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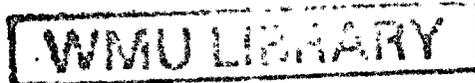
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WORLD MARITIME UNIVERSITY

MALMÖ, SWEDEN

MARINE CARGO INSURANCE:
OPERATIONAL PRACTICE PROBLEMS
IN CAMEROON

by

MOUNE YVONNE

CAMEROON

A dissertation submitted to the World Maritime University
in partial fulfilment of the requirements for the award
of the:

Degree of Master of Science
in
General Maritime Administration

Year of Graduation

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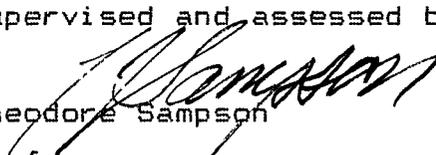
I certify that all material in this dissertation which is not my own work has been identified and that no material is included for which a degree has been previously conferred upon me.

The contents of this dissertation reflect my personal views and are not necessarily endorsed by the University.

23rd. October 1991

.....*MBJA*.....

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DEDICATION

To my parents, Anne and Henri BOSSAMBO,
Who made me the person I am and who will
Always be present in my heart, despite their
Absence.

To my husband, Jean-Stéphane and
To my children, Christian, Laurence, Gaëtan.
Constant thought and love for them gave me
Strength to face this long, hard separation.

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- The Cameroon National Shippers Council, for providing me with all the necessary documentation needed to complete this project,
- All those involved in the Cameroonian market of marine insurance whose interviews have helped to make things clearer to me.

I cannot end this page without making a special mention of all the friends with whom I have spent these two long years and who have made them more bearable, especially Yvrose who shared most of this time with me.

FOREWORD

My approach in this study will be that of "Candide" of Voltaire.

I will address this subject from a layman's perspective as a vigilant follower of the marine insurance market in Cameroon, and not in the viewpoint of an insurance professional or a maritime lawyer, what I am not.

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- I Law No. 75-14 of 8 December 1975, rendering insurance of imports compulsory.

- II Decree No. 76-334 of 6 August 1976, relating to the implementation of Law No. 75-14 of 8 December 1975 rendering insurance of imports compulsory.

- III Ordinance No. 85-3 of 31 August 1985, relating to insurance business.

- IV Decree No. 87-639 of 9 May 1987, to fix the minimum amount of the registered or initial capital of insurance companies.

SELECTED BIBLIOGRAPHY

INTRODUCTION

" It is commonly accepted that of all commercial activities, marine insurance is the most international" (V. Dover : 1975, p. xii).

This quotation is doubly true when specifically applied to marine cargo insurance.

Marine Insurance is divided into two main branches which are : Hull Insurance and Cargo Insurance. Hull insurance strictly speaking concerns the vessels. The shipowners or carriers insure their vessels and more specifically the hull and the machinery. This is done by insurance companies. At the same time, the shipowners will usually enter their vessel(s) in Protection and Indemnity Associations (P&I Clubs) in which groups of shipowners join together to help each other on a mutual basis to meet the expenses of additional liabilities.

In this study, I am not going to deal with hull insurance which, in the case of Cameroon, whose fleet is very small, does not pose any unique problem, according to the information I received from the national shipping company, Cameroon Shipping Lines. My intention is to focus on Cargo Insurance which is a significant concern for many involved in the movement of cargo in the marine mode in Cameroon. Indeed, in only one ship sailing from one port to another, there can be a number of cargoes belonging to

more than a hundred of shippers. Each of these cargoes will be insured, which means an important number of insurance policies which can be subscribed for only one ship and one trip.

To come back to Dover's quotation, the exchange of goods from one country to another is an international practice. To be workable from a business perspective, two essential elements are needed. These are transport and insurance. In the case of goods transported by sea, these elements correlate with maritime transport and marine insurance.

When maritime activities are studied from the viewpoint of their role in worldwide economics, a close link becomes obvious between the three activities of international trade, maritime transport and marine insurance. When the international nature of maritime activities is understood, one realizes that it may be unwise for a country to expect to deal with them without active foreign involvement.

Each of the three activities independently generates significant earnings on an international basis. In the particular case of marine insurance, a country controlling its insurance market by insuring its goods locally can gain much of its hard currency this way. Indeed, the figures for insurance incomes for a country can amount to billions of USD, for those countries where the business is well established. On the contrary, a country whose goods are insured abroad loses a considerable amount of capital. For this reason Cameroon has enacted Law No 75/14 of 8 December 1975 rendering the insurance of imported goods in Cameroon compulsory.

As a matter of fact, having considered the situation and knowing that the country imports twice as many goods as it exports, the government has decided to focus its attention on imports. Moreover, with international trade being very competitive, the government wanted its national exporters to have freedom in negotiating with their clients, so that they do not risk losing already established or developing markets.

Thus, exports have no local insurance restriction. They can be insured locally or abroad. Of course, if exported goods could be insured locally, this would be positive for Cameroon's economy as well. Moreover, the emphasis in this study will be placed on imports which obviously concern more directly the Cameroonian market and involve more people since the goods imported are to be consumed locally.

As indicated earlier, the aim of the government by passing Law No 75/14 was to stop the exodus of capital associated with insurance business, but, if the results of this legislation are closely examined, it has to be admitted that this law did not achieve its purpose.

As a matter of fact, most of the insurance companies present in the Cameroonian insurance market are subsidiaries of large foreign companies, which means that most of this capital will still not accrue to the benefit of Cameroon.

Of course, since then, some national private companies have established their businesses, but they are young in the business and they face a difficult task in competing for a market share with the older well-

established companies.

As will be seen later on, the Cameroonian market has achieved a basically good structure even though it might take time before it operates as effectively to satisfy the different participants : the sellers and the buyers of insurance. Indeed, many problems of different kinds prevent the market from functioning adequately. These problems are mainly based on the human failure of dealing with the regulations on the one hand, and failure in human relationships on the other hand.

Thus, the problems at this level will not be easy to solve since they involve human behaviour which, as everyone knows, is very complex and very difficult to change in a short time.

The purpose of this project then is to point out the different problems faced in the practice of marine cargo insurance in Cameroon and to try to discuss which solutions may possibly solve at least some of these problems.

To carry out this task, the material used was mainly based : firstly, on different interviews given by senior officials of some of the insurance companies and by some major shippers; secondly, on a two-year press review of insurance matters; thirdly, on a book written by one insurance company Manager ; and finally, on the very useful documentation of the Western African Sub-regional Colloque on Marine Insurance which took place in Douala, Cameroon, in October 1989. Of course, many reference books on marine cargo insurance were used to establish a foundation of knowledge in order to complete this work.

CHAPTER I

INTERNATIONAL TRADE, MARITIME TRANSPORT AND INSURANCE

In this chapter, I shall first of all show the link between international commerce, maritime transport and insurance. I shall then, very briefly, present the useful tool that insurance represents and its influence on the Incoterms. Finally, I shall provide a sketch of the situation of external trade and maritime transport in Cameroon.

I-1 The Relationship Between the Three Concerns.

International trade, maritime transport and insurance are three concerns which are intimately connected. In fact, the first one is served by the other two.

Trade is an ancient practice which is almost as old as human beings. There is a vital need for people to exchange goods, and since the advent of navigation, overseas trade was made possible. This dates back thousands of years. As soon as overseas trade became settled, those engaged in it found it necessary to protect themselves against the loss of their goods. Indeed, early merchants involved in this trade were leaving everything to chance, and they were never sure they would get back their investment.

Thus, it became imperative for them to receive compensation for whatever losses they might occasionally sustain. The concept of insurance was then born, and as time progressed and the more overseas trade grew, the greater became the importance of marine insurance. As can be deduced from this progression, marine insurance originated from a willingness of people to expand overseas trade when it became possible to protect themselves from its risks.

I-2 Insurance : the Indispensable Tool.

Sending goods from one country to another, as part of a commercial transaction can be a risky business. If the goods are lost or damaged, or if delivery does not take place for some other reason, the assured can turn to his insurer and be indemnified.

Cargo Insurance is one of the main branches of marine insurance. It is, "an activity aimed at moving the burden of risk from the shoulders of the exporters and importers of goods and placing it upon the shoulders of specialist risk-bearing underwriters". (Badger & Whitehead : 1983, p.2)

Accordingly, it is easier for overseas traders to carry on their business if the risks of losses are covered at least to some extent. Cargo insurance provides a kind of protection which makes overseas trading less of a gamble than it would be if no method of insurance were available.

Insurance can be regarded as a kind of financial security that ensures that the cargo owner will be able to carry on the business of trading of goods. Insurance is not compulsory, but it is highly advisable because the amount paid for it is insignificant beside the amount of the cargo.

The English Marine Insurance Act, 1906, which today is still the basis on which the insurance industry law is codified in a large number of places, defines marine insurance as : "A contract whereby the insurer undertakes to indemnify the assured in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure". (Section 1 of the 1906 Act)

The contract so defined is based on three principles which are the pillars of insurance. Those principles are discussed below.

- The Principle of Indemnity

As a result of the incidence of the risks against which the insurer has agreed to protect the assured, the latter is entitled to be compensated to the extent of the loss he has suffered. This means that the assured is not allowed to make a profit from the insurance. This principle gives rise to rules such as : the right of subrogation resulting from the settlement of the claim; the right to a return of premium in certain cases; and the solutions to problems arising when more than one insurer is concerned with the same interest.

- The Principle of Insurable Interest

No one may ensure anything unless he has an interest in it, which means that if the thing insured is preserved, he will derive a benefit from its preservation, but if it is in any way damaged or lost, the assured will be adversely affected. So, an assured can only be entitled to indemnity if he has an insurable interest in the subject matter of the insurance.

- The Principle of Utmost Good Faith

A high standard of honesty is required in the practice of marine insurance. The assured must disclose all material facts known to him or deemed to be known to him. The duty of observing good faith is much more firmly placed on the assured, although generally it is equally binding on the insurer.

I-3 Incoterms and Insurance.

Today, overseas trade is no longer a gamble since it is well structured with standardized sales contract wording which goes back to 1936, when the International Chamber of Commerce first published a set of international rules for the definition and interpretation of trade terms (INCOTERMS). The intention in setting down the terms was to enable sellers and buyers as parties to a sale contract to work to the same definition in establishing their respective responsibilities.

The basis on which the Incoterms works is to list the meaning which is most widely accepted throughout the

world. This approach has its counterpart in marine insurance. As a matter of fact, from the insurance point of view, it should be made clear whether the seller or the buyer is responsible for goods and their transport so that appropriate insurance coverage can be applied. INCOTERMS specifically outline parameters of responsibility.

The most common INCOTERMS used in marine transport are :

- F O B (Free on Board) : the seller undertakes to deliver the goods on board the vessel, at which point the risk passes to the buyer.

- C & F (Cost and Freight) : the seller undertakes to fix the shipping space, deliver the goods on board and pay the ocean freight. The risk passes to the buyer on shipment.

- C I F (Cost, Insurance, Freight) : the seller undertakes to fix the shipping space, deliver the goods on board the vessel, pay the freight and arrange the voyage insurance for cover at least up to the port of destination. The risk passes then to the buyer.

Once the insurance responsibility between seller and buyer is firmly established, it is easier to see when the seller's policy will cease and the buyer's policy will start. The responsibility for marine insurance under FOB and C&F sales is the buyer's, whereas it is the seller's under CIF sale.

The interrelation of international trade, maritime transport and insurance is then made clear. In international trade, goods need to be carried, and this role is a function of maritime transport, or ships.

International trade would be more risky for the traders if they could not insure their goods ; the need to insure goods is fulfilled by marine cargo insurance.

At the same time, maritime transport benefits from insurance, because many improvements in shipping are due to the requirements of the insurers, who are not willing to pay the claims when they can prove irresponsibility on the part of the carrier. Therefore, the shipowners or the carriers have to make sure their vessels are in an acceptable condition to be engaged in overseas transport.

I-4 Maritime Transport in Cameroon

Cameroon is a coastal country where more than 90% of the external trade is carried by sea. This means that the country depends almost entirely on maritime transport for exports and imports. Consequently, maritime transport is of great importance for the economy of the country. Given this dependence of its external trade on maritime transport, the Cameroonian Government has placed emphasis on the maritime sector in general and on shipping policy in particular. This began some twenty years ago.

Therefore, in the early seventies, about ten years after its independence, the country undertook to have its own fleet and in 1974 created the Cameroon Shipping Lines (CAMSHIP). Until 1987, the fleet was composed of six sea-going vessels, but today, due partly to an economic slump, the Company owns only two vessels.

Before the creation of CAMSHIP, the carriage of Cameroonian goods was entirely handled by foreign vessels,

mainly French ones, Cameroon being a former French colony until 1959. But, despite the intent of this program, the current size of the fleet means that most of the goods carried by sea to and from Cameroon are still transported by foreign ships. Two vessels simply cannot handle the whole external trade of the country. This is emphasized by the following 1989 table which shows the distribution of vessels of various flags calling into Cameroonian ports. It is clear that the part carried by CAMSHIP is relatively insignificant.

Classification of vessel flags (1989)

Position	Flag	Annual Traffic	% Global Traffic
1	Bahamas	768 430	21,49
2	French	419 300	11,70
3	Cypriot	412 091	11,52
4	Yugoslavian	266 366	7,45
5	Cameroonian	215 393	6,08
6	Panamian	211 146	5,91
7	Greek	192 770	5,39
8	Liberian	167 117	4,68
9	Danish	113 381	3,17
10	Spanish	104 426	2,92

-	Others	706 871	19,70

-	TOTAL	3 577 291	100,00

Source: Annual Report, Cameroon National Ports Authority

I-5 The External Trade of Cameroon

I-5.1 Exports

Exports in most developing countries are mainly based on agricultural products and raw materials. With a few exceptions, the features of Cameroonian exports are very similar to those of many developing countries.

Agriculture is a huge asset for Cameroon. It contributed about 25% of the Gross Domestic Product in the mid 1980's. It provides a great range of both cash crops for export and food crops for home consumption. Concerning cash crops which are exported, they include : cocoa (world's fifth largest producer), coffee, cotton, tobacco, rubber, palm oil and bananas. To these crops, tropical wood can be added.

Apart from the production of agricultural exports, Cameroon produces and exports the following minerals : bauxite, coal, iron; iron ore, nickel, platinum and to a small extent gold.

In addition, since the late 1970's, Cameroon has produced oil, and from the early 1980's, it has exported crude petroleum what has helped the country's balance of trade for some years ; but the external trade has been in deficit since the slump in oil prices.

The following for 1986 table shows the main exports of the country.

Exports (f.o.b) in million francs CFA *

Cocoa.....	87,223
Coffee (arabica).....	28,330
Coffee (robusta).....	88,281
Bananas.....	5,670
Rubber.....	4,319
Tobacco.....	4,429
Cotton fibre.....	12,326
Cotton fabrics.....	3,984
Palm nuts and kernels.....	161
Palm oil.....	1,567
Cocoa pulp.....	5,533
Cocoa butter.....	8,661
Logs.....	18,488
Sawnwood and sleepers.....	2,712
Aluminium.....	16,914
Aluminium products.....	5,184
Crude petroleum.....	192,709
	=====
Total (including others)	541,728

Source : Regional Surveys of the World, 20th Edition,
1990

I-5.2 Imports

If the main exports of Cameroon are cash crops and raw materials, the leading imports are essentially machinery and transport equipment, chemicals, textiles, iron and steel products. As with exports, the features of Cameroonian imports are those of most developing countries which are mainly represented by manufactured articles.

The following table shows the different imports of the country.

Imports (c.i.f) in million francs CFA *

Tyres.....	5,181
Textiles.....	20,827
Malt.....	15,029
Cement.....	5,575
Alumina.....	9,593
Lubricants.....	3,917
Medicine.....	24,460
Books and Newspapers.....	10,733
Iron and steel pipes.....	1,470
Paper and allied products.....	16,612
Drilling equipment.....	7,472
Footwear.....	5,143
Iron and steel.....	35,210
Cutting machinery.....	7,404
Generating machinery.....	6,971
Road transport equipment.....	66,940
Air transport equipment.....	10,797
Maritime transport equipment.....	1,996
Electrical, telegraphic, telephone appliances and machinery.....	56,112
Fertilizers.....	8,223
	=====
Total (including others)	590,439

Source : Regional Surveys of the World, 20th ed., 1990

* 1 USD = 290 FCFA as per March 31, 1990

Having considered both main exports and imports of the country, one can draw the conclusion that the external trade balance shows a deficit, even though the export of crude oil was very important at this time. In fact, since the year 1986, the sharp decline in oil prices marks the beginning of the deterioration. The last figures available make it clear that the situation is becoming worse.

According to the two previous paragraphs, it can be said that maritime transport in Cameroon is a very young industry in terms of its size, which implies that marine insurance is very young too, since both industries are closely related.

I-6 Marine Insurance in Cameroon

The creation of the national shipping company coincides with the promulgation of the law regulating insurance business; and more particularly, owing to the legislative provisions of Law No 75/14 of 8 December 1975 and its Decree of application No 76/334 of 6 August 1976 rendering insurance of imports compulsory, the basis of marine insurance industry was made possible since then.

With the law rendering insurance of imports compulsory, marine insurance has gone through a boom in the early 1980's before the economic crisis the country is facing reached its culminating point, but since 1985, it has started a reverse course and has seen a reduction in its part of the market.

However, up to now, cargo marine insurance comes in second position after automobiles as is shown in the following table.

**Evolution of Some Sectors of the Insurance Business
(in millions F.CFA)**

Sector	1983	1984	1985	1986
Global Turn-Over	30 973	37 009	41 328	46 024
Maritime	5 511	5 652	6 001	5 307
Automobile	12 500	14 379	17 588	-
Life	1 990	2 923	4 063	4 700
Evolution in %				
Maritime	17,79	15,27	14,52	11,53
Automobile	40,36	38,85	42,56	-
Life	6,42	7,9	9,89	10,21

Source : Bulletin du C.N.C.C. (1er trimestre 1990)

CHAPTER I I

MARINE CARGO INSURANCE PRACTICE IN CAMEROON

This chapter will be divided into two parts. The first part will describe the insurance market in Cameroon. The second part will describe the practice of marine cargo insurance in Cameroon.

In this chapter I intend to describe, and only describe the way things are supposed to be done, since when meeting an insurance professional in the Cameroonian market, he gives you this description. In order to avoid confusion I shall come to the way things are really done when describing the problems met in the practice of marine cargo insurance in another chapter.

PART ONE

THE INSURANCE MARKET IN CAMEROON

The Insurance Market in Cameroon is composed of Insurance Companies, Intermediaries (who are General Agents and Brokers) and of one professional Reinsurance Company. To complete the presentation of the market, those without whom the business would not be carried out, the buyers of marine cargo insurance, will be considered. As can be noticed, the Marine Insurance Market is not discussed, but rather the Insurance Market; the reason will hopefully appear obvious after the description of this market. Firstly, the different texts of law regulating the business are presented.

II-1 Regulatory System

The Insurance Business in Cameroon is under the supervisory authority of the Ministry of Finance, which controls the operations of the insurance companies and the insurance agents.

The first Ordinance laying down the regulations applicable to insurance business was published in May 1973. It was Ordinance No 73-14 of 10 May 1973. This ordinance was replaced the 31 August 1985 by the Ordinance No 85-03 relating to insurance business which became Law No 85-22 of 11 December 1985.

For the time being, this Ordinance regulates the insurance business in Cameroon. It both applies to the Insurance Companies as well as to the Direct Agents (or

Intermediaries).

Ordinance No 85-03 is divided into eight parts which are subdivided into chapters, making a total of 92 articles. Some of these articles particularly relevant to this project will be described in the following pages.

In Part I of the Ordinance dealing with the General Provisions :

* Article 3 provides that :

1- Insurance companies shall be registered under Cameroonian Law.

4- Notwithstanding the provisions herein above, some foreign underwriters may be authorized to carry out insurance transactions in the Republic of Cameroon under conditions which shall be fixed by a special instrument.

* Article 6 :

Insurance contracts covering imported goods or cargo must be concluded in Cameroon where the contractant is a resident within the meaning of the General Tax Code.

In Part III of the Ordinance dealing with the State Approval :

* Article 31 provides that :

1- Insurance companies governed by the present Ordinance shall obtain approval from the supervisory authority before commencing business in compliance with the conditions fixed by order.

* Article 36 :

2- All reinsurance transactions involving the transfer or retrocession of more than 50% of a risk abroad shall be subject to the prior approval of the supervisory authority, provided the transferor gives proof that he has exhausted the capacity to contract of bodies approved in Cameroon.

3- All reinsurance agreements with foreign companies shall not involve the transfer of more than 50% of the premium.

* Article 38 :

Insurance Agents governed by this Ordinance shall, prior to starting their activities, be empowered by the supervisory authority to offer insurance transactions to the public.

* Article 44 :

The conditions of professional competence and integrity required of insurance agents and other conditions for practising their profession shall be laid down by order of the supervisory authority.

* Article 45 :

1- Natural persons responsible for managing an insurance company shall, prior to their assumption of duty, be approved by order of the Minister in charge of insurance.

2- They shall be of Cameroonian nationality and reside in Cameroon.

3- Their applications for approval shall be accompanied by

all documents showing that they are of honourable character and have the appropriate training and experience.

4- The Minister in charge of insurance may make all investigations needed to enable him take a decision.

5- Notwithstanding the provisions of paragraph 2 above : Companies already operating on the date of issue of this Ordinance may be managed by non-Cameroonians approved for two years or provided that the said persons reside in Cameroon. Such approval can only be renewed once if need be.

Companies approved after the promulgation of this Ordinance may be managed by non-Cameroonians approved for two years, renewable once.

In Part IV of the Ordinance dealing with Regulatory commitments of insurance companies :

* Article 48 provides that :

Insurance companies shall be bound, according to the types of transactions they carry out to provide the following technical provisions :

1- Provision for unexpired risks : provision intended to cover risks and overheads related thereto for each of the premium paid contracts, in respect of the period between the due date of the next premium, or failing this, the date at which the contract matures.

2- Provision for outstanding claims and the amount of expenditure for claims resulting in annuities for which the company is not yet liable.

In Part V of the Ordinance dealing with State

Intervention :

* Article 55 provides that :

1- State Control of insurance concerns shall be exercised in the interests of policy holders, subscribers and the beneficiaries of contracts.

2- It shall concern all the activities of such undertakings, in particular, the application of the rules and regulations in insurance companies, the use of funds collected, compensation for accidents and the investment of technical and actuarial provisions.

* Article 57 :

1- State control of insurance concerns and transactions shall be exercised under the authority of the Minister in charge of insurance through insurance controllers or any other duly appointed person.

* Article 58 :

1- Insurance concerns operating in the Republic of Cameroon shall be bound to send to the supervisory authority, in the manner and on the dates fixed by it, all documents as may facilitate the checking and the running of the companies. They must state their accounts in the manner laid down by decree.

Apart from Ordinance No 85-03 of 31 August 1985 Relating to Insurance Business, another important text regulating insurance business is Decree No 87/639 of 9 May 1987 to fix the minimum amount of the registered or

initial capital of insurance companies.

This Decree provides that :

Insurance companies that carry out the transactions referred to in Article 1(3) of Ordinance No 85-03 of 31 August 1985 shall, at the time of their constitution, show proof of the following :

- for limited liability companies, a minimum initial capital not less than one hundred and fifty million CFA francs, half of which must be completely paid up, excluding contributions in kind ;

- for mutual insurance companies, a minimum initial capital of not less than one hundred million CFA francs wholly subscribed ;

- for mutual societies, a minimum initial capital of not less than fifty million CFA francs wholly subscribed.

