

## ANNEX 1

to the Local Law relating to Book III of the Insurance Code applicable in French Polynesia

### BOOK III COMPANIES<sup>1</sup>

#### PRELIMINARY TITLE

**Article LP 300-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the purposes of this Book, ‘partner supervisory authority’ means the supervisory authority of the State in which the head office of the insurance company operating in French Polynesia is located, with which French Polynesia has concluded a cooperation agreement in accordance with the terms and conditions set out in this Article.

In order to ensure the supervision of companies authorised in accordance with Article LP 321-1 whose head office is located outside French Polynesia, a cooperation agreement may be concluded with the supervisory authority of the State in which these companies have their head office.

This agreement may only be concluded on condition that the level of supervision in the State or territory in which these companies have their registered office provides guarantees at least equivalent to those provided by this Code.

This agreement defines the conditions under which the supervisory authority provides assistance to French Polynesia by transmitting information relating to the level of solvency of the company or other elements falling within the scope of the supervision and the implementation of a warning procedure in the event of a deterioration in the situation of the company.

It also indicates the conditions under which French Polynesia communicates to the partner supervisory authority the information gathered during inspections and the decisions adopted by French Polynesia in application of this Code.

**Article LP 300-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. An assistance agreement may be concluded between French Polynesia and the Prudential Control and Resolution Authority mentioned in Article L 612-1 of the Monetary and Financial Code. This agreement defines the conditions under which the Prudential Control and Resolution Authority provides assistance to French Polynesia for:

- the examination of applications for authorisation submitted by the companies referred to in 1° of I of Article LP 310-2 and by the companies referred to in 2° of I of Article LP 310-2, when the registered office of the latter is located in a State or territory not included in the list referred to in Article LP 321-2;

---

<sup>1</sup> Book III replaced by LP no. 2024-10 of 02/07/2024, with the exception of articles L.326-17 and L. 326-18 (art LP 3 JOPF of 02/07/2024 p. 4321 NS).

Articles L.326-17 and L. 326-18 are positioned after article LP 331-18.

- technical support for the drafting and application of insurance regulations in French Polynesia and the training of staff in the department responsible for carrying out inspection operations.

**Article LP 300-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

French Polynesia may request information relating to a company mentioned in 2° of I of Article LP 310-2 from a supervisory authority that is not a partner supervisory authority within the meaning of Article LP 300-1.

It may also agree with this authority to exchange information.

**Article LP 300-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

An Insurance Committee is hereby set up in French Polynesia, comprising representatives of the administration and an equal number of representatives of:

- the insurance industry
- consumers and businesses.

It is chaired by a representative of the administration.

As a forum for dialogue, the Insurance Committee is responsible for:

- identifying problems in the insurance market, in particular the lack of supply;
- proposing solutions to these issues and, where appropriate, relevant regulatory changes;
- ensuring that the range of products and services on offer is appropriate to the local context, taking into account economic and social issues.

The Insurance Committee does not deal with issues that fall within the remit of the Central Rates Office.

Each year, the Insurance Committee issues a report which is sent to the Minister of the Economy, who then makes it public. The report lists all the problems encountered by policyholders and operators in the insurance sector, as well as any solutions found.

An order issued by the Council of Ministers sets out the composition and operation of the Insurance Committee.

## TITLE I: GENERAL PROVISIONS

**Article LP 310-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The supervision of French Polynesia is exercised in the interests of policyholders, subscribers and beneficiaries of insurance and capitalisation contracts.

The following are subject to this supervision

1° - Companies which, in the form of direct insurance, enter into commitments the performance of which depends on the duration of human life, undertake to pay a capital sum in the event of marriage or the birth of children, or call on savings with a view to capitalisation and enter into specific commitments for this purpose;

2° - Companies which, in the form of direct insurance, cover the risk of bodily injury due to accident or illness;

3° - Companies which, in the form of direct insurance, cover other risks including those linked to assistance activities.

Mutual insurance companies governed by Local Law no. 2008-4 of 6 February 2008 on the status of mutual insurance companies in French Polynesia and carrying out insurance operations are considered to be insurance companies.

The *Caisse de prévoyance sociale* (Social Security Fund), governed by Order no. 1336 IT of 28 September 1956, as amended, on the organisation and operation of the *Caisse de prévoyance sociale* of French Polynesia, is not subject to the provisions of this code.

**Article LP 310-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I - Subject to the provisions of article LP 310-6, only the companies referred to in article LP 310-1, approved in accordance with article LP 321-1, whose registered office is located:

1° in French Polynesia;

2° outside French Polynesia, from their branches duly established in French Polynesia and managed by an authorised agent;

For the purposes of the provisions of this Code applicable to branches of the companies referred to in 2° of this Article, the term “authorised agent” shall be understood to mean “managing director”.

3° outside French Polynesia and which carry on business there without being established there.

II- Contracts entered into in breach of this article are null and void. However, this nullity is not enforceable against policyholders, subscribers and beneficiaries of contracts where they are acting in good faith.

**Article LP 310-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the operations mentioned in 2° and 3° of article LP 310-1, French Polynesia is considered to be the place where the risk is situated:

1° If the insured goods are located in French Polynesia, when the insurance relates either to buildings or to buildings and their contents insofar as the latter are covered by the same insurance policy;

2° If the vehicle is registered in French Polynesia, when the insurance relates to vehicles of any kind;

3° If the contract has been taken out in French Polynesia, when it is a contract for a period of four months or less, relating to risks incurred during travel, regardless of the branch to which these risks belong;

4° In all cases other than those mentioned in 1°, 2° and 3° above, if the policyholder's main residence is in French Polynesia or, where the policyholder is a legal entity, if the establishment of this legal entity to which the contract relates is located in French Polynesia.

**Article LP 310-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the operations mentioned in 1° of article LP 310-1, French Polynesia is considered to be the place of the commitment if the subscriber has his principal residence there or, if the subscriber is a legal entity, if the registered office or the establishment of this legal entity to which the contract relates is located there.

**Article LP 310-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Without prejudice to 2° and 3° of I of Article LP 310-2, a company that does not have its registered office in French Polynesia may carry out one of the operations mentioned in Article LP 310-1 only if it complies with the provisions of its national legislation or those applicable in the territory where its registered office is located.

**Article LP 310-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

It is forbidden to take out direct insurance of a risk or commitment located in French Polynesia within the meaning of Articles LP 310-3 and LP 310-4, with companies other than those referred to in Article LP 310-2.

However, the provisions of the first paragraph do not apply to the insurance of risks relating to sea and air transport.

In addition, the provisions of the first paragraph may be waived by decision of French Polynesia if it is found that insurance cover for a risk cannot be obtained from the insurance companies referred to in Article LP 310-2. This waiver is granted for a limited period determined on a case-by-case basis and may not exceed three years. It may be renewed under the same conditions.

Any person requesting a waiver under the third paragraph must apply to the competent administrative authority.

## TITLE II: ADMINISTRATIVE SYSTEM

### CHAPTER I: AUTHORISATION OF INSURANCE COMPANIES

**Article LP 321-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The companies referred to in Article LP 310-2 may not commence their operations until they have obtained an administrative authorisation issued by French Polynesia.

Approval is granted at the request of the company, for operations in one or more classes of insurance. The company may only carry out the operations for which it has been approved.

No authorisation may be granted to the same company for operations defined in 1° of article LP 310-1 and for operations defined in 3° of the same article.

**Article LP 321-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where an insurance company referred to in 1° of I of article LP 310-2 is a subsidiary of a company subject to the supervision of a prudential supervisory authority, the latter shall be consulted prior to the granting of authorisation.

The authorisation of the companies mentioned in 2° and 3° of I of article LP 310-2 may only be granted under the following cumulative conditions:

- the level of supervision in the State or territory in which the head office of these companies is located provides guarantees at least equivalent to those provided for in this code;
- the prudential supervisory authority of this State or territory has concluded a cooperation agreement with French Polynesia under the conditions set out in article LP 300-1.

An order of the Council of Ministers draws up the list of States or territories that meet these conditions.

By way of derogation from the provisions of the preceding paragraphs, the companies referred to in 2° of I of article LP 310-2 whose registered office is located in a State or territory not included in the list provided for in the preceding paragraph may nevertheless be authorised if they fulfil all the prudential obligations required of the companies referred to in 1° of I of article LP 310-2.

**Article LP 321-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In order to grant or refuse the administrative authorisation provided for in Article LP 321-1, French Polynesia checks that the following conditions are met:

- the technical and financial resources that the company proposes to implement are sufficient and appropriate with regard to its programme of activity. In particular, French Polynesia shall ensure that the company complies with the solvency margin set out in Article LP 323-2 ;
- the persons responsible for managing or administering the company and, in the case of the companies referred to in 2° of I of Article LP 310-2, the authorised agent, are of good repute and have the skills and experience required for their duties, which are assessed in accordance with the conditions set out in Article LP 331-3;
- for the companies mentioned in 1° of I of article LP 310-2, the distribution of their capital and the quality of their shareholders guarantee sound and prudent management;
- for the companies mentioned in 2° and 3° of I of article LP 310-2, the financial situation is satisfactory and, if the State in which the company's registered office is located is on the list mentioned in article LP 321-2, the company complies with the regulations of the State in which its registered office is located.

The granting of authorisation may be subject to compliance with commitments made by the applicant company.

The list of documents to be produced in support of an application for approval, drawn up or translated into French, is set by an order issued by the Council of Ministers.

If French Polynesia remains silent for more than three months from the date of receipt of the complete application for approval, this will be deemed to constitute an implicit decision to reject the application.

