

**TURKS AND CAICOS ISLANDS**

**DOMESTIC INSURANCE BILL 2015**

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

CLAUSE

1. Short title and commencement
2. Interpretation
3. Application of Ordinance

PART II

GENERAL

*Unauthorised Insurance Business*

4. Prohibition against unauthorised business and dealings with unlicensed insurers

*Restricted Deposits*

5. Amount and form of deposits
6. Release of deposits

*Licensing and Approvals*

7. Categories of licences
8. Application for, and restrictions on issuance of, licence
9. Form and display of licence
10. Approval of auditor, actuary, etc.
11. Approval of external insurers
12. Licensee fit and proper assessment
13. Responsibility of licensee, fit and proper assessment
14. Appointment of approved auditor
15. Audit and audit report
16. Obligations of auditor
17. Power of Commission to appoint auditor

PART III

INSURERS

*Financial Resource Requirements*

18. Maintenance of business in financially sound condition
19. Minimum capital and solvency margin requirements
20. Commission may direct local insurer to increase its capital, etc.
21. Restrictions in investment and trading in derivatives
22. Restrictions on reinsurance of risks

*Annual Returns, Financial Statements and Audit*

23. Annual returns
24. Preparation of financial statements
25. Group accounts
26. Auditor may rely on actuarial valuations

*Appointment of Actuary and Internal Auditor*

27. Appointment of actuary
28. Appointment of internal auditor
29. Internal audit function
30. Internal audit reports to be submitted to Commission

*Governance*

31. Local insurer to have adequate number of directors
32. Appointment and termination of directors and senior officers
33. Foreign insurer to appoint representative in the Islands
34. Management systems and controls
35. Risk management strategy, policies, systems and controls
36. Board to ensure risks for insurer covered by risk management strategy, etc.
37. Underwriting and pricing strategy, policies, systems and controls
38. Investment strategy, policies, systems and controls
39. Application of sections 34 to 38 to foreign insurer
40. Procedures to detect fraud

*Other Obligations of, and Restrictions on, Insurers*

41. Requirements with respect to domestic business

42. Separate accounts for long term and general insurance business
43. Further provisions relating to long term business accounts
44. Statutory fund
45. Method of creating trust
46. Segregation of assets by class of business
47. Provision relating to assets held in trust
48. Restriction on trustee dealing with assets
49. Insurer to furnish particular of liabilities and assets with respect to fund
50. Assets in statement deemed to be assets of statutory fund
51. Depreciation of trust assets
52. Substitution of securities
53. Restriction on transfer of surplus assets of statutory fund
54. Appropriation of profits towards surplus
55. Inaccurate or misleading particulars
56. Insurer to furnish Commission with information
57. Investments to be made in corporate name
58. Prohibitions relating to acquisition of shares and loans
59. Dividend not to impair capital
60. Preparation of certified actuarial valuation of assets and liabilities

*Merger, Transfer of Business and Run-off*

61. Merger, transfer of business and run-off
62. Restrictions on compromises and arrangements under the Companies Ordinance

*Further Provisions in Respect of Insurers Carrying on General Insurance Business*

63. Provisions to be included in financial statements
64. Establishment of insurance pools
65. Self-insurance
66. Disclosure of *pro-rata* condition of average
67. Adequacy of reinsurance

PART IV

INSURANCE INTERMEDIARIES

68. Restrictions on dealing with unlicensed insurers

69. Requirements applicable to insurance agents and insurance sub-agents
70. Annual returns by insurance agents and insurance sub-agents
71. Insurance broker to maintain professional indemnity insurance
72. Annual returns by insurance brokers
73. Insurance broker to establishment of policies, systems and controls
74. Premiums collected by licensed insurance intermediary
75. Procedures to address fraud
76. Maintenance of minimum paid up capital

#### PART V

#### PROVISIONS APPLICABLE TO LICENSEES UNDER THIS ORDINANCE

##### *Maintenance of Records*

77. Obligation to maintain records
78. Additional records to be maintained by insurer

##### *Obligations of, and Restrictions on Licensee*

79. Restrictions on business carried on by licensee
80. Restrictions on transfer, acquisition and disposal of significant interest
81. Notification of change in persons holding significant interest in foreign insurer
82. Advertisements
83. Change of name
84. Commission may require licensee to change name
85. Prohibition on use of certain words and phrases in name
86. Requirement to act with due skill and diligence
87. Business continuity plan

#### PART VI

#### WINDING UP

88. Companies Ordinance to apply with modifications
89. Voluntary winding-up
90. Winding-up by Court
91. Reduction of contract as alternative to winding up
92. Continuation of long term insurance business by liquidator

- 93. Segregated assets of insurers with long term business
- 94. Application to liquidate assets where no liabilities exist or where provision made for all liabilities

PART VII

MISCELLANEOUS

*Administrative*

- 95. Investigatory powers
- 96. Manner of making application under this Ordinance

*Offences and Penalties*

- 97. False or misleading representations, statements, reports or returns
- 98. Order to comply
- 99. Criminal liability of directors

*Directive*

- 100. Commission may issue directive

*Regulations*

- 101. Regulations

*Final Provisions*

- 102. Consequential amendments
- 103. Transitional provisions

SCHEDULE: Enactments amended

**TURKS AND CAICOS ISLANDS**

**A**

**Proposal**

**for**

**a**

**BILL**

**for**

**AN ORDINANCE TO MAKE PROVISION FOR THE LICENSING, REGULATION, SUPERVISION AND CONTROL OF DOMESTIC INSURANCE BUSINESS AND INSURANCE INTERMEDIARIES; AND FOR CONNECTED PURPOSES.**

**ENACTED** by the Legislature of the Turks and Caicos Islands.

**PART I**

**PRELIMINARY**

**Short title and commencement**

**1.** This Ordinance may be cited as the Domestic Insurance Ordinance 2015 and shall come into operation on such date or dates as the Governor may appoint by Notice published in the *Gazette* and different dates may be appointed for different provisions and different purposes.