Finally, the most important Law with regard to Marine Cargo Insurance is Law No 75/14 of 8 December 1975 Rendering Insurance of Imports Compulsory.

This Law states the following :

1- All natural persons and corporate bodies under public or private law shall be bound to take out insurance in respect of all imports into the United Republic of Cameroon with an insurance concern holding approval in Cameroon.

2- The terms and conditions of application of the present Law, and in particular the minimum value of imports for

which insurance shall be compulsory and the production and validity of insurance certificates, shall be prescribed by Decree.

The Decree herein above mentioned, is Decree No 76-334 of 6 August 1976 Relating to the implementation of Law No 75-14 of 8 December 1975 rendering insurance of imports compulsory.

This Decree states :

Article 1- The insurance obligation instituted by Section I of Law No 75-14 of 8 December 1975 shall apply solely to imports the FOB value of which exceeds 500,000 CFA francs. The type of insurance shall be freely fixed by the parties. Provided that in the absence of a "comprehensive" coverage the insurance policy shall be taken out, in the case of sea transport, under the minimum conditions of the guarantee "Free of Particular Average, Unless..."

Article 3- The risks to be borne by the insured in the case where an insurance policy other than a "comprehensive risks" one has been taken out, may only be insured, as the case may be with an insurance concern approved in the United Republic of Cameroon.

Article 5- The insurance concern must deliver free of charge to the insured, an insurance certificate. The presumption that the insurance obligation has been met shall be established by this document for the period stated therein.

These different Laws and Decrees show that Cameroon

has provided the Insurance Business with a relatively reliable regulatory system. Now, how this system works in practice may be an absolutely different matter. As a matter of fact, a law can be perfectly worded, but it is the way people understand these words and how they react to them that is important.

II-2 Insurance Companies

About ten companies operate in the market with a turnover of 46.024 millions of CFA Francs in 1986.

These companies are divided as follows :

II-2.1 Companies under Cameroonian Law

There are eight companies operating at present. Among them, one mutual company and seven limited liability companies.

* The only mutual insurance company, AMACAM (Assurance Mutuelle Agricole du Cameroun), is the oldest company operating in the market. .

* The seven limited companies are divided into :

-Two private companies with full Cameroonian assets. They are :

C N A (Compagnie Nationale d'Assurance),

T A A (TransAfricaine d'Assurance).

- One mixed company with Cameroonian and foreign assets, the State being the majority shareholder :

S O C A R (Société Camerounaise d'Assurance et de Réassurance).

- The four remaining companies are actually subsidiaries of multinational companies with a foreign assets majority. They are :

S N A C (Société Nouvelle d'Assurance au Cameroun),

G E A C A M (General and Equitable Assurance Cameroon Ltd) formerly G R E A C A M,

C C A R (Companie Camerounaise d'Assurance et de Réassurance),

A L I C O (American Life Insurance Company).

Apart from the last one, ALICO, which only deals with Life Insurance, all these companies deal with marine insurance through a Marine and Transport Department. None of them is fully involved in marine insurance only, and as it can be seen in the tables to come, marine insurance is in the second place in their activities.

All these companies are members of a professional association, A S A C (Association des Sociétés d'Assurance du Cameroun), main role of which is to promote the interests of the profession.

The personnel employed by those different companies is more than 90% Cameroonian.

II-2.2 Complementary Companies

These companies are not under the national law. They are represented in the market by legal correspondents. Thus :

C A M A T represented by the A C C,

Saint Paul Fire represented by the A C C,

Rhône Méditerranée represented by S N A C.

Lloyd's is a company with a special status which operates through a representative.

II-3 Reinsurance Company

The C N R (Caisse Nationale de Réassurance) is a public company which was created in 1968 in order to preserve the exodus of hard currency from the foreign companies which were almost entirely alone in dealing with insurance business in the country. The CNR's aim was to avoid all the reinsurance operations to be carried out abroad.

After Ordinance No 73-14 and the creation of companies under national law, the scope of the operations of the CNR was extended. The CNR insures the insurance companies. In fact, all the insurance companies operating in Cameroon are required to place at least 10% of the risks they underwrite in Cameroon and all the war risks with the CNR. This is required by law. Apart from those 10%, the companies are free to reinsure where they want,

as many of them do abroad.

II-4 Intermediaries

Two kinds of Intermediaries are found in the market, general agents and brokers.

II-4.1 General Agents

They represent the insurance companies and bring to the traders the security of the companies for which they underwrite. They carry out their business like a liberal profession and can offer businessmen the services of an insurance company in a decentralised way, in short they are closer to the buyers of insurance. This could explain why they are acquiring more than 50% of the market income, whereas they are only six in all. Among those six general agents, only two are nationals, T. BOLLANGA and ORGASSUR. Both together realise scarcely 20% of the underwritings.

The four others are foreign general agents, which means that they generally deal with international groups of underwriting agents and with multinational trading companies. Those trading companies prefer to insure their cargoes with subsidiaries of their home companies. Thus, the hard currency exodus cannot be avoided totally. These foreign general agents are mainly :

CHANAS & PRIVAT,

A C C,

S O R A R A F,

S O G E R C O .

II-4.2 Brokers

The brokers are usually the intermediaries between the insurance companies, the agents and the assureds. The broker is the authorized agent of the assured. He is the one to whom the premium is handed over. He will then deduct his brokerage, which is usually about 5% of the premium and he will give the remaining amount to the insurer. He is the real person negotiating the policy for the assured.

Forty brokers operate in the Cameroonian market. Up to 1979, the market was closed for international brokerage, but at present, international broking companies are found in the market, such as :

AGFRA-SEDGWICK,

GRAS-SAVOYE,

S G C A C,

C C C A.

As for the International General Agents, those brokers are inclined to deal principally with foreign insurance companies having close links with their countries.

Concerning the national brokers, they are numerous and are found everywhere in the trading places in the

country. They are very close to the traders.

Two out of the forty brokers make more than 50% of the brokerage turnover. They are, AGFRA-SEDGWICK which is a subsidiary of the very well-known British broking company SEDGWICK, and GRAS-SAVOYE, a subsidiary of the French company. Once more, this means that a big part of insurance business income is going out of the country in one way or another.

II-5 Purchasers of Marine Cargo Insurance

Usually, they are small or big businessmen and companies. This categorisation has its importance because, depending on whether the client is a small one as opposed to a big one, his understanding of insurance practice or at least the means he uses to understand it differs completely from big businessmen. They are more involved in international trade and having more possibilities, they try to avoid the risks of losing their investments, by taking great interest in insurance concerns.

Concerning the big companies, they generally have personnel or a whole service in charge of insurance matters and personnel will deal with the insurance companies and the intermediaries.

The small businessmen or companies are much less aware of the wheels of insurance practice. Unfortunately, this category represents the largest part of the buyers of the marine cargo insurance market in Cameroon.

Apart from those different regular clients of the market, there are also sporadic clients. As a matter of fact, anyone at any time can be concerned with marine cargo insurance. It is, for example, the case when individuals have to ship their personal belongings from one country to another, and for this purpose they will be obliged to insure their effects to make sure they are not running the risk of losing everything in case of occurrence of any damage or loss.

PART TWO

THE PRACTICE OF MARINE INSURANCE IN CAMEROON

In the preceding part, the insurance market has been described, and so it can be seen that almost all the insurance companies operating in Cameroon deal with marine insurance through their Marine and Transport Department.

II-6 Insurance Policies

These companies offer four kinds of insurance policies to their clients which are :

- voyage policy,
- floating policy,
- open cover policy;
- third party policy.

II-6.1 Voyage Policy

The nature, the quantity of the goods and the journey are fixed beforehand. The name of the vessel, the ports of departure and arrival, the consignor and the consignee, so too will the quantities and the value of the goods insured be known prior to the underwriting of the policy. For this policy, the risk is well defined and usually the policy is underwritten for occasional shipments.

II-6.2 Floating Policy

In this case, the quantities of the goods are determined, but the time is not defined. This policy is generally used for commercial contracts which spread shipments over an indefinite period of time. Thus, instead of several voyage policies, the floating policy will include the total value and the number of shipments.

II-6.3 Open Cover Policy

Contrary to the preceding policy, the open cover policy defines the time but the quantities are not determined. This policy automatically covers all the goods sent by the assured taking place within the defined period, whatever goods, means of transport and destinations. The only thing the assured will have to do is to make known all the shipments to the insurer. The open cover is generally used by tradesmen and manufacturers who export or import regularly various kinds of goods to and from ports of different countries. The open cover policy is renewed yearly by tacit agreement. The advantages of this policy are practical. As a matter of fact, there is no need for formalism, the cover is automatic and there is a gain of time and of expenses.

II-6.4 Shippers' Third-Party Liability Policy

Open cover policies are proposed for shipping companies, forwarding and transport agents as they can cover the goods that their clients have asked them to insure and to carry or to ship. This policy is an open cover one in which insurance is not automatic since it

only includes the shipments that their clients ask them to insure.

II-7 Types of risks

These different policies cover two types of risks : the ordinary risks of transport, and war risks, strike risks and exceptional risks. These risks are then ranged under the heading of particular average and general average.

II-7.1 Particular Average

The particular average is the damages, the losses or shortages that the goods can suffer during their transport. The damage can occur :

- during transport, from events which strike the vessel as well as the goods : such as wreck, fire...etc., and from incidents which strike only the goods, such as damping by seawater or rain, breakage due to shifting....
- during the handling (loading, stowage, unloading...) and during the stay on quay (theft or breakage). Various expenses can be caused by damage such as average expenses.

II-7.2 General Average

It is a special risk to maritime transport. This risk is likely to result in losses and important expenses for the shippers. The system of general average is an ancient one which implies a liability on the part of all interests at risk in a maritime adventure to contribute rateably to make good any losses voluntarily incurred in time of peril, for the common safety of the marine adventure.

II-7.3 War Risks, Strikes..

War and strike risks are "exceptional" risks. They generally cover goods transported in areas where there are political or social troubles and where there is a declared war.

II-8 Insurance Cover

Two main kinds of insurance cover are proposed to the buyers of marine cargo insurance in the market ; they are the "All Risks" and the "FAP Sauf" (Franc d'Avaries Particulières) which means, " Free of Particular Average, Unless."

II-8.1 "All Risks" Cover

This insurance, contrary to its name, does not cover all risks. It covers all the damage or losses occurring to the goods assured during the voyage. The risks which are excluded from the cover are enumerated in the policy, and apart from these specific exclusions, the scope of "All Risks" is wide enough. The "All Risks", by and large, corresponds to the Institute A Clause. Only a small amount of goods imported into Cameroon are insured under the "All Risks" conditions.

II-8.2 "FAP Sauf" Cover

The "FAP Sauf" insurance, contrary to "All Risks", only covers the particular average caused by the occurrences which are enumerated in the policy. This

enumeration can be very wide, and it quotes the big events which may occur during maritime transport. The "FAP Sauf" corresponds, to some extent, to the B or C Institute Clauses. Most of the goods imported in Cameroon are insured on the "FAP Sauf" conditions.

II-9 Determination of the premium rate

The premium to be paid will depend on the risks covered; thus, obviously, the premium paid for an "All Risks" cover will be higher than the one paid for a "FAP Sauf" cover. To determine this premium, the following different elements are considered.

II-9.1 Nature and Value of the Cargo

Goods differ in their nature : some are fragile, others are perishable and some again are dangerous... Depending on whether the cargo is of one type or another, the rate of the premium will differ. In the same way, goods differ in value, and the value of the cargo will be taken into account as a determining element.

II-9.2 Packaging

The packing of the goods is one of the main elements of determination of the premium. As a matter of fact, a large amount of damage or losses occur due to inappropriate packaging. The packaging made by specialized companies is more reliable and the insurers take into account the fact whether the goods insured are packed by professionals or not. The problem of packaging is rather acute in Cameroon.

II-9.3 Type of Vessel

The type of vessel is important in that the container ship for example is quite different from a bulk carrier when it comes to transport of goods, but the most important aspect concerning the vessel is its age and general conditions. Indeed, the older a ship, the higher the risks, and consequently the higher the rate of premium. Ships over 15 years are applied a special rate.

II-9.4 Condition of the Voyage

This condition includes the way the cargo is carried, if it is containerized or if it is conventional. Containerized cargoes are said to be in a safer condition.

Then, the condition will depend on whether the cargo is carried on deck or not ; cargoes carried on deck are more often subject to damage such as water wetting or to loss due to bad stowage or bad weather. The condition can also include the port of destination : some ports do not have the equipment required for the loading and discharge operations, which can lead to possible accidents due to lack of appropriate port infrastructure.

The Cameroonian market has no pre-established premium rate. Each company decides the rate that it judges sufficient for the coverage of a risk and for its own profit margin. This means that there is free competition in the market.

II-10 Compensation of the Assured

In case of loss or damage occurrence, the assured has to fulfil some formalities in order to be indemnified. Those formalities are the following:

-To take or demand all the measures of conservation or of salvage that the situation requires in order to protect the goods insured or to limit damage.

-To request on average surveyor intervention within 30 days after the discharge of the goods.

-To maintain all rights and claims against the carriers and/or any other person responsible.

-To present the claim to the insurers as soon as possible.

In general, the rule requires that :

- In the case of visible damage :

* before taking delivery of the goods, the assured should make precise reservations referring to the brands, the numbers, the quantity and the weight of the litigious cargo ; and he should wait for a contradictory survey or an official report.

* he should immediately send a registered letter of reservations to the carrier and/or any other person responsible, informing him of the damage ascertained.

- In the case of damage found after delivery :

* the assured should stop the unpacking and ask for the average surveyor.

* he should immediately send a registered letter of reservations to the carrier and/or to any other person responsible, informing him of the damage ascertained.

- In both cases, he should invite the carrier and/or any other person responsible to attend to the survey by sending a registered letter. If the carrier does not attend to the survey, it should not take place ; and the surveyor's advice should be sought as to whether a judiciary survey should take place or not.

- The prescription should be interrupted against the carrier or any one else if the complete files are not provided to the insurers within one month of the date before this prescription.

- In the case of General Average : the assured should sign the commitment to contribute, but with reservation to contest the very principle of general average and the figures.

Apart from these different formalities, the assured is required to provide for any claim to the insurers :

- * an original certificate of insurance
- * an original Bill of Lading negotiable
- * the original titles of transport

Furthermore, the assured will have to provide the following :

- In the case of particular average :
 - * a certificate of the average surveyor

* if possible the carrier's statement

* the copies of the letters of reservations sent to the persons responsible.

- In the case of non-delivery of cargo :

* the final certificate of non-delivery from the person supposed to be responsible

- In the case of general average :

* the receipt of provisory contribution endorsed in blank by the person who has paid the contribution.

According to what precedes, the assured has to go through many formalities and to provide a number of certificates, in order to have compensation paid.

Once these requirements have been achieved and the certificates provided, then the assured is entitled to receive the indemnity from the insurer, if the latter is satisfied with the documents received. Then, the assured will start waiting to be indemnified, what usually does not take place before at least two months.

CHAPTER I I I

MARINE CARGO INSURANCE PROBLEMS IN CAMEROON

In this chapter, my intention is to raise the main problems faced by the practice of marine cargo insurance in Cameroon. These problems are of various kinds, but they are mainly due to human inability, by and large, since the structure of the market is good enough and should not be the cause of malpractice.

III Regulatory Difficulties

Law No 75/14 of December 1975 which rendered insurance of imports compulsory has given marine insurance a real start since this practice under Cameroonian law was almost non-existent. This obligation to subscribe to insurance locally for imported goods has helped to increase the amount of income of the insurance companies.

However, this law has some failings : it is compulsory to insure on restrictive conditions "FAP Sauf" and not on "All Risks", and only for goods amounting to 500 000 FCFA and more.

The problem is that, under these restrictive conditions, the shipper has made insurance a simple customs formality. The certificate of insurance has to be shown to the customs service on delivery of the goods. The certificate being just a document, the shipper usually will subscribe to insurance at the lowest cost when he has made sure his goods have arrived. This way of

circumventing the law has become current practice and most of the shippers find it absolutely normal to subscribe to a so-called "FAP Sauf" policy which does not cost much and gets rid of this "burden" (as insurance is perceived by the public in general).

This could lead to the question of knowing whether goods imported in Cameroon are actually insured or not. The answer to this question is that most of them are insured. This refers back to the first chapter in which the fact that most of the Cameroonian imports are paid for on a C.I.F basis, which means that the goods are insured by the supplier up to the port of Douala was discussed, so, the insurance certificate required by the customs services is merely a formality.

Thus, the truth is that despite the law rendering compulsory insurance of imports locally, most Cameroonian imports are insured abroad. One of the reasons given by the importers to explain this situation is that the cost of insurance is more expensive in the Cameroonian market. They pay much less for an "All Risks" cover abroad than locally.

This ascertainment raises another question. If the law makes it compulsory to subscribe to an "All Risks" policy for imported goods, should the practice be different ? The answer seems obvious. How can one be sure that this could really help ? How is it possible for people not to consider it a bigger constraint to subscribe to "All Risks" ? Would people not try to evade this law as well ? Most importantly, how does one get people to understand the benefits of subscribing to an "All Risks" policy locally if they are not obviously aware of its

importance? Last but not the least, how to encourage them to change their commercial behaviour by buying F.O.B and not C.I.F ?

When one looks to the Authorities in charge of implementing the law, apparently, nothing is done to stop this practice. Either the Authorities are not aware of this practice and they should be more effective in the control of the application of the law, or they are aware of it and they are accommodating towards the people circumventing the law.

On the other hand, the insurance companies are playing a game which is not to their credit. As a matter of fact, if they issue certificates of insurance which are fake, knowing that never they will have claims from them, they are gaining money in a dishonest way, because they are no longer dealing with insurance, but they are just helping their customers to circumvent the law.

Some insurers even use the practice of "fronting" which consists of Cameroonian insurers accepting cover of shipments at conditions fixed by foreign insurers to whom they will give up almost the entire premium encashed as a reinsurance operation.

In fact, the problem is made more difficult since the insurers are the persons who could have been of great help in trying to put an end to this dishonest practice.

A recent discussion with a Representative of the French Insurance Market highlighted another view of the problem of the importers' non-willingness to insure their goods locally. This comes from the fact that their trade

partners (in this particular example, the French exporters) do not agree to sell their products on an FOB basis and to let the buyer arrange for his own insurance and transport. The reason they put forward is that they do not trust the Cameroonian insurers, so, they demand to sell on the CIF basis, whatever the requirements of the country importing might be.

Thus, the importer will then be obliged to buy on a CIF basis and to subscribe to another insurance policy for the same cargo in order to comply with the regulations of his country, and in fact, he will pay twice for the same cargo.

Apparently, this double insurance does not bother the sellers' insurers who are quite well aware of the practice. The only thing that they cannot stand is to pay for a claim which has been put to the local insurer as well. If ever this happens, they will say that the assured wants to get two compensations for the same cargo ; this, in insurance is considered to be a malpractice, whereas the fact that this assured has paid twice for the same cargo, is not perceived as a malpractice.

This confirms the fact that it is easier to receive money than to give it. This was put another way by a Belgian distinguished advocate of the past- quoted by Robert de Smet- who said : " Les Assureurs sont comme les femmes, ils conçoivent dans la joie, mais ils engendrent dans la douleur" (V. Dover : 1975, p.46). This quotation could be more or less translated as : "The insurers are like women, they conceive in joy, but they give birth in pain." Once one has admitted this idea, everything in the practice of insurance becomes clearer.

III-2 Financial Problems

The financial problems in the practice of marine cargo insurance in Cameroon have several aspects.

III-2.1 Statement of Outstanding Premiums

One of the most important aspects of the financial problems for insurance companies is the statement of their outstandings, which represented about 70% of the total of all the premiums of the insurance business in 1989, and put the insurance companies in a very critical situation. How could this situation occur and to such an extent ? According to the majority of the insurance companies, it is due to the dishonesty of the intermediaries in general.

As a matter of fact, the intermediaries of insurance and particularly the fishy brokers, have a very bad reputation in keeping the premiums the assured pays and not in handing them over to the insurers.

It is the usual practice that the assured gives the amount of premium determined to his broker and the latter will hand over that amount to the insurer minus his brokerage. This should be done without any delay as soon as the contract of insurance is concluded. The broker should not have to keep this amount of money which does not belong to him. The fact that the insurer does not receive the premium could make the contract of insurance void.

That brings to mind the question of why the insurance

companies go on concluding contracts when they are not having the premiums paid.

To that question, some insurers answer that they avoid using the broker's services and they deal directly with the assured. However, they are facing the same problem with some assured persons who do not pay their premiums too. They argue that the assured is going from one insurer to another and acting in the same way.

Why can insurers continue to issue certificates of insurance when they cannot trust their clients ? It is obvious that if the premium is not paid, the insurer cannot cover the cargo since insurance is a commodity for which you have to pay before delivery, if there is ever any delivery. That means that the insurer should have the premium paid, and it is with the amount of premiums that he can make provision for the indemnity to be paid in case of occurrence of any damage or loss.

This situation may quite well be the consequence of the practice of issuing complaisant certificates, knowing that no claim is going to be put since the certificate is just used for customs purposes by shippers who know that their cargo has arrived and apparently in safe condition.

Another point is to know whether, after taking delivery of the goods, it might not happen that the assured is faced with some loss or damage of goods, in which case, he will naturally put in a claim and will be waiting to be indemnified.

That will raise another question of financial problems. Indeed, if the assured is given a certificate

of insurance at a very low rate of premium, and assuming that the premium was paid but that the certificate is all the same a complaisant one, then in this case, if any loss or damage occurs, the assured will expect to be indemnified properly. However, this compensation will be difficult since the policy which he will have contracted at a very low cost will not cover his cargo properly. From this point the problem of non-payment of claims could start.

III-2.2 Non-payment of claims

Most of the time, the claims are not paid for due to two main reasons. The first reason is that the insurance companies have not enough reserves left to enable them to face claims. Most of them attribute this situation to the big outstandings, what is partly quite true, but this cannot be the only reason for not paying the indemnities.

The reason is that the assured is not aware of the formalities to be carried out to put in a claim. That creates a situation where there are great delays in providing the different certificates needed take place. Sometimes, the insurance companies do not pay because they put forward the fact that it is too late for them to claim against the carrier or any other person responsible.

On the other hand, the insurers also hold the carriers responsible or more exactly the judiciary which, in the case of the claim reaching this stage, cannot handle it properly, having no specialized magistrates on the matter. Another fact is that Cameroon is applying the 1924 Hague Rules Convention which, as everyone knows, favour the shipowners and carriers. The Cameroonian

Merchant Shipping Code based on the 1924 Hague Rules is even more favourable to the carriers.

In addition, up to now, Cameroon has not ratified the Hamburg Rules which are more well-balanced and take into account the shippers' problems concerning claims against the shipowners/carriers.

The last point is that the assured on the whole, for his part, puts forward the bad will of the insurers who do not want to pay the claims even when the latter have provided them with all the papers required. As a matter of fact, according to the assured, it is quite usual for compensation to take place six months later. Of course, this cannot easily be explained to someone who has suffered a loss and who is waiting to be indemnified. From that, the assured draws the conclusion that the insurers are reluctant to pay the indemnity.

