business or which have been paid into such business;
- (b) that such person sets up a Trust Fund for the collection of premiums which shall be subject to such conditions relating to the investment of any funds in its possession as the Minister may impose.

- (4) Any person who contravenes subsection (1) hereof or fails to comply with any of the conditions laid down by the Minister in terms of subsection (3) shall be guilty of an offence and liable on conviction to a fine of five thousand rand.

## 6. General powers of Minister for protection of policy-holder

- (1) The Minister may, by written notice, demand the production of any documents or the giving of any information or explanation relating to any matter connected with his insurance business or transactions relating thereto from any insurer.
- (2) Any person who having been served with a demand under subsection (1) without lawful excuse neglects or refuses to comply with it shall be guilty of an offence and liable on conviction to a fine of one thousand rand.
- (3) If a person who has been served with a notice under subsection (1) supplies the Minister with any document, information or explanation which is false in any material respect, such person and every other person who took part in the preparation or issue of, or who signed such document, information or explanation, shall, unless he proves that he had no knowledge of the falsity when he supplied the document, information or explanation, be guilty of an offence and liable on conviction to a fine of one thousand rand or imprisonment for two years or both.
- (4) The Minister may, if he considers it necessary for the protection of existing or prospective policy-holders, by written notice require an insurer to deposit with him such approved security as the Minister shall deem sufficient to meet the liabilities of such insurer.
- (5) Any person who without lawful excuse neglects or refuses to comply with the notice referred to in subsection (4), shall be guilty of an offence and liable on conviction to a fine of two thousand rand.

## **7. Exemption**

The Minister may in writing exempt from all or any of the provisions of this Order any friendly society or any scheme established by or on behalf of any employee or employer or by them jointly, solely for the purpose of making provision for the payment of superannuation benefits, pensions or payments only to employees or their dependants on their retirement, or their sustaining any disability or on their death:

Provided that no money paid into such friendly society or under any such scheme shall be invested outside Swaziland without the prior written consent of the Minister thereto.

## **8. Regulations**

The Minister may make such regulations as he deems it necessary in order to carry into effect the principles and purposes of this Order.

## **9. Repeal**

The Insurance Act [No. 53 of 1954](#) is hereby repealed.