**Article LP 321-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In addition to cases of failure to comply with one or more of the requirements set out in article LP 321-3, French Polynesia shall refuse authorisation where the exercise of the company's supervisory role is likely to be hindered either by the existence of direct or indirect capital or control links between the applicant company and other natural or legal persons, or by the existence of legislative, regulatory or administrative provisions of the State or territory to which one or more of these persons are subject.

**Article LP 321-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The insurance company shall immediately inform French Polynesia when it:

- expressly renounces all or part of its authorisation by committing not to underwrite any new contracts ;
- does not make use of all or part of its authorisation within one year of publication of the authorisation decision in the Official Journal;
- has ceased to carry on the activity corresponding to all or part of its authorisation for two consecutive financial years.

French Polynesia shall immediately declare that the authorisation has lapsed in whole or in part.

In the event that an insurance company transfers its entire portfolio of contracts belonging to a given class, French Polynesia shall immediately declare the partial lapse of the authorisation for the class concerned.

An insurance company whose authorisation has lapsed shall remain subject to the supervision of French Polynesia until all the commitments arising from the contracts underwritten by the company have been fully and definitively settled with the policyholders and third party beneficiaries, or until its entire portfolio of contracts in the class or classes concerned has been the subject of a transfer authorised under the conditions set out in Article LP 331- 6.

## CHAPTER II - SUPERVISION OF INSURANCE COMPANIES

### Section I: Exercising control

**Article LP 322-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

French Polynesia continuously monitors the financial situation and operating conditions of the companies referred to in Article LP 310-1.

In particular, it shall ensure that these companies comply with solvency requirements and verify that they are able to meet at all times the commitments they have made to their policyholders, members or beneficiaries and do so effectively.

In order to carry out these tasks, it has the power to investigate and make findings in respect of the companies referred to in article LP 310-1, the power to take administrative police measures and the power to impose penalties.

In addition, it may subject to supervision any person who has received an underwriting or management mandate from an insurance organisation, or who subscribes to a group insurance contract, or who carries on, in any capacity whatsoever, the insurance distribution business referred to in article LP 511-1.

**Article LP 322-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Without prejudice to the special provisions set out in this Book, the provisions of the Local Law applicable to the investigation and establishment of administrative breaches of economic regulations and the implementation of administrative measures and sanctions by the administrative departments of French Polynesia shall apply to:

- the exercise of permanent surveillance and control as provided for in articles LP 322-1 and LP 322-6;
- the investigation and recording of administrative breaches of regulations in the field of insurance supervision, as well as administrative police measures and administrative sanctions taken in application of this book.

**Article LP 322-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The companies referred to in 1° of I of Article LP 310-2 shall notify French Polynesia of the appointment and reappointment of the Managing Director and Deputy Managing Directors, the

sole Managing Director, the members of the Management Board and any person called upon to perform equivalent functions.

French Polynesia may oppose the appointments and renewals mentioned in the first paragraph if it finds that the persons concerned do not meet the conditions of good repute, skills and experience applicable to them. This decision shall be taken after the persons concerned have been given the opportunity to comment on the information drawn up by French Polynesia.

The office or function of the persons whose appointment or renewal is opposed shall cease at the end of the period set by French Polynesia, after notification of the opposition decision.

The provisions of this article shall apply to the appointment and renewal of the authorised agent of the companies referred to in 2° of I of Article LP 310-2.

The terms of application of this article shall be specified by an order issued by the Council of Ministers.

**Article LP 322-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

As part of the supervisory and control duties provided for in this chapter, the Council of Ministers may determine, by order, the list, model, frequency and deadlines for the transmission of documents and information which must be periodically submitted to French Polynesia, as well as the compulsory terms of contracts and prohibited clauses.

French Polynesia may ask the statutory auditors of an insurance company for any information on the activity of the audited entity and on the due diligence they have carried out there as part of their assignment. The statutory auditors are then released from professional secrecy with regard to it.

**Article LP 322-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of failure to comply with an obligation to notify, declare or transmit statements, documents or data or in the event of opposition to the permanent surveillance mission provided for in this Book, the competent administrative authority may issue an injunction, possibly accompanied by a penalty payment, the amount and effective date of which it sets.

The amount of the penalty payment, paid into the budget of French Polynesia, is recovered in the same way as the latter's non-tax claims.

An order issued by the Council of Ministers sets the conditions for application of this article, and in particular the maximum daily amount of the penalty payment in the event of total or partial non-performance or late performance.

**Article LP 322-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The control of the persons mentioned in article LP 322-1 may be extended:

1° To its subsidiaries;

2° To legal entities that control it directly or indirectly within the meaning of article L. 233-3 of the French Commercial Code as applicable in French Polynesia;

3° To the subsidiaries of these legal entities;

4° To any other company or legal entity belonging to the same group;

5° To persons and organisations of any kind having entered, directly or indirectly, into a management, reinsurance or other agreement with this company that is likely to alter its operational or decision-making autonomy in any of its areas of activity.

**Article LP 322-7** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

When an audit report is drawn up, the draft report is brought to the attention of the audited entity's senior management, who may submit their observations, which are included in the final report.

The results of the audit are communicated to the audited entity's board of directors, supervisory board or any other body exercising equivalent supervisory functions, as well as, in the case of a company referred to in 2° of article LP 310-2, to the managing director.

They may also be communicated to the company's statutory auditors.

**Article LP 322-8** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. The obligation of professional secrecy, defined in article 226-13 of the French Penal Code, in its locally applicable version, applies to all persons called upon in the course of their duties or responsibilities to intervene in the context of the investigation and control of the persons mentioned in article LP 322-1 or of a sanction procedure mentioned in articles LP 322-14 or LP 514-3. Information gathered in the course of these operations or proceedings is covered by professional secrecy.

II. This secrecy is not enforceable:

1° Against the judicial authority acting within the framework of either a judicial liquidation procedure opened against a person subject to the control of French Polynesia, or criminal proceedings;

2° Against the administrative courts seized of a dispute relating to the activities of French Polynesia;

3° Against the *Cour des Comptes* (Court of Auditors), in the context of the audits entrusted to it by law.

III. French Polynesia is authorised to communicate to the Institute of Statistics of French Polynesia the data sent to it by the bodies subject to its control and which are useful for the establishment of public statistics. The information thus collected is covered by professional secrecy under the conditions applicable to French Polynesia.

IV. The information gathered as part of the control by French Polynesia may be transmitted to the supervisory authorities referred to in articles LP 300-1 and LP 300-3, to the *Fonds de garantie des assurances obligatoires de dommages* (Guarantee fund for compulsory non-life insurance), to the body referred to in II of article LP 512-1 and to the *Institut d'émission d'outre-mer* (French Overseas Issuing Bank), for the performance of their duties.



## Section II: Administrative police measures

**Article LP 322-9** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Any breach or infringement of a regulatory provision in the field of insurance supervision may be the subject of an injunction under the conditions laid down in the regulations governing the implementation of administrative measures and sanctions in economic matters.

In addition, when a person subject to control by virtue of article LP 322-1 behaves in a way that jeopardizes its equity capital or the fulfilment of its commitments to policyholders, French Polynesia may issue an injunction, under the conditions set out in the regulations referred to in the previous paragraph, to take all measures in a given field aimed at restoring or strengthening its financial equilibrium or correcting its practices. It may require the company to submit for its approval a recovery plan comprising all appropriate measures to restore or strengthen its financial situation, improve its management methods or ensure that its organization is suited to its activities or development objectives.

**Article LP 322-10** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

When the solvency of a company subject to the control of French Polynesia under article LP 310-1 or when the interests of its customers, policyholders, members or beneficiaries are compromised or likely to be compromised, French Polynesia takes the necessary precautionary measures.

To this end, it may:

- 1° Place the company under special surveillance;
- 2° Temporarily restrict or prohibit certain operations or activities of the company, including the acceptance of premiums or deposits;
- 3° Temporarily suspend, restrict or prohibit the free disposal of all or part of the controlled company's assets;
- 4° Require the controlled company to sell its activities;
- 5° Order an insurance company to suspend or limit the payment of surrender values, the option of arbitration, the payment of policy loans or the option of surrender;
- 6° Enjoin the insurance company to file, within a time limit set by it and which may not be less than four months, a request for the transfer of all or part of its portfolio of insurance contracts, operations or contract or settlement enrolment forms under the conditions set out in article LP 331-6.
- 7° Order, after noting the failure of the transfer procedure provided for in 5°, the automatic transfer of all or part of the portfolio of insurance contracts;
- 8° Decide to prohibit or limit the distribution of dividends to shareholders or the remuneration of shares to members of the company;
- 9° Suspend one or more managers of the audited company.

**Article LP 322-11** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

French Polynesia may appoint a provisional administrator to a person mentioned in article LP 322-1 that French Polynesia controls, to whom all powers of administration, management and representation of the legal entity in French Polynesia are transferred. The provisional administrator disposes of the movable and immovable property of the legal entity in the interests of proper administration.

This appointment is made either at the request of the directors when they consider that they are no longer able to carry out their duties normally, or at the initiative of French Polynesia when the management of the controlled entity can no longer be ensured under normal conditions, or in the event of the suspension of one or more of its directors.

**Article LP 322-12** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

French Polynesia shall decide on the measures provided for in Articles LP 322-10 and LP 322-11 following an adversarial procedure.