Moreover, having no feedback in general from the insurers, which could make them change their opinion, they spread the idea that the insurance business is a tricky one. All this results from the problem of having no real communication between the assured and the insurers. Which leads to the next problem.

III-3 Lack of communication

The fact that the assured is not properly informed of what he should do when damage or loss occurs is the very sign of lack of communication between the assured and the insurer, or between the assured and the broker, when an intermediary is involved. Lack of communication is

sometimes the origin of the non-payment of claims because of delay in dealing with the procedure of different formalities.

If the assured is not properly informed as to what he should do when there is occurrence of loss or damage, he cannot do what he is supposed to. Now, this information should be given either by the insurer himself or by the broker while the contract is concluded, and the assured should be reminded as soon as the damage occurs.

It seems that the assured, once he has paid the premium, is left on his own which should not be so. The relationship between the insurer or broker and the assured should be permanent, so far as they are in business together. In the same way, the broker and the insurer should keep close contact in case the broker is the intermediary and even more there should be some cooperation between them, being both insurance professionals. There is lack of cooperation in the insurance business in Cameroon, which is also a source of problems which could not otherwise exist or could be solved easily.

III-4 Lack of cooperation

Lack of cooperation is another important problem for the insurance business. Consider cooperation between the insurer and the broker. When a broker is used as an intermediary, he represents the assured. Thus, he is the one who must keep a close relationship with the insurer, since they work together for the assured, and moreover, they are involved in the practice of insurance, which the

assured does not.

However, with reference to the problem of the fishy brokers who misappropriate the premiums, it is quite certain that the relations between the brokers and the insurers cannot be good at all. In this case what can be done? Taking into consideration the great part a broker can play in the insurance business, this lack of cooperation and trust is something very harmful to the profession. In fact, the broker is useful to the profession, at least when he does his job correctly.

Another point of lack of cooperation is the one between the insurer and the assured in order to prevent damage occurrence. As seen before, damage due to bad or no proper packaging occurs very often. The better the goods are packed, the more secure the cargo will be, so, both insurer and assured should try to find solutions to this problem and they can only do that if there is cooperation between them.

Earlier, it was seen that some insurers deal directly with the assureds, and sometimes those latter do not pay their premiums and go from one insurer to another. Lack of cooperation between insurers themselves is then regrettable. Indeed, this kind of situation would occur very seldom if the insurers cooperated; and this specific case of dishonest clients, they could work together to show them up and to harry them.

The lack of cooperation between the insurers adds to the mistrust of the public towards them, since they are perceived as individuals trying to cheat people.

III-5 Mistrust of the public

This point is a very difficult one. The public in general consider insurers or insurance professionals as people who use their money to become rich, and this opinion is so wide-spread that it will take time and effort to change it.

As a matter of fact, clients of insurance companies have a long list of complaints, some justified and some not. Anyhow, the problem is no longer to know if the assured is right or not, but to seek a way of restoring the reputation of the insurance business. Only insurance professionals can do something to lead the public to change its opinion towards them. This will be a very long and exacting task, because they will first have to change the way they deal with their job, to show more professionalism.

III-6 Lack of professionalism

Most of the points which have been reviewed earlier could also be discussed in this paragraph. Indeed, most of those points are partly, if not completely, due to the lack of professionalism.

Apart from the case of the fishy brokers, which is obvious proof of pure dishonesty and thus of non-professionalism, even the honest professionals of marine insurance fail in achieving their duty.

Taking the point of lack of communication, the fact that the insurer or the broker could not be at the

disposal of his client, is already a breach of professionalism. If you add to this the fact that, because of lack of information, their clients who are not aware of the practice of the business happen to lose their claims, that is a very serious mistake.

Both insurers and brokers are to blame for this point, for they should show great keenness in serving their clients, and by the way, do their work properly. Moreover, they seem to forget that they can only have a business if there are people to buy insurance.

Concerning the lack of cooperation, the professionals do not seem to be really involved in their job, only that could explain the existence of some of the problems which should not exist otherwise. Indeed, with more cooperation, they would find solutions to those problems altogether. That also can be considered as a lack of professionalism, since they do not care about improving their profession. They seem to work from day to day, and not to be very interested in their future.

Another point is the non-payment or the delay in the payment of claims. Of course, the insurer puts forward some reasons, as seen earlier, but where the lack of professionalism intervenes is when the insurer or the broker does not find it necessary to inform the assured of what is going on, and why there is some delay in payment. Once again, the insurer behaves as if he does not need the assured, and the latter needs him.

However, the most serious distortion to their profession is the fact that they help their clients to circumvent the law by issuing complaisant certificates of

insurance, and to gain money from this practice. In doing that, of course, they are not only dishonest themselves, but also very far from having professional ethics.

All these points cannot encourage the public to put their trust in the professionals of marine insurance in Cameroon. In fact, by acting this way, insurance professionals seem to completely forget the most important of the principles of marine insurance, which is the principle of Utmost Good Faith, which implies trust.

What can be done to change this state of things ? Is there any solution to be applied which could help to improve, if not cure, the problems of the practice of marine insurance in Cameroon ?

CHAPTER IV

WHICH SOLUTIONS TO THE PROBLEMS ARE POSSIBLE ?

Having discussed the different major problems encountered in the practice of marine cargo insurance in Cameroon, in this chapter I intend to suggest solutions which could be applied to the problems. As mentioned earlier, most of these problems are mainly related to human failings and the solutions should be specifically directed towards correcting human weaknesses. Thus, the different problems mentioned in the previous chapter will be discussed step by step and some questions that were put when the problems were posed will be answered.

IV-1 Strengthening of the Regulatory System

As explained before, the law rendering insurance of imports compulsory has been circumvented almost since its enforcement. Moreover, this law is only applicable for "FAP Sauf" cover and not for "All Risks" cover. Now, should it be different if the "All Risks" cover was made compulsory ? The answer which comes to mind immediately is "yes". Yes, because the shippers will be obliged anyway to insure their goods.

For the time being, the goods imported are often insured abroad. The problem of insurance is not crucial

for the importers, since their goods are insured by the seller up to the port of arrival.

If the "All Risks" was compulsory, it is quite certain that people would have more difficulties in breaking the law. Indeed, the cost to pay would be higher and they would not be willing to pay for two insurance policies as they do now, that means paying for their goods on a CIF basis and buying an "All Risks" cover for the same goods locally.

In fact, the problem considered this way could only be solved with importers buying on a FOB basis. It is true that the shippers complain that insurance bought locally is much more expensive, but having no choice, they will try to reduce their expenses in subscribing to only one policy.

However, it is not certain at all that the importers will accept the obligation to buy an "All Risks" policy so easily, and something should be done to make people to subscribe locally without any constraint.

First of all, the Authority in charge of International Trade in the country should help importers to understand the importance for the country and for themselves of buying "FOB". Once they know why it is vital for the economy and in addition for them to buy on an FOB basis, they will consequently understand the need to insure locally.

As a matter of fact, the disease should be taken at the root, and the Administration responsible must dedicate

itself to educating people involved in international trade. Thus, the Chamber of Commerce for example could organize seminars for external traders on how and why to buy "FOB" and to sell "CIF". Of course, it is not so easy as it seems, but at least, it should be tried.

Actually, when people are obliged to do something, they often try, in one way or another to get out of doing it, so that, if the "All Risks" cover were made compulsory, it might go through the same failure as the "FAP Sauf".

Thus, the best way could be to keep things as they are now. That means, having the law rendering insurance of imports compulsory, but the Authority in charge of enforcing the law should be more involved in the control of its actual application. At the same time, measures should be taken in accordance by the Ministry in charge of Commerce, the Ministry of Finance and the insurance professionals to change the habits of the economic operators involved in international trade.

According to how things are explained to people, this initiative will be successful or fail. As discussed earlier, human beings in general do not like to be forced to obey a law the importance of which they do not see. They prefer to be part of a decision, to be involved and to be asked their opinion. In that manner, one can easily make them act the way the law wants them to.

This way of strengthening the regulatory system might seem somewhat unusual but it could be a solution to the problem posed by the breach of law. This should not prevent the Authorities from firmly penalising the infringers by instituting a fine, and this should be strictly applied.

Another important measure would be to appoint some persons well aware of the practice of insurance at the points of delivery of goods. These persons would then be the actual controllers who will verify the certificates of insurance in order to determine which insurance company or which broker has issued them. Indeed, the broker can provide the assured with the certificate, but the certificate should be countersigned by the insurance company covering the risks and normally the headed note paper of the company should be used.

Thus, if ever it is made clear that the certificate is a false one, the broker and the insurance company could also be sued and fined. As a matter of fact, the assured cannot be the only one to be held guilty since he can only get the certificate through either the insurer or the broker.

IV-2 Solutions to the Financial Problems

IV-2.1 Control of the Financial Situation of the Insurance Companies

Financial control by the Authority should be made first when the candidates to the profession ask for their approval, and later on, control should take place at the time of the establishment of the insurance company. In fact, this is provided by Law No 85/03 relating to insurance business, but it is not strictly applied. This provision requires that the control be made by insurance controllers appointed by the Ministry of Finance. During the exercise of the profession, regular controls should be made periodically of the accounts of the companies to make

sure they have enough reserves for the payment of claims.

IV-2.2 Statement of the Outstanding Premiums

Concerning this problem, the insurance companies could take some measures to stop the practice of embezzlement of premiums by the brokers and the non-payment by the assured.

Indeed, since most of the insurance companies complain about this malpractice, they should be very careful when they have to conclude a contract with a broker or a client. This means that they should not trust anybody and that they must have their regular clients or brokers with whom they do business. For the others, the insurers should wait for the payment of the premiums before issuing any certificate of insurance. Moreover, they could ask for a guarantee for payment when concluding the contract.

Maybe in practice it is not so easy to select clients since the companies need them to run their business, but things being as they are in the market, it would be better for them to have less clients, but clients who pay. Furthermore, one can still be selective and earn money. In addition, this selection could be useful to the profession. As a matter of fact, if people know the insurance companies may refuse to insure their goods or if the brokers know they could be blacklisted, that could make them think before trying to cheat the insurance companies or their clients. Thus, the insurance companies can do much themselves to help their profession.

IV-2.3 Security for claims payment

The other aspect of financial problems is the non-payment of claims which is crucial for the assured, and the latter are powerless to protect themselves. One solution could be to control the state of the provisions of companies. Those controls should be made periodically and should concern the audit of the accounts of the companies throughout the exercise of the profession. The control should be very strict, since the security of the assured depends on it, and it could only be efficient if the Authority in charge does it seriously. This control also has provision in Part IV of Law No 85/03, but the enforcement is somewhat neglected. Obviously, the supervisory Authority has a lot of work to carry out to put the insurance business in order.

IV-2.4 Settlement of Claims against Carriers

Finally, the judicial system dealing with claims against carriers, should be reviewed. Indeed, the insurers face big difficulties in paying claims against shipowners or carriers held responsible. When they are paid, the amount is so trifling compared to the cargo insured that it does not help enough to even collect it sometimes. To solve this problem, several changes are needed, and all of these changes are within the competence of the government.

First of all, the judicial system should be adapted to handle cargo marine claims. This adaptation means in fact that the government or any competent Authority should appoint persons with a Maritime Law background, who could

help the magistrates any time such claims are to be arbitrated. If possible, those persons should be members of an Arbitration Court. With those lawyers, Senior Officers in shipping and navigation could be appointed so that a team of maritime specialists be set up to deal with the claims, which would be of great help.

Next, the Merchant Shipping Code dated 31 March 1962 should be reviewed. In fact, it is under revision now and it is hoped that its provisions concerning the settlement of claims against the shipowners/carriers will no longer be based on the Hague/Visby Rules.

This takes us to the final point which is the importance for the country of adopting the Hamburg Rules of 1978. The ratification of this Convention and its application would help the shippers' interests and in the same way the insurers'. Thus, the Administration and the different professional groups interested in this ratification should work together to show the importance of this convention so that the government decides to adopt it.

IV-3 Training of Insurance Professionals

Apart from problems such as the regulatory ones and some financial problems, almost all of them could be solved if insurance professionals dealt with their work with more professionalism. The insurance professionals and particularly the insurers and the brokers should have a perfect knowledge of the techniques of marine cargo insurance as well as the commercial and judicial practices related to it.

Of course this knowledge is acquired by attending specialised lectures on the subject, insurance being a very specialised business, but for those graduates who enter the profession without any specialisation, some seminars could be organised for them by the whole body of the profession. This would be a great help to them and more so for their companies.

As a matter of fact, attending seminars where all kinds of problems related to the profession are raised can be useful for those employees not very used to the practice of marine insurance. Even professionals with more knowledge should attend those seminars regularly in order to refresh their knowledge and to be in contact with other professionals to share their views and ideas.

However, the day to day practice is also very important. Most people employed in the business of insurance in Cameroon are neither graduates nor specialists. They are moderately educated persons who entered the profession and learnt the practice during on-the-job training. Among them, very good experienced professionals can be found, and for that kind of personnel, seminars are very important. Companies could also organise internal training sessions periodically for their technical clerks and agents.

Marine insurance deals with two concerns which are basically international (international trade and maritime transport). The training of professionals of marine insurance will do more to keep them informed of the changes or innovation occurring in the practice of insurance itself and in commercial or transport fields,

and obviously, this needs a regular up-date of their requirements. Generally speaking, training is held in order to improve the practice of the business by the professionals.

Actually, people involved in the business at different levels have said that if it is indispensable for an insurance company to have specialists, it is also indispensable for those specialists to have good personal qualities to be successful in business. That is to say that someone could be an expert in insurance and fail in business, if he does not have the qualities required. Those qualities required are by and large the following : discipline, integrity or honesty, a good sense of communication, flexibility and... aggressiveness.

IV-4 Cooperation between Professionals

Actual cooperation between insurers and brokers could give the marine cargo insurance market in Cameroon a quite different face. Indeed, most of the problems the business is facing now would not even exist if both insurers and brokers performed their duties seriously and in cooperation. The insurer should have a good relationship with the broker representing the assured in order to serve the interests of the client adequately. Cooperation amongst them would make things easier for both parties.

If there are any problems, both broker and insurer could find easier solutions to them if there is concerted action. As a matter of fact, the broker should have practically the same knowledge of the practice of insurance as the insurer, so, when damage or loss occurs,

the broker should be the one dealing with the insurer.

It is really in such a case that he actually has the opportunity to put his knowledge at the service of the assured and to play the part of an intermediary, but in close cooperation with the insurer. This would serve the interests of all the parties, and problems such as non-payment of claims due to non-provision of documents required by the insurer could not happen.

Of course, this cooperation should start from the beginning, that is to say from the negotiation of the contract, if both insurer and broker keep in mind that they are at the service of the assured even if they make their money by serving him.

Thus, this cooperation must be an honest one. The insurer and the broker must be honest, vis-a-vis each other, and even more towards the assured. In fact, with good cooperation, it will be quite difficult for the broker to misappropriate the premiums, having a close relationship with the insurer.

Besides cooperation between insurer and broker, there is cooperation between insurers themselves. This cooperation is quite different from the previous one and has different objectives. Insurers need to cooperate to be able to solve any problem they face in the practice of their business. If one takes the problem of non-payment of premiums, the insurers could get rid of this dishonest and regrettable practice through concerted action, but it is imperative for them to work together to be successful.

The other important point for which cooperation is necessary is co-insurance. The market is poor, due partly

to the financial weakness of the insurance companies. This reason is the one put forward by foreigners who refuse to insure in Cameroon. They add that the Cameroonian insurance companies are not able to handle big claims.

They are right to some extent, and the only way the insurers could solve this problem would be to practice co-insurance which is widely practiced in other places. This practice is quite usual and it helps companies to do business and be confident in their involvement in the case of any damage or loss.

Instead of acting alone with difficulty, it is in the interests of the companies to put their efforts together when necessary. This will not be prejudicial to their business, on the contrary it will give more credit to the profession. Sometimes, the fact that one can share is a proof of maturity.

Moreover, the insurers, as mentioned earlier, need to meet regularly to discuss the different problems faced in the fulfilment of their duties. They could then try to find solutions to the problems and to submit their claims, if any, to their supervisory Authority. To have more impact, this should be done through an Association and not individually.

In fact, this association exists but it does not deal with things which could be of real interest for the profession. Once again, the insurers are the only persons able to improve their profession ; for example, this Association and the meetings it could sponsor could become a forum from which new ideas would be generated for the benefit of business.

IV-5 Improved Communication between Assured and Insurer/Broker

Any relationship between humans is based upon communication. Without exchange of views, information and knowledge, a lot of business could not be fulfilled ; and this can be applied to the insurance business which may more than others need an exchange of information. Thus, if for any reason it happens that the insurer and the assured cannot communicate when dealing with a contract of insurance, it almost surely ends with problems.

Consequently, the need for communication is very important, and in the particular case of insurers and the assureds in Cameroon, the insurers should try to give more information to their clients who are very often ignorant of insurance practice. Then, it is the duty of the insurers or the brokers to give detailed information concerning the contract of insurance which they are going to conclude. Indeed, the fact that the assured does not know much about what is going on is a source of misunderstanding. Thus, by explaining everything to him, including the content of the contract, as different formalities to be performed in case of loss or damage occurrence, they can avoid problems.

This information should be delivered at the time of the conclusion of the contract, but this does not mean that the insurer or the broker after this conclusion should leave the assured on his own. In the case of any loss or damage, they, and more particularly the broker,

should keep in close contact with the assured and should lead him in his search for the different documents required by the insurer. The broker in fact should remind the assured of every step of the formalities procedure until the latter has got every single document needed for his claim. The broker's duty is to help the assured be satisfied and receive his compensation.

Of course, the assured also has a duty to give all information known by him on the object of the contract, and this information must be correct and true. Consequently, both parties have to give necessary information to each other in order to successfully achieve the contract of insurance.

The insurer being the seller has more of an obligation with respect to information and advice vis-à-vis his client. This share of information and dialogue could have more positive results as far as the assured's opinion of the insurers goes. It could lead to more trust from the assured. As a matter of fact, the assured needs to see that the insurers care about their problems; and if the latter shows any concern by either communicating with them, informing them, or in short, by keeping in touch with them, this would be a cause for satisfaction and faith.

IV-6 Public Awareness of the Importance of Marine Cargo Insurance

" No commercial contract generates such emotional outbursts at times as does an insurance policy. The starting point for such feelings is partly summed up in

the old adage that insurance is 'sold not bought'. Thus the general public do not happily go out to buy an insurance policy as they do to buy a car or a television set. They buy a policy with some reluctance. If all goes well they will pay their premiums and not make any claim" (R.W.Hodgin, 1989, p.v).

This long quotation explains quite well the state of mind of the public towards the insurance business. In the case of this quotation, the public is the British one which is supposed to be well informed as to how things stand, owing to the preeminence and the professionalism of its market.

Then, if you add to this natural reluctance towards insurance the fact that the Cameroonian public is not actually aware of the importance of marine cargo insurance, one can see how difficult and what a long time it will be to change its mentality.

As mentioned earlier, the insurers should educate the public. They should in a concerted way organise information days during which they would be at the entire disposal of the public to explain everything people would like to know and to answer their questions. Moreover, they could distribute questionnaires to the public to find out what they know about insurance and what they expect from it when they buy it.

The insurers should demonstrate very clearly which risks goods could run without insurance during the different stages of transport up to the final destination. They should be as precise as possible when explaining that to the public. In fact, this should be convincing enough

to make the public think seriously about it.

There should be a regular dialogue between the insurers and the assured ; indeed, it is not in one meeting that things will change. The insurers have to be patient, but they have a great interest in trying to make people understand why insurance is important for them.

At the same time, by having those regular open meetings with the public, they will perhaps succeed in restoring their reputation, and actually, they really need to change the widespread bad reputation which they carry.

CONCLUSION

Cameroon has set up basic structures for a marine insurance industry by laying down some regulations, but it appears from the different problems considered that these structures are not sufficient for the good achievement of business.

The decision for this set up which is also not successful, as seen previously, was made in order to avoid the exodus of capital.

Cameroon has then much work to do in order to be able to control the situation. If the government is the main body which should be involved in this work since it has to take care of the interests of the country, insurance professionals and all other professional groups involved in the business, by and large, should try to find solutions at their levels.

Up to now, one individual solution has been found. Indeed, one national private insurance company, C N A (Compagnie Nationale d'Assurances), has signed a Protocol of Cooperation for the insurance of goods with CAMSHIP, the National Shipping Company, both companies searching to improve their performance. The two main objectives of this protocol are to give a better protection to the shippers' cargo and to reduce the procedures for compensation.

In practice, the application of this agreement will be the following : only CAMSHIP will deal with the shipper and it will, as such, issue the certificate of insurance and make the payment of claims locally as well as abroad where it has representatives in different ports. This will allow claims to be placed abroad without difficulties, which was almost impossible since the national insurers do not necessarily have representatives or insurance companies with which they work (apart from reinsurance operations) and which could handle some claims for them. Moreover, this agreement provides that the expertise and the checking expenses will be paid by both CAMSHIP and CNA.

With this agreement, foreign traders should be less reluctant to insure their goods in Cameroon. Indeed, the problem of payment of claims is the one put forward by the foreign traders. Therefore, if they know that they would be paid by the shipping company carrying their goods itself, this would be more acceptable to them, since the shipping company has representatives in their countries.

The agreement also forecasts that the payment could take place not later than one month after the arrival of the ship. In addition, the fact that the shippers will only have to address CAMSHIP and do not go through the numerous formalities they would have to in the case of a claim should make things easier for them.

This protocol of cooperation is a very good way to try to stop the capital exodus from the country which takes place when goods are insured abroad. Thus, in practice, when a shipper comes to ship his cargo,

insurance is proposed to him at the same time and he pays once for the transport and for insurance. The protocol can be very interesting for all the parties involved in the transport and insurance of cargo. Unfortunately, I am not aware of how this will be achieved practically. Indeed, it will be interesting to know how and where the coordination of the work will be done. However, it can be presumed that C N A will put some agents at the disposal of CAMSHIP every time that one vessel receives the shipment or the application for shipment, and the certificates of insurance will be prepared and issued as a consequence.

Once more, it is a very interesting initiative that CAMSHIP and CNA have had. The only thing which is regrettable is that since CAMSHIP does not have enough capacity, only a small percentage of the goods will benefit from that agreement, and it would be a good thing to extend this agreement to other shipping companies.

The problem is to know if and how private national insurance companies could approach some other shipping companies which call into Cameroonian ports and conclude such agreements with them. Indeed, this would be a success if the insurance companies could be convincing enough to attract foreign shipping companies to work together.

The insurance companies should try to find a strategy to gain these foreign companies trust. Of course, it is not sure that many of them would accept, but if only some of them agree, it would be a good start. Anyhow, it would be sad if whilst having this opportunity, they could not achieve it.

It is with such initiatives that the insurers could help their profession and at the same time help their clients and a country where the economic situation is dramatic. Any idea is welcome as far as it can help to improve the situation.

Apart from such initiatives, more important is the radical change in attitudes which is necessary. This change should be general, this means that also the public, amongst whom the potential clients are found, as the professionals and any other group involved.

Everyone should do his best to help in the achievement of this problem. As one Cameroonian proverb says, " One hand cannot tie a parcel " ; that means that the collaboration of everyone is needed for the successful accomplishment of a task.

Thus, as was mentioned before, the government will teach people that they should buy "FOB" and it will prepare regulations accordingly. It will also perform its job efficiently and control the whole business the way it should be done.