**Interpretation**

**2.** (1) In this Ordinance—  
“accident insurance” means—

- (a) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident;  
or
- (b) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance money in the event of bodily injury to, or the death of, a person caused by an accident;

“admissible assets” means the assets specified as such in regulations;

- “annuity business” means contracts to pay annuities on human life that guarantee a fixed or variable payment to the annuitant at some future time;
- “approval” means, in relation to any matter requiring approval under this Ordinance, approval in writing from the party required to give it;
- “approved actuary” means an actuary approved in the manner specified in section 10;
- “approved auditor” means an auditor approved in the manner specified in section 10;
- “approved form” means a form approved by the Commission under the Financial Services Commission Ordinance;
- “association of underwriters” means an association of individual underwriters organised according to a system whereby each underwriting member of a syndicate becomes liable for a separate amount of the sum secured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured;
- “beneficiary” means the person named in a life insurance policy to receive the insurance proceeds upon the termination of the policy;
- “capital” means capital as provided for in the regulations;
- “class of business” or “class” means a class of insurance business specified in section 3;
- “Code” means the Code issued by the Commission under the Financial Services Commission Ordinance;
- “company” means a body corporate, wherever incorporated, registered or formed;
- “Commission” means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission Ordinance;
- “contract” includes a policy and any other document, such as a cover note, evidencing the existence of insurance coverage, including the scope thereof;
- “Court” means the Supreme Court;
- “domestic business” means insurance business, the principal objective of which is to insure risks in relation to—
- (a) a person who, at the time of effecting the contract, is ordinarily resident in the Islands; or
  - (b) property that, at the time of effecting the contract, is in the Islands or, in the case of a vehicle, vessel

or aircraft, or other movable property is ordinarily based in the Islands;

“external insurer” means an insurer constituted outside the Islands which the Commission has approved under section 11;

“financial year” in relation to a licensee means the financial year adopted by the licensee at the end of which the balance of the licensee's accounts is struck;

“foreign insurer” means an insurer licensed under section 7(1)(a) that is not a local company;

“general insurance business” means insurance business of the classes specified in section 3(1)(a)(i);

“group insurance” means insurance whereby the lives or health of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

“industrial life insurance” means life insurance, the premiums for which are usually collected weekly or monthly by the insurer's representative at the policyholder's home or place of work;

“insolvent” in relation to a licensed insurer, means a licensed insurer who is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 19;

“insurance agent” means a person appointed by an insurer to—

- (a) solicit applications for insurance business or negotiate for insurance business;
- (b) issue insurance contract documentation; or
- (c) collect money by way of premiums acting in accordance with the relevant agency agreement specified in section 69(2),

but excludes an individual who is an employee of the insurer;

“insurance broker” means a person who acts as an independent contractor or consultant and who, for commission or other compensation, carries out any of the following activities—

- (a) the soliciting or negotiating of insurance business, including the renewal and continuance of such business, on behalf of policyholders or prospective policyholders;

- (b) the bringing together, either directly or through the agency of a third party, with a view to the insurance of risks, of persons seeking insurance and insurers, and carrying out work preparatory to the conclusion of contracts of insurance;
- (c) the provision of advice to clients concerning their insurance requirements; and
- (d) assist policyholders in settlement of claims;

“insurance business” means the business of undertaking liability under a contract of insurance to indemnify or compensate a person in respect of loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes life insurance business, reinsurance business, the running-off of contracts of insurance and the settlement of insurance claims;

“insurance intermediary” means an insurance agent, insurance sub-agent or insurance broker;

“Insurance licence” means a licence issued under section 7(1)(a);

“insurance money” means the amount or amounts payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonuses, and annuities payable under the contract;

“insurance sub-agent” means a person appointed by an insurance agent to solicit directly or through advertising or other means, or negotiate for domestic business on behalf of the insurance agent who appointed him;

“insurer” means a person carrying on insurance business and includes an association of individual underwriters including Lloyd’s and other associations of underwriters recognised by the Commission, and which comply with such laws as a re-enacted in their principal place of residence for their regulation and supervision;

“international accounting standards” shall have the meaning prescribed by regulations;

“liability insurance” means the business of effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, not being risks arising out of, or in connection with the use of, motor vehicles or out of, or in connection with the use of, vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft;

“licence” means a licence required or granted under this Ordinance and the expression “licensed” in relation to any licensee shall be construed accordingly;

“licensee” means a person holding a licence issued under this Ordinance;

“life insurance” means insurance in respect of which an insurer undertakes to pay insurance money—

- (a) on death;
- (b) on the happening of an event or contingency dependent on human life;
- (c) at a fixed or determinable future time or times; or
- (d) for a term dependent on human life, and which, for greater certainty, includes—
  - (i) accidental death insurance, but not accident insurance;
  - (ii) health insurance;
  - (iii) disability insurance;
  - (iv) group insurance; and
  - (v) an undertaking entered into by an insurer to provide a life or fixed term annuity or what would be an annuity except for the fact that the periodic payments may be unequal in amount, and provides for the establishment, accumulation and payment of sinking, redemption, accumulation renewal or endowment funds;

“life insurance business” means the business of issuing contracts of insurance in relation to the life of an individual;

“life insurance policy” means a written contract of insurance, whether contained in one or more documents in relation to long term insurance business effected in the Islands by a licensed insurer upon the life of an individual;

“local company” means a company incorporated under the Companies Ordinance;

“local insurer” means an insurer that is a local company;

“long term insurance business” means insurance business of the classes specified in section 3(1)(a)(ii);

“marine, aviation and transit insurance” means the business of effecting and carrying out, otherwise than incidentally to

some other class of insurance business, contracts of insurance—

- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
- (b) upon goods, merchandise or property of any description whatever on board vessels or aircraft;
- (c) upon the freight of, or any other interest in or relating to, vessels or aircraft;
- (d) against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks;
- (e) against risks incidental to the construction, repair or docking of vessels, including third-party risks;
- (f) against transit risks, whether the transit is by sea, inland water, land or air, or partly one and partly another, including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance, but not including risks the insurance of which is motor vehicle insurance business; or
- (g) against any other risks the insurance of which is customarily undertaken in conjunction with or as incidental to any business referred to in the foregoing paragraphs of this definition;

“motor vehicle insurance” means insurance against—

- (a) liability arising out of—
  - (i) bodily injury to, or the death of, a person; or
  - (ii) the loss of, or damage to, property, caused by an automobile or the use or operation thereof; or
- (b) the loss of, or damage to, an automobile and the loss of use thereof, and includes insurance coming within paragraph (a) of the definition of the class of accident insurance or sickness or health insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also provides the insurance described in paragraph (a)(i);

“mutual insurer” means a mutual association (in whatever form established) which carries on insurance business as a co-

operative owned by its policyholders and which maintains insurance reserves contributed by such policyholders as a condition of membership;

“ordinary life insurance” means life insurance other than industrial life insurance;

“pecuniary loss insurance” means the business of effecting and carrying out contracts of insurance against any of the following risks, namely—

- (a) risks of loss to the person insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due;
- (b) risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;
- (c) risks of loss to the persons insured attributable to their incurring unforeseen expense; and
- (d) risks neither falling within any of the foregoing paragraphs nor being of a kind such that carrying on of the business effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class and excludes risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reductions of the scope of business so carried on;

“pension fund management” means management of a pension fund or pension policies by a life insurance company financed by deposits from contract holders where the assets purchased with the deposits are co-mingled with the assets of the life insurance company and are not segregated for management in a separate fund and the insurer pays the pension clients interest on their deposits;

“policy” means a document setting out the terms of a contract of insurance;

“policyholder” means the person with whom an insurer has effected a contract of insurance and shall include a person to whom a policyholder has assigned or transferred unconditionally a contract, in whole or in part, other than as security;

“property insurance” means the issue of, or the undertaking of liability pursuant to policies of insurance against loss or damage to real or personal property of every kind and interests therein, from any hazard or cause, or against loss

consequential upon such loss or damage, not being risks the insurance of which is motor vehicle insurance business or marine, aviation and transit insurance business;