Where justified by particular urgent circumstances, French Polynesia may, on a provisional basis, order the protective measures listed in Articles LP 322-10 and LP 322-11 without an adversarial procedure. An adversarial procedure is then immediately initiated for the purpose of lifting, adapting or confirming these precautionary measures required by the emergency situation.

**Article LP 322-13** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Without prejudice to the provisions of article LP 322-14, the administrative authorisation provided for in article LP 321-1 may be withdrawn by French Polynesia:

- in the event of a prolonged lack of activity;
- if the balance between the company's financial resources and its activity is upset;
- if the public interest so requires, in the event of substantial changes affecting the distribution of its capital, the status of its shareholders or the composition of its management bodies;
- when the commitments mentioned in the sixth paragraph of article LP 321-3 are no longer respected even though the company's situation justifies maintaining them.

### **Section III - Administrative penalties**

**Article LP 322-14** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where a company referred to in Article LP 310-1 has failed to comply with a regulatory provision in the field covered by insurance supervision or has failed to comply with an injunction, French Polynesia may impose one or more of the following administrative penalties on it or, where applicable, on its directors, partners or third parties with authority to manage or administer, depending on the seriousness of the breach:

1° Warning;

2° Reprimand;

3° Ban on carrying out certain operations and any other restrictions on the exercise of the activity;

- 4° Temporary suspension of one or more directors of the company or of its managing agent;
- 5° Compulsory resignation of one or more directors or of the managing agent;
- 6° Partial withdrawal of authorisation;
- 7° Total withdrawal of authorisation.

The sanctions mentioned in 3° and 4° may not exceed ten years in duration.

French Polynesia may impose a financial penalty either instead of or in addition to these penalties. The amount of this penalty must be commensurate with the seriousness of the breaches committed, but may not exceed 3% of the pre-tax turnover achieved in French Polynesia by the perpetrator of the practices during the last financial year for which the accounts have been closed, calculated over a period of twelve months. This maximum is increased to 5% in the event of a further breach of the same obligation within five years of the expiry or limitation period of the previous penalty.

These penalties are imposed and may be publicised in accordance with the conditions set out in the regulations relating to the implementation of administrative measures and penalties in economic matters.

## **CHAPTER III: PRUDENTIAL RULES APPLICABLE TO INSURANCE COMPANIES**

### **Section I: General principles.**

**Article LP 323-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The companies referred to in Article LP 310-1 are subject to prudential obligations relating in particular to their technical provisions, investments and own funds.

These prudential obligations are proportionate to the nature, scale and complexity of the risks inherent in the activities of insurance companies. Where appropriate, account is also taken of the supervision exercised by a partner supervisory authority.

An order issued by the Council of Ministers specifies the terms and conditions for the application of this article.

**Article LP 323-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The companies referred to in 1° of I of Article LP 310-2 must at all times comply with a solvency margin calculated in accordance with the procedures defined by order of the Council of Ministers.

The companies referred to in 2° and 3° of I of article LP 310-2 must at all times comply with the solvency margin calculated in accordance with the procedures laid down by the legislation of the State or territory in which these companies have their registered office.

By way of derogation from the second paragraph, the companies referred to in 2° of the I of article LP 310-2 whose registered office is located in a State or territory not included in the list

referred to in article LP 321-2 must comply with the solvency margin referred to in the first paragraph.

## **Section II: Basic prudential regime (none)**

## **Section III: Enhanced prudential regime (none)**

### **CHAPTER I: PENAL PROVISIONS**

**Article LP 324-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Any breach of the provisions of article LP 310-6 will be punished by a fine of XPF536,000. The judgement will be published at the expense of the convicted persons or companies liable under civil law.

**Article LP 324-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Carrying out in French Polynesia any of the transactions mentioned in 1°, 2° and 3° of Article LP 310-1 without complying with the provisions of Articles LP 310-2 and LP 310-5 is punishable by three years' imprisonment and a fine of 8,900,000 CFP francs.

Legal entities declared criminally liable, under the conditions set out in article 121-2 of the French Penal Code, for the offences defined in this article shall incur, in addition to a fine in accordance with the terms set out in article 131-38 of the French Penal Code, the penalty set out in 4° of article 131-39 of the same code.

Persons who have taken out a policy in good faith with a company whose closure has been ordered by the court benefit from the same privileges and guarantees as those reserved by this code for policyholders and beneficiaries in the event of the liquidation of an insurance company.

**Article LP 324-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Criminal offences under this Book shall be investigated and recorded under the conditions laid down in respect of trade-related offences by Local Law no. 2009-12 of 3 August 2009 relating to the investigation and recording of economic offences.

## **TITRE III - RULES GOVERNING THE FORMATION AND OPERATION OF INSURANCE COMPANIES**

### **CHAPTER I: PROVISIONS COMMON TO ALL INSURANCE COMPANIES**

## Section I: General principles

**Article LP 331-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

A resolution of the Assembly of French Polynesia determines the conditions of formation and the general rules of operation and governance of the companies subject to the control of French Polynesia by virtue of Article LP 310-1 with the aim of ensuring that these companies comply with solvency requirements, are able to meet at all times the commitments they have made to their policyholders, members or beneficiaries and actually meet them.

It specifies the conditions under which the provisions of articles L 210-1 et seq. of the Commercial Code as applicable in French Polynesia and the laws governing public limited companies are applicable to these companies.

**Article LP 331-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The actual head office of insurance companies having their registered office declared in French Polynesia must be located in the territory of French Polynesia.

The actual head office of insurance companies referred to in 2° and 3° of I of article LP 310-2 must be located in the same territory as their head office.

**Article LP 331-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - No person may, directly or indirectly, manage or direct a company subject to the control of French Polynesia by virtue of Article LP 310-1, nor have the power to sign on its behalf, nor be an authorised agent, if they have been convicted within the last ten years of:

1° For a felony;

2° A prison sentence or a suspended prison sentence of at least six months for:

- a) One of the offences provided for in Title 1 of Book III of the Criminal Code and for offences provided for by special laws and punishable by the penalties provided for fraud and breach of trust;
- b) Concealment or one of the offences assimilated to or similar to concealment set out in Section 2 of Chapter 1 of Title II of Book III of the Criminal Code;
- c) Money laundering;
- d) Active or passive bribery, influence peddling, embezzlement and misappropriation of property;
- e) Forgery, falsification of securities or other fiduciary values issued by the public authorities, falsification of marks of authority;
- f) Participation in a criminal association;
- g) Drug trafficking;
- h) Pimping or one of the offences provided for in sections 2 and 2a of Chapter V of Title II of Book II of the Criminal Code;
- i) One of the offences provided for in section 3 of the same chapter;
- j) One of the offences under the legislation on commercial companies set out in Title IV of Book II of the Commercial Code as applicable in French Polynesia;
- k) Bankruptcy;
- l) Loan-sharking

- m) Any of the offences provided for by the laws and regulations applicable to gambling and games of chance;
- n) Infringement of the laws and regulations governing foreign financial relations;
- o) Tax fraud;
- p) Any of the offences provided for in Local Law 2008-12 of 26 September 2008 on the certification, conformity and safety of products and services, Local Law 2009-12 of 3 August 2009 on the investigation and detection of economic offences, Local Law 2021-42 of 7 September 2021 on the promotion of exemplary economic practices and Local Law 2016-28 of 11 August 2016 on consumer protection;
- q) One of the offences provided for in the Monetary and Financial Code;
- r) Any of the offences provided for in Articles LP 5611-1 and LP 5611-2 of the French Polynesia Labour Code;
- s) Offences against automated processing systems as provided for in Chapter III of Title II of Book III of the Criminal Code;
- t) Any of the offences against insurance legislation or regulations.

3° If, within the last ten years, he has been convicted of an offence involving dismissal from his position as a public or ministerial officer.

II. The incapacity provided for in the first paragraph applies to any person in respect of whom a definitive personal bankruptcy order or another definitive prohibition order has been issued under the conditions provided for in Book VI of the Commercial Code applicable in French Polynesia.

III. - Persons exercising a function, activity or profession mentioned in the first paragraph of I who are subject to one of the convictions provided for in I and II must cease their activity within one month of the date on which the court decision becomes final.

IV. - The fact that a person is not subject to the incapacity provided for in this Article does not prejudice the assessment by French Polynesia of compliance with the conditions required for approval or registration in the register referred to in Article LP 512-1.

V. - Persons called upon to manage a company, firm or corporation referred to in the first paragraph of I must be of good repute and have the competence and experience required for their duties.

The members of the board of directors or supervisory board of the persons referred to in article LP 310-1 must be of good repute and have the necessary skills and experience.

In assessing the skills of the persons concerned, French Polynesia shall take into account their training and experience in a manner proportionate to their duties, in particular the experience acquired as chairman of a board or committee. It shall also take into account, in its assessment of each person, the skills, experience and responsibilities of the other members of the body to which that person belongs.

Where offices have been held previously, competency is presumed on the basis of the experience acquired. In the case of new members, it takes into account the training from which they may benefit throughout their term of office.

VI. The provisions of this article apply to the authorised agent appointed by the companies referred to in 2° of I of Article LP 310-2.

**Article LP 331-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Operations other than those mentioned in Article LP 310-1 may only be carried out by the companies mentioned in Article LP 310-1 if they remain of limited importance in relation to the company's overall activities.

They may accept as reinsurance business in the classes for which they are authorised.

They may underwrite insurance contracts on behalf of other authorised companies with which they have concluded an agreement to this effect.