The assureds should be honest and should try to understand the importance of being informed and knowing how things in which they are involved work.

Finally, the insurance professionals should be more conscientious, more cooperative and over all more aware of the importance of communication and earnestness in the practice of their profession.

The last point to make in this conclusion is that one should be aware that, apart from all the problems discussed in this project, one problem that was not mentioned and which could be considered as an obstacle to the achievement of many improvements, is the fact that the effects of colonization are still hanging over the country. These effects determine, to a great extent, the rules of commercial practice. This is general to most countries which have not had their independence long enough for the practices and traditions of colonial times to be modified and reoriented in the best interests of the independent nation.

It will take time before a country actually feels free to deal with its own business and problems the way it would like to, without any constraints from partners, even if it has the economic means to do so, but sooner or later, this time will come. While waiting for that time to come, therefore, work has to be done on the people ; desperate and regular work to change the attitude and the mentality of those people. That is the first step. Once this step is crossed, it will be easier for the people to understand why they are asked by their government to adopt that way of trading and not another, for example.

This obviously will not change the rules of the game of international relations, but at least the whole country will know more or less what is going on, and why it should act this way and not in another way. As soon as people are aware of the reason for things, the problems of marine cargo insurance in Cameroon will be partly solved.

ANNEX I

LAW No. 75-14 OF 8 DECEMBER 1975,
RENDERING INSURANCE OF IMPORTS
COMPULSORY.

Loi n° 75-14 du 8 décembre 1975

portant assurance obligatoire des marchandises ou facultés à l'importation.

L'Assemblée nationale a délibéré et adopté.

Le Président de la République promulgue la loi dont la teneur suit :

Article premier. — Les personnes physiques ou morales de droit public ou privé sont assujetties à l'obligation de souscrire une assurance auprès d'une entreprise d'assurance agréée au Cameroun pour toute importation de marchandises ou facultés sur le territoire de la République unie du Cameroun.

Cette assurance peut être souscrite directement auprès de l'organisme visé à l'alinéa précédent ou par l'intermédiaire des personnes physiques ou morales habilitées conformément à la réglementation en vigueur à présenter des opérations d'assurance au Cameroun.

Art. 2. — Un décret fixe les conditions d'application de la présente loi, notamment la valeur minima des marchandises ou facultés importées à partir de laquelle il y a obligation d'assurance, ainsi que les modalités d'établissement et de validité des documents justificatifs d'assurance.

Art. 3. — Toute infraction aux dispositions de l'article 1^{er} ci-dessus est punie d'une amende égale à 25 % de la valeur de la marchandise ou faculté importée et d'un emprisonnement de douze mois maximum ou de l'une de ces deux peines seulement.

Art. 4. — La présente loi sera enregistrée et publiée au *Journal officiel en français et en anglais.*

Yaoundé, le 8 décembre 1975.

EL HADJ AHMADOU AHIDJO.

Law No. 75-14 of 8 December 1975

rendering insurance of imports compulsory.

The National Assembly deliberated and adopted,

The President of the Republic enacts the law set out below:

1. (1) All natural persons and corporate bodies under public or private law shall be bound to take out insurance in respect of all imports into the United Republic of Cameroon with an insurance concern holding approval in Cameroon.

(2) Such insurance may be taken out directly with concerns referred to in (1) above or through the intermediary of natural persons or corporate bodies empowered under the regulations in force to transact insurance in Cameroon.

2. The terms and conditions of application of the present Law, and in particular the minimum value of imports for which insurance shall be compulsory and the production and validity of insurance certificates, shall be prescribed by decree.

3. Any offence against the provisions of Section 1 above shall be punishable by fine equivalent to twenty-five per cent of the value of the goods imported and by imprisonment not exceeding twelve months, or one or other such penalty only.

4. This Law shall be registered and published in the *Official Gazette* in French and English.

Yaoundé, 8 December 1975:

EL HADJ AHMADOU AHIDJO.

ANNEX II

DECREE No. 76-334 OF 6 AUGUST 1976.
RELATING TO THE IMPLEMENTATION OF
LAW No. 75-14 OF 8 DECEMBER 1975
RENDERING INSURANCE OF IMPORTS
COMPULSORY.

Décret n° 76-334 du 6 août 1976

*portant application de la loi n° 75-14 du 8 décembre 1975
rendant obligatoire l'assurance des marchandises ou facultés à l'importation.*

LE PRÉSIDENT DE LA RÉPUBLIQUE,

Vu la constitution du 2 juin 1972, modifiée et complétée par la loi n° 75-19 mai 1975 ;

Vu l'ordonnance n° 73-14 du 10 mai 1973 fixant la réglementation applicable aux opérations d'assurance ;

Vu la loi n° 75-14 du 8 décembre 1975 rendant obligatoire l'assurance des marchandises ou facultés à l'importation ;

DÉCRET :

Article premier. — L'obligation d'assurance instituée par l'article 1^{er} de la loi n° 75-14 du 8 décembre 1975 susvisée s'applique qu'aux marchandises ou facultés importées dont la valeur FOB excède 500.000 francs CFA.

Decree No. 76-334 of 6 August 1976

*relating to the implementation of Law No. 75-14 of
8 December 1975 rendering insurance of imports
compulsory.*

THE PRESIDENT OF THE REPUBLIC,

Mindful of the Constitution of 2 June 1972 as amended by Law No. 75-19 of 9 May 1975 ;

Mindful of Ordinance No. 73-14 of 10 May 1973 to lay down regulations applicable to insurance concerns ;

Mindful of Law No. 75-14 of 8 December 1975 rendering insurance of imports compulsory ;

HEREBY DECREES AS FOLLOWS:

1. The insurance obligation instituted by Section 1 of Law No. 75-14 of 8 December 1975 referred to above shall apply solely to imports whose FOB value exceeds 500,000 CFA francs.

Art. 2.— Le mode d'assurance est librement fixé par les parties.

Toutefois, à défaut d'une couverture « Tous risques », l'assurance doit être faite, en cas de transport maritime, aux conditions minima de la garantie « franc d'avaries particulières sauf... (FAP sauf) ».

Pour tout autre mode de transport, l'assurance obligatoire limitée à la couverture « Perte totale ».

Art. 3.— Les risques laissés à la charge de l'assuré en cas de souscription d'une garantie autre que « Tous risques » ne peuvent être assurés, le cas échéant qu'auprès d'un organisme d'assurance agréé en République unie du Cameroun.

Art. 4.— Les marchandises ou facultés transportées doivent être garanties depuis le port ou l'aéroport d'embarquement jusqu'au port ou aéroport de débarquement.

Les parties peuvent toutefois convenir d'une couverture d'assurance portant sur les risques préliminaires et complémentaires au voyage maritime ou aérien.

Art. 5.— L'organisme d'assurance doit délivrer sans frais à l'assuré un document justificatif d'assurance.

La présomption qu'il a été satisfait à l'obligation d'assurance est établie par ce document pour la période qui y est mentionnée.

Art. 6.— Le document justificatif visé à l'article précédent est délivré immédiatement à la souscription du contrat et renouvelé lors de la reconduction dudit contrat ou de la mise en vigueur en cas de suspension.

Art. 7.— La délivrance ou le renouvellement de toute licence d'importation doit être subordonnée à la production du document justificatif d'assurance visé aux articles 5 et 6 ci-dessus.

Art. 8.— En cas de perte ou de vol du document justificatif d'assurance, l'assureur ou l'autorité compétente délivre un duplicata sur simple demande de la personne au profit de laquelle le document original avait été établi.

Art. 9.— La forme et le contenu du document justificatif d'assurance devant être établi suivant un modèle fixé par arrêté.

Art. 10.— Un arrêté conjoint du ministre des finances et du ministre de l'économie et du plan fixe les conditions d'application des dispositions qui précèdent aux contrats d'importation en cours d'exécution à la date de signature du présent décret.

Le même arrêté détermine les modalités de contrôle applicable aux importations non soumises à autorisation préalable.

Art. 11.— Le présent décret qui prend effet pour compter de la date de signature sera publié selon la procédure d'urgence et inséré au *Journal officiel* en français et en anglais.

Yaoundé, le 6 août 1976.

Le Président de la République,

The type of insurance shall be freely fixed by the parties.

Provided that in the absence of a « Comprehensive » coverage the insurance policy shall be taken out, in the case of sea transport, under the minimum conditions of the guarantee « free of particular average unless ... ».

For all other means of transport, compulsory insurance shall be limited to the coverage of « Total loss ».

3. The risks to be borne by the insured in the case where an insurance policy other than a « Comprehensive risks » one has been taken out may only be insured, as the case may be with an insurance concern approved in the United Republic of Cameroon.

4. The goods or cargo transported must be insured from the port or airport of lading until the port or airport of delivery.

The parties may, however, agree to an insurance coverage for preliminary or supplementary risks of travel by sea or air.

5. The insurance concern must deliver free of charge to the insured, an insurance certificate.

The presumption that the insurance obligation has been met shall be established by this document for the period stated therein.

6. The insurance certificate referred to in the preceding article shall be issued immediately on signing the contract and shall be renewed during the renewal of the said contract or the putting into force of the latter in the event of suspension.

7. The issue or renewal of any import licence shall be subject to the presentation of the insurance certificate referred to in Articles 5 and 6 hereinabove.

8. In the event of loss or theft of the insurance certificate, the insurer or the competent authority shall issue a duplicate at the simple request of the person in whose name the original certificate was established.

9. The form and content of the insurance certificate shall be established according to the model fixed by order.

10. A joint order of the Minister of Finance and of the Minister of Economic Affairs and Planning shall fix the terms and conditions of application of provisions prior to import contracts in the course of execution on the date of signature of this decree.

The same order shall determine the methods of control applicable to imports not subject to prior authorization.

11. This decree which takes effect from the date of signature shall be published according to the procedure of urgency and inserted in the *Official Gazette* in French and English.

Yaounde, 6 August 1976.

EL HADJ AHMADOU AHIDJO,

ANNEX III

ORDINANCE No. 85-3 OF 31 AUGUST 1985,
RELATING TO INSURANCE BUSINESS.

Ordonnance n° 85-03 du 31 août 1985

relative à l'exercice de l'activité d'assurance.

Le Président de la République,

Vu la Constitution,

Vu la loi n° 85-01 du 29 juin 1985 portant loi de finances 1985-1986,

Ordonne:

TITRE PREMIER

Dispositions générales.

CHAPITRE PREMIER

Des sociétés et intermédiaires d'assurances.

Article premier.— A l'exception des sociétés ou institutions de prévoyance publiques ou privées régies par des lois spéciales et des organismes ayant exclusivement pour objet la réassurance, sont soumises aux dispositions de la présente ordonnance, toutes les sociétés d'assurances et de capitalisation qui:

(1) Contractent des engagements dont l'exécution dépend de la durée de la vie humaine, s'engagent à verser un capital en cas de mariage ou de naissance d'enfant ou ont pour objet l'acquisition d'immeubles au moyen de la constitution des rentes viagères;

(2) Font appel à l'épargne en vue de la capitalisation et contractent, en échange de versements uniques ou périodiques directs ou indirects des engagements déterminés.

(3) Pratiquent des opérations d'assurances autres que celles prévues aux alinéas 1 et 2 ci-dessus et s'engagent, moyennant une prime ou cotisation, à procéder à une indemnisation en cas de réalisation d'un risque;

(4) Effectuent des opérations de réassurance.

Art. 2.— Sont également soumis aux dispositions de la présente ordonnance, tous les intermédiaires d'assurances dont le rôle consiste à solliciter ou à recueillir la souscription d'un contrat d'assurance ou de capitalisation ou l'adhésion à un tel contrat.

Art. 3.— (1) Les sociétés d'assurances doivent être de statut juridique camerounais.

(2) Le capital social des sociétés anonymes d'assurances dont le minimum est fixé par décret, comporte une participation des intérêts camerounais, privés ou publics, au moins égale au tiers de son montant.

(3) En outre, les statuts doivent prévoir que tous droits préférentiels de souscription, tous droits d'attribution, toutes mutations d'actions ne peuvent s'opérer que si celles-ci ont été préalablement offertes à l'Etat camerounais.

(4) Par dérogation aux dispositions ci-dessus, certains souscripteurs étrangers peuvent être autorisés à pratiquer des opérations d'assurances en République du Cameroun dans les conditions qui sont fixées par un texte particulier.

Art. 4.— Le capital social des sociétés de courtage d'assurances doit comporter une participation des intérêts privés camerounais au moins

Ordinance No. 85-3 of 31 August 1985

relating to insurance business.

The President of the Republic,

Mindful of the Constitution;

Mindful of Law No. 85-1 of 29 June 1985 : Finance Law of the Republic of Cameroon for the financial year 1985-1986.

Hereby ordains as follows :

PART I

General Provisions.

CHAPTER I

Insurance Companies and Direct Agents.

1. The provisions of this Ordinance shall apply to all insurance and capital accumulation of public or private provident societies or institutions governed by special laws and concerns whose sole purpose is reinsurance which:

(1) Enter into obligations the fulfilment of which depends on the length of the life of a human being, undertake to pay a benefit in the event of marriage or birth of a child, or are directed to the acquisition of real property by means of life annuities.

(2) Offer a means of saving with a view to the accumulation of capital and enter into specific obligations in return for direct or indirect single or periodical payments.

(3) Carry out insurance transactions other than those provided for in paragraphs 1 and 2 above, undertake in return for a premium or contribution, to pay a benefit in the event of a claim.

(4) Carry out reinsurance business.

2. All direct insurance agents whose job consist in seeking or obtaining the conclusion of an insurance contract or the accumulation of capital, or accession to such a contract shall also be subject to the provisions of this ordinance.

3. (1) Insurance companies shall be registered under Cameroonian law.

(2) The registered capital of limited liability insurance companies the minimum of which shall be fixed by decree shall comprise private or public Cameroonian shares at least equal to one third of its amount.

(3) In addition, the rules and regulations shall provide that all transactions relating to preferential rights of subscription, attribution rights or transfer of shares can only be carried out if the latter have been offered to the State of Cameroon beforehand.

(4) Notwithstanding the provisions herein above, some foreign underwriters may be authorized to carry out insurance transactions in the Republic of Cameroon under conditions which shall be fixed by a special instrument.

4. The registered capital of brokerage firms involved in the underwriting of insurance contracts shall comprise private Cameroonian sha-

CHAPITRE 2

De la domiciliation des contrats d'assurances.

Art. 5. - (1) Les contrats d'assurances intéressant les personnes ayant la qualité de résident, les risques ou les biens situés ou immatriculés au Cameroun, ne peuvent être souscrits qu'auprès des organismes agréés pour effectuer des opérations d'assurances sur le territoire de la République du Cameroun.

Les courtiers ou sociétés de courtage intervenant dans la souscription des contrats d'assurances susvisés doivent obligatoirement avoir leur siège sur le territoire national.

Sont nuls et de nul effet les contrats souscrits en infraction aux dispositions du présent article. Toutefois, cette nullité n'est pas opposable aux assurés, souscripteurs et bénéficiaires de bonne foi.

(2) Nonobstant les dispositions de l'alinéa 1er ci-dessus, l'autorité de tutelle peut délivrer des autorisations spéciales pour l'assurance de risques particuliers auprès d'organismes d'assurances non agréés.

Art. 6. - Les contrats d'assurances concernant les marchandises ou exécutés à l'importation doivent être rattachés au Cameroun si l'assuré a la qualité de résident, au sens du Code général des impôts.

Art. 7. - (1) Les conditions générales et particulières des contrats souscrits ou exécutés en République du Cameroun, les avenants et autres documents se rapportant à leur exécution doivent être rédigés en français ou en anglais.

(2) Il est interdit aux personnes physiques ayant la qualité de résident et aux personnes morales pour leurs établissements situés sur le territoire de la République du Cameroun, de souscrire des contrats d'assurance directe ou de rente viagère, libellés en monnaie étrangère, sauf autorisation spéciale de l'Autorité compétente.

(3) Sont nuls de plein droit les contrats souscrits en infraction aux dispositions du présent article. Toutefois, cette nullité n'est pas opposable aux assurés, souscripteurs et bénéficiaires de bonne foi.

CHAPITRE 3

Des garanties pour les assurés.

Art. 8. - (1) Il est constitué par les sociétés visées à l'Article 1er paragraphes 1 et 2 de la présente ordonnance, une réserve de garantie destinée à suppléer à une insuffisance des provisions techniques et mathématiques.

(2) La constitution de la réserve de garantie dispense les sociétés soumises à cette obligation de la constitution de la réserve légale exigée des sociétés anonymes.

(3) Les sociétés d'assurances pratiquant des opérations visées au paragraphe 3 de l'Article 1er ci-dessus doivent justifier d'une marge de solvabilité et d'un fonds de garantie.

(4) Les modalités de constitution et les montants réglementaires de la réserve de garantie, de la marge de solvabilité et du fonds de garantie sont fixés par décret.

Art. 9. - (1) Dans tous les prospectus, affiches, circulaires, notices, annonces ou documents quelconques relatifs aux emprunts des sociétés, il doit être rappelé de manière explicite qu'un privilège est institué au profit des assurés, par l'Article 53 de la présente ordonnance et indiqué que le prêteur, même s'il est assuré, ne bénéficie d'aucun privilège pour les intérêts et le remboursement de ces emprunts.

CHAPTER II

Domiciliation of insurance contracts.

5. (1) Insurance contracts covering residents, or risks or property located or registered in Cameroon, may be concluded only with concerns which are authorized to carry out insurance transactions within the Republic of Cameroon.

Brokers and brokerage firms involved in the underwriting of the insurance contracts shall have their registered office in Cameroon.

Contracts concluded in breach of the provisions of this article shall be null and void. Provided that such nullity shall not be applicable to bona fide insured persons, underwriters and beneficiaries.

(2) Notwithstanding the provisions of paragraph 1 above, the supervisory authority may grant special authorizations for the insurance of special risks with non-approved insurance concerns.

6. Insurance contracts covering imported goods or cargo must be concluded in Cameroon where the contractant is a resident within the meaning of the General Tax Code.

7. (1) The general and special conditions of contracts concluded or fulfilled in the Republic of Cameroon, endorsement and other documents relating to their fulfilment shall be drafted in English or French.

(2) It shall be forbidden for natural persons with resident status and corporate bodies, for their establishments located on the territory of the Republic of Cameroon to conclude direct insurance contracts or take out life annuities, in foreign currency without the special authorization of the competent authority.

(3) Contracts concluded in breach of the provisions of this article shall be null and void. Provided that such nullity shall not be applicable to bona fide insured persons, underwriters and beneficiaries.

Section III

Guarantees for policy holders.

8. (1) Companies referred to in Article 1. (1) and (2) of this Ordinance shall set up guarantee reserves to meet any deficiency in technical and actuarial provisions.

(2) Establishment of the guarantee reserves shall exempt companies subject to these provisions from establishing the legal share generally required of limited liability companies.

(3) Insurance companies carrying out the transactions referred to in Article 1 (3) above shall show proof of a solvency margin and a guarantee fund.

4. The conditions for the constitution of the reserves and the statutory amounts of the guarantee reserve, the solvency margin and the guarantee fund shall be fixed by decree.

9. (1) In all prospectuses, posters, circulars, notices, advertisements or documents whatsoever relating to company loans, it shall be explicitly stated that Article 53 of this Ordinance institutes preferential rights on behalf of policy holders and that the lender, even if he is a policy holder enjoys no preferential right in respect of the interest and reimbursement of these loans.

Cette mention doit figurer également en caractères apparents sur les titres d'emprunt.

(2) Il est porté chaque année dans les charges de l'entreprise, une somme constante destinée au paiement des intérêts et au remboursement des emprunts ou à la constitution de la réserve pour l'amortissement des emprunts.

Art. 10.— Dans une société mutuelle ou dans une société à forme mutuelle d'assurances, le sociétaire ne peut être tenu en aucun cas ni au-delà de la cotisation inscrite sur sa police dans une société à cotisations fixes, ni au-delà du montant maximal de cotisation indiqué sur sa police dans le cas d'une société à cotisations variables.

TITRE II

Constitution et fonctionnement des entreprises d'assurances.

CHAPITRE PREMIER

Des principes généraux.

Art. 11.— (1) Les opérations visées à l'Article 1er de la présente ordonnance ne peuvent être pratiquées que par des sociétés de capitaux, des sociétés à forme mutuelle ou des sociétés mutuelles.

(2) Toutefois, les organismes qui se proposent de pratiquer des opérations de capitalisation ou d'acquisition d'immeubles au moyen de la constitution de rentes viagères, ne peuvent se constituer que sous la forme de sociétés anonymes.

Art. 12.— Les conditions de constitution, de fonctionnement, de cessation d'activité des organismes visés aux Articles 1er, 2, 3 et 4 ci-dessus sont fixées par la présente ordonnance et ses textes d'application.

CHAPITRE 2

Des sociétés de capitaux.

Art. 13.— Les sociétés anonymes mentionnées à l'Article 11 ci-dessus sont soumises à la législation générale applicable à cette catégorie de sociétés, sous réserve des dispositions ci-après:

(1) Elles doivent avoir un capital, au moins égal au montant qui est fixé par le décret prévu à l'Article 3 ci-dessus.

(2) Chaque actionnaire doit verser avant la constitution définitive de la société la moitié au moins du montant des actions souscrites en numéraire.

(3) Les apports en nature doivent être intégralement et immédiatement libérés. Ils doivent en outre figurer à l'actif du bilan sous une rubrique spéciale.

Art. 14.— Les prospectus, affiches, circulaires, notices, annonces ou documents quelconques destinés aux tiers, ainsi que les polices émises doivent indiquer le montant du capital social de la société concernée.

Art. 15.— (1) En cas de perte de plus de deux tiers du capital social, le Conseil d'administration convoque l'Assemblée générale extraordinaire à l'effet soit de décider des mesures impératives à prendre en vue de la reconstitution du capital, soit de statuer sur la dissolution de la société.

(2) Dans tous les cas la décision prise par l'Assemblée générale extraordinaire est portée à la connaissance de l'Autorité de Tutelle dans un délai d'un mois pour approbation.

This fact shall also be clearly stated on the loan documents.

(2) Each year, a fixed amount document shall be included in the expenditure of the company to cover the payment of interests and reimbursement of loans or the constitution of the reserve for the paying off of loans.

10. Members of a mutual society or a mutual insurance company shall under no circumstances whatever, be bound to pay amounts excluding the contribution shown on their policy in a company with fixed contribution nor exceeding the maximum amount of the contribution shown on their policy in the case of a company with variable contributions.

PART II

Constitution and functioning of insurance companies.

CHAPTER I

General principles.

11. (1) The transactions defined in Article 1 of this Ordinance may be carried out only by capital accumulation companies, mutual insurance companies or mutual societies.

(2) Provided that concerns which intend to carry out transaction relating to capital accumulation or the acquisition of real property by means of life annuities may be formed only as limited liability companies.

12. The constitution functioning and dissolution of concerns covered by Articles 1, 2, 3 and 4 above are defined in this Ordinance and the instruments implementing it.

CHAPTER II

Joint stock companies.

13. Limited liability companies referred to in Article 11 above shall be governed by the general legislation applicable to this category of companies, subject to the following provisions.

(1) The capital shall not be less than the amount to be fixed by the decree provided for in Article 3 above.

(2) Prior to the final incorporation of the company, all shareholders shall pay up not less than one-third of their holdings in cash.