“reinsurance business” means insurance business that is purchased by an insurer from another insurer (the reinsurer) as a means of risk management, in consideration for a premium, to transfer risk from the insurer to the reinsurer;

“resident in the Islands” is to be construed in accordance with regulations;

“sickness or health insurance” means—

- (a) insurance against loss resulting from the illness or disability of a person other than loss resulting from death;
- (b) insurance whereby an insurer undertakes to pay a certain sum or sums of money in the event of the illness or disability of a person; or
- (c) insurance against expenses incurred for vision or dental care, laboratory or x-ray services, hospitalisation, other than for illness or disability arising out of an accident;

“significant interest”, in respect of a company, means a holding or interest in the company, or in any holding company of the company, held or owned by a person, either alone or with any other person and whether legally or equitably, (but does not include proxy-holders or a person who holds or owns an interest solely for the benefit of another person, such as a custodian or trustee) that entitles or enables the person, directly or indirectly—

- (a) to control ten *per cent* or more of the voting rights of that company at a meeting of the company or of its members;
- (b) to a share of ten *per cent* or more in dividends declared and paid by the licensee;
- (c) to a share of ten *per cent* or more in any distribution of the surplus assets of the company; or
- (d) to appoint one or more directors of the company;

“variable annuity business” means insurance business under a policy or contract which provides that the annuity benefits payable to the policyholder are to be determined wholly or partly—

- (a) according to the investment experience of a separate segregated account maintained by the insurer in respect of that policy or class of policy;
- (b) by reference to the value of, or income from assets of any description allocated in the general accounts of the insurer in respect of that policy or class of policy whether or not specified in the policy; or
- (c) by reference to fluctuations in or in an index of, the value of assets of any description whether or not specified in the policy;

“variable life insurance business” means life insurance business under a policy the duration of which may vary, and under which the benefits payable to the policyholder are to be determined wholly or partly—

- (a) according to the investment experience of a separate segregated account or accounts maintained by the insurer in respect of that policy or class of policy;
- (b) by reference to the value of or income from assets of any description allocated in the general accounts of the insurer in respect of that policy or class of policies whether or not it is specified in the policy; or
- (c) by reference to fluctuations in or in an index of the value of assets of any description whether or not it is specified in the policy.

(2) For the purposes of the definition of “capital” in subsection (1), regulations may specify the criteria for determining whether reserves are distributable or non-distributable.

### **Application of Ordinance**

3. (1) Subject to this section, this Ordinance applies to—

- (a) all licensed insurers, whether established within or outside the Islands that carry on insurance business within the Islands of all or any of the following classes—
  - (i) general insurance business namely—
    - (A) accident insurance;
    - (B) liability insurance;
    - (C) marine, aviation and transit insurance;

- (D) motor vehicle insurance;
- (E) pecuniary loss insurance;
- (F) property insurance;
- (G) sickness or health insurance business, including group health;
- (ii) long term insurance business namely—
  - (A) industrial life insurance;
  - (B) individual and group ordinary life insurance;
  - (C) variable life insurance;
  - (D) pension fund management
  - (E) annuity business;
  - (F) variable annuity business;
- (iii) all other classes of insurance not specified in subparagraphs (i) and (ii) and including but not limited to medical service plans, hospital service plans, health maintenance organisations, prepaid limited health care service plans, dental, optometry and other similar health service plans; and

(b) insurance intermediaries.

(2) For the purposes of this Ordinance, the reinsurance of liabilities under contracts of insurance shall be treated as insurance business of the class and type to which the contracts would have belonged if they had been issued by the reinsurer, and all the provisions of this Ordinance shall apply to the reinsurance save that a company or an association of underwriters carrying on the reinsurance shall not be required to make in respect of the reinsurance any deposit as required by section 5.

(3) This Ordinance shall not apply to any organisation licensed or registered to carry on insurance business in another jurisdiction outside of the Islands except in cases where such organisation is licensed by the Commission to write any class of business in the Islands.

## PART II

## GENERAL

*Unauthorised Insurance Business***Prohibition against unauthorised business and dealings with unlicensed insurers**

4. (1) Subject to subsection (3), a person shall not—
- (a) carry on, or hold himself out as carrying on, insurance business; or
  - (b) act, or purport to act, as an insurance intermediary,
- in or from within the Islands, unless he holds a licence issued under this Ordinance authorising him to do so.
- (2) For the purposes of subsection (1), a local company that carries on, or holds itself out as carrying on, insurance business outside the Islands is deemed to carry on, or hold itself out as carrying on, insurance business from within the Islands.
- (3) Subsection (1) does not apply to—
- (a) a reinsurer that—
    - (i) satisfies the criteria specified in regulations for the purposes of section 22 or that is approved by the Commission under subsection (1)(b) of that section; and
    - (ii) enters into a reinsurance contract with a licensed insurer; or
  - (b) an external insurer that is carrying on business in accordance with the approval granted to it under section 11.
- (4) Subject to subsection (3), a person shall not knowingly enter into an insurance contract with an unlicensed insurer to insure a risk located in the Islands.
- (5) For the purposes of subsection (4) a risk is located in the Islands if it is a risk in relation to—
- (a) a person who, at the time of effecting the contract, is ordinarily resident in the Islands; or
  - (b) property that, at the time of effecting the contract, is in the Islands or, in the case of a vehicle, vessel or aircraft, or other movable property is ordinarily based in the Islands.

(6) An insurance contract entered into by any person, whether before or after the commencement of this Ordinance, shall not be rendered void or unenforceable merely because it is entered into in connection with insurance business carried on by a person in contravention of subsection (1).

(7) A person may obtain a special dispensation from the Commission to enter into an insurance contract with an insurer, insurance broker, insurance agent or insurance sub-agent not licensed under this Ordinance to insure a risk located in the Islands where that person demonstrates to the satisfaction of the Commission an evident need that the contract be so placed.

(8) A dispensation, if granted, shall, in addition to any specific conditions imposed by the Commission, be subject to the condition that the person shall pay to the Permanent Secretary, Finance the insurance premium sales tax that would have been payable under the Insurance Premium Sales Tax Ordinance if the policy or contract of insurance had been placed in the Islands.

(9) For the purposes of subsection (4), a licensed insurer is deemed to be an unlicensed insurer with respect to any insurance business that it is not permitted by its licence to carry on.

(10) A person who contravenes subsection (1) or (4) commits an offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment for two years, or to both.

### *Restricted Deposits*

#### **Amount and form of deposits**

5. (1) Subject to subsection (2), an insurer or an insurance broker, if a company, shall not be licensed under this Ordinance to carry on and may not carry on any class of insurance business unless it has made the deposit with a financial institution in the Islands, approved by the Commission, the prescribed deposit, which deposit shall be held to the order or on behalf of the Commission.

(2) The Commission may, in its discretion, decide if an insurance broker, having regard to the prescribed criteria, is required to make the deposit.