**Article LP 331-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Companies subject to supervision by French Polynesia under article LP 310-1, which provide legal protection insurance, opt for one of the following management methods:

- members of staff responsible for managing claims in the “legal protection” branch or for providing legal advice relating to this management may not at the same time carry out a similar activity in another branch practised by the company employing them, or in another company with which the company has financial, commercial or administrative links;
- “legal protection” claims are handled by a legally separate company;
- the legal protection insurance contract provides for the right of the insured to entrust the defence of his interests to a lawyer or a qualified person of his choice, as soon as he is entitled to claim the intervention of the insurance under the policy.

## **Section II: Portfolio transfer.**

**Article LP 331-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance companies authorised in accordance with the provisions of article LP 321-1 may be authorised, under the conditions defined in this article, to transfer all or part of their portfolio of contracts, with its rights and obligations, to one or more other authorised companies.

Creditors are notified of the request for transfer by a notice published in the *Journal officiel de la Polynésie française* (Official Journal of French Polynesia - JOPF), which gives them three months to submit their observations.

French Polynesia approves the transfer by government order if it is satisfied that the transfer does not prejudice the interests of creditors and policyholders.

Where the transferee company is a company referred to in 2° and 3° of I of Article LP 310-2, French Polynesia approves the transfer only if the supervisory authorities of the State in which the transferee company has its registered office certify that, taking into account the transfer, the transferee company has the necessary solvency margin.

Approval makes the transfer enforceable against policyholders, contract subscribers and beneficiaries as well as creditors and excludes the application of the right to outbid provided for in article L. 141-19 of the Commercial Code applicable in French Polynesia.

The transfer is enforceable from the date of publication in the *Journal officiel de la Polynésie française* of the approval decision mentioned in the third paragraph of this article.

Policyholders have the option of cancelling the contract within two months of the date of such publication.

### **Section III: Privileges.**

**Article LP 331-7** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The movable assets of companies with their registered office in French Polynesia are subject to a general privilege to secure the settlement of their obligations towards policyholders and beneficiaries of contracts, as well as the preferential reimbursement of premiums paid by individuals who have exercised their right of withdrawal pursuant to Article LP. 132-5-1 of this Code. This privilege ranks after the 5° of Article 2101 of the Civil Code as applicable in French Polynesia.

The same applies to immovable property. This privilege ranks after the 2° of Article 2105 of the Civil Code as applicable in French Polynesia.

For the companies referred to in paragraphs 2 and 3 of Article LP 310-2, the movable and immovable assets representing technical provisions and guarantees are subject to a special privilege to secure the settlement of their direct insurance operations for contracts underwritten or performed in French Polynesia.

**Article LP 331-8** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where the assets of an insurance company are insufficient to cover its regulated obligations, or where the financial situation of such company is such that the interests of policyholders and beneficiaries of contracts are likely to be compromised in the short term, the immovable property forming part of the company's assets may be encumbered with a mortgage registered at the request of French Polynesia. Where the company's authorization is withdrawn, this mortgage is automatically established as of the date of withdrawal of authorization.

**Article LP 331-9** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For companies engaging in the operations mentioned in Article LP. 310-1, the claim secured by the privilege or legal mortgage is determined at the amount of the premiums to be reimbursed by preference in the event of contract termination and the mathematical provision, reduced, if applicable, by the advances on policies, including interest, and increased, if applicable, by the amount of the individual account of profit participation opened in the name of the insured, when these profits are not payable immediately after the liquidation of the financial year in which they were generated.



For other types of insurance, the secured claim is determined, with respect to direct insurance, at the amount of indemnities due following losses and the amount of advance premiums paid or premium provisions corresponding to the period for which the risk has not been covered, with indemnity claims being paid by preference.

For indemnities due in the form of annuities, it is determined at the amount of the mathematical provision.

**Article LP 331-10** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

When a company mentioned in 1° of I of article LP 310-2 has established guarantees outside French Polynesia for the benefit of creditors holding rights under insurance contracts executed in the country where such guarantee was established, the privilege provided for in the first paragraph of Article LP 331-7 shall not have the effect of placing these creditors in a more favourable position than that of creditors holding rights under contracts executed in FP.

#### **Section IV: Reorganization and/or liquidation.**

**Article LP 331-11** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The judicial reorganization or liquidation proceedings instituted by Book VI of the Commercial Code, as applicable in French Polynesia, may only be initiated against an enterprise mentioned in Article LP 310-2 at the request of French Polynesia.

The competent court may be seized by the public prosecutor with a request to open such proceedings after consultation with French Polynesia. The provisions of Article LP 331-14 are applicable to the judicial reorganization procedure.

The president of the court may not be seized with a request to open a conciliation procedure instituted by Article L 611-3 of the Commercial Code, as applicable in French Polynesia, against aforementioned enterprises.

When judicial liquidation proceedings are opened against an enterprise mentioned in Article LP 310-1, the approval of such enterprise shall be withdrawn in accordance with the provisions of Article LP 322-14. In this case, the provisions of Articles LP 331-14, LP 331-15, and LP 331-18 shall apply. The enterprise shall remain subject to the control of French Polynesia until all obligations arising from the contracts entered into by the enterprise have been fully and finally settled with the insured parties and third-party beneficiaries, or have been transferred under the conditions provided for in Article LP 331-6.

The liquidator may, with the agreement of French Polynesia, continue certain activities of the insurance enterprise concerned to the extent necessary and appropriate for the needs of the liquidation.

**Article LP 331-12** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The decision of French Polynesia, issued under the conditions mentioned in Article LP 322-13 or Article LP 322-14, pronouncing the total withdrawal of the administrative approval of an insurance company, shall automatically result, as of its publication, if it concerns a company

headquartered in French Polynesia, in the dissolution of the company or, if it concerns a company not headquartered in French Polynesia, in the liquidation of the assets and liabilities of the special balance sheet of its operations in French Polynesia.

Judicial liquidation is initiated at the request of French Polynesia. It is governed by Chapter II of Title II of Book VI of the Commercial Code applicable in French Polynesia, subject to the provisions of this chapter. French Polynesia appoints a liquidator responsible for the verification of insurance claims and the inventory of assets directly related to liabilities, such as claims against insured parties, ceding companies, reinsurers, and co-insurers.

Concurrently, the competent court appoints, in the opening judgment, one or more judicial representatives as liquidators, who may be chosen outside the list of judicial representatives for the reorganization and liquidation of companies. This liquidator is responsible for the inventory of other assets and liquidation operations.

In the same decision, the court appoints a supervising judge to oversee the liquidation operations. This judge is assisted in the performance of their duties by one or more commissioners appointed by French Polynesia.

**Article LP 331-13** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The supervising judge may, at any time, order verifications to be carried out on documents and on-site by the commissioners.

**Article LP 331-14** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of the opening of judicial liquidation proceedings against an insurance company, the insured parties, policyholders, members, and beneficiaries of insurance contracts are, without prejudice to Article L.113-2 and contractual obligations, exempted from the declaration required under Article L 621-43 of the Commercial Code applicable in French Polynesia. An order issued by the Council of Ministers shall determine the conditions for the application of this article.

**Article LP 331-15** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The liquidator shall, if applicable, proceed with the preferential restitution of premiums paid by persons who have exercised their right of withdrawal in accordance with Article L 132-5-1 of this Code.

**Article LP 331-16** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of the withdrawal of the administrative approval granted to a company mentioned in paragraphs 2 and 3 of Article LP 310-1, the effects of all contracts entered into by the company shall cease automatically at noon on the fortieth day following the publication in the Official Journal of French Polynesia of the decision by French Polynesia pronouncing the withdrawal.

Premiums or contributions due before the date of the decision by French Polynesia pronouncing the withdrawal of approval, and unpaid as of that date, are owed in full to the company. However, they are only definitively acquired by the company in proportion to the guaranteed

period up to the day of termination. Premiums or contributions falling due between the date of the decision by French Polynesia pronouncing the withdrawal of approval and the date of automatic termination of the contracts are owed only in proportion to the guaranteed period.

However, with regard to marine insurance contracts, exceptions may be arranged.

**Article LP 331-17** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Following the publication in the Official Journal of French Polynesia of the decision by French Polynesia pronouncing the withdrawal of the administrative approval granted to a company mentioned in paragraph 1 of Article LP 310-1, the contracts entered into by the company remain governed by their general and specific terms until the decision by French Polynesia, as provided in the following paragraph, is published in the Official Journal of French Polynesia. However, the liquidator may, with the approval of the supervising judge, suspend the payment of all sums due under the contracts. Premiums collected by the liquidator are deposited into a special account subject to separate liquidation.

French Polynesia, upon the request of the liquidator and based on the report of the supervising judge, may set the date on which the contracts cease to have effect, authorize their transfer in whole or in part to one or more companies, extend their maturity, decide on the reduction of sums payable in case of life or death, as well as benefits granted and surrender values, in order to reduce the value of the company's commitments to the amount that the liquidation situation allows to cover.

The payment of periodic premiums is suspended ten days after the appointment of the liquidator and until the publication of the decision by French Polynesia setting the date on which the contracts cease to have effect. In the event of a portfolio transfer, the suspended payments are made to the transferee company, reduced by the reduction rate defined by French Polynesia.

**Article LP 331-18** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The court may declare the nullity of one or more transactions carried out by the directors of a company with a liquidator following the withdrawal of administrative approval, provided that the party making the request proves that the persons who contracted with the company were aware that the assets were insufficient to cover the privileged claims of the insured and that the impugned transaction would have the effect of reducing this guarantee.

## **Section V: Sanctions.**

**Article LP 331-19** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Disregard of the incapacities provided for in Article LP 331-3 is punishable by three years' imprisonment and a fine of XPF 44,749,000.