(3) Contributions in kind shall be fully and immediately paid up. They shall also appear on the assets side of the balance sheet of the company under a separate heading.

14. Prospectuses, posters, circulars, notices, advertisements or any other documents whatsoever generally intended for third parties, as well as policies issued, shall state the amount of the registered capital of the company concerned.

15. (1) In the event of loss of more than two-thirds of the registered capital, the Board of Directors shall convene an Extraordinary General Meeting for the purpose of either deciding on the imperative measures to be taken for the reconstitution of capital or resolving to wind up the company.

(2) Whatever the case, the supervisory authority shall be informed of the decision taken by the Extraordinary General Meeting within a period not exceeding one month, for his approval.

(3) Si l'Assemblée générale extraordinaire ne s'est pas tenue dans les délais légaux, l'Autorité de Tutelle adresse une mise en demeure à la société. Trois mois après cette mise en demeure, elle peut décider de suspendre la société et demander au tribunal compétent de prononcer sa dissolution.

CHAPITRE 3

Des sociétés d'assurances à forme mutuelle.

Art. 16.— Les sociétés d'assurances à forme mutuelle sont celles qui garantissent à leurs sociétaires, moyennant le versement d'une cotisation fixe ou variable, le règlement intégral de leurs engagements en cas de réalisation des risques dont elles ont pris la charge.

Art. 17. — Elles doivent avoir un fonds d'établissement au moins égal au montant fixé par décret.

Art. 18.— Les sociétés d'assurances à forme mutuelle doivent faire figurer dans les statuts et dans tous les documents destinés aux tiers le montant de leur fonds d'établissement ainsi que, suivant le régime des cotisations appliqué aux sociétaires, l'une des mentions « Société d'assurances à forme mutuelle à cotisations fixes » ou « Société d'assurances à forme mutuelle à cotisations variables » imprimée en caractères uniformes.

Art. 19.— Les sociétés d'assurances à forme mutuelle peuvent se former soit par acte authentique, soit par acte sous seing privé fait en double original quel que soit le nombre des signataires de l'acte constitutif, sous réserve des dispositions du Code de l'enregistrement.

Art. 20.— Les projets de statuts doivent:

(1) Mentionner l'objet, la durée, la dénomination de la société et la circonscription territoriale de ses opérations, déterminer le mode et les conditions générales suivant lesquelles sont contractés des engagements entre les sociétés et les sociétaires, préciser la nature des risques garantis directement ou acceptés en réassurance.

(2) Fixer le nombre minimal des adhérents qui ne peut être inférieur à trois cents (300) et pour les sociétés d'assurances de dommages le montant minimal des valeurs assurées.

(3) Fixer le montant minimal des cotisations versées par les adhérents au titre de la période annuelle et préciser que ces cotisations doivent être intégralement versées préalablement à la déclaration prévue à l'Article 21 ci-dessous.

(4) Indiquer le mode de rémunération de la direction et, s'il y a lieu, des administrateurs.

(5) Prévoir la constitution d'un fonds d'établissement destinée à faire face aux dépenses prévues dans le plan financier et à garantir les engagements de la société et préciser que le fonds d'établissement devra être intégralement versé en espèces, préalablement à la déclaration prévue à l'Article 21 ci-dessous.

(6) Prévoir pour les sociétés pratiquant les opérations vie et capitalisation, d'une part le versement de cotisations fixes, d'autre part, la constitution d'une réserve de garantie dont le montant doit être au moins égal à celui qui est fixé par la réglementation en vigueur.

(7) Fixer le montant maximal des frais de gestion.

(8) Prévoir le mode de répartition des excédents de recettes.

(9) Déterminer les conditions de modification et de rappel des cotisations pour les sociétés ayant été constituées sous forme de « Société d'assurances à forme mutuelle à cotisations variables ».

(3) In the event that the Extraordinary General Meeting did not take place within the legally prescribed period, the supervisory authority shall send a formal notice to the company. Three months after the formal notice, the authority may decide to suspend the company or ask the competent court to order that the company be wound up.

CHAPTER III

Mutual insurance companies.

16. By mutual insurance company shall be understood a company which, in return for the payment of a fixed or variable contribution, guarantees the full settlement of its members' liabilities, in the event of a claim for which it has accepted responsibility.

17. Mutual insurance companies shall have an initial capital not less than the amount provided for by decree.

18. Mutual insurance companies shall mention the amount of their initial capital in their articles of association and in all documents intended for third parties. Depending on the system of contribution applicable to the members, they shall also mention either « mutual insurance company with fixed contributions » or « mutual insurance company with variable contributions » printed in uniform letters.

19. Mutual insurance companies may be formed either by authenticated deed or by simple contract, drawn up in two originals whatever the number of signatories of the deed of formation, subject to the provisions of the Registration Code.

20. The draft articles of association shall :

(1) State the purpose, duration and name of the company, stipulate the manner and general terms on which undertakings are entered into between the company and its members, and specify the nature of the various categories of risks covered directly or accepted for reinsurance.

(2) Lay down the minimum number of members which may not be less than 300 (three hundred) and, for damage insurance companies, the minimum amount of insured values.

(3) Lay down the minimum contribution paid by members in respect of the annual period and state that the contributions shall be fully paid prior to the declaration provided for in Article 21 below.

(4) Stipulate the method of remuneration of the management staff and where applicable, the directors.

(5) Provide for the constitution of initial capital intended to meet the expenses set out in the financial plan and to cover the liabilities of the company and state that the initial capital shall be fully paid in cash, prior to the declaration provided for in Article 21 below.

(6) In the case of companies involved in life insurance and capital accumulation transactions, provide for the payment of fixed contributions and the constitution of a guarantee reserve of an amount not less than that fixed by the regulations in force, on the other.

(7) Fix the maximum administrative expenses.

(8) Lay down the method of distributing surplus receipts.

(9) Determine the conditions under which contributions may be amended and called in, in the case of companies formed as « mutual insurance companies with variable contributions ».

(10) Prévoir que la société n'est constituée qu'à partir de l'acceptation mentionnée à l'Article 21 alinéa 6 ci-dessous.

Les projets de statuts peuvent prévoir la constitution d'un fonds social complémentaire destiné à procurer à la société les éléments de solvabilité prescrits par la réglementation en la matière. Les modalités de constitution de ce fonds sont déterminées par décret.

Art. 21.— Il ne peut être stipulé aucun avantage particulier aux premiers sociétaires.

Le texte entier des statuts doit être reproduit sur tout document destiné à recevoir les adhésions.

Lorsque les conditions prévues aux Articles 19 et 20 sont remplies, les signataires de l'acte primitif ou leur fondés de pouvoirs le constatent par une déclaration devant notaire.

A cette déclaration sont annexés:

(1) La liste nominative dûment certifiée des adhérents contenant leurs noms, prénoms, qualités et domiciles et, s'il y a lieu, la dénomination et le siège de la société, le montant des valeurs assurées par chacun d'eux et le chiffre de leurs cotisations;

(2) L'un des doubles de l'acte de société s'il est sous seing privé ou une expédition s'il est notarié et s'il a été passé devant un notaire autre que celui qui reçoit la déclaration.

(3) L'état des cotisations versées par chaque adhérent;

(4) L'état des sommes versées pour la constitution du fonds d'établissement;

(5) Un certificat du notaire constatant que les fonds ont été versés préalablement à la déclaration prévue au présent article;

(6) Le procès-verbal de la première Assemblée convoquée à la diligence des signataires de l'acte primitif à l'effet de vérifier la sincérité de la déclaration mentionnée ci-dessus et de nommer les membres du premier Conseil d'administration et les commissaires aux comptes; ce procès-verbal constate l'acceptation des membres du Conseil d'administration et des commissaires aux comptes présents à la réunion.

CHAPITRE 4

Des sociétés mutuelles d'assurances et de leurs unions.

Art. 22.— Les sociétés mutuelles d'assurances visées au présent chapitre sont des associations qui:

(1) Garantissent à leurs membres, moyennant le versement d'une cotisation variable, le règlement intégral de leurs engagements en cas de réalisation des risques dont elles ont pris la charge;

(2) Ont un caractère régional ou professionnel;

(3) Ne rémunèrent aucun intermédiaire en vue de l'acquisition des contrats;

(4) N'attribuent aucune rémunération à leurs gérants ou administrateurs;

(5) Répartissent intégralement leurs excédents de recettes entre les membres dans les conditions fixées par les statuts.

Les sociétés mutuelles d'assurances ne peuvent pas accepter des risques en réassurance, sauf autorisation spéciale de l'autorité de tutelle. Dans ce cas, le montant des cotisations acceptées en réassurance doit être limité au quart de leurs cotisations d'assurance directe.

(10) Stipulate that the company shall be incorporated only after the acceptance referred to in Article 21(6) below.

Draft articles of association may provide for the constitution of an additional fund of the company intended to furnish the company with the components of solvency provided for by the appropriate regulations. The terms and conditions of the constitution of this capital shall be determined by decree.

21: No special benefit may be stipulated for the founding members.

The full text of the articles of association shall be appended to all documents intended for the enrolment of members.

When the conditions provided for in Article 19 and 20: shall have been fulfilled, the signatories of the initial deed or their attorneys shall make a declaration accordingly before a notary.

To this declaration shall be appended :

(1) A duly certified list of members containing their names, ranks and residences and, where applicable, the name and head office of the company, the insured values and contribution per member;

(2) a duplicate of the company deed, where the deed is by simple contract or an authentic copy where it is drawn up by a notary and where it was authenticated before a notary other than the one receiving the declaration;

(3) an account of each member's contributions;

(4) an account of the sums paid for the constitution of the initial capital;

(5) An attestation from a notary certifying that the funds were paid prior to the declaration provided for in this Article.

(6) Minutes of the first meeting convened at the suit of the signatories to the initial deed in order to verify the sincerity of the declaration mentioned above and to appoint members of the first Board of Directors and Auditors; the minutes shall indicate the acceptance of the members of the Board of Directors and Auditors present at the Meeting.

CHAPTER IV

Mutual insurance companies and their unions.

22. By mutual society in the sense of this Section shall be understood an association which :

(1) In return for the payment of a variable contribution, guarantees the full settlement of its members liabilities in the event of a claim for which it has accepted responsibility.

(2) Is concerned with given areas or occupation;

(3) Does not remunerate any intermediary with a view to obtaining business;

(4) Does not remunerate its directors;

(5) Divides its full surplus receipts among its members as provided for in the articles of association.

Mutual insurance companies may not accept risks for reinsurance except with the special authorization of the supervisory authority. In that case, the amount of contributions accepted for reinsurance shall be limited to a quarter of their direct insurance contributions.

Art. 23.— Les frais de gestion de sociétés mutuelles ne peuvent comprendre que des dépenses nécessaires à leur fonctionnement et, le cas échéant, les charges du service et de l'amortissement des emprunts.

Le total des dépenses de fonctionnement ne peut dépasser, par rapport aux cotisations normales, les pourcentages suivants :

(1) Vingt cinq pour cent (25%) pour un montant de cotisations inférieur ou égal à 25.000.000 de FCFA ;

(2) Vingt pour cent (20%) sur la tranche de cotisations comprise entre 25.000.000 de CFA et 50.000.000 de FCFA.

(3) Quinze pour cent (15%) sur la tranche excédent 50.000.000 de FCFA.

Les gérants ou administrateurs ne peuvent recevoir que le remboursement sur justification des débours effectivement exposés par eux pour le compte de la société.

Les employés, quelles que soient leurs fonctions, ne peuvent être rémunérés que par un traitement fixe et par des avantages accessoires ayant le caractère, soit d'aide ou d'assistance à ces employés ou aux membres de leurs familles, soit de contribution à la constitution de pensions de retraite en leur faveur. Ces avantages ne peuvent en aucun cas consister en allocations proportionnelles au montant des cotisations, ni au montant des valeurs assurées, ni au nombre des adhérents de la société.

~~Les avantages accessoires qui seraient accordés à l'un quelconque de ces employés, ne peuvent représenter plus de vingt pour cent (20%) du total des sommes affectées par la société à de tels avantages ni plus de vingt-cinq pour cent (25%) du traitement de l'intéressé.~~

Art. 24.— (1) Les sociétés mutuelles d'assurances à caractère régional doivent limiter leurs souscriptions à la circonscription territoriale fixée par l'arrêté d'agrément.

Ces sociétés ne peuvent assurer que les risques situés dans ladite circonscription.

(2) Les sociétés mutuelles d'assurances à caractère professionnel regroupent les membres exerçant la même profession ou des professions connexes, spécifiées par les statuts. Elles n'assurent que des risques se rattachant à l'exercice de la profession ou des professions connexes concernés.

(3) Les sociétés mutuelles d'assurances doivent faire figurer dans leurs statuts et tous autres documents destinés aux tiers la mention « Société mutuelle d'assurances à cotisations variables », imprimée en caractères uniformes.

Art. 25.— Les sociétés mutuelles d'assurances ne peuvent pratiquer des opérations autres que celles prévues au paragraphe 3 de l'Article 1er de la présente ordonnance.

Art. 26.— Les sociétés mutuelles d'assurances ne peuvent être valablement constituées que si elles réunissent au moins cent cinquante (150) membres.

Elles sont tenues de constituer un fonds d'établissement dont le montant minimum est fixé par décret. Ce fonds est alimenté par des prélèvements au titre de droit d'adhésion effectués par les adhérents en vue de permettre la constitution définitive de la société.

Les sommes représentant la contribution de la mutuelle à la constitution du fonds d'établissement des unions prévues à l'Article 27 ci-après sont prélevées sur ce fonds.

23. The administrative costs of mutual societies may include only expenses necessary for their operation and, where applicable, charges relating to the amortization of loans.

Total administrative expenses may not exceed the following levels in relation to normal contributions :

(1) 25 % (twenty-five per cent) of contributions not exceeding 25,000,000 CFA francs.

(2) Twenty per cent of contributions falling between 25,000,000 CFAF and 50,000,000 CFAF.

(3) Fifteen percent of contributions exceeding 50,000,000 CFA F.

(3) The directors of mutual insurance companies may receive refunds in respect of their effective disbursements on behalf of the company only on presentation of supporting documents.

(4) The employees, whatever their functions, may receive only a fixed remuneration and subsidiary benefits either as assistance to the said employees or to members of their families or as contribution to the building up of their retirement pension. The said benefits shall not include allowances proportional to the amount of contributions, the insured values or the company's membership.

~~(5) Subsidiary benefits granted to any employee may not represent more than twenty per cent of the total sums allocated by the company to such benefits or more than twenty-five per cent of the remuneration of the person concerned.~~

24. (1) Regional mutual insurance companies shall confine their underwriting to the territorial area defined in the order granting approval. Such companies may only insure risks situated in the said area.

(2) Mutual insurance companies with given occupations shall admit as members persons engaged in the same or allied occupations specified by the articles of association. They shall only insure risks relating to engagement in the occupation or allied occupations concerned.

(3) Mutual insurance companies shall ensure that the mention « Mutual insurance company with variable contributions » is printed in uniform letters in their articles of association and in any other documents intended for third parties.

25. Mutual insurance companies shall not carry out insurance transactions other than those provided for in Article 1 (3) of this Ordinance.

26. (1) Mutual insurance companies shall not be validly formed with fewer than one hundred and fifty members.

(2) They shall constitute an initial capital whose minimum amount shall be fixed by decree. This capital shall be established by deducting membership fees paid by members with a view to a final establishment of the company.

(3) The sums representing the contribution of the mutual company to the establishment of the initial capital of the unions provided for in Article 27 below shall be drawn from the initial capital of the company.

Les sociétés mutuelles d'assurances peuvent, si leurs statuts les y autorisent, emprunter pour constituer le fonds social complémentaire prévu à l'Article 20 de la présente ordonnance.

L'Assemblée générale des sociétés mutuelles d'assurances se compose de tous les membres à jour de leurs cotisations. Les statuts peuvent limiter le nombre des pouvoirs susceptibles d'être confiés à un même mandataire.

Les commissaires aux comptes font un rapport à l'Assemblée générale sur les dépenses exposées pour le compte de la société par les administrateurs et dont le remboursement a été obtenu ou demandé par eux.

Art. 27.— Il peut être formé entre sociétés mutuelles d'assurances pratiquant les assurances de même nature, des unions ayant exclusivement pour objet de réassurer intégralement les contrats souscrits par ces mutuelles et de donner à celles-ci leur caution solidaire.

Ces unions ne peuvent être constituées qu'entre sociétés mutuelles s'engageant à céder à l'union par un traité de réassurance la totalité de leurs risques. Elles sont régies par les dispositions applicables aux sociétés mutuelles d'assurances, sous réserve de celles qui suivent ci-après :

— Les unions ont une personnalité civile distincte de celle des sociétés adhérentes;

— Elles ne sont valablement constituées que si elles groupent un nombre de sociétés adhérentes au moins égal à quatre (4);

— Elles sont assimilées pour les risques qu'elles sont appelées à couvrir aux sociétés à forme mutuelle en ce qui concerne le montant minimal du fonds d'établissement qu'elles ont à constituer;

— Les statuts des unions doivent prévoir que :

a) Les membres du Conseil d'administration des unions sont choisis obligatoirement parmi les gérants ou administrateurs des sociétés qui en font partie;

b) Les Assemblées générales sont composées de toutes les sociétés faisant partie de l'union, représentées chacune exclusivement par un de ses gérants ou administrateurs dûment mandaté;

c) La convocation à l'Assemblée générale doit être faite par lettre recommandée adressée aux sociétés faisant partie de l'union 15 jours au moins avant la date fixée pour la réunion de l'Assemblée ; copie de cette lettre de convocation doit être adressée dans le même délai à l'autorité de tutelle;

d) Les questions communiquées par trois sociétés au moins faisant partie de l'union, 20 jours au plus tard avant la réunion de l'Assemblée générale, doivent être inscrites à l'ordre du jour;

e) L'ensemble des dépenses de fonctionnement des unions et des mutuelles faisant partie de ces unions ne peut pas dépasser les pourcentages prévus à l'Article 23 précédent.

Art. 28.— Est nulle et de nul effet, toute société visée aux chapitres 3 et 4 du présent Titre, qui a été constituée en violation des dispositions de la présente ordonnance.

Toutefois, les sociétaires ne pourront se prévaloir vis-à-vis des tiers des nullités ci-dessus prévues.

Art. 29. — Lorsque la société est ainsi annulée, les fondateurs auxquels la nullité est imputable et les administrateurs en fonction au moment où elle a été encourue sont responsables solidairement envers les

(4) Mutual insurance companies may if their articles of association so authorize them, borrow in order to constitute the additional company capital provided for in Article 20 of this Ordinance.

(5) The General Assembly of mutual insurance companies shall be composed of all members who are up-to-date with their contributions. The articles of association may limit the scope of powers likely to be entrusted to the same proxy.

(6) Auditors shall submit a report to the General Assembly on the expenses incurred on behalf of the company by the directors and for which they have obtained or requested reimbursement.

27. (1) Unions may be established between mutual insurance companies practising insurance of the same nature, for the sole purpose of reinsuring the contracts entered into by mutual insurance companies and providing their joint and several guarantee to the said contracts.

(2) The said unions may be established only between mutual companies that undertake to surrender all their risks to the union by a reinsurance treaty. They shall be governed by the provisions applicable to mutual companies, with the following stipulations:

— The unions shall have a legal status distinct from the member companies;

— They shall be validly constituted only when the member companies are four at least in number;

— They shall be assimilated, for risks they are supposed to cover, to mutual companies as concerns the minimum amount of the initial capital which they have to constitute;

— Articles of association of unions shall stipulate that:

(a) Union board members shall be chosen compulsorily from directors of companies which are part thereof;

(b) General Assemblies shall comprise all companies which are part of the union and are each represented exclusively by one of its directors duly authorized;

(c) The convening letter to the General Assembly shall be sent to the companies forming part of the union by registered mail at least 15 days before the date fixed for the assembly meeting. A copy of the said convening letter shall be addressed to the supervisory authority within the same time limit;

(d) Matters submitted by at least three companies forming part of the union, not later than twenty days before the meeting of the General Assembly, shall be put on the agenda;

(e) All operating expenses of unions and mutual companies which are part of the said unions may not exceed the percentages provided for in Article 23 above.

28. (1) Any company referred to in Chapters 3 and 4 of the present Part 2, which has been constituted in violation of the provisions of the present Ordinance, shall be null and void.

(2) Provided that members may not oppose the nullity above defined to third parties.

29. (1) Where a company is declared null, the founders to whom the nullity is ascribable and the directors in office at the time the nullity

Si, pour couvrir la nullité, une Assemblée générale devait être convoquée, l'action en nullité n'est plus recevable à partir de la date de convocation régulière de cette Assemblée.

L'action en nullité de la société ou des actes de délibérations, postérieure à sa constitution, est éteinte lorsque la cause de la nullité a cessé d'exister avant l'introduction de la demande ou en tout cas du jour où le tribunal statue sur le fond en première instance. Nonobstant la régularisation, les frais des actions en nullité intentées antérieurement sont à la charge des défendeurs.

Le tribunal saisi d'une action en nullité peut, même d'office, fixer un délai pour couvrir les nullités.

L'action en responsabilité, pour les faits ayant entraîné la nullité, est également irrecevable lorsque la cause de la nullité a cessé d'exister, soit avant l'introduction de la demande, soit au jour où le tribunal statue sur le fond en première instance, soit dans un délai imparti pour couvrir la nullité et, en outre, si trois années se sont écoulées depuis le jour où la nullité était encourue.

Les actions en nullité ci-dessus visées sont prescrites après cinq ans.

Art. 30.— A partir du jour où l'agrément prévu à l'Article 31 ci-dessus a été notifié à une société régie par les chapitres 3 et 4 du présent Titre, l'action en nullité ne peut plus être intentée par l'autorité de tutelle.

Celle-ci est néanmoins admise à suspendre l'agrément jusqu'à ce que la nullité soit couverte.

TITRE III

Agrément de l'état.

Section 1

De l'agrément des sociétés d'assurances.

Art. 31.— Les sociétés d'assurances régies par la présente ordonnance doivent, avant de commencer leurs opérations, obtenir l'agrément de l'autorité de tutelle dans les conditions fixées par arrêté.

Elles ne peuvent pratiquer que les opérations d'assurances pour lesquelles elles ont été agréées.

Elles peuvent présenter directement lesdites opérations ou par l'intermédiaire des personnes habilitées.

Art. 32.— L'agrément est accordé sur demande de l'entreprise, pour les opérations d'une ou plusieurs branches ou sous-branches d'assurances énumérées ci-après:

1. *Vie*: Toute opération comportant des engagements dont l'exécution dépend de la durée de la vie humaine.

2. *Nuptialité*: Toute opération ayant pour objet le versement d'un capital en cas de mariage ou de naissance d'enfant.

3. *Capitalisation*: Toute opération d'appel à l'épargne en vue de la capitalisation et comportant, en échange de versements uniques ou périodiques, directs ou indirects des engagements déterminés.

4. *Acquisition d'immeubles*: Toute opération ayant pour objet, l'acquisition d'immeubles au moyen de la constitution de rentes viagères.

(2) If a General Meeting is convened to cover the nullity, actions for nullity shall no longer be admissible with effect from the date of the regular notice convening the meeting of the said Assembly.

(3) Actions for nullity of the company or of acts of deliberations taken after its constitution shall be extinguished when the cause of the nullity ceases to exist before the actions are instituted or in any case on the day when the court of first instance rules on the merits of the case. Notwithstanding the regularization, the costs of actions for nullity suits filed previously shall be borne by the defendants.