(3) The deposit which is required to make under subsection (1) shall be in the form of cash.

(4) A deposit made by or on behalf of a company pursuant to subsection (1) shall be deemed to form part of the assets of the company.

(5) All interest accruing due on any amount deposited pursuant to subsection (1) shall be paid to the depositor concerned, on the authority of the Commission.

### **Release of deposits**

6. (1) Where a company has ceased to transact business and has given written notice to that effect to the Commission, or where the licence of a company has been cancelled, the deposit made under section 5 shall not be delivered to the company until all the outstanding risks of the company have been reinsured or have been surrendered to the satisfaction of the Commission.

(2) Upon making application for release of its deposit, a company shall file with the Commission, in respect of all policies issued locally, a list of all policyholders who have not been so reinsured or who have not surrendered their policies, and the company shall at the same time publish, and continue the publication at least once a week for twelve consecutive weeks, in the *Gazette* and in at least one newspaper circulated in the Islands and approved by the Commission, a notice that it will apply to the Commission for the release of its deposit on a certain day not less than three months after the date on which the notice is first published in the *Gazette* and calling upon the policyholders opposing such release to file notice of their opposition with the Commission on or before the day so specified.

(3) After the day so specified in the said notice, if the Commission is satisfied that the deposit of the company is substantially in excess of the requirements under this Ordinance, in respect of the continuing policyholders, it may authorise the release to the company such portion of the excess as it thinks proper in the circumstances, and shall continue to hold the remainder of the deposit for the protection of the continuing policyholders, and subsequently from time to time as such policies lapse, or proof is adduced to the satisfaction of the Commission that they have been satisfied, further amounts may be released on the authority of the Commission.

(4) Notwithstanding this section, where the company is in liquidation the deposit of such company may, on the order of any court having jurisdiction under this Ordinance or the Companies Ordinance be released to the liquidator.

(6) Where the licence of a company which has not commenced to carry on insurance business in the Islands is cancelled pursuant this Ordinance, the Commission shall authorise the refund to such company any moneys deposited by it pursuant to section 5.

*Licensing and Approvals***Categories of licences**

7. (1) The categories of licences which may be issued under this Ordinance are—

- (a) an Insurer's Licence—
  - (i) to carry on general insurance business; or
  - (ii) to carry on long term insurance business;
- (b) an Insurance Agent's Licence;
- (c) an Insurance Sub-Agent's Licence; and
- (d) an Insurance Broker's Licence.

(2) Subject to section 42(1), the Commission shall not issue a licence to an insurer that authorises it to carry on both general insurance business and long term insurance business.

(3) Notwithstanding subsection (2), a licensed insurer that, immediately prior to the commencement of this Ordinance, held a licence that authorised it to carry on both general insurance business and long term insurance business shall continue to be permitted to do so after the commencement of this Ordinance provided that the Commission is satisfied that the licensed insurer has satisfactory processes in place requiring that risks for each line of business be handled separately on both a going-concern and wind-up basis.

**Application for, and restrictions on issuance of, licence**

8. (1) An application for a licence shall be made to the Commission—

- (a) in the case of an Insurer's licence, by a company or, where permitted by regulations, by a mutual insurer or an association of underwriters; and
- (b) in the case of any other licence, by any person.

(2) An application for a licence under subsection (1) shall be accompanied by—

- (a) where required, a business plan complying with any requirements as may be prescribed by regulations; and
- (b) the prescribed application fee, which shall be non refundable in the event of the refusal of the application by the Commission, the withdrawal of the application or the failure by the applicant to pursue the application.

(3) Subject to subsections (4), (5) and (6), the Commission may refuse an application made under this section or may issue a licence to the applicant unconditionally or subject to such conditions as it considers appropriate.

(4) The Commission shall not issue a licence to an applicant unless it is satisfied that—

- (a) the applicant intends, if issued with a licence, to carry on the business to be authorised by the licence;
- (b) the applicant satisfies the requirements of this Ordinance and any regulations with respect to the application;
- (c) the applicant will, on the issuance of the licence—
  - (i) be in compliance with this Ordinance and regulations; and
  - (ii) have paid up capital at least equal to the amount that it is required to maintain under section 5;
- (d) the applicant, its directors and senior officers and any persons having a significant interest in the applicant satisfy the Commission's fit and proper criteria;
- (e) the organisation, management and financial resources of the applicant are adequate for the carrying on of the business to be authorised by the licence;
- (f) in the case of an Insurer's licence—
  - (i) the reinsurance arrangements of the applicant are adequate for the carrying on of the business to be authorised by the licence or that there is no justification for making those arrangements; and
  - (ii) the insurance business to be authorised by the licence will be conducted and managed in accordance with sound and prudent insurance principles; and
- (g) in the case of a license for an insurance agent, insurance sub-agent or insurance broker (if an individual) that the applicant—
  - (i) is at least twenty-one years of age;
  - (ii) is not an undischarged bankrupt unless granted judicial leave to carry on such business; and

(iii) has not been found by a court to be of unsound mind or certified to be suffering from a mental disorder within the meaning of any applicable Ordinance;

(h) the relevant insurance business will be conducted and managed in accordance with sound and prudent insurance principles; and

(i) issuing the licence is not against the public interest.

(5) The Commission may refuse to issue a licence to an applicant if it is of the opinion that any person having a share or other interest in the affairs of the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria.

(6) The Commission shall not issue an Insurer's licence to an applicant that is not a local company unless it is satisfied that—

(a) the applicant is authorised by or under the laws of a jurisdiction outside the Islands (its "home jurisdiction") to carry on insurance business of the classes which the licence will authorise the insurer to carry on and has carried on such business for at least five years before the date of application;

(b) the insurance business that the applicant will be authorised to carry on would be lawfully carried on by the applicant if it were carried on in its home jurisdiction; and

(c) the insurance business to be carried on by the applicant will be subject to the supervision of the authority responsible for the supervision of insurance business in its home jurisdiction.

(7) The Commission shall cause notice of the issue of a licence under this section to be published in the *Gazette*.

(8) A decision by the Commission to refuse a licence or issues a conditional licence, is final and not subject to appeal to, or review by, any court or other authority.

(9) A licensee shall on or before the 31st day of March in each year pay the prescribed annual fee.

### **Form and display of licence**

**9.** (1) A licence issued under this Ordinance shall be in writing and in the approved form.

(2) A licensee shall display its licence, or a certified copy of its licence, in a conspicuous position at every public office it maintains in the Islands.

### **Approval of auditor, actuary, etc.**

**10.** (1) The Commission may, for the purposes of this Ordinance, grant approval—

- (a) to an auditor, as an approved auditor;
- (b) to an actuary, as an approved actuary; and
- (c) to an insurer constituted outside the Islands, as an approved external insurer in accordance with section 11.

(2) An application for approval as an auditor or an actuary may be made directly by the person seeking approved status or by any licensee proposing to engage such person in a professional capacity.

(3) Regulations may specify, in so far as not inconsistent with this Ordinance, the qualifications and experience required for approval as an approved auditor or an approved actuary.