**Article LP 331-20** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Any person convicted under Article LP 331-19 may not be employed in any capacity in the company where they held executive, management, or board of directors or supervisory board

positions, or where they had signing authority, nor in any subsidiaries of that company subject to the control of French Polynesia pursuant to Article LP 310-1.

Any person who violates the prohibition set forth in the preceding paragraph, as well as their employer, shall be subject to the penalties provided for in Article LP 331-19.

**Article LP 331-21** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The provisions of Articles L 242-2, L 242-6 (2° to 4°), and L 242-8 of the Commercial Code, as applicable in French Polynesia, shall apply to insurance companies, even when they do not fall within their scope by right.

**Article LP 331-22** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Articles L 626-2 to L 626-5, L 626-12, and L 626-16 to L 626-19 of the Commercial Code, as applicable in French Polynesia, shall apply to any person who has the direct or indirect power to commit an insurance company, including, in particular, the authorised agent of an insurance company headquartered outside French Polynesia but established in French Polynesia, even when they do not fall within their scope by right.

**Article LP 331-23** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Any violation of the provisions of Article LP 322-4, 4° of Article LP 322-10, and Articles LP 331-5 and LP 332-1 shall be punished by the penalties mentioned in Article LP 324-1.

**Article LP 331-24** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of liquidation carried out under the conditions provided for in Article LP 331-11, the following provisions shall apply:

1° If the financial situation of the company dissolved following the total withdrawal of administrative approval reveals an insufficiency of assets in relation to the liabilities to be settled during the liquidation, the court may, in the event of mismanagement contributing to this insufficiency of assets, decide, at the request of the liquidator or even on its own motion, that the debts of the company shall be borne in whole or in part, with or without joint and several liability, by all de jure or de facto directors, whether remunerated or not, or by some of them. The action shall be time-barred three years from the filing of the liquidator's fourth semi-annual report with the court registry.

2° Directors who have engaged in the conduct mentioned in Articles L625-4 and L625-5 of the Commercial Code, as applicable in French Polynesia, may be subject to the sanctions provided for in Book VI, Title II, Chapter V of the same code and may be relieved of disqualifications and prohibitions under the conditions provided for in Article L625-10 of the same code.

## CHAPTER II: SPECIFIC PROVISIONS FOR INSURANCE COMPANIES WITH THEIR HEAD OFFICE IN FRENCH POLYNESIA

### Section I: General principles.

**Article LP 332-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The companies mentioned in Article LP 310-1 with their head office in French Polynesia must be established as a public limited company or a mutual insurance company.

### Section II: Insurance and capitalization joint-stock companies.

**Article LP 332-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Changes in the shareholding structure of the companies referred to in 1° of I of Article LP 310-2 must be notified to French Polynesia. The acquisition or extension of direct or indirect holdings in these companies must be authorized by French Polynesia. When a reduction or transfer of direct or indirect holdings is notified to it, French Polynesia verifies that such operation does not undermine the conditions subject to which the authorization granted to the concerned company was issued. An order issued by the Council of Ministers determines the notification thresholds for the proposed operations, as well as the criteria for the assessment, by French Polynesia, of the operations mentioned in the second sentence of this paragraph. This regime aims to safeguard the interests of policyholders and to ensure that the company maintains sound and prudent management.

The authorization granted for the operations mentioned in the first paragraph may be subject to compliance with commitments made by one or more of the persons having submitted an authorization request.

In the event of non-compliance with the provisions set out in the order issued by the Council of Ministers referred to in the first paragraph of this article, and without prejudice to the provisions of Article L.233-14 of the Commercial Code as applicable in French Polynesia, at the request of French Polynesia, the Public Prosecutor, or any shareholder, the judge may suspend, until the situation is regularized, the exercise of voting rights attached to the shares or equity interests of the companies referred to in the first paragraph of this article that are held irregularly, directly or indirectly.

**Article LP 332-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of the termination of the mandate of one or more members of the board of directors, following an opposition decision taken by French Polynesia under Article LP 322-3, the companies mentioned in 1° of I of Article LP 310-2 and constituted as public limited companies shall fill the vacant positions under the conditions provided for in Article L.225-24 of the Commercial Code applicable in French Polynesia.

**Article LP 332-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of the termination of the mandate of one or more members of the supervisory board, following an opposition decision taken by French Polynesia under Article LP 322-3, the

companies mentioned in 1° of I of Article LP 310-2 and constituted as public limited companies shall fill the vacant positions under the conditions provided for in Article L.225-78 of the Commercial Code as applicable in French Polynesia.

**Article LP 332-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of the termination of the mandate of one or more directors elected by the employees, following an opposition decision taken by French Polynesia under Article LP 322-3, the companies mentioned in 1° of I of Article LP 310-2 and constituted as public limited companies shall fill the vacant positions under the conditions provided for in Article L.225-34 of the Commercial Code as applicable in French Polynesia.

**Article LP 332-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the event of the termination of the mandate of the Chairman of the Board of Directors, following an opposition decision taken by French Polynesia under Article LP 322-3, the companies mentioned in 1° of I of Article LP 310-2 and constituted as public limited companies shall fill the vacant positions under the conditions provided for in Article L.225-17 of the Commercial Code as applicable in French Polynesia.

### **CHAPTER III - SPECIFIC PROVISIONS FOR INSURANCE COMPANIES WITH THEIR HEAD OFFICE OUT OF FRENCH POLYNESIA**

**Article LP 333-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Any insurance company mentioned in 2° du I of Article LP 310-2 must be represented in French Polynesia by a authorised agent. If the authorised agent is a natural person, they must reside in French Polynesia. If the authorised agent is a legal entity, its head office must be established in French Polynesia, and the natural person specifically designated to represent it must comply with the provisions applicable to the authorised agent.

### **CHAPTER IV - ACCOUNTING AND STATISTICAL PROVISIONS (None)**

## ANNEX II

to the Local Law relating to Book V of the Insurance Code applicable in French Polynesia

### BOOK V INSURANCE DISTRIBUTORS

(replaced, LP n° 2024-10 of 02/07/2024 art LP 4 JOPF of 02/07/2024 p. 4321 NS)

#### TITLE 1: INSURANCE DISTRIBUTION

##### Chapter 1: Scope of Application, Definitions, and Professional and Organizational Requirements

##### Section I: Scope and definitions

**Article LP 511-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Insurance distribution is the activity of providing recommendations on insurance contracts, presenting, proposing, or assisting in the conclusion of such contracts, or carrying out other preparatory work for their conclusion, or contributing to their management and execution, particularly in the event of a claim.

Also considered as insurance distribution is the provision of information on one or more insurance contracts based on criteria chosen by the policyholder or member on a website or through other means of communication, and the establishment of a ranking of insurance products including a comparison of prices and products, or a premium discount, when the policyholder or member can conclude the contract directly or indirectly through the website or by other means of communication.

For the purposes of this book, membership in a mutual insurance scheme or a collective contract is deemed equivalent to an insurance contract.

II. - The following activities are not considered insurance distribution within the meaning of I:

1° The provision of information on an occasional basis in the context of another professional activity, where the provider does not take any further steps to assist in the conclusion or execution of an insurance contract;

2° The activity consisting exclusively of managing, assessing, and settling claims;

3° The mere provision of data and information on potential policyholders to insurance intermediaries or insurance companies, where the provider does not take any further steps to assist the policyholder or member in concluding an insurance contract;

4° The mere provision of information on insurance products, on an insurance intermediary, or on an insurance company to potential policyholders, where the provider does not take any further steps to assist the policyholder or member in concluding an insurance contract.

III. - An insurance distributor is any insurance intermediary, any ancillary insurance intermediary, or any insurance company referred to in Article LP 310-2.

An insurance intermediary is any natural or legal person other than an insurance company and its staff and other than an ancillary insurance intermediary, who, for remuneration, engages in or carries out insurance distribution activities.

An ancillary insurance intermediary is any person other than a credit institution, an investment firm, or a financing company who, for remuneration, engages in or carries out insurance distribution activities, provided that the following conditions are met:

- 1° Insurance distribution does not constitute the principal professional activity of that person;
- 2° The person distributes only insurance products that are complementary to a good or service;
- 3° The insurance products concerned do not cover life insurance or civil liability risks, unless such coverage is complementary to the good or service provided as part of the principal professional activity of the intermediary

IV. - For insurance distribution activities, the employer or principal is civilly liable, in accordance with the provisions of Article 1384 of the Civil Code as applicable in French Polynesia, for damage caused by the fault, imprudence, or negligence of their employees or agents acting in such capacity, who are considered, for the purposes of this article, as employees, notwithstanding any agreement to the contrary.

**Article LP 511-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the purposes of Article LP 511-1, the presentation, proposal, or assistance in the conclusion of an insurance operation is considered to include any act by a natural or legal person to solicit or collect the subscription to a contract or the adherence to such a contract, or to orally or in writing explain to a potential policyholder or member, for the purpose of such subscription or adherence, the terms of coverage of a contract.

The preparatory work for the conclusion of an insurance contract referred to in I of Article LP 511-1 includes, on the one hand, all activities related to the animation of networks of insurance distributors or the organization by an insurance intermediary of the network of insurance intermediaries or ancillary insurance intermediaries it uses, and, on the other hand, all analysis and advisory work carried out with a view to the presentation, proposal, or conclusion of a contract. They do not include activities involving the provision of information or advice on an occasional basis in the context of a professional activity other than that mentioned in the first paragraph.