(4) The court before which an action for nullity is brought may on its own decision, fix a period of time within which the nullity is to be covered:

(5) Actions for liability for acts having caused the nullity shall also be inadmissible where the cause of the nullity ceases to exist, either before the action is filed, or on the day the court of first instance rules on the merits of the case, or within the period of time allowed to cover the nullity. They shall further be inadmissible where three years have elapsed since the nullity was incurred.

(6) Actions for nullity referred to above shall be barred by statute after five years.

30. (1) As from the day the approval provided for in Article 31 below is notified to a company governed by Chapters 3 and 4 of the present Part 2, actions for nullity shall no longer be instituted by the supervisory authority.

(2) The said supervisory authority shall, however, be allowed to suspend the approval until the nullity is covered.

PART III

State approval.

Section 1.

Approval of insurance companies.

31. (1) Insurance companies governed by the present Ordinance shall obtain approval from the supervisory authority before commencing business in compliance with the conditions fixed by order.

(2) They may only carry out transactions for which they are approved.

(3) They may present the said transactions directly or through the intermediary of persons authorized to do so.

32. Approval shall be granted at the request of the undertaking to cover one or more of the following categories and sub-categories of insurance:

1. *Life*:

Any transaction involving commitments whose fulfilment depends on the lifespan of a person.

2. *Marriage*:

Any transaction involving the payment of an amount of money in the event of marriage or birth of a child.

3. *Capital accumulation*:

Any transaction requiring savings so as to accumulate capital and involving specific commitments in return for payment which may be a lump sum or periodic, direct or indirect.

4. *Acquisition of property*:

Any transaction to acquire property through life annuities.

5. *Epargne*: Toute opération d'appel à l'épargne dans le but de réunir des sommes versées par les adhérents, soit en vue de les affecter à des comptes de dépôt portant intérêt, soit en vue de la capitalisation en commun avec participation aux bénéfices d'autres sociétés gérées ou administrées directement ou indirectement.

6. *Crédit*: Toute opération sur:

- a) Insolvabilité générale;
- b) Crédit à l'exportation;
- c) Vente à tempérament;
- d) Crédit hypothécaire;
- e) Crédit agricole.

7. *Opérations d'assurance automobile*.

8. *Opérations d'assurance aviation*.

9. *Opérations contre accidents*:

- a) Prestations forfaitaires;
- b) Prestations indemnitaires;
- c) Combinaisons;
- d) Personnes transportées.

10.— *Opérations d'assurance maladie*:

- a) Prestations forfaitaires;
- b) Prestations indemnitaires;
- c) Combinaisons.

11. *Opérations d'assurance contre l'incendie, les explosions et les éléments naturels*.

12. *Opérations d'assurances contre les risques de responsabilité civile autres qu'aux branches 7, 8 et 11*.

13. *Opérations d'assurance contre les risques de mortalité du bétail*.

14. *Opérations d'assurance contre le vol*.

15. *Opérations d'assurance maritime et de transport*.

16. *Opérations d'assurance caution*.

17. *Pertes pécuniaires diverses* :

- a) Risques d'emploi;
- b) Insuffisance de recettes générales;
- c) Mauvais temps;
- d) Pertes de bénéfices;
- e) Persistance de frais généraux;
- f) Dépenses commerciales imprévues;
- g) Perte de loyers ou de revenus;
- h) Pertes commerciales indirectes autres que celles mentionnées précédemment;
- i) Pertes pécuniaires non commerciales;
- k) Autres pertes pécuniaires.

18. *Opérations d'assurances contre tous les risques non compris dans ceux mentionnés ci-dessus, ces opérations devant être explicitement désignées dans la demande d'agrément*.

19. *Réassurance*: Toute opération d'acceptation en réassurance pratiquée par ces entreprises dont l'activité s'étend à d'autres branches.

Sous réserve de la réglementation relative aux accidents de travail et maladies professionnelles, l'agrément peut également être demandé en ce qui concerne ces risques, uniquement pour la garantie des prestations complémentaires.

5. *Savings*:

Any transaction involving savings intended to collect sums paid by members with a view to either placing them in deposit account at interest or for joint capital accumulation with other companies managed or administered directly or indirectly on a profit-sharing basis.

6. *Credit*:

Any transaction dealing with :

- a) general insolvency;
- b) export credit;
- c) hire-purchase;
- d) loan on mortgage;
- e) agricultural credit.

7. *Motor insurance*.

8. *Aviation insurance*.

9. *Accident insurance*:

- a) fixed benefits;
- b) compensation;
- c) schemes;
- d) passengers;

10. *Health insurance*:

- a) fixed benefits;
- b) compensations;
- c) schemes.

11. *Fire, explosions and natural disaster insurance*.

12. *Public liabilities insurance other than the insurance referred to in sub-paragraphs 7, 8 and 11 of the article*.

13. *Livestock insurance*.

14. *Burglary insurance*.

15. *Marine and transport insurance*.

16. *Security insurance*.

17. *Various money losses*:

- a) employment risk;
- b) inadequate overall revenue;
- c) bad weather;
- d) loss of profits;
- e) continued overhead costs;
- f) unforeseen business expenditure;
- g) loss of rents or income;
- h) indirect business losses other than those previously mentioned;
- j) non-business money losses;
- k) other money losses.

18. *Insurance against all other risks not included in those mentioned above; the type of insurance should be specified in the application for approval*;

19. *Reinsurance* :

Any transaction involving acceptance of reinsurance offered by companies which offer other types of insurance policies.

Subject to the regulations governing industrial accidents and occupational diseases, approval may also be requested for these risks, in so

l'autorité de tutelle peut, si elle le juge nécessaire, exclure certaines opérations comprises dans une branche pour laquelle l'agrément est accordé ou subordonner l'octroi d'agrément aux conditions fixées au paragraphe (2) de l'Article 63 de la présente ordonnance.

Art. 33.— (1) Les sociétés d'assurances ne peuvent avoir d'autre objet que celui de pratiquer les opérations énumérées à l'Article 32 de la présente ordonnance.

(2) Elles peuvent toutefois faire souscrire des contrats d'assurances au compte d'autres sociétés avec lesquelles elles ont conclu un accord à cet effet. L'accord par lequel elles s'engagent à prêter leur concours à cette fin doit être, préalablement à son entrée en vigueur, approuvé par l'autorité de tutelle.

(3) Les sociétés qui pratiquent l'une des branches d'opérations visées aux paragraphes 1, 2, 3, 5 et 6 de l'Article 32 ci-dessus doivent, pour chacune de ces opérations, établir une gestion spéciale et tenir une comptabilité distincte.

Art. 34.— Il est interdit à toute société pratiquant les opérations visées au paragraphe 3 de l'Article 32 ci-dessus de stipuler ou de réaliser l'exécution de contrats ou l'attribution de bénéfices par voie de tirage au sort.

Art. 35.— L'agrément est accordé par arrêté de l'autorité de tutelle et publié au Journal officiel. Il spécifie les branches et les sous-branches des opérations d'assurances pour lesquelles l'entreprise est agréée.

Art. 36.— (1) Sauf dérogation accordée par l'autorité de tutelle, il est interdit aux personnes physiques et morales assujetties aux dispositions de la présente ordonnance de placer auprès d'un organisme non agréé au Cameroun, tout ou partie d'un risque situé ou immatriculé au Cameroun.

(2) Toute opération de réassurance portant sur une cession ou récession supérieure à 50 % d'un risque à l'étranger est soumise à l'autorisation préalable de l'autorité de tutelle, sous réserve que la cession ou récession justifie avoir épuisé la capacité de rétention des organismes agréés au Cameroun.

(3) Tout traité de réassurance avec une société étrangère ne peut porter sur une cession supérieure à 50 %.

Art. 37. — (1) L'agrément devient caduc, si l'entreprise qui l'a obtenu n'a pas commencé à pratiquer dans le délai d'un an pour compter de la date de publication au Journal officiel de l'arrêté d'agrément, sauf si elle justifie auprès de l'autorité de tutelle que pendant ce temps, elle a exercé au Cameroun des investissements indispensables au démarrage de son activité. Toutefois, les modalités de financement de ces investissements doivent respecter les normes de constitution des fonds propres exigées par les Articles 3 (2), 8, 13, 17 et 26 (2) de la présente ordonnance.

(2) L'agrément devient également caduc en cas de transfert d'une entreprise à une autre du portefeuille de contrats relatifs à toute l'activité.

(3) Si le transfert est partiel, la caducité ne portera que sur les branches ou les sous-branches concernées.

(4) Si pendant le premier exercice de ses activités, une société n'a pas émis de primes dans une ou plusieurs branches ou sous-branches d'opérations pour lesquelles l'agrément lui a été accordé, elle ne peut reprendre ces opérations qu'avec l'autorisation de l'autorité de tutelle.

The supervisory authority may, if he deems it necessary, exclude certain transactions from a category for which approval is requested or grant approval only under the conditions laid down in Article 63 (2) of this Ordinance.

33. (1) Insurance companies may not carry out any other business other than the transactions listed in Article 32 of this ordinance.

(2) However, they may conclude insurance contracts on behalf of other companies with which they have entered into agreements for this purpose. The agreements by which they undertake to furnish such assistance shall require the approval of the supervisory authority before taking effect.

(3) Companies which carry out any of the transactions referred to in sub-paragraphs 1, 2, 3, 5 and 6 of Article 32 above shall institute special management systems and keep separate accounts for each transaction.

34. All companies carrying out the transactions referred to in Article 32 (3) above shall be prohibited from stipulating that a contract is to be performed by the drawing of lots, from so executing a contract, and from so allocating profits.

35. Approval shall be granted by order of the supervisory authority and published in the Official Gazette. It shall specify the categories and sub-categories of transactions for which the insurance undertaking is approved.

36. (1) Except where otherwise authorized by the supervisory authority natural persons and corporate bodies subject to the provisions of this Ordinance shall be prohibited from insurance all or part of a risk situated or registered in Cameroon with a body which is not approved in Cameroon.

(2) All reinsurance transactions involving the transfer or retrocession of more than 50 % of a risk abroad shall be subject to the prior approval of the supervisory authority, provided the transferor gives proof that it has exhausted the capacity to contract of bodies approved in Cameroon.

(3) All reinsurance agreements with foreign companies shall not involve the transfer of more than 50 % of the premium.

37. (1) The approval shall become null and void if the undertaking which obtained it fails to start business within one year following the publication of the approval order in the Official Gazette unless it gives proof to the supervisory authority that during that time it was carrying out investments in Cameroon required to start its business. However, the conditions for financing these investments shall be in compliance with the norms for constituting the company's funds as stipulated in Articles 3 (2), 8, 13, 17 and 26 (2) of this Ordinance.

(2) The approval shall also become null and void in the event of transfer of a company's portfolio relating to its entire business to another company.

(3) Where the transfer is partial the approval shall become null and void only as regards the categories and sub-categories concerned.

(4) If during the first financial year of its business a company fails to write premiums in one or more categories or sub-categories of transactions for which approval has been granted, it may resume operations only with the authorization of the supervisory authority.

CHAPITRE 2

Des intermédiaires d'assurances.

Art. 38.— Les intermédiaires d'assurances régis par la présente ordonnance doivent, avant de commencer leurs activités, être habilités par l'autorité de tutelle à présenter au public les opérations d'assurances.

Art. 39.— Sont considérés comme intermédiaires d'assurances :

(1) Les personnes physiques titulaires d'un mandat d'agent général, délivré par une entreprise d'assurances agréée;

(2) Les personnes physiques et les sociétés immatriculées au Régistre de commerce pour le courtage d'assurance et, en ce qui concerne ces sociétés, les associés ou tiers qui ont obtenu les pouvoirs de les gérer ou de les administrer;

(3) Les personnes physiques ou morales mandatées à cet effet soit par une société agréée, soit par une personne également agréée, visées aux alinéas 1 et 2 ci-dessus;

(4) Les salariés commis par une entreprise d'assurances ou une personne visée aux alinéas 1 et 2 ci-dessus.

Art. 40.— L'agent général d'assurances ne peut commencer à opérer qu'après visa de son traité de nomination par l'autorité de tutelle.

Art. 41.— Tout courtier d'assurances doit, pour exercer ses activités obtenir l'agrément de l'autorité de tutelle accordé par arrêté.

Art. 42.— Les personnes physiques ou morales mandatées par une société ou toute autre personne agréée, ne peuvent exercer l'activité d'intermédiaire d'assurances qu'après l'obtention d'une carte professionnelle délivrée par le mandant et visée par l'autorité de tutelle.

Art. 43.— Le salarié commis par une entreprise d'assurances ou par l'une des personnes mentionnées aux Articles 40 et 41 ci-dessus, doit obtenir une carte professionnelle de prospecteur, visée par l'autorité de tutelle.

Art. 44.— Les conditions de compétence professionnelle et d'honorabilité exigées des intermédiaires d'assurances ainsi que les autres modalités de l'exercice de leur profession sont fixées par arrêté de l'autorité de tutelle.

CHAPITRE 3

Des dirigeants.

Art. 45.— (1) Les personnes physiques chargées de la direction d'une société d'assurances doivent préalablement à leur entrée en fonction, obtenir l'agrément du ministre chargé des assurances accordé par arrêté.

(2) Elles doivent être de nationalité camerounaise et résider au Cameroun.

(3) Leur demande d'agrément doit être accompagnée de toutes les pièces justifiant qu'elles possèdent l'honorabilité, la formation et l'expérience adéquates à leurs fonctions.

(4) Le ministre chargé des assurances peut utiliser tous les moyens d'investigation susceptibles d'éclairer sa décision.

(5) Par dérogation aux dispositions du paragraphe (2) ci-dessus :

— Les sociétés existant à la date de promulgation de la présente ordonnance, peuvent être dirigées par des non-camerounais agréés pour une période de deux ans à la condition expresse que les intéressés résident au Cameroun. Cet agrément ne peut être éventuellement renouvelé qu'une fois.

CHAPTER II

Insurance agents.

38. Insurance agents governed by this Ordinance shall, prior to starting their activities, be empowered by the supervisory authority to offer insurance transactions to the public.

39. The following shall be considered insurance agents :

(1) Natural persons duly appointed general agents by an approval insurance undertaking.

(2) natural persons and companies entered in the Trade Register as insurance brokers and, as concerns the companies, partners or third parties which have been empowered to manage or administer them.

(3) natural persons or corporate bodies so appointed either by an approved company or persons referred to in paragraphs 1 and 2 above.

(4) wage-earners appointed by an insurance company or a person referred to in paragraphs 1 and 2 above.

40. A general insurance agent may start business only after his appointment has been endorsed by the supervisory authority.

41. Every insurance broker shall, before engaging in his activities, be granted approval by order of the supervisory authority.

42. Natural persons or corporate bodies appointed by a company or any other approved person may act as insurance agent only after obtaining a professional card issued by the mandator and endorsed by the supervisory authority.

43. A wage-earner employed by an insurance undertaking or one of the persons mentioned in Articles 40 and 41 above shall obtain a professional card as a canvasser which shall be endorsed by the supervisory authority.

44. The conditions of professional competence and integrity required of insurance agents and other conditions for practising their profession shall be laid down by order of the supervisory authority.

CHAPTER III

Managers.

45. (1) Natural persons responsible for managing an insurance company shall, prior to their assumption of duty, be approved by order of the Minister in charge of insurance.

(2) They shall be of Cameroonian nationality and reside in Cameroonian.

(3) Their applications for approval shall be accompanied by all documents showing that they are of honourable character and have the appropriate training and experience.

(4) The Minister in charge of insurance may make all investigations needed to enable him take a decision.

(5) Notwithstanding the provisions of paragraph 2 above :

— companies already operating on the date of issue of this Ordinance may be managed by non-Camerounians approved for two years on the proviso that the said persons reside in Cameroon. Such approval may only be renewed once if need be.

— Les sociétés agréées postérieurement à la promulgation de la présente ordonnance, pourront être dirigées par des non-camerounais agréés pour une période de deux ans éventuellement renouvelable une fois.

Art. 46.— (1) Il est interdit aux administrateurs et directeurs des sociétés d'assurances de prendre ou de conserver un intérêt direct ou indirect dans une entreprise, un marché, un traité ou une opération commerciale ou financière faite avec la société ou pour son compte à moins qu'ils n'y soient autorisés par l'Assemblée générale.

(2) Un compte rendu est, chaque année, présenté à l'Assemblée générale sur l'exécution des marchés, entreprises, traités, opérations commerciales ou financières par elle autorisés aux termes du précédent paragraphe.

(3) Ce compte rendu doit faire l'objet d'un rapport des commissaires aux comptes.

Art. 47.— (1) Ne peuvent à un titre quelconque fonder, administrer, diriger, gérer ou liquider les entreprises d'assurances et de réassurance ou exercer la profession d'intermédiaire d'assurances et de réassurance :

— Les personnes ayant fait l'objet de condamnation pour crime de droit commun, pour vol, pour abus de confiance, pour escroquerie, pour soustraction commise par dépositaire public, pour extorsion de fonds ou valeurs, pour émission de chèque sans provisions, pour atteinte au crédit de l'Etat, pour recueil d'objets obtenus à l'aide de ces infractions;

— les personnes ayant fait l'objet de condamnation pour tentative ou complicité des infractions ci-dessus;

— les faillis non réhabilités;

(2) Les mêmes interdictions peuvent être également prononcées à l'encontre :

— De toute personne condamnée pour infraction à la législation ou à la réglementation des assurances;

— Des administrateurs, gérants ou directeurs d'organismes d'assurances dissous à la suite du retrait d'agrément.

TITRE IV

Des engagements réglementaires des sociétés d'assurances.

Art. 48.— Les sociétés d'assurances doivent obligatoirement constituer, selon les opérations qu'elles effectuent, les provisions techniques suivantes:

A. — Pour les opérations d'assurances-vie, d'assurances natalité, nuptialité et de capitalisation:

1. Provisions mathématiques: différence entre les valeurs actuelles des engagements respectivement pris par les assureurs et par les assurés;

2. Réserve de capitalisation : réserve destinée à parer à la dépréciation des valeurs comprises dans l'actif de la société et à la diminution de leur revenu;

3. Provisions pour bénéfices non distribués annuellement aux assurés: montant des comptes individuels de participation aux bénéfices ouverts au nom des assurés, lorsque ces bénéfices ne sont pas payables immédiatement après la clôture de l'exercice qui les a produits.

— companies approved after the promulgation of this ordinance may be managed by non-Camerounians approved for two years renewable once.

46. (1) Administrators and managers of insurance companies shall not take or have a direct or indirect interest in an undertaking, contract, agreement or business or financial transaction made with the company or on its behalf, unless they are duly authorized by the General Assembly.

(2) A report shall each year be submitted to the General Assembly. Such a report shall concern the execution of contracts, commitments, agreements, and business or financial transactions authorized by the Assembly in accordance with the previous paragraph.

(3) Auditor shall submit a report on the said report.

47. (1) The following shall not, in whatever capacity, found, administer, run, manage or liquidate insurance or reinsurance undertakings or practise the profession of insurance and reinsurance agent :

— persons who have been convicted for ordinary law crimes, theft, breach of confidence, fraud, deductions by bailiffs, extortion of funds or securities, issuing of cheque without cover, misappropriation of State funds and receiving and concealing of goods obtained by committing these offences;

— persons who have been convicted for attempting to commit the above offences or being accomplices thereto;

— undischarged bankrupt persons.

(2) The same prohibitions may also be taken against :

— any person convicted for contravening insurance law and regulations;

— administrators, managers and directors of insurance undertakings dissolved following withdrawal of approval.

PART IV

Regulatory commitments of insurance companies.

48. Insurance companies shall be bound, according to the types of transactions they carry out to provide the following technical provisions.

A. — For life insurance, birth and marriage insurance and capital accumulation transactions :

1. Actuarial provisions : the difference between the current values of commitments made by insurers and policy holders respectively.

2. Capital accumulation reserve : reserve intended to provide against the depreciation of securities included in the assets of the company and for loss of revenue therefrom.

3. Provision for profits not distributed annually to policy-holders : sum total of the individual profit-sharing accounts are not payable immediately following the close of the year during which they occurred.

B. — Pour les autres branches d'opérations:

1. Provisions pour risques en cours : provisions destinées à couvrir les risques et les frais généraux y afférents, pour chacun des contrats à prime payable d'avance à la période comprise entre la date de l'inventaire et la prochaine échéance de prime, ou à défaut le terme fixé par contrat;

2. Provisions pour sinistres à payer: valeur estimable des dépenses pour sinistres non réglés et montant des dépenses pour sinistres constitutifs des rentes non encore mises à la charge de la société;

3. Provisions mathématiques des rentes : valeur des engagements de la société en ce qui concerne les rentes mises à sa charge.

Pour toutes autres branches d'opérations d'assurances, l'autorité de tutelle peut, outre celles prévues ci-dessus, prescrire par arrêté publié au Journal officiel, la constitution des provisions techniques nécessaires au règlement intégral des engagements pris envers les assurés et bénéficiaires de contrats.

Les provisions techniques visées par les paragraphes précédents sont calculées sans déduction des réassurances cédées, dans les conditions fixées par arrêté de l'autorité de tutelle.

Les dotations réglementaires aux provisions techniques sont pour chacun des exercices comptables, imputées au titre des charges de l'exercice et ne donnent lieu à aucun prélèvement fiscal.

Art. 49.— Outre les provisions techniques et mathématiques prévues à l'article précédent, les sociétés d'assurances sont tenues, quelle que soit la date des opérations qu'elles effectuent, d'inscrire au passif de leur bilan:

1. Les postes correspondants aux créances privilégiées autres que les provisions techniques et mathématiques;

2. Les dépôts de garantie des agents, des assurés et des tiers, s'il y a lieu;

3. Une provision pour amortissement des emprunts.

Il est porté chaque année, au compte des frais de gestion, une somme constante destinée au paiement des intérêts et au remboursement des emprunts ou à la constitution de la provision visée au 3e alinéa du présent article.

Art. 50.— (1) Les sociétés d'assurances doivent à toute époque, être en mesure d'inscrire au passif et de présenter à l'actif du bilan dans les conditions spécifiées par décret, les provisions techniques et les autres engagements visés aux Articles 48 et 49 ci-dessus.

(2) Les éléments d'actif affectés à la représentation des provisions techniques doivent être des liquidités, des exigibilités, des créances et des placements mobiliers ou immobiliers présentant des garanties et remplissant des conditions de disponibilité et de diversité suffisantes pour que la société d'assurances soit à tout moment en situation de satisfaire à ses engagements.

(3) En outre, les sociétés pratiquant les branches d'opérations visées aux paragraphes 1, 2, 3 et 4 de l'Article 32 ci-dessus et tenues de constituer des provisions mathématiques, doivent maintenir le revenu net des placements affectés à ces provisions mathématiques à un montant au moins égal à celui des intérêts dont sont crédités lesdites provisions mathématiques.

B. For other types of transactions:

1. Provision for unexpired risks : provision intended to cover risks and overheads related thereto for each of the premium paid contracts, in respect of the period between the due date of the next premium, or failing this, the date at which the contract matures.

2. Provision for outstanding claims: estimated value of expenditure for outstanding claims and the amount of expenditure for claims resulting in annuities for which the company is not yet liable.

3. (a) Actuarial provision for annuities : value of the company's commitments in respect of annuities for which it is liable.