(4) The Commission shall maintain a list of approved auditors, approved actuaries and approved external insurers.

### **Approval of external insurers**

**11.** (1) The Commission may, on application made by a licensed insurance broker and on payment of the prescribed application fee, approve an insurer constituted outside the Islands as an approved external insurer for the purpose of the acceptance of domestic insurance business placed with it by that insurance broker.

(2) The Commission may grant approval if it is satisfied that—

- (a) the external insurer satisfies the Commission's fit and proper criteria as specified in guidelines issued by the Commission under section 43 of the Financial Services Commission Ordinance;
- (b) the proposed volume of domestic business to be placed with such insurer is either inadequate to justify application for a licence or that some other good and sufficient reason exists;
- (c) the said insurance broker has demonstrated a market need in terms of additional capacity, scope of coverage or otherwise;

- (d) the Commission receives confirmation from the home supervisory authority that the insurer is authorised to carry on the types of insurance business proposed; and
  - (e) the insurer is solvent and meets all the regulatory requirements in its home jurisdiction.
- (3) Approval may be granted—
  - (a) for one or more specific risks, classes of business or policies; and
  - (b) on an indefinite basis or subject to review at such intervals as the Commission may specify.
- (4) For the purposes of sections 4 and 68, an approved external insurer is deemed to be a licensed insurer where it is carrying on business in accordance with the approval granted to it under this section.
- (5) A licensed insurance broker shall not knowingly enter into an insurance contract with an external insurer, who is not approved under this section to insure a risk located in the Islands.
- (6) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment for two year, or to both.

#### **Licensee fit and proper assessment**

**12.** The following persons are required to satisfy the Commission's fit and proper criteria as specified in guidelines issued by the Commission under section 43 of the Financial Services Commission Ordinance—

- (a) an applicant for a licence;
- (b) a licensee, on an on-going basis;
- (c) the directors, senior managers and significant owners of an applicant or licensee;
- (d) where a licensee is required to appoint an auditor, the auditor appointed; and
- (e) where a licensee is required to appoint an actuary, the actuary appointed.

#### **Responsibility of licensee, fit and proper assessment**

**13.** (1) A licensee shall take reasonable care to satisfy itself, prior to appointment and on an on-going basis, that—

(a) if applicable, its directors and senior managers are fit and proper for the role to which they are appointed; and

(b) where the licensee is required to appoint an auditor or actuary, the auditor or actuary appointed is fit and proper.

(2) If, whether before or after the Commission has approved the appointment of a person specified in subsection (1) or has approved a significant owner, the licensee becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the person, it shall notify the Commission of the information as soon as reasonably practicable.

### **Appointment of approved auditor**

**14.** (1) A licensed insurer, licensed insurance broker and licensed insurance agent (that is a company) shall appoint and at all times have an approved auditor, who shall be independent of the licensed insurer, insurance broker or insurance agent, to—

(a) audit and report on its annual financial statements;

(b) review and certify its solvency statement; and

(c) certify such other matters as may be prescribed as are required to be certified by the auditor or, in the case of a particular insurer, by the Commission.

(2) An auditor shall not be appointed under subsection (1) unless—

(a) he has consented to act as the auditor of the licensed insurer, insurance broker or insurance agent; and

(b) the Commission has given its prior written approval the his appointment.

(3) A licensed insurer, insurance broker or insurance agent shall, within fourteen days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(4) A licensed insurer, insurance broker or insurance agent shall make such arrangements as the auditor reasonably requires to enable him to audit the its financial statements, review and certify the insurer's solvency statement and certify such other matters as may be required to be certified in accordance with subsection (1)(c), including—

- (a) by giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and
- (b) by providing the auditor with such information and explanations as he reasonably requires.

(5) Where, for whatever reason, a person ceases to be the auditor of a licensed insurer, insurance broker or insurance agent, the insurer, broker or agent does not commit an offence under subsection (6) if it appoints another auditor in accordance with this section within two months of the date that person who was previously appointed auditor ceases to hold that appointment.

(6) A licensed insurer, insurance broker or insurance agent commits an offence if—

- (a) subject to subsection (5), it does not have an auditor;
- (b) it appoints an auditor contrary to subsection (1) or (2); or
- (c) it contravenes subsection (3) or (4),

and is liable on summary conviction to a fine of \$20,00 or to a term of imprisonment of one year, or to both.

### **Audit and audit report**

**15.** (1) An approved auditor shall carry out sufficient investigation to enable him—

- (a) to form an opinion on the financial statements and the solvency statement of a licensed insurer, insurance broker or insurance agent, as the case may be;
- (b) to prepare an audit report in compliance with regulations; and
- (c) to certify such other matters as may be required to be certified in accordance with section 14(1)(c).

(2) Upon completion of his audit of the financial statements of a licensed insurer, insurance broker or insurance agent, the approved auditor shall provide—

- (a) an audit report to the insurer, broker or agent complying with regulations; and
- (b) where he considers it appropriate, or where regulations so require, an auditor's management letter.

(3) For the purposes of this section, the auditor's management letter is the letter normally addressed by the auditor to its client on the conclusion of an audit, commenting on accounting and administrative practices and making recommendations in relation thereto.

(4) The approved auditor shall specify in his management letter—

- (a) any breaches by the insurer of this Ordinance or regulations;
- (b) any failure of the insurer to conduct its business in accordance with its business plan;
- (c) any material breaches of its internal controls; and
- (d) such other matters as may be required by regulations.

### **Obligations of auditor**

**16.** (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a licensed insurer, licensed insurance broker or licensed insurance agent shall report immediately to the Commission any information relating to the affairs of the relevant licensee that he has obtained in the course of acting as its auditor that, in his opinion, suggests that—

- (a) the insurer is insolvent or is likely to be unable to meet its obligations;
- (b) that a criminal offence has been or is being committed by the relevant licensee or in connection with its business;
- (c) the insurer is in breach of section 18, 19 or 21;
- (d) the relevant licensee has significant weaknesses in its internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise its financial viability; or
- (e) a serious breach of this Ordinance or regulations or such enactments, codes or guidance relating to money laundering or financing of terrorism as may be specified in regulations has occurred in respect of the relevant licensee or its business.

(2) Where the appointment of an auditor of a licensed insurer, licensed insurance broker or licensed insurance agent is terminated, the auditor whose appointment has been terminated shall—

- (a) forthwith inform the Commission of the termination of his appointment and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his appointment, he would have reported information to the Commission under subsection (1), he shall report the information concerned to the Commission, as if his appointment had not been terminated.

(3) The Commission may require an auditor of a licensed insurer, licensed insurance broker or licensed insurance agent to discuss any audit he has conducted or commenced with, or provide additional information regarding the audit to the Commission.

(4) Where, in good faith, an auditor or former auditor provides any information to the Commission under subsection (1), (2) or (3), he is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he would not have had.