**Article LP 511-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)



I. - The activity of distribution as an insurance intermediary or ancillary insurance intermediary may only be carried out for remuneration by the following categories of persons:

1° Insurance brokers, natural persons and companies registered in the Trade and Companies Register in French Polynesia for insurance brokerage activities. These persons carry out distribution in accordance with the modalities mentioned in paragraph (b) or (c) of II of Article LP 521-2;

2° General insurance agents, natural or legal persons, holding a mandate or temporarily appointed for a maximum period of two years, non-renewable, to perform the functions of a general insurance agent. These persons carry out distribution in accordance with the modalities mentioned in paragraph (a) of II of Article LP 521-2;

3° Insurance agents, self-employed natural persons and legal entities other than general insurance agents, mandated for this purpose by an insurance company. These persons carry out their activities in accordance with the modalities mentioned in paragraph (a) or (b) of II of Article LP 521-2;

4° Mandated insurance intermediaries, self-employed natural persons and legal entities mandated by a natural or legal person mentioned in 1°, 2°, and 3° above.

5° Salaried natural persons appointed for this purpose:

- a) Either by an insurance company;
- b) Or by a natural or legal person mentioned in 1° above;
- c) Or by a natural or legal person mentioned in 2° above;
- d) Or by a natural or legal person mentioned in 3° above;
- e) Or by a natural or legal person mentioned in 4° above.

The activity of the persons referred to in 3° and 4° of this article is limited to the presentation, proposal, or assistance in the conclusion of an insurance operation within the meaning of Article LP 511-1, and possibly to the physical collection of premiums or contributions, and, in addition, with respect to life insurance and capitalization, to the physical delivery of sums due to policyholders or beneficiaries.

This limitation does not apply to:

- Credit institutions and financing companies as defined in Article L 511-1 of the Monetary and Financial Code;
- Persons exercising mandates in maritime, river, or air transport insurance, excluding all other lines of business.

II. - An intermediary may operate under several categories among those mentioned in 1° to 4° of I of this article.

**Article LP511-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - The remuneration referred to in III of Article LP 521-1 shall mean any commission, fee, any other type of payment, or any benefit of any kind, economic or otherwise, proposed or offered in connection with insurance distribution activities.

II. - Remuneration allocated for distribution activities may only be retroceded, in whole or in part, to one of the intermediaries referred to in I of Article LP 511-3.

At the request of the latter, the intermediary shall disclose to the natural or legal person considering subscribing to or joining an insurance contract due to their professional activities the amount of the commission and any other remuneration paid by the insurance company for the proposed contract. This obligation applies when the intermediary operates under the modalities provided for in paragraph (c) of II of Article LP 521-2 and presents, proposes, or assists in concluding a contract for that person, where the annual premium exceeds the amount set by an order issued by the Council of Ministers.

III. - The above provision does not prevent the retrocession of a referral commission to introducers whose role is limited to connecting the policyholder and the insurer and one of the intermediaries referred to in Article LP 511-3, or to referring one to the other.

## **Section II: Professional Requirements**

**Article LP 511-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - To protect the interests of potential policyholders or members, insurance distributors and their staff whose activities consist in providing recommendations on insurance contracts, presenting, proposing, or assisting in the conclusion of such contracts, or carrying out other preparatory work for their conclusion, must possess, prior to commencing their activity, the appropriate knowledge and skills enabling them to fulfil their duties and meet their obligations adequately.

II. - Insurance intermediaries and the staff of insurance companies, as well as the staff of insurance intermediaries carrying out the activities mentioned in I, shall comply with the requirements for continuous professional training and development to maintain an adequate level of performance corresponding to the function they hold and the relevant market.

III. - Persons within the management structure of the companies referred to in I and II who are responsible for the distribution of insurance products, as well as all other persons directly involved in insurance distribution, must possess the professional knowledge and skills necessary to perform their tasks.

IV. The persons referred to in II and III shall demonstrate compliance, by themselves and, where applicable, by their employees, with the applicable requirements for professional knowledge and skills set out in I and II of this article.

V. An order issued by the Council of Ministers shall specify the modalities for implementing this article.

**Article LP 511-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance intermediaries, natural persons working for an insurance company or an insurance intermediary who are responsible for insurance distribution activities, as well as staff directly involved in such activities, must possess the integrity necessary for their functions, this condition being verified in accordance with the provisions of I to V of Article LP 331-3 applicable to them.

Persons responsible for ancillary insurance distribution shall also meet this integrity requirement.

### **Section III: Organizational Requirements**

**Article LP 511-7** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

To ensure compliance with the requirements set out in Articles LP 511-5 and LP 511-6 by staff engaged in insurance distribution activities, insurance companies shall approve, implement, and regularly update their appropriate internal policies and procedures. They shall establish within their organization a function responsible for ensuring the proper implementation of the approved policies and procedures and shall communicate to French Polynesia the name of the person responsible for this function.

These companies shall create, maintain, and update registers containing all relevant documents regarding the application of the provisions of Articles LP 511-5 and LP 511-6.

**Article LP 511-8** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

All persons required to receive or disclose information in connection with the provisions of this chapter shall be bound by professional secrecy under the conditions set out in Article LP 322-8.

## **Chapter II: General Principles Relating to Insurance Intermediation**

### **Section I: Registration Obligation**

**Article LP 512-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Insurance intermediaries and ancillary insurance intermediaries as defined in article LP 511-1 must be registered in a single register of intermediaries, which is freely accessible to the public.

The same intermediary may not have more than one registration number.

Decisions relating to registration in the register are made by French Polynesia.

Registration, which may be renewed each year, on a date set by order of the Council of Ministers, may be subject to the prior payment of annual registration fees set by order of the Council of Ministers.

An order issued by the Council of Ministers specifies the conditions for registration on this register and determines the information that must be made public.

II. - When French Polynesia decides not to examine applications for registration and maintain the register itself, it may entrust this public interest task to a body with legal personality and made up of members from the fields of insurance, banking and finance.

In the event that the collection of registration fees is also entrusted to a legal entity other than French Polynesia, this task shall be subject to a financial mandate under the conditions laid down by the regulations in force in French Polynesia.

III. - The provisions of this article shall not apply to natural persons who are employees of an insurance intermediary or of an insurance intermediary on an ancillary basis.

**Article LP 512-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance companies that use the services of intermediaries must ensure that such intermediaries are registered in the single register of insurance intermediaries.

## **Section II: Other Conditions for Access and Practice.**

**Article LP 512-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I- Upon their registration or the renewal thereof, insurance intermediaries and ancillary insurance intermediaries shall provide French Polynesia with the information necessary to verify the conditions relating to access to and practice of the intermediation activity.

II- Insurance intermediaries and ancillary insurance intermediaries shall promptly inform French Polynesia when they no longer meet the conditions for access to and practice of the intermediation activity. In such cases, French Polynesia shall order the removal of the corresponding registration.

### **Subsection 1: Integrity Conditions**

**Article LP 512-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The provisions of Article LP 331-3 shall apply to insurance intermediaries and ancillary insurance intermediaries who are natural persons acting in their own name, persons who manage, administer, or direct legal entities acting as intermediaries, persons who are members of a supervisory body, have signing authority on behalf of, or are directly responsible for intermediation activities within these intermediaries, as well as employees of insurance companies who are directly responsible for intermediation activities.

### **Subsection 2: Professional Competence Conditions**

**Article LP 512-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Insurance intermediaries and ancillary insurance intermediaries who are natural persons acting in their own name, persons who manage, administer, or direct legal entities acting as intermediaries or insurance companies, persons who are members of a supervisory body, have

signing authority on behalf of, or are directly responsible for intermediation activities within these intermediaries, as well as employees of these intermediaries or companies, shall be subject to professional competence conditions that take into account the activities carried out by these persons and the products distributed.

These conditions shall be demonstrated by:

- Either the completion of a professional internship;
- Or professional experience;
- Or a diploma, title, or certificate.

An order issued by the Council of Ministers shall specify the modalities for implementing this article, taking into account the nature of the activities carried out by these persons and the products distributed.

### **Subsection 3: Professional Liability Insurance**

**Article LP 512-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Every insurance intermediary and ancillary insurance intermediary shall take out a professional liability insurance policy covering the financial consequences of their professional liability. They shall be exempt from this obligation:

- If such insurance or an equivalent guarantee is already provided to them by an insurance company, an insurance intermediary, or another company on whose behalf they act or by whom they are mandated;
- Or if these companies or this intermediary assume full responsibility for their actions.

In all cases, intermediaries must be able to demonstrate their compliance with this obligation at any time.

An order issued by the Council of Ministers shall determine:

- the minimum amount of coverage under the insurance contract per claim and per year for a single intermediary;
- The maximum rate of any deductible per claim.

II. - The insurance policy, the coverage of which takes effect on the date set pursuant to Article LP 512-1 for a period of twelve months, shall be tacitly renewed on the 1<sup>st</sup> of January of each year.

Any suspension of coverage, termination of the tacit renewal, or cancellation of the insurance policy shall be promptly notified by the insurer and the intermediary to French Polynesia.

III. - Any person with an interest may request from the competent administrative department the name of the company that issued the professional liability insurance certificate to the intermediary, as well as the references of the insurance policy to which the certificate relates.

### **Subsection 4: Financial Guarantee**

**Article LP 512-7** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Every insurance intermediary and ancillary insurance intermediary who, even occasionally, collects funds intended to be paid either to an insurance company or to policyholders, or who uses a non-agent representative to transmit such funds, must obtain a financial guarantee specifically allocated to the reimbursement of these funds to policyholders, unless such representative can themselves provide such a guarantee.