(b) For all other types of insurance transactions the supervisory authority may prescribe, by order published in the Official Gazette, their technical provisions necessary for the complete settlement of commitments towards the insured and the beneficiaries of policies, in addition to the provisions mentioned above.

(c) The technical provisions referred to in the preceding paragraphs shall be calculated without deduction of ceded reinsurance under conditions laid down by order of the supervisory authority.

(d) The statutory amounts assigned to the technical provisions in respect of each year of account shall be considered as charges for that year and shall not be subject to any tax deductions.

49. (1) Irrespective of the date of their transaction, insurance companies shall enter the following as liabilities on their balance sheets, in addition to the technical and actuarial provisions provided for in the preceding article :

(a) Items corresponding to the preferential debts, other than the technical and actuarial provisions;

(b) Security deposits, policy holders and third parties where applicable;

(c) Provision for amortization of loans.

(2) Each year, a fixed sum earmarked for the payment of interest and loan reimbursements or for the formation of the provision referred to in paragraph (c) of this article shall be entered as management expenses.

50. (1) Insurance companies shall at all times be able to enter the technical provisions and other commitments referred to in Articles 48 and 49 above, in their balance sheets, as liabilities and represent them as assets, under conditions laid down by decree.

(2) Assets assigned to the technical provisions shall be liquid assets, claims due, debts and investments in movable and real property which shall be sufficiently secure, liquid and diverse for the insurance company to be in a position to meet its commitments at all times.

(3) Furthermore, companies carrying out the transactions referred to in Article 32 (1), (2), (3) and (4) above which are obliged to set up actuarial provisions shall maintain the net income from the investments assigned to the said actuarial provisions at an amount not less than the amount of interest credited to these provisions.

(4) La nature et les modes d'évaluation des placements et autres éléments d'actif satisfaisant aux impératifs techniques et financiers définis aux paragraphes précédents et admis en représentation des provisions techniques sont déterminés par décret.

Art. 51.— Le passif visé aux alinéas 1 et 3 de l'Article 49 de la présente ordonnance est représenté à l'actif dans les mêmes conditions que les provisions techniques correspondant aux opérations autres que celles ne faisant pas l'objet d'une gestion spéciale, ou à défaut, des espèces en caisse ou en banque.

Art. 52.— Les fonds restant disponibles, lorsqu'il a été satisfait aux dispositions concernant la représentation du passif visé aux Articles 49 à 51 ci-dessus, demeurent à la libre disposition de la société d'assurances. Ils peuvent être utilisés ou placés conformément aux statuts de la société et aux règles de droit commun.

Art. 53.— (1) Les actifs mobiliers des sociétés d'assurances affectés à la représentation des provisions techniques sont grévés d'un privilège spécial en faveur des assurés et bénéficiaires de contrats. Ce privilège prendra rang immédiatement après les privilèges généraux prévus par le Code Civil.

(2) Les immeubles des sociétés d'assurances affectés à la représentation des provisions techniques sont grévés d'une hypothèque légale inscrite à la requête de l'autorité de tutelle au profit de la communauté des assurés, souscripteurs et bénéficiaires de contrats d'assurances.

~~Art. 54.— Les sociétés soumises aux dispositions de la présente ordonnance sont tenues, en ce qui concerne exclusivement les provisions techniques et autres engagements réglementés de se conformer à la réglementation spéciale en la matière lors de l'établissement de leur bilan. Pour l'évaluation de tous autres postes du bilan, ces sociétés demeurent soumises aux règles de droit commun.~~

TITRE V

Intervention de l'Etat.

CHAPITRE PREMIER

Du contrôle.

Art. 55. — Le contrôle de l'Etat sur les organismes d'assurances s'exerce dans l'intérêt des assurés, souscripteurs et bénéficiaires de contrats.

Il porte sur l'ensemble de l'activité desdits organismes notamment l'application de la réglementation à l'industrie de l'assurance, l'emploi des fonds collectés, le règlement des sinistres et le placement des provisions techniques et mathématiques.

Art. 56.— Sont soumis au contrôle de l'Etat:

1. Les sociétés et intermédiaires visées aux articles 1 et 2 de la présente ordonnance;
2. Les organismes visés l'article 3 paragraphe (4) de la présente ordonnance;
3. Les groupements professionnels institués entre entreprises d'assurances.

Art. 57.— (1) Le contrôle de l'Etat sur les organismes et opérations d'assurances s'effectue sous l'autorité du ministre chargé des assurances par l'entremise des contrôleurs des assurances ou de toute autre personne dûment désignée.

(2) Un décret détermine les modalités d'application du présent article.

(4) The nature and method of evaluating the investments and other assets which fulfil the technical and financial requirements defined in the preceding paragraphs and are accepted for the formation of the technical provisions shall be defined by decree.

51. The liabilities referred to in Article 49 (1) and (3) of this Ordinance shall be entered as assets in the same manner as the technical provisions corresponding to transactions for which special management is required, or failing that, in the same manner as cash in hand or in banks.

52. (1) When the provisions concerning the formation of the liabilities referred to in Articles 49 to 51 above have been complied with, remaining funds shall be entirely at the disposal of the insurance company. They may be employed or invested in accordance with the memorandum and articles of association of the company and with the rules of ordinary law.

53. (1) The policyholders and beneficiaries of contracts shall have preferential rights on the movable assets of insurance concerns assigned to the technical provisions. This right shall immediately rank after the general privileges provided by the civil code.

(2) Buildings belonging to the insurance companies which are assigned to the technical provisions shall be secured by a legal mortgage registered at the request of the supervisory authority in favour of policyholders, and subscribers or beneficiaries of contracts.

~~54. Companies governed by the provisions of this Ordinance shall be bound, exclusively as concerns the technical provisions and other regulatory commitments to comply with the special rules and regulations applicable thereto on drawing up their balance sheets. For the evaluation of the other items on the balance sheet such companies shall remain subject to the rules of ordinary law.~~

PART V

State intervention.

CHAPTER I

Control.

55. (1) State control of insurance concerns shall be exercised in the interest of policyholders, subscribers and beneficiaries of contracts.

(2) It shall concern all the activities of such undertakings, in particular, the application of the rules and regulations in insurance companies, the use of funds collected, compensation for accidents and the investment of technical and actuarial provisions.

56. The following shall be subject to state control.

- (1) The companies and intermediaries referred to in Articles 1 and 2 of this Ordinance.
- (2) The concerns referred to in Article 3 (4) of the Ordinance.
- (3) Professional associations set up among insurance companies.

57. (1) State control of insurance concerns and transactions shall be exercised under the authority of the Minister in charge of insurance through insurance controllers or any other duly appointed person.

(2) A decree shall lay down the conditions of application of this Article.

Art. 58.— (1) Les organismes d'assurances opérant en République du Cameroun sont tenus de transmettre à l'autorité de tutelle, dans les formes et aux dates fixées par elle, tous documents de nature à permettre le contrôle et la marche de leur entreprise. Ils doivent établir leur comptabilité dans les formes fixées par décret.

(2) L'exercice comptable commence le 1er janvier et finit le 31 décembre de chaque année. Exceptionnellement, le premier exercice comptable des entreprises agréées qui commencent leurs opérations au cours d'une année civile peut être clôturé à l'expiration de l'année suivante.

Art. 59.— (1) Les organismes d'assurances doivent, avant usage, communiquer à l'autorité de tutelle, qui peut prescrire toutes rectifications ou modifications nécessaires, leurs polices, tarifs, prospectus, imprimés, avenants, propositions d'assurances et tous autres documents destinés au public ou à être distribués ou remis aux porteurs de contrats.

(2) Les documents destinés à être distribués au public ou publiés doivent toujours porter à la suite de la raison sociale, la mention ci-après : « Entreprise privée régie par l'ordonnance n° 85-03 du 31 août 1985 ».

(3) Ils ne doivent contenir aucune allusion au contrôle de l'Etat, ni une assertion susceptible d'induire en erreur sur la véritable nature de l'entreprise ou l'importance réelle de ses engagements.

CHAPITRE 2

Du secret professionnel.

Art. 60.— (1) Tout administrateur ou toute personne qui, à un titre quelconque, participe à la direction, à la gestion ou au contrôle d'une entreprise d'assurances ou qui est employé par celle-ci, est tenu au secret professionnel.

(2) Toutefois, outre les cas prévus par la loi, le secret professionnel ne peut être opposé ni au ministre chargé des assurances, ni au Conseil national des assurances institué par la présente ordonnance.

CHAPITRE 3

Des interventions diverses.

Art. 61.— L'autorité de tutelle peut imposer des clause-types de contrat et fixer, pour certaines branches d'opérations, les maxima des taux de rétributions des intermédiaires et les règles applicables au paiement de ces rétributions.

Art. 62.— Les frais de toutes natures, résultant du contrôle des organismes d'assurances sont couverts au moyen de contributions annuelles desdits organismes sur la base d'une assiette et selon les modalités de calcul fixées par arrêté de l'autorité de tutelle.

Art. 63.— (1) Lorsque la situation du marché l'exige, l'autorité de tutelle peut, pour une, plusieurs ou toutes les branches ou sous-branches d'opérations d'assurances suspendre ou limiter la délivrance d'agréments nouveaux.

(2) Elle peut également, en pareilles circonstances, obliger toute société qui sollicite un agrément, à couvrir des branches d'opérations déterminées.

58. (1) Insurance concerns operating in the Republic of Cameroon shall be bound to send to the Supervisory Authority, in the manner and on the dates fixed by it, all documents as may facilitate the checking and the running of the companies. They must state their accounts in the manner laid down by decree.

(2) The accounting year shall begin on 1 January and end on 31 December of each year. As an exceptional measure, the first accounting year of approved undertakings beginning their activities during a calendar year may be closed at the end of the following year.

59. (1) Insurance concerns, must send their policies, prospectuses, forms, endorsements, insurance application forms and other documents intended for the public or to be distributed or supplied to policy holders to the supervisory authority which may recommend any necessary corrections or changes before there are put to use.

(2) Documents intended for distribution to the public or those published must bear the following, after the company name.

«Private company governed by Ordinance No. 85-3 of 31 August 1985».

(3) They must not bear any reference to state control nor any statement as may misrepresent the real nature of the company or the actual amount of its commitments.

CHAPTER II

Professional secrecy.

60. (1) Any administrator or any person who, in whatever capacity, is involved in the running, management or supervision of an insurance company or who is employed by such a company shall be bound by professional secrecy.

(2) However, apart from the cases provided for by law, professional secrecy shall not be raised against the Minister in charge of insurance and the National Insurance Council set up by this Ordinance.

CHAPTER III

Sundry interventions.

61. The supervisory authority may impose standard clauses for contracts and fix, for some transactions, the maximum remuneration of intermediaries and the rules applicable to the payment of such remuneration.

62. All types of expenses arising from the control of insurance concerns shall be covered by annual contributions from the said concerns on the basis of an assessment and according to calculations fixed by order of the supervisory authority.

63. (1) Where the circumstances of the market so require, the supervisory authority may suspend or restrict grants of new approvals for one, several or all branches or sub-branches of insurance transactions.

(2) It may also, under similar circumstances, compel any company requesting approval to cover specific branches of transactions.

CHAPITRE 4

Procédures de redressement et de sauvegarde.

Art. 64.— (1) Lorsque l'activité d'une société d'assurances est de nature à conduire à une situation telle que cette société ne soit plus en mesure de donner des garanties suffisantes pour tenir, ses engagements ou qu'elle risque de ne plus fonctionner conformément à la réglementation en vigueur, l'autorité de tutelle doit adresser à ses dirigeants un avertissement par lettre recommandée et exiger que lui soit soumis pour approbation, dans un délai d'un mois, un programme de rétablissement prévoyant toutes les mesures propres à restaurer l'équilibre de leur entreprise.

(2) Dès l'envoi de l'avertissement prévu au paragraphe précédent, l'autorité de tutelle peut charger un contrôleur des assurances d'exercer une surveillance permanente sur la société en difficulté.

(3) Si la société refuse de produire un programme de rétablissement, ou si celui qu'elle a soumis ne recueille pas l'approbation de l'autorité de tutelle, ou si le programme approuvé n'est pas exécuté dans les conditions et délais prévus, l'autorité de tutelle peut prendre sans préjudice de l'application des dispositions relatives au retrait d'administration, toutes mesures propres à sauvegarder les intérêts des assurés bénéficiaires de contrats.

(4) Dans pareils cas, l'autorité de tutelle peut :

— Restreindre ou interdire la libre disposition par la société de ses actifs.
— Prescrire à toute autre personne ou collectivité émettrice de refuser l'exécution de toute opération portant sur des titres appartenant à la société mise en cause ainsi que le paiement des intérêts et dividendes afférents auxdits titres.

— Faire inscrire sur les immeubles de cette société l'hypothèque prévue à l'Article 53 de la présente ordonnance et demander au conservateur des hypothèques de refuser la transcription de tous actes, l'inscription de toute hypothèque portant sur les immeubles impliqués et soumettre la radiation d'hypothèque consentie par un tiers au profit de la société incriminée à son autorisation préalable.

— Exiger le dépôt à la Caisse de dépôts et consignations des grosses sommes de prêts hypothécaires consentis par ladite société ainsi que le dépôt de tous les fonds, titres et valeurs détenus ou possédés par cette société, dans les délais et conditions qu'elle fixera, à la Banque Centrale, dans un compte bloqué.

Ce compte de pourra être débité sur ordre de son titulaire que sur autorisation expresse de l'autorité de tutelle et seulement pour un montant déterminé.

(5) Un décret précisera, en ce qui concerne les exigences en matière de solvabilité, toutes autres modalités de redressement des sociétés d'assurances.

Art. 65.— Les dirigeants d'une société soumise aux mesures de redressement du présent chapitre, qui ne produisent pas le programme requis, qui n'exécutent pas celui qui a été approuvé ou qui n'effectuent pas les transferts prescrits par l'autorité de tutelle, sont passibles des sanctions de l'Article 85 de la présente ordonnance.

TITRE IV

Cessation d'activité.

Art. 66.— Tout organisme d'assurances peut être amené à mettre fin à son exploitation par décision soit de ses organes, soit de l'autorité de tutelle dans les conditions fixées ci-dessous :

CHAPTER IV

Recovery and safety procedures.

64. (1) Where the activity of an insurance company is such as would lead to a situation whereby the company can no longer provide adequate guarantees to honour its commitments or is likely to cease functioning in accordance with the regulations in force, the supervisory authority shall, be registered letter, send a warning to the company directors and request that a recovery programme comprising all necessary measures to restore the balance of the company be forwarded to him within one month for approval.

(2) The supervisory authority may, as soon as the warning provided for in the preceding paragraph is sent, appoint an insurance controller to carry out a permanent surveillance of the company in difficulty.

(3) Where the company refuses to draw up a recovery programme or where its programme is not approved by the supervisory authority, or where the approved programme is not carried out under the prescribed conditions and time limit, the supervisory authority may, without prejudice to the provisions governing the withdrawal of approval take any necessary measures that would protect the interest of insured parties and policy holders.

(4) In such case, the supervisory authority may :

(a) restrict or forbid the company's freedom of access to its assets;

(b) order any issuing person or body to refrain from carrying out any transaction on securities belonging to the company in question and from paying interest and dividends on the said securities;

(c) register a mortgage on the property of the company as provided for in Article 53 of this Ordinance and request the registrar of mortgages to refuse transcribing all documents and registering any mortgage related to the property involved, and to give prior authorization for the lifting of any mortgage made by a third party for the benefit of the company in question;

(d) Demand that the first authentic copies of mortgage loans granted by the said company be deposited at the Deposits and Consignment Fund and that all the funds, titles and shares held or owned by the company be deposited in a frozen account at the Central Bank for a given period and under conditions to be fixed by the supervisory authority;

(e) the account shall not be debited by order of its owner except on special authorization from the supervisory authority and for a given amount only.

(5) Any other conditions for the recovery of insurance companies as concerns solvency requirements shall be fixed by decree.

65. Directors of a company subject to the recovery measures outlined in this Chapter who do not draw up the required programme, who do not carry out the approved programme or who do not make the transfers ordered by the supervisory authority shall be liable to the penalties provided in Article 85 of this Ordinance.

PART IV

Cessation of activity.

66. Any insurance body may be required to cease its activities by decisions of its organs or by the supervisory authority under the conditions outlined below :

CHAPITRE PREMIER

De la cessation volontaire des opérations.

Art. 67.— (1) En cas de suspension volontaire, totale ou partielle de ses opérations, l'organisme d'assurances est tenu d'en informer au préalable l'autorité de tutelle qui peut prescrire toute mesure de sauvegarde.

(2) La reprise partielle ou totale des opérations objet de la suspension, doit être notifiée à l'autorité de tutelle. Elle est subordonnée à l'autorisation préalable de l'autorité de tutelle, si elle intervient un an après la suspension.

Art. 68.— (1) Les organismes d'assurances peuvent, avec l'approbation de l'autorité de tutelle, transférer en totalité ou en partie leurs portefeuilles de contrats avec les droits et obligations y attachés, à un ou plusieurs autres organismes d'assurances agréés.

(2) La demande de transfert est portée à la connaissance des créanciers par un avis public inséré dans un journal d'annonces légales, qui leur impartit un délai de trois mois pour présenter leurs observations.

(3) La convention de transfert passée entre les parties est transmise à l'autorité de tutelle qui l'approuve par visa si elle la juge conforme aux intérêts des assurés, bénéficiaires de contrats d'assurances et créanciers. Cette approbation rend le transfert opposable aux personnes visées au présent paragraphe.

Art. 69.— Un organisme qui désire se retirer du marché peut procéder à la liquidation amiable de son portefeuille.

Il doit en informer l'autorité de tutelle dans les quinze jours et lui indiquer le nom du liquidateur désigné.

L'autorité de tutelle peut nommer un co-liquidateur.

CHAPITRE 2

De la cessation d'activité du fait de l'autorité de tutelle.

Art. 70.— (1) L'agrément peut être suspendu pour tout ou partie des branches d'opérations, pour insuffisance des garanties financières au regard des engagements souscrits par l'organisme d'assurances ou pour violation de la réglementation.

(2) Cette mesure intervient 3 mois après une mise en demeure par lettre recommandée, adressée à l'organisme d'assurances intéressé par l'autorité de tutelle.

(3) La suspension prononcée par une décision de l'autorité de tutelle, doit être motivée et notifiée à l'entreprise concernée et insérée au Journal officiel.

Art. 71.— (1) La suspension entraîne interdiction de souscrire tout contrat nouveau ou de reconduire tout contrat parvenu à sa date d'expiration dans les branches ou sous-branches d'opérations pour lesquelles la suspension a été prononcée.

(2) Les contrats en cours des branches ou sous-branches visées par la suspension sont gérés par l'organisme concerné jusqu'à leur résiliation ou extinction, dans les conditions prévues par les polices.

Art. 72.— L'autorité de tutelle peut, faute d'un transfert amiable approuvé conformément aux dispositions de l'article 68 précédent, imposer à l'entreprise en cause le transfert d'office de tout ou partie de son portefeuille à un ou plusieurs autres organismes agréés avec l'accord de ceux-ci.

CHAPTER I

Voluntary cessation of activity.

67. (1) In case of a voluntary, total or partial suspension of transactions by an insurance concern, the insurance body shall be bound to give prior notification to the supervisory authority who may order any necessary safety measures.

(2) The supervisory authority shall be notified of the partial or total resumption of suspended operations. It shall be the subject of prior authorization if the resumption takes place one year after suspension.

68. (1) Insurance concerns may, on the approval of the supervisory authority, transfer all or part of their portfolios, together with the rights and obligations arising thereunder, to one or more approved insurance concerns.

(2) Creditors shall be notified of applications for transfer by a public notice published in a newspaper bearing legal notices allowing them three months to enter their submissions.

(3) The transfer agreement reached between the parties shall be forwarded to the supervisory authority who shall grant approval by endorsement, if he deems that such a transfer is in the interest of the insured parties, policy holders and creditors. Such approval shall render the transfer demurrable in respect of the persons mentioned in this paragraph.

69. (1) An insurance concern which intends to withdraw from the market may proceed with an amicable liquidation of its portfolio.

(2) It shall notify the supervisory authority within fifteen days and give the name of its liquidator.

(3) The supervisory authority may appoint a co-liquidator.

CHAPTER II

Cessation of activity at the instance of the supervisory authority.

70. (1) Approval may be withdrawn or suspended in respect of all or part of the branches of transactions when the financial guarantees are inadequate for the commitments made by the insurance concern, or when the regulations are infringed.

(2) This measure shall come into force three months after the supervisory authority has formally notified the insurance company concerned by registered letter.

(3) The decision of suspension taken by the supervisory authority must be reasoned, forwarded to the suspended company, and published in the Official Gazette.

71. (1) When approval is suspended, no new contract may be concluded or old contract renewed at expiry in those branches or sub-branches covered by the suspension.

(2) Contracts still valid in the branches or sub-branches affected by the suspension shall be supervised by the company concerned under conditions provided for by the policies, until their termination or expiry.

72. Failing an amicable transfer approved in accordance with the provisions of Article 68 above, the supervisory authority may order the company concerned to automatically transfer all or part of its portfolio to one or more other approved and consenting companies.

Art. 73.— (1) En cas de retrait d'agrément à une entreprise d'assurances, tous les contrats d'assurances en répartition souscrits par elle cessent de plein droit d'avoir effet le quarantième jour à midi, à compter de la publication au Journal Officiel de la décision de retrait. Les primes antérieurement échues et non payées ne sont acquises à l'entreprise que proportionnellement à la période garantie et les primes à échoir entre la décision de retrait et la date de résiliation ne sont dues que proportionnellement à la période garantie selon la règle de la divisibilité de la prime.

(2) Après la publication de l'arrêté prononçant le retrait d'agrément, les contrats vie souscrits par l'entreprise demeurent régis par leurs conditions générales et particulières. Ils sont maintenus sans modification si la situation financière de l'entreprise le permet. Sinon, leur maintien s'accompagne d'une réduction des engagements de l'assureur soit par une prorogation d'échéance, soit par une réduction des sommes assurées. L'autorité de tutelle peut également décider de leur transfert à une ou plusieurs sociétés. A défaut de transfert, les contrats ne prennent effectivement fin qu'après la publication au Journal officiel d'un nouvel arrêté qui ouvre un délai de dix jours à l'expiration duquel commence la liquidation proprement dite.

Art. 74.— (1) Les entreprises d'assurances ne peuvent être mises en liquidation judiciaire qu'à la requête de l'autorité de tutelle. L'arrêté prononçant le retrait total d'agrément emporte de plein droit, à compter de la date de sa publication au Journal officiel, la liquidation de l'entreprise en cause.

(2) La liquidation est effectuée par un mandataire de justice désigné par ordonnance sur requête rendue par le président du tribunal compétent et exécutoire nonobstant toutes voies de recours.

Le président du tribunal commet par la même ordonnance un juge chargé de contrôler les opérations de liquidation. Ce juge est assisté, dans l'exercice de sa mission, par un ou plusieurs contrôleurs des assurances désignés par le ministre chargé des assurances.

Le juge et le liquidateur sont remplacés dans les mêmes formes.

(3) Le liquidateur ou le dirigeant de l'entreprise, si le liquidateur n'est pas encore désigné, a un délai de trente jours pour aviser, par deux insertions dans un journal d'annonces légales, les souscripteurs du retrait d'agrément et de la résiliation des contrats qui en résulte.