#### **Power of Commission to appoint auditor**

17. (1) Where the Commission is satisfied that the auditor of a licensed insurer, licensed insurance broker or licensed insurance agent has failed to fulfil his obligations under this Ordinance or is otherwise not a fit and proper person to act as the auditor of an insurer, it may, by written notice to the insurer, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 14.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a relevant licensee fails to appoint an auditor, the Commission, at the expense of the licensee, may appoint an approved auditor to act as the auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Ordinance to have been appointed by the licensee.

## PART III

## INSURERS

*Financial Resource Requirements***Maintenance of business in financially sound condition**

**18.** (1) A licensed insurer shall, at all times, maintain its business in a financially sound condition by—

- (a) having admissible assets;
- (b) providing for its liabilities; and
- (c) generally conducting its business,

so as to be in a position to meet its liabilities at all times.

(2) If a licensed insurer forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

(3) Subject to subsection (4), the Commission may, by written notice, direct a licensed insurer that is authorised by its licence to carry on domestic business to maintain in the Islands assets of such value, of such description and in such manner as may be specified in the notice.

(4) The Commission may not require a licensed insurer to maintain assets in the Islands, the value of which exceeds the value of its liabilities under all contracts of insurance that constitute domestic business.

(5) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment of two years, or to both.

**Minimum capital and solvency margin requirements**

**19.** (1) A licensed local insurer shall—

- (a) maintain its capital in an amount not less than the greater of—
  - (i) the minimum applicable to it as specified in regulations; or
  - (ii) such amount as the Commission may direct under section 20; and
- (b) ensure that at all times it maintains a solvency margin calculated in accordance with any regulations that is not less than the greater of—

- (i) the minimum solvency margin applicable to it as specified in regulations; or
- (ii) such solvency margin amount as the Commission may direct under section 20.

(2) If the capital, or solvency margin, of a licensed local insurer falls below the amount that it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(3) Where it appears to the Commission that the assets of any insurer carrying on insurance business fall below the requirements for solvency under this section and after a reasonable time has been given to the company to be heard by it, the Commission shall—

- (a) cancel the license of the insurer; or
- (b) upon such terms and conditions as the Commission deems proper, limit a time within which the company shall make good the deficiency, the insurer's licence being continued in the meantime, and upon the insurer's failure to make good the deficiency within the time so limited, the licence of the insurer shall be cancelled.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction, to a fine of \$100,000 or to a term of imprisonment of two years, or to both.

**Commission may direct local insurer to increase its capital, etc.**

**20.** (1) If the Commission considers it appropriate, it may issue a direction to a licensed local insurer to do either or both of the following—

- (a) increase its capital to an amount higher than the minimum capital applicable to the insurer as specified in regulations;
- (b) maintain a solvency margin in an amount higher than that specified in regulations.

(2) A direction under subsection (1)—

- (a) may be made at the time of licensing or at any time thereafter; or
- (b) may be reviewed at any time by the Commission; and

(c) shall specify a reasonable time period for compliance with the direction.

(3) In making a determination under subsection (1), the Commission shall have regard to—

- (a) the nature and extent of the insurance business carried on, or proposed to be carried on, by the insurer;
- (b) the degree of risk that the insurer faces in its business;
- (c) the insurer's actual or projected premium income;
- (d) the insurer's actual or expected reinsurance coverage; and
- (e) such other factors as it considers relevant in the insurer's case.

### **Restrictions on investment and trading in derivatives**

**21.** (1) A licensed local insurer shall not invest or trade in a derivative without the prior approval of the Commission, unless the derivative concerned—

- (a) is specified by regulations as an admissible asset; or
- (b) is a derivative of a type or description that regulations otherwise permit the insurer to invest or trade in.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Restrictions on reinsurance of risks**

**22.** (1) A licensed insurer shall not enter into an agreement to reinsure any of its risks with a person other than a reinsurer—

- (a) that satisfies the criteria specified in regulations for the purposes of this section; or
- (b) that the Commission, on the application of the insurer, approves as a reinsurer for the risks specified in the application.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

*Annual Returns, Financial Statements and Audit***Annual returns**

**23.** (1) A licensed insurer shall, within the time period specified in subsection (2), submit in writing to the Commission with respect to each financial year, the following—

- (a) its financial statements for that financial year on a consolidated basis and on a local only basis;
- (b) a copy of the auditor's management letter, if any;
- (c) the certificate of compliance required by section 79(3);
- (d) the certified solvency statement required by section 24(3);
- (e) the actuarial report required under section 60(1);
- (f) any certifications prepared by the auditor in accordance with section 14(1)(c);
- (g) the report of its auditor on the financial statements;
- (h) in the case of a licensed foreign insurer which has a branch in the Islands, written confirmation that the insurer accepts responsibility for all contracts issued through the branch and for all acts, omissions and liabilities of the same;
- (i) a list of insurance agents and insurance brokers authorised to act on behalf of the insurer; and
- (j) such other documents as may be specified in regulations or requested by the Commission.

(2) The documents specified in subsection (1) shall be submitted to the Commission in the case of a licensed insurer that has, at any time during the financial year, been authorised by its licence to enter into contracts of insurance that constitute domestic business, within three months of the last day of its financial year.

(3) The Commission may extend the period specified in subsection (2) by such period or periods as it considers appropriate, except that such extension, or if more than one extension is granted, the aggregate of such extensions, shall not exceed a period of two months.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

**Preparation of financial statements**

24. (1) A licensed insurer shall prepare financial statements with respect to each financial year that comply with such international accounting standards as may be specified in regulations.

(2) The financial statements required to be prepared under subsection (1) shall comprise—

- (a) a balance sheet;
- (b) an income statement;
- (c) a statement of shareholders' equity;
- (d) a cash flow statement;
- (e) such statement relating to the prospects for the insurer's business as may be required by the accounting standards in accordance with which its financial statements are prepared or as may be specified in regulations; and
- (f) such other information as may be specified in regulations or by the Commission.

(3) A licensed insurer shall, in addition to its annual financial statements, prepare with respect to each financial year, a solvency statement complying with such requirements as may be specified in regulations.

(4) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(5) The financial statements prepared under subsection (1) shall—

- (a) be approved by the directors of the licensed insurer; and
- (b) following approval under paragraph (a), be signed by at least one director on behalf of all the directors.

(6) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he signs the financial statements.

(7) A licensed insurer shall submit to the Commission a quarterly financial statement in a form specified by the Commission within one month after the end of each quarter.

(8) A licensed insurer that fails to submit such statements shall be subject to the conditions of the regulations as they apply to the preparation of annual returns.

### **Group accounts**

**25.** (1) Where a licensed insurer is a member of a group of companies, the Commission may require the insurer to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensed insurer or by another auditor approved by the Commission.

(3) Regulations may provide for the form and content of group accounts to be submitted under this section.

### **Auditor may rely on actuarial valuations**

**26.** The auditor of an insurer licensed to carry on long term insurance business may accept, for the purposes of an audit under this Ordinance, a valuation by the actuary appointed by the insurer of—

- (a) the policy liabilities of the insurer as at the end of a financial year of the insurer; or
- (b) a change, during a financial year, in the policy liabilities of the insurer in relation to a particular fund.