This guarantee may only result from a surety bond issued by a credit institution, a financing company, or an insurance company governed by this Code.

An order issued by the Council of Ministers shall determine the minimum amount of the financial guarantee and the conditions for its implementation.

II. - The guarantor may require the submission of all accounting records and documents.

III. - Any person with an interest may request from the competent administrative department the name of the company that issued the professional financial guarantee certificate to the intermediary, as well as the references of the contract to which the certificate relates.

IV. - The surety bond, which takes effect on a date set by an order issued by the Council of Ministers for a period of twelve months, shall be tacitly renewed on the 1<sup>st</sup> of January of each year. The amount of the guarantee shall be revised upon the renewal of the bond.

V. - The obligation provided for in this article shall not apply to payments for which the intermediary has received a written mandate from an insurance company expressly authorizing them to collect premiums or contributions and, where applicable, to settle claims.

In all cases, intermediaries must be able to demonstrate their compliance with this obligation at any time.

**Article LP 512-8** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The guarantee shall cease due to the termination of the contract at its expiry. It shall also cease upon the death or cessation of activity of the guaranteed person or, in the case of a legal entity, upon its dissolution. Any suspension of the guarantee, termination of the bond, or cessation of the guarantee shall be promptly notified by the guarantor and the intermediary to French Polynesia.

In no case shall the guarantee cease before the expiration of a period of three clear days following the date on which French Polynesia is informed by the guarantor of the cessation of the guarantee.

In all cases provided for in the preceding paragraphs, the cessation of the guarantee shall not be enforceable against the creditor for claims arising during the validity period of the surety bond.

### Chapter III: Derogations from General Principles for Ancillary Insurance Intermediaries

**Article LP 513-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The obligations mentioned in this book shall not apply to ancillary insurance intermediaries when all the following conditions are met:

1° The insurance contract is complementary to the good or service provided by a supplier and covers:

- a) Either the risk of malfunction, loss, including theft, or damage to the good or non-use of the service;
- b) Or damage to or loss of luggage, including theft, and other risks related to travel;

2° The amount of the insurance premium calculated on an annual basis does not exceed an amount defined by an order issued by the Council of Ministers, with a maximum limit of XPF 80,000;

3° By derogation from 2°, where the insurance contract is complementary to a service mentioned in 1° and the duration of this service is equal to or less than three months, the amount of the premium per person does not exceed an amount defined by an order issued by the Council of Ministers, with a maximum limit of XPF 30,000.

**Article LP 513-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The company or insurance intermediary that carries out distribution activities through an ancillary insurance intermediary referred to in Article LP 513-1 shall ensure that:

1° Information is made available to the potential policyholder or member, prior to the conclusion of the contract, on the identity and address of the intermediary, as well as on the complaint procedures;

2° Appropriate and proportionate measures are taken to ensure compliance with the provisions of Article LP 521-1 and to take into account the requirements and needs of the client before proposing the contract;

3° The insurance product information document referred to in Article L 112-2 of this Code is provided to the potential policyholder or member before the conclusion of the contract;

4° The potential policyholder or member is informed of the possibility of purchasing the good or service provided by the supplier separately.

## **Chapter IV: Control of Access and Practice Conditions for Distribution Activities**

### **Section I: Justifications Required from Persons Authorized to Present Insurance or Capitalization Operations**

(None)

### **Section II: Special control procedures for the conditions of professional competence.**

(None)

### **Section III: Special control procedures for integrity requirements.**

(None)

### **Section IV: Miscellaneous Provisions and Penalties.**

**Article LP 514-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Violations of the provisions of Chapter II of Title 1 of Book V is punishable by two years' imprisonment and a fine of XPF 715,990, or by one of these two penalties only.

**Article LP 514-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Presenting contracts for subscription or having contracts subscribed on behalf of a company not authorised to carry out the corresponding operations in French Polynesia is punishable by a fine of XPF 357,995. In the event of a repeat offence, a six-month prison sentence may also be imposed.

The fine provided for in this article shall be imposed for each contract proposed or subscribed, but the total fines incurred may not exceed XPF 715,990.

**Article LP 514-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where a person referred to in Article LP 511-1, other than an insurance company, has failed to comply with a regulatory provision in the area under the supervision of French Polynesia, or has failed to comply with an injunction, French Polynesia may impose one or more of the following administrative penalties on that person or, where applicable, on its directors, partners or third parties with management or administration powers, depending on the seriousness of the breach:

1° Warning;

2° Reprimand;



3° Ban on carrying out certain intermediation transactions and any other restrictions on the exercise of this activity;

4° Temporary suspension of one or more directors of the intermediary organisation;

5° Compulsory resignation of one or more directors of the intermediation organisation;

6° Removal from the register mentioned in article LP 512-1;

7° Ban on carrying on the business of intermediation.

The sanctions mentioned in 3°, 4° and 7° may not exceed ten years in duration.

French Polynesia may impose a financial penalty either instead of or in addition to these penalties. The amount of this penalty must be commensurate with the seriousness of the breaches committed, but may not exceed 3% excluding tax of the turnover achieved in French Polynesia by the perpetrator of the practices during the last financial year ended, calculated over a period of twelve months. This maximum is increased to 5% in the event of a further breach of the same obligation within five years of the expiry or limitation period of the previous penalty.

These penalties are imposed and may be publicised in accordance with the conditions laid down in the regulations relating to the implementation of administrative measures and penalties in economic matters.

**LP. 514-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)  
Criminal offenses under this book shall be investigated and recorded under the conditions provided for offenses related to commerce by the Local Law No. 2009-12 of 03 August 2009, relating to the investigation and recording of economic offenses.

**LP. 514-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)  
Breaches of the provisions of this book shall be investigated, recorded, sanctioned, and/or subject to an injunction measure under the conditions provided by the applicable Local Law regarding the investigation and recording of administrative breaches of economic regulations and the implementation of administrative measures and sanctions by the administrative departments of French Polynesia.

## **TITLE II: INFORMATION TO BE PROVIDED BY DISTRIBUTORS AND CONDUCT RULES**

### **Chapter 1: Provisions Applicable to All Insurance Contracts**

#### **Section I: General Principles**

**Article LP 521-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Insurance distributors shall act honestly, impartially, and professionally, and in the best interests of the policyholder or member.

II- Without prejudice to the regulatory provisions in force relating to consumer information and protection, all information, including advertising communications addressed by the insurance distributor to a potential policyholder or member, must be clear, accurate, and not misleading. Advertising communications must be clearly identifiable as such.

III. - Insurance distributors shall not be remunerated, or remunerate or evaluate the performance of their personnel, in any way that is inconsistent with their obligation to act in the best interests of the policyholder or member. In particular, an insurance distributor shall not make any arrangements by way of remuneration, sales targets or otherwise which might encourage him or his staff to recommend a particular insurance product to a potential policyholder or member when that distributor could offer another insurance product which better meets the requirements and needs of the potential policyholder or member.

## Section II: Information to be Provided

**Article LP 521-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Prior to the conclusion of an insurance contract, the insurance intermediary shall provide the potential policyholder or member with information relating to their identity, address, registration, complaint procedures, and recourse to a mediation process, as well as, where applicable, the existence of financial ties with one or more insurance companies. They shall also specify whether they provide a recommendation service regarding the insurance contracts they distribute.

II. - Prior to the conclusion of an insurance contract, the insurance intermediary must:

1° Provide indications regarding the provision of this contract:

a) If they are contractually obligated to work exclusively with one or more insurance companies, the intermediary shall indicate this to the potential policyholder or member and inform them of the names of these insurance companies;

b) If they are not contractually obligated to work exclusively with one or more insurance companies but are unable to base their analysis on a sufficient number of insurance contracts offered on the market, the intermediary shall inform the potential policyholder or member of the names of the insurance companies with which they can and do work;

c) If they are not contractually obligated to work exclusively with one or more insurance companies and claim to provide a recommendation service based on an impartial and personalized analysis, they are required to analyse a sufficient number of insurance contracts offered on the market to be able to recommend, based on professional criteria, the contract or contracts that would be most suitable for the needs of the potential policyholder or member;

2° Indicate whether, in relation to this contract, they work:

a) On a fee basis, i.e., in the form of remuneration paid directly by the policyholder or member;

- b) On a commission basis, i.e., remuneration included in the insurance premium;
- c) On the basis of any other type of remuneration, including any economic benefit, proposed or offered in connection with the insurance contract; or
- d) On the basis of a combination of the types of remuneration mentioned in a, b, and c;

3° Where the policyholder or member is required to pay fees, the insurance intermediary shall communicate the amount of such fees or, where this is not possible, the method of calculation.

III. - The policyholder or member shall be informed of changes affecting any of the information mentioned in II if they make payments under the insurance contract after its conclusion, other than ongoing premiums and scheduled payments.

IV. - Prior to the conclusion of an insurance contract, the ancillary insurance intermediary shall provide the potential policyholder or member with information relating to their identity, address, registration, complaint procedures, recourse to a mediation process, and the nature of the remuneration received for the distribution of the contract.

**Article LP 521-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

When distributing an insurance contract, and prior to the conclusion of this contract, the insurance company shall provide the potential policyholder or member with information relating to its identity, address, status as an insurance company, complaint procedures, and recourse to a mediation process. It shall also inform the potential policyholder or member of the nature of the remuneration received by its staff for the distribution of the contract.