Tous les contrats d'assurances en capitalisation sont maintenus provisoirement en cours en attendant la décision qui sera prise par l'autorité de tutelle, à la demande du liquidateur et sur le rapport du juge commissaire.

Cette décision peut être soit la réalisation des contrats à telle date déterminée, soit le transfert total ou partiel à une autre entreprise, soit la réduction des capitaux assurés en prorogeant l'échéance des contrats et des prestations.

Néanmoins, le liquidateur peut, avec l'approbation du juge commissaire, surseoir au paiement des sinistres, des dettes arrivées à échéance et des valeurs de rachat.

Les primes encaissées par le liquidateur sont versées dans un compte spécial.

(4) Un arrêté de l'autorité de tutelle précisera en tant que de besoin les dispositions des articles 66 à 74 ci-dessus, relatives aux modalités de cessation d'activité des entreprises d'assurances agréées.

Art. 75.— Les activités des intermédiaires d'assurances peuvent prendre fin dans les conditions déterminées par arrêté de l'autorité de tutelle.

73. (1) When approval of an insurance company is withdrawn, all the subscribed insurance contracts distributed by that company shall automatically cease to have effect at midday on the fortieth day with effect from the date of publication of the withdrawal decision in the Official Gazette. The company shall earn the unpaid premiums past due date only in proportion to the guarantee period and the premiums due between the withdrawal decision and the date of termination shall be earned only in proportion to the guarantee period according to the rule of premium sharing.

(2) After publication of the withdrawal order, the life-insurance contracts underwritten by the company shall continue to be governed by their general and special conditions. They shall remain unchanged if the financial situation of the company so permits. Otherwise, their being maintained shall be accompanied with a reduction of the insurer's commitments either by extending the period or by reducing the amounts. The supervisory authority may also decide to transfer such contracts to one or more companies. Failing such transfer, the contracts shall be effectively ended only after a new order has been published in the Official Gazette giving a ten-day time limit at the end of which the actual liquidation shall commence.

74. (1) Insurance companies may be subjected to judicial liquidation only on the request of the supervisory authority. The order announcing the total withdrawal of the approval shall, with effect from the date of publication in the Official Gazette, automatically entail the liquidation of the company in question.

(2) (a) The liquidation shall be carried out by an attorney designated by an order of the President of the competent court and enforceable notwithstanding all modes of appeal.

(b) The President of the court shall, by the same order, appoint a judge to supervise the liquidation operations. The judge shall be assisted in his mission by one or more insurance controllers appointed by the Minister in charge of insurance.

(c) Replacement of the judge and the liquidator shall be done in like manner.

(3) (a) The liquidator, or if none has been appointed yet, the director of the company shall have thirty days within which to inform the policy holders, through two announcements in a newspaper bearing legal notices, of the withdrawal of the approval and the resulting cancellation of their contracts.

(b) All capital accumulation insurance contracts shall, on the request of the liquidator and on the basis of the report of the committed judge, be temporarily maintained pending the decision of the supervisory authority.

(c) The said decision may be either the cancellation of contracts on a given date, total or partial transfer to another company, or the reduction of the insured capital by extending the date of expiry of contracts and services.

Nonetheless, the liquidator may, with the approval of the bailiff defer the payment of accidents, debts that have matured and repurchase securities.

The allowances received by the liquidator shall be paid into a special account.

(4) An order of the supervisory authority shall, whenever necessary, further clarify the provisions of Articles 66 to 74 above relating to the conditions of cessation of the activities by approved insurance companies.

75. The activities of insurance intermediaries shall cease under the conditions laid down by order of the supervisory authority.

Art. 76. (1) Il est créé un Conseil national des assurances, organisme consultatif, placé sous l'autorité du ministre chargé des assurances.

(2) Cet organisme est appelé à donner des avis sur les questions qui lui sont soumises par l'autorité de tutelle concernant l'organisation du marché, le fonctionnement des entreprises ainsi que l'exercice des professions annexes à l'industrie des assurances et le retrait d'agrément.

(3) A ce titre, il peut notamment formuler toutes propositions sur l'assurance, les règles de tarification, les principes directeurs en matières de réassurance et les modalités de règlement des sinistres.

(4) Un décret fixe les attributions, la composition et les modalités de fonctionnement de ce conseil.

Art. 77. (1) Toutes les sociétés d'assurances agréées conformément aux dispositions de l'article 31 ci-dessus, sont tenues d'adhérer à l'association professionnelle des sociétés d'assurances constituée conformément à la réglementation sur les associations.

(2) L'association professionnelle des sociétés d'assurances est placée sous la tutelle du ministre chargé des assurances.

(3) Nulle autre association professionnelle ou nul groupement syndical des sociétés d'assurances ne peut être constitué.

(4) Cette association est administrée par un bureau élu par l'Assemblée générale de l'association.

(5) Les statuts de l'association professionnelle des sociétés d'assurances doivent, antérieurement à leur déclaration et à leur publication être soumis à l'accord de l'autorité de tutelle.

Art. 78. (1) L'association professionnelle des sociétés d'assurances fait appliquer par ses membres, la réglementation relative aux opérations d'assurances

(2) Elle sert d'intermédiaire entre les organismes d'assurances et l'autorité de tutelle.

Art. 79. (1) L'association professionnelle des sociétés d'assurances étudie les questions intéressant l'exercice de la profession d'assurance, la création des services communs de prévention, les accords sur le règlement des sinistres, etc.

(2) Elle provoque des accords sur ces questions et peut être chargée par l'autorité de tutelle d'assurer la direction effective des organismes communs que les compagnies d'assurances constitueraient.

Art. 80. En tant que de besoin, un décret complètera les dispositions ci-dessus en ce qui concerne la constitution, les modalités de fonctionnement et les compétences de l'association professionnelle des sociétés d'assurances.

Art. 81. (1) Lorsque les sociétés d'assurances concluent un accord quelconque en matière de tarifs, de conditions générales de contrats, d'organisation de la profession, de concurrence et de gestion financière, cet accord doit être porté par ses signataires et par lettre recommandée, à la connaissance de l'autorité de tutelle.

(2) Il en sera de même des conventions d'emprunts passées entre une société d'assurance et un organisme bancaire ou financier, ou tout autre bailleur de fonds.

76. (1) A National Insurance Board which is an advisory body shall be set up and placed under the authority of the Minister in charge of insurance.

(2) This body shall be required to give opinions on matters submitted to it by the supervisory authority, relating to the organization of contracts, the functioning of undertakings, the practice of related professions and the withdrawal of approvals.

(3) In this capacity, it shall, in particular, formulate proposals on the prevention of risks, the general conditions of insurance contracts, the rules of tariff fixing, the guiding principles in matters of reinsurance and the conditions for the compensation of accidents.

(4) A decree shall fix the duties, composition and conditions of functioning of the said Board.

77. (1) All insurance companies approved in accordance with the provisions of Article 31 above shall become members of the Professional Association of Insurance Companies constituted in pursuance of the regulations governing associations.

(2) The Professional Association of Insurance Companies shall be placed under the supervision of the Minister in charge of insurance.

(3) No other professional association or employers' group of insurance companies may be set up.

(4) The Association shall be administered by an Executive elected by the General Assembly of the Association.

(5) The rules and regulations of the Professional Association of Insurance Companies shall be submitted for the approval of the Minister with supervisory powers prior to their adoption and publication.

78. (1) The Professional Association of Insurance Companies shall cause its members to abide by the regulations governing insurance transactions.

(2) It shall act as an intermediary between insurance concerns and the supervisory authority.

79. (1) The Professional Association of Insurance Companies shall study questions relating to the practice of the insurance profession, the setting up of common prevention services, agreement on the settlement of claims, etc.

(2) It shall promote agreements on these questions and may be instructed by the supervisory authority to direct any joint bodies set up by insurance companies.

80. If need be, the provisions above, with regard to the setting up, the functioning and competence of the Professional Association of Insurance Companies, shall be supplemented by decree.

81. (1) Where insurance or reinsurance companies conclude any agreement on rates, general conditions of contracts, organization of the profession, competition or financial management, the signatories of the agreement shall notify the supervisory authority thereof by registered letter.

(2) The same shall apply to loan agreements signed between an insurance company and a banking or financial body, or any other creditor.

(3) L'accord ne peut être mis en application que si, après un délai de trois mois, l'autorité de tutelle n'y fait pas opposition.

TITRE VIII

Des sanctions et dispositions finales.

CHAPITRE PREMIER

Des sanctions.

Art. 82.— Indépendamment des sanctions prévues ci-dessus, la violation des dispositions législatives ou réglementaires sur les activités d'assurances peut entraîner la suspension ou le retrait de l'agrément.

Art. 83.— Toute violation des dispositions des Articles 3, 5, 9, 14, 18, 20, 21, 24 (paragraphe 3), 26, 27, 33, 34, 36 et 59, est sanctionnée par la nullité de l'acte ou document concerné.

Art. 84.— (1) Les infractions aux dispositions des Articles 1, 2, 3, 5, 6 à 10, 18, 21, 23 à 25 et à celles des Titres 3 à 8, sont punies d'une amende transactionnelle de 1.000.000 à 5.000.000 de francs CFA, infligée par l'autorité de tutelle.

(2) Si le contrevenant ne s'acquitte pas du montant de cette amende dans un délai de six (6) mois à partir de la notification de la décision le sanctionnant, l'autorité de tutelle transmet le dossier au Parquet.

(3) Au cas où le contrevenant est une personne morale, les poursuites sont diligentées à l'encontre de ses dirigeants.

Art. 85.— (1) Sont passibles d'un emprisonnement de huit à quinze jours et d'une amende de 1.000.000 à 5.000.000 de F CFA ou de l'une de ces deux peines seulement, sur plainte de l'autorité de tutelle les dirigeants de sociétés d'assurances qui méconnaissent les obligations ou interdictions relatives aux procédures de rétablissement de leurs entreprises telles que prévues dans le chapitre 4 du Titre 5 de la présente ordonnance.

(2) En cas de récidive, la peine d'emprisonnement pourra être portée à un mois et celle d'amende à 10.000.000 de F CFA.

Art. 86.— (1) Toute personne qui présente au public, en vue de leur souscription ou fait souscrire des contrats d'assurances pour le compte d'un organisme soumis au contrôle de l'Etat par la présente ordonnance et non agréé pour la branche d'assurance dans laquelle rentrent ces contrats, est punie d'une amende de 1.000.000 de F CFA à 5.000.000 de F CFA et d'un emprisonnement de douze mois à deux ans ou de l'une de ces deux peines seulement.

(2) En cas de récidive, ces peines sont doublées.

(3) Sont punies des mêmes peines les infractions aux dispositions des Articles 45 à 47 de la présente ordonnance.

(4) La juridiction ordonne obligatoirement, nonobstant les voies de recours, la publication de ses décisions et la fermeture de l'établissement prévues aux Articles 33 et 34 du Code Pénal.

(5) En cas de décision de fermeture de l'établissement ayant acquis l'autorité de la chose jugée, le ministère public ou l'autorité de tutelle saisit le présent du tribunal compétent aux fins de nomination par ordonnance rendue, sans frais, d'un liquidateur désigné sur proposition de cette autorité administrative. Ce liquidateur est de plein droit investi des attributions et devoirs du syndicat de faillite.

Art. 87.— Sont punis des peines de la banqueroute simple les dirigeants sociaux de droit ou de fait, les liquidateurs et, d'une façon générale toute personne ayant directement ou par personne interposée, administré, géré ou liquidé l'entreprise sous couvert ou aux lieux et place de ses représentants légaux qui ont, en cette qualité et de mauvaise foi :

1. Soit dans l'intention de retarder le retrait d'agrément de l'entreprise, employé des moyens ruineux pour se procurer des fonds;

2. Soit, après le retrait d'agrément de l'entreprise, payé ou fait payer irrégulièrement un créancier;

(3) The agreement may be enforced only if the supervisory authority does not put up objections within three months.

PART VIII

Penalties and final provisions.

CHAPTER I

Penalties.

82. Apart from the penalties provided for above, the breach of legislative and statutory provisions governing insurance activities may lead to the suspension or withdrawal of the agreement.

83. Any breach of the provisions of Articles 3, 5, 9, 14, 18, 20, 21, 24(3), 26, 27, 34, 36 and 59 shall be punishable by the nullity of the deed or document concerned.

84. (1) Any breach of the provisions of Articles 1, 2, 3, 5, 6 to 10, 18, 21, 23 to 25 and those of Parts 3 to 8 shall be punishable by a negotiable fine ranging from 1,000,000 to 5,000,000 CFA francs, imposed by the supervisory authority.

(2) Where the offender does not pay the fine within a period of 6 (six) months following the date of notification of the decision penalizing him, the supervisory authority shall forward the file to the Legal Department.

(3) Where the offender is a corporate body, legal action shall be taken against its managers.

85. (1) The managers of insurance companies who ignore the obligations or prohibitions relating to the re-establishment of their undertakings such as provided for under Part 5 Chapter 4 of this Ordinance shall be liable to imprisonment of eight to fifteen days and a fine ranging from 1,000,000 to 5,000,000 CFA francs or one of the two penalties only.

(2) In the event of repeated offence, the imprisonment may be increased to one month and the fine to 10,000,000 CFA francs.

86. (1) Any person who presents insurance contracts to the public for purchase or causes same to be purchased on behalf of a body subject to state control by this Ordinance which is not approved for the category of transactions to which the contracts relate shall be punishable by fine ranging from 1,000,000 CFA francs to 5,000,000 CFA francs and imprisonment ranging from twelve months to two years or one of the two penalties only.

(2) In case of repeated offence, these penalties shall be doubled.

(3) Any breach of the provisions of Articles 45 to 47 shall be punishable by the same penalties.

(4) The court shall, notwithstanding any remedy by law, order the publication of its judgment and the closure of the establishment as provided for under Sections 33 and 34 of the Penal Code.

(5) In the event of the closure of the establishment ordered in res judicata, the Legal Department or the supervisory authority shall request the President of the competent court to appoint, by an order issued without charges, a liquidator to be proposed by the administrative authority. This liquidator shall, without more, have the powers and duties of the body of creditors.

87. De facto or de jure business leaders, liquidators and, in general, any person who, directly or indirectly, administers, manages or liquidates an undertaking under the cover or on behalf of its legal representatives and who, in this capacity and in bad faith :

(1) Either with the intention of delaying the withdrawal of the approval of the undertaking uses extravagant means to get funds;

(2) Or, after the withdrawal of the agreement of the undertaking, irregularly pays or causes creditors to be paid;

3 Soit, en vue de soustraire tout ou partie de leur patrimoine, aux poursuites de l'entreprise en liquidation ou à celles des associés ou créanciers sociaux, détourné ou dissimulé, tenté de détourner ou de dissimuler une partie de leurs biens ou qui se sont frauduleusement reconnus des sommes qu'ils ne devraient pas.

Art. 88.— (1) Est puni des peines de l'abus de confiance prévues par l'Article 318 du Code Pénal tout liquidateur ou toute personne qui, ayant participé à l'administration de l'entreprise, se sera rendu acquéreur pour son compte directement ou indirectement, des biens de cette entreprise.

(2) Est puni des mêmes peines, tout liquidateur qui se sera rendu coupable de malversations dans sa gestion.

Art. 89.— Tous arrêts et jugements de condamnation en vertu des Articles 84 à 88 seront, aux frais des condamnés, affichés et publiés dans un journal d'annonces légales.

CHAPITRE 2

Des dispositions finales.

Art. 90.— Les organismes d'assurances agréés sous le régime précédent sont, dans un délai de six mois maximum à compter de la date de publication de la présente ordonnance et sous peine d'application des sanctions prévues au Chapitre 1 du présent Titre, tenus de se conformer aux nouvelles prescriptions.

Art. 91.— Sont abrogées toutes dispositions antérieures, contraires à la présente ordonnance, notamment l'ordonnance n° 73-14 du 10 mai 1973 fixant la réglementation applicable aux organismes d'assurances, modifiée par la loi n° 79-24 du 30 novembre 1979.

Art. 92.— La présente ordonnance sera enregistrée puis publiée au *Journal officiel* en français et en anglais.

Yaoundé, le 31 août 1985.

Le Président de la République
Paul Biya

(3) Or, with a view to withdrawing all or part of their share in order to pursue an undertaking being liquidated, business associates or creditors of the undertakings misappropriate, conceal, attempt to misappropriate or conceal part of their share, or persons who lay false claim to money they are not entitled to; shall be punishable by penalties for bankruptcy.

88. (1) Any liquidator or person who, having participated in the administration of an undertaking either directly or indirectly purchases for himself the property of the said undertaking shall be punishable by the penalties for breach of confidence, provided for under Article 318 of the Penal Code.

(2) Any liquidator who shall be found guilty of misappropriation of funds during his management shall be punishable by the same penalties.

89. All decisions and judgments sentencing culprits in accordance with Articles 84 to 88 shall be posted and published in the legal notices journal at the expense of the sentenced person.

CHAPTER II

Final provisions.

90. Insurance concerns approved under the foregoing system shall, within a maximum period of six months following the date of publication of this Ordinance and subject to the application of the penalties provided for under Chapter 1 of this Part, be bound to conform to the new prescriptions.

91. Any previous provisions repugnant to this Ordinance, in particular Ordinance No. 73-14 of 10 May 1973 to lay down regulations applicable to insurance concerns are hereby repealed.

92. This Ordinance shall be registered and published in the *Official Gazette* in English and French.

Yaounde, 31 August 1985.

Paul Biya
President of the Republic

ANNEX IV

DECREE No. 87-639 OF 9 MAY 1987,
TO FIX THE MINIMUM AMOUNT OF THE
REGISTERED OR INITIAL CAPITAL OF
INSURANCE COMPANIES.

↳ Décret n° 87-639 du 9 mai 1987

*fixant le montant minimum du capital social
ou du fonds d'établissement des sociétés d'assurances.*

Le Président de la République,

Vu la Constitution;

Vu l'ordonnance n° 85-003 du 31 août 1985 relative à l'exercice de l'activité d'assurance;

Vu le décret n° 73-570 du 24 septembre 1973 fixant le montant du capital social des sociétés anonymes d'assurances.

Decree No. 87-639 of 9 May 1987

*to fix the minimum amount of the registered
or initial capital of insurance companies.*

The President of the Republic,

Mindful of the Constitution;

Mindful of Ordinance No. 85-3 of 31 August 1985 relating to insurance business;

Mindful of Decree No. 73-570 of 24 September 1973 to fix the amount of the capital of limited liability companies engaged in insurance.

Décrète :

Article premier. — En application des dispositions des articles 3, 13, 17 et 26 de l'ordonnance n° 85-003 du 31 août 1985, les sociétés d'assurances doivent, selon leur statut juridique, constituer un montant initial minimum de capital social ou de fonds d'établissement tel que déterminé par le présent décret.

Art 2. — Les entreprises d'assurances pratiquant les opérations visées à l'alinéa 3 de l'article 1er de l'ordonnance précitée doivent justifier à leur constitution :

Pour les sociétés anonymes, d'un capital social minimum égal à 150 millions de francs CFA dont la moitié est intégralement libérée, non compris les apports en nature;

Pour les sociétés à forme mutuelle, d'un fonds d'établissement minimum égal à 100 millions de francs CFA intégralement souscrit;

— Pour les sociétés mutuelles, d'un fonds d'établissement minimum égal à 50 millions de francs CFA intégralement souscrit.

Art. 3. — Pour les sociétés d'assurances pratiquant les opérations des alinéas 1 et 2 de l'article 1er de l'ordonnance ci-dessus visée, les montants sont fixés de la manière suivante :

— 100 millions de francs CFA de capital social minimum pour les sociétés anonymes dont la moitié au moins est intégralement libérée, non compris les apports en nature.

— 50 millions de francs CFA de fonds d'établissement minimum intégralement souscrit pour les sociétés à forme mutuelle.

Art. 4. — Les minima fixés aux articles 2 et 3 précédents sont portés respectivement à 200 millions de francs CFA pour les sociétés anonymes et 150 millions de francs CFA pour les sociétés à forme mutuelle, lorsqu'elles opèrent à la fois dans les branches visées aux alinéas 1 et 2, et les branches de l'alinéa 3 de l'article 1er de l'ordonnance relative à l'exercice de l'activité d'assurance.

Art. 5. — Les sociétés d'assurances agréées avant la date de publication du présent décret et justifiant du montant réglementaire de la marge de solvabilité, seront dispensées des obligations édictées par le présent décret sous réserve d'une déclaration expresse adressée dans les six mois au ministre chargé des assurances.

Cette déclaration doit indiquer le niveau de la marge ainsi que les éléments ayant servi au calcul.

Toutefois, la dispense visée au paragraphe ci-dessus peut être retirée dès que l'entreprise ne satisfait plus aux exigences réglementaires en matière de solvabilité.

Art. 6. — Toute violation des dispositions du présent décret est sanctionnée par la nullité prévue à l'article 83 de l'ordonnance.

Hereby decrees as follows:

1. Pursuant to the provisions of Articles 3, 13, 17 and 26 of Ordinance No. 85-3 of 31 August 1985, insurance companies must, depending on their legal status, have a minimum registered capital or initial capital as laid down in this decree.

2. Insurance companies that carry out the transactions referred to in Article 1 (3) of the above-mentioned ordinance shall, at the time of their constitution, show proof of the following:

— for limited liability companies, a minimum initial capital not less than one hundred and fifty million CFA francs, half of which must be completely paid up, excluding contributions in kind;

— for mutual insurance companies, a minimum initial capital of not less than one hundred million CFA francs wholly subscribed;

— for mutual societies, a minimum initial capital of not less than fifty million CFA francs wholly subscribed.

3. In the case of insurance companies that carry out the transactions referred to Article 1 (1) and (2) of the above-mentioned ordinance, the amounts shall be as follows:

— for limited liability companies, a minimum initial capital of one hundred million CFA francs, not less than half of which shall be completely paid up excluding contributions in kind;

— for mutual insurance companies, a minimum initial capital of fifty million CFA francs wholly subscribed.

4. The minimum amounts fixed in Articles 2 and 3 above shall be increased to two hundred million CFA francs for limited liability companies and one hundred and fifty million CFA francs for mutual insurance companies respectively where these companies carry out transactions in the branches referred to in Article 1 (1), (2), and (3) of the ordinance relating to insurance business.

5. (1) Insurance companies that were approved before the date of publication of this decree and show proof of having the amount required for the margin of solvency shall be exempted from the obligations prescribed by this decree, provided that they forward a specific declaration within six months to the Minister in charge of insurance.

(2) The said declaration shall indicate the degree of solvency and the elements used in its evaluation.

(3) However, the exemption referred to above may be withdrawn as soon as the company ceases to fulfil the statutory requirements for solvency.

6. Any breach of the provisions of this decree shall be punishable by the nullity provided for in Article 83 of the ordinance.

Art. 7. - Est abrogé le décret n° 73-570 du 24 septembre 73 fixant le montant du capital social des sociétés anonymes d'assurances.

Art. 8. - Le présent décret sera enregistré puis publié au *Journal officiel* en français et en anglais.

Yaoundé, le 9 mai 1987.

Le Président de la République
Paul Biya

7. Decree No. 73-570 of 24 September 1973 to fix the amount of capital of limited liability companies engaged in insurance is hereby repealed.

8. This decree shall be registered and published in the *Official Gazette* in English and French.

Yaounde, 9 May 1987.

Paul Biya
President of the Republic

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