### *Appointment of Actuary and Internal Auditor*

#### **Appointment of actuary**

**27.** (1) Every licensed insurer carrying on long-term insurance business shall appoint an approved actuary, as a member of its staff or as a consulting actuary.

(2) Within three years of the commencement of this Ordinance, every licensed insurer carrying on general insurance business shall appoint an approved actuary as a member of its staff or as a consulting actuary.

(3) A licensed insurer shall, within three months of the termination of the appointment of an approved actuary, appoint another approved actuary.

(4) Where the appointment of an approved actuary is terminated, the licensed insurer shall within twenty-one days of appointing another approved actuary notify the Commission in writing of the appointment.

(5) No person may carry out the function of an approved actuary unless the Commission is satisfied that he possesses the necessary qualifications to carry out such functions.

(6) The chief executive officer and the chief financial officer or a person performing like functions may not be appointed as or hold the position of approved actuary of a licensed insurer.

(7) Notwithstanding anything to the contrary in any other enactment, the actuary of a licensed insurer shall report immediately to the Commission—

(a) if he is of the opinion that there are reasonable grounds for believing that the insurer or a director or senior officer of the insurer may have contravened this Ordinance or any other enactment and that the contravention is of such a nature that it may significantly affect the interests of policyholders of the insurer;

(b) any other matter as may be prescribed or requested by the Commission.

(8) The actuary of a licensed insurer shall report to the insurer any matter relating to the business of the insurer that he has obtained in the course of acting as its actuary that, in his opinion, requires action to be taken by the company.

(9) Where the actuary of a licensed insurer reports to the insurer under subsection (8) and the insurer does not, within such time as the actuary considers reasonable, take the action required, he shall report the matter to the Commission.

### **Appointment of internal auditor**

**28.** A licensed insurer shall appoint an internal auditor to have responsibility for the internal audit obligations imposed on the insurer by this Ordinance.

### **Internal audit function**

**29.** (1) The internal auditor shall—

(a) possess sufficient independence to carry out the licensed insurer's internal audit obligations objectively;

(b) report directly to the board and shall be given sufficient status within the licensed insurer to ensure that senior management and the board react to, and act on, his recommendations;

(c) have unrestricted access to—

- (i) the staff of the licensed insurer, in order to carry out the insurer's internal audit obligations; and
  - (ii) documents and information relating to the business of the licensed insurer and its customers;
- (d) have sufficient human resources with adequate professional qualifications, relevant auditing experience and training to understand and evaluate the business they audit; and
- (e) employ a methodology that identifies all significant risks run by a licensed insurer and allocate resources accordingly.
- (2) The principal responsibilities of the internal auditor are—
- (a) assessing whether the licensed insurer's existing risk management strategy, policies, systems and controls and internal controls remain sufficient, effective and appropriate for the insurer's business;
  - (b) assessing whether the licensed insurer's risk management strategy, policies, systems and controls and internal controls, are being implemented and complied with;
  - (c) where relevant, assessing whether the systems and controls for monitoring and assessing the on-going capital requirements of the licensed insurer are effective and are being implemented;
  - (d) where the licensed insurer has a separate risk management function, periodically reviewing that function; and
  - (e) periodically reviewing the licensed insurer's compliance function.
- (3) The responsibilities specified in subsection (2) shall extend to all the activities of the licensed insurer, including outsourced activities, and where the insurer has established branches or subsidiaries, to those branches and subsidiaries.
- (4) The internal audit function should be subject to independent review by the licensed insurer's approved auditor.

### **Internal audit reports to be submitted to Commission**

**30.** A licensed insurer shall—

- (a) within ten days of the last day of each calendar quarter, provide the Commission with a list of reports that have been prepared by the internal auditor during that calendar quarter, with a summary of the areas covered by each report; and
- (b) on the written request of the Commission, submit to the Commission copies of such internal reports as are specified in the Commission's request, within the time period specified in the request.

### *Governance*

#### **Local insurer to have adequate number of directors**

**31.** (1) A licensed local insurer shall have an adequate number of directors who—

- (a) are capable of exercising independent judgment;
- (b) have sufficient knowledge, skills, experience and understanding of the business of the insurer, and the risks to which the insurer is exposed, to ensure that the board is able to fulfil its responsibilities; and
- (c) have sufficient time and commitment to undertake their duties diligently.

(2) Without limiting subsection (1)—

- (a) a licensed local insurer shall, at all times, have at least three directors; and
- (b) at least one of the insurer's directors shall be resident in the Islands.

(3) Without limiting subsection (2), a licensed local insurer shall, at all times, have at least two non-executive directors.

(4) A person shall not be appointed, or accept appointment, as the director of a licensed local insurer unless that person is an individual.

(5) Where a licensed local insurer, after being granted a licence, has less than three directors contrary to subsection (2), it shall—

- (a) immediately notify the Commission of that fact in writing; and
- (b) within a period not exceeding twenty-one days from the date the local insurer failed to comply

with subsection (2), submit an application pursuant to section 32 in order to ensure compliance with subsection (2).

(6) Regulations may provide for the duties and responsibilities of the directors of a licensed local insurer.

(7) A licensed local insurer that fails to comply with subsection (5) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Appointment and termination of directors and senior officers**

**32.** (1) A licensed local insurer shall not appoint a director or senior officer without the prior written approval of the Commission.

(2) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned is an individual who satisfies the Commission's fit and proper criteria as specified in guidelines issued by the Commission under section 43 of the Financial Services Commission Ordinance.

(3) A licensed local insurer shall provide written notice to the Commission within fourteen days after a director or senior officer of the insurer ceases to hold office with, or to be employed by, the insurer.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the insurer and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

(5) Subject to subsection (6), a licensed foreign insurer shall, within fourteen days after—

- (a) the appointment of a director or senior officer; or
- (b) a director or senior officer ceasing to hold office with, or to be employed by, the insurer,

provide written notice of that fact to the Commission.

(6) The requirements of subsection (5) are disapplied or modified with respect to a licensed foreign insurer—

- (a) in such circumstances as may be prescribed; or
- (b) where, in the case of a particular foreign insurer, the Commission so determines on the application of that insurer.

(7) Where the Commission is of the opinion that a director or senior officer of a licensed local insurer does not satisfy the Commission's fit and proper criteria, it may require the insurer to remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission.

(8) In this section "senior officer" includes—

- (a) the chief executive officer of the insurer;
- (b) the chief operating officer of the insurer;
- (c) the chief compliance officer of the insurer;
- (d) the chief risk officer of the insurer;
- (e) the chief investment officer of the insurer; and
- (f) any other officer who holds a position that has authority to bind the insurer.