The policyholder or member shall be informed of changes occurring after the conclusion of the insurance contract that affect the information mentioned in the preceding paragraph, if they make payments under the insurance contract after its conclusion, other than ongoing premiums and scheduled payments.

### **Section III: Conduct Rules**

**Article LP 521-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

I. - Prior to the conclusion of any insurance contract, the distributor referred to in Article LP 511-1 shall specify in writing, based on information obtained from the potential policyholder or member, their requirements and needs, and shall provide them with objective information about the proposed insurance product in a clear, accurate, and non-misleading manner to enable them to make an informed decision.

The distributor shall recommend a contract that is consistent with the requirements and needs of the potential policyholder or member and shall specify the reasons for this recommendation.

II. - Without prejudice to the provisions of I, prior to the conclusion of a specific contract, where the insurance distributor offers the potential policyholder or member a personalized recommendation service, this service shall consist in explaining why, among several contracts or several options within a contract, one or more contracts or options best meet their requirements and needs.

III. - The clarifications mentioned in I and II of this article and in Article LP 522-5, which are based in particular on the information provided by the potential policyholder or member, shall be adapted to the complexity of the proposed insurance contract. These clarifications shall be communicated to the potential policyholder or member in a clear, accurate, and non-misleading manner to enable them to understand the consistency of the proposed contract with their requirements and needs and to make an informed decision.

IV. - Prior to the subscription or adherence to a contract referred to in Article LP 522-1, the distributor shall comply with the provisions of Article LP 522-5, by derogation from I and II of this article.

**Article LP 521-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The obligations set out in Articles LP 521-2 to LP 521-4 shall not apply to the presentation of a contract covering the risks referred to in Article LP 111-6.

**Article LP 521-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The communication of information provided by the distributor to the policyholder or member pursuant to Articles LP 521-2 to LP 521-4 and LP 522-1 to LP 522-6 shall be made on paper.

The communication may also be made on a durable medium other than paper, provided that this medium is appropriate to the commercial relationship between the distributor and the policyholder or member and that the latter has chosen this mode of communication after being offered both options by the distributor.

The information mentioned in the first paragraph may also be provided via a website if it is addressed personally to the policyholder or member or if the following conditions are met:

1° The use of this means is appropriate to the commercial relationship between the distributor and the policyholder or member;

2° The policyholder or member has consented to the use of this means;

3° The distributor has notified the policyholder or member electronically of the website address and the location on the website where this information can be found;

4° Access to the aforementioned information on the website is guaranteed for a reasonable period ensuring its availability for consultation by the policyholder or member.

## **Chapter II: Additional Requirements for Capitalization Contracts and Certain Life Insurance Contracts**

### **Section I: Prevention of Conflicts of Interest**

**Article LP 522-1** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In addition to the obligations imposed on them under Articles LP 521-1, LP 521-2, and LP 521-3, the intermediary or insurance company engaged in the distribution of individual life insurance contracts with surrender values or the subscription of capitalization contracts shall implement effective organizational and administrative arrangements to take all appropriate measures to prevent conflicts of interest as defined in Article LP 522-2 from harming the interests of their policyholders. These arrangements shall be proportionate to the activities carried out, the insurance products sold, and adapted to the types of distributor.

**Article LP 522-2** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

In the course of their insurance distribution activities, intermediaries and insurance companies shall take all appropriate measures to detect conflicts of interest that may arise between themselves, including with their respective managers and staff, with any person directly or indirectly linked to them by a control relationship, and with their policyholders or members, or between two policyholders or two members, during the exercise of insurance distribution activities.

Where the arrangements put in place by the intermediary or insurance company in accordance with Article LP 522-1 to manage conflicts of interest are not sufficient to ensure, with a reasonable degree of certainty, that the risk of harming the interests of the potential policyholder or member will be avoided, the intermediary or insurance company shall inform the latter, prior to the conclusion of any insurance contract, of the general nature or sources of such conflicts of interest.

## **Section II: Information to be Provided**

**Article LP 522-3** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Without prejudice to the provisions of Articles LP 521-1 and LP 521-2, the intermediary or insurance company shall provide the potential policyholder or member, prior to the conclusion of any contract referred to in Article LP 522-1, with the following information:

1° An indication of whether or not they will receive the periodic assessment of the suitability of the recommended investment products to the requirements and needs of policyholders and members, as provided for in Article LP 522-6;

2° Information on the contracts and proposed investment strategies, including appropriate guidance and warnings on the risks inherent in these contracts or certain proposed investment strategies;

3° Information on all related costs and charges to be communicated, including any additional distribution costs not already included in the costs and charges specified in the key information documents, particularly those not caused by the occurrence of an underlying market risk. All such costs and charges shall be presented in an aggregated manner to enable the potential policyholder or member to understand their cumulative effect on the investment return. If requested by the potential policyholder or member, a breakdown of additional distribution costs shall be provided.

This information shall be provided to the policyholder or member regularly, at least annually, during the lifetime of the investment. It shall be presented in a clear, accurate, and non-misleading manner, enabling potential policyholders or members to understand the nature and risks of the insurance-based investment product offered to them and, consequently, to make informed investment decisions.

**Article LP 522-4** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Intermediaries or insurance companies shall be deemed to comply with the obligations set out in I of Article LP 521-1, Article LP 522-1, or Article LP 522-2 when they pay or receive fees or commissions, or provide or receive a non-monetary benefit in connection with the distribution of a contract referred to in Article LP 522-1, to or from any party, excluding the policyholder or member or a person acting on behalf of the policyholder or member, only in cases where the payment or benefit:

1° Does not have a negative effect on the quality of the service provided to the policyholder or member; and

2° Does not impair compliance with the obligation of the intermediary or insurance company to act honestly, impartially, and professionally in the best interests of their policyholders or members.

### **Section III: Conduct Rules**

**Article LP 522-5** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The intermediary or insurance or capitalization company shall recommend a contract that is consistent with the requirements and needs of the potential policyholder or member and shall specify the reasons for this recommendation. To this end, the intermediary or company shall inquire about the policyholder's or member's financial situation, investment objectives, and their knowledge and experience in financial matters.

The clarifications mentioned in the first paragraph shall be adapted to the complexity of the proposed insurance or capitalization contract and shall enable the determination of the suitability of the proposed contract for the potential policyholder or member.

For contracts with guarantees expressed in units of account, the intermediary or insurance or capitalization company shall communicate, prior to the subscription or adherence to a contract referred to in Article LP 522-1, detailed information specifying, for each unit of account, the gross performance, net performance, and fees charged over a period defined by an order issued by the Council of Ministers. This information shall include, in particular, any commission retrocessions received in connection with the financial management of the assets representing the commitments expressed in units of account by the insurance company, its delegated managers, including in the form of a collective investment scheme, or the depository of the contract's assets under conditions defined by an order issued by the Council of Ministers.

Where the intermediary or company recommends bundled services or products, they shall verify the suitability of the bundled offer as a whole.

II.- Without prejudice to the provisions of I, prior to the subscription or adherence to a contract referred to in Article LP 522-1, and where a personalized recommendation service is provided by the intermediary or insurance or capitalization company to the potential policyholder or member, this service shall consist of explaining why, among different contracts or different investment options within a contract, one or more contracts or options are more suitable to their requirements and needs, and in particular more aligned with their risk tolerance and ability to bear losses.

**Article LP 522-6** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Where an intermediary or insurance company has informed the policyholder or member that they would conduct a periodic assessment of the suitability of the recommended investment products, this assessment shall include an updated statement on how the insurance-based investment meets the preferences, objectives, and other characteristics of the policyholder or member.

Where the policyholder or member does not provide the information mentioned in Article LP 522-5, the intermediary or insurance or capitalization company shall warn them prior to the conclusion of the contract.

## **TITRE III: SPECIAL PROVISIONS FOR INSURANCE BROKERS AND BROKERAGE COMPANIES**

### **Single Chapter**

**Article LP 530** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

Uninsured persons who have made payments to a broker or brokerage company registered in the register referred to in Article LP 512-1, relating to contracts subject to an apparent commitment by one of the companies mentioned in Article LP 310-1, shall be guaranteed by said company when the professional liability insurance of the broker or brokerage company that received these payments cannot be invoked.

The insurer that has provided the guarantee under the provisions of the preceding paragraph shall be subrogated to the rights and actions of the insured under those of Article LP 512-7.

## **TITLE IV: SPECIAL PROVISIONS FOR GENERAL INSURANCE AGENTS**

## **Single Chapter.**

**Article LP 540** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

The status of general insurance agents and its amendments, after being negotiated and established by the relevant professional organizations, shall be approved by an order issued by the Council of Ministers.

## **TITLE V: SPECIAL PROVISIONS FOR AGENTS WHO ARE NOT GENERAL INSURANCE AGENTS**

### **Single Chapter.**

**Article LP 550** (created, LP n° 2024-10 of 02/07/2024 art LP 3 JOPF of 02/07/2024 p. 4321 NS)

For the purposes of I of article LP 512-1, agents who are not general insurance agents, who carry out their activity in the name and on behalf of an insurance company and under its full responsibility, and who do not collect either premiums or sums intended for clients, may be registered in the single register of intermediaries by the company which appoints them. This company is responsible for verifying that they meet the conditions for taking up and pursuing the activity of intermediary.

Where French Polynesia has entrusted an organisation with the task of keeping the register, the insurance company is obliged to provide this organisation, at its request, with any information required to verify the conditions of access to and practice of agents other than general insurance agents whose registration it has examined.

An order issued by the Council of Ministers shall specify the modalities for implementing this article.