(9) A person who contravenes subsection (1), (3) or (5) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Foreign insurer to appoint representative in the Islands**

**33.** (1) A licensed foreign insurer that does not have a staffed office in the Islands, shall—

- (a) appoint a person, and at all times have a representative in the Islands to act as its insurance agent;
- (b) appoint at least one person resident in the Islands (consent to such appointment shall be signified by the person in writing), whose appointment shall be approved by the Commission, for the purpose of accepting service of process in any legal proceedings to which the insurer is a party; and
- (c) appoint an employee resident in the Islands, approved by the Commission, as its TCI manager to have responsibility for managing the business and affairs of the insurer in the Islands; and
- (d) designate a senior manager in the insurer's home jurisdiction to whom the TCI manager is responsible.

(2) A licensed foreign insurer that has a staffed office in the Islands, shall—

- (a) appoint at least one person resident in the Islands (consent to such appointment shall be signified by the person in writing), whose appointment shall be

approved by the Commission, for the purpose of accepting service of process in any legal proceedings to which the insurer is a party;

(b) appoint an employee resident in the Islands, approved by the Commission, as its TCI manager to have responsibility for managing the business and affairs of the insurer in the Islands; and

(d) designate a senior manager in the insurer's home jurisdiction to whom the TCI manager is responsible.

(3) A licensed foreign insurer shall, within fourteen days after—

(a) it appoints or designates a person pursuant to subsections (1) and (2); or

(b) the person appointed or designated pursuant to subsections (1) and (2) is terminated for whatever reason,

provide written notice of that fact to the Commission.

(4) The written notice provided under subsection (3)(b) shall include a statement setting out the reasons for the termination of the person's appointment and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

(5) The persons appointed or designated under this section shall have such duties and obligations as may be specified in this Ordinance or regulations.

(6) A licensed foreign insurer may, with the prior written approval of the Commission, appoint one person to carry out the function referred to in subsection (1) or (2).

(7) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Management systems and controls**

**34.** (1) A licensed local insurer shall take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionaries so that—

(a) it is clear who has which of those responsibilities; and

(b) the business and affairs of the insurer can be adequately monitored and controlled by the directors and its relevant senior officers.

(2) A licensed local insurer shall establish and maintain such systems and controls as are appropriate to its business and which are fully documented.

(3) The systems and controls established and maintained under subsection (2) shall take into account—

(a) the nature, scale, complexity and diversity of the insurer's business; and

(b) the degree of risk associated with each area of its business.

(4) A licensed local insurer shall ensure that its systems and controls are regularly reviewed and updated as required and make and retain for the retention period, a record of how it has complied with this section.

(5) The systems and controls of a licensed local insurer shall specify the duties and responsibilities of the board and senior management, including such responsibilities and duties as are imposed on the board and senior management by this Ordinance.

(6) The senior management of a licensed local insurer is responsible for ensuring that, insofar as it is necessary for them to perform their duties, all staff of the insurer—

(a) are made aware of and understand the strategies, policies, systems and controls established and maintained by the insurer; and

(b) are provided with information concerning the insurer and its business.

### **Risk management strategy, policies, systems and controls**

**35.** (1) A licensed local insurer shall establish and maintain—

(a) a clearly defined strategy, and if the board considers it appropriate, policies, for the effective management of all significant risks that the insurer is or may be exposed to; and

(b) systems and controls that are sufficient to ensure that the risk management strategy and policies are effectively implemented.

(2) The risk management strategy, policies, systems and controls shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the licensee's business;
- (b) specify how risks are to be identified, measured, assessed, monitored, controlled and reported;
- (c) cover the risks associated with investment activities that may affect the insurer's liabilities or solvency margin;
- (d) where appropriate, set the level of risk that the insurer is prepared to accept and authority levels for members of staff; and
- (e) be approved, and reviewed on at least an annual basis, by the board.

(3) The risk management strategy, policies, systems and controls shall be fully and clearly documented and effectively communicated and readily available to the directors and to those senior managers, staff and other functionaries of the insurer who have responsibility for implementing them.

(4) Without limiting this section, the risk management systems and controls of an insurer shall—

- (a) enable the insurer to monitor the adequacy and effectiveness of—
  - (i) its risk management strategy and policies and their implementation; and
  - (ii) measures taken to address any deficiencies identified in the risk management strategy, policies, systems and controls; and
- (b) ensure that any exceptions to the insurer's risk management strategy and policies are reviewed and authorised by senior management and, where appropriate, the board.

**Board to ensure risks for insurer covered by risk management strategy, etc.**

**36.** (1) The board of directors of a licensed local insurer shall consider whether the following risks are material risks for the insurer and, if it determines that they are, the board shall ensure that they are covered by the insurer's risk management strategy and policies, that is to say—

- (a) market risk;
- (b) insurance risk;
- (c) investment risk;

- (d) underwriting risk;
- (e) pricing and product design risk;
- (f) liquidity risk;
- (g) credit risk;
- (h) operational risk;
- (i) reinsurance risk; and
- (j) custodial risk.

(2) The board of directors of a licensed local insurer shall—

- (a) approve the investment strategy and the significant investment policies, and any subsequent changes to the strategy or significant policies, and review them on at least an annual basis;
- (b) ensure that a management structure, including appropriate systems and controls, is put in place to effectively execute and monitor the investment strategy and policies;
- (c) ensure that effective policies, systems and controls are established and maintained to enable the monitoring and managing of the insurer's asset and liability positions to ensure that the insurer's investment activities and assets positions are appropriate for its risk profile; and
- (e) ensure that contingency plans are put in place to mitigate the effect of a deterioration in investments.

(3) The board and senior management are responsible for—

- (a) ensuring that they understand all the risks to which the insurer is exposed in its business;
- (b) assessing the resources required for an appropriate risk management system, including accurate and reliable management information and reporting systems, and for ensuring that the required resources are available; and
- (c) overseeing the implementation of the insurer's risk management strategy, policies, systems and controls.

**Underwriting and pricing strategy, policies, systems and controls**

**37.** (1) A licensed local insurer shall establish, document and maintain—

- (a) an underwriting and pricing strategy and policies; and
- (b) systems and controls that are sufficient to ensure that the underwriting and pricing strategy and policies are effectively implemented.

(2) Without limiting subsection (1)(a), the underwriting and pricing policies shall provide for—

- (a) the evaluation of risks underwritten or to be underwritten;
- (b) the establishment of adequate premium levels;
- (c) the mitigation and diversification of risks by—
  - (i) defining limits on the amount of risk retained; and
  - (ii) providing for the transfer of appropriate levels of risk away from the insurer through adequate and appropriate reinsurance or other risk transfer arrangements.

(3) Without limiting subsection (1)(b), the systems and controls shall include controls of expenses related to premiums and claims.

(4) The underwriting and pricing strategy and the significant underwriting and pricing policies established under subsection (1), shall be approved, and reviewed on at least an annual basis, by the board of directors.

(5) Senior management shall monitor the systems and controls established in accordance with subsection (1)(b) on an on-going basis.

**Investment strategy, policies, systems and controls**

**38.** (1) A licensed local insurer shall establish and maintain—

- (a) an investment strategy and such investment policies as the board of directors considers appropriate for the nature, size, complexity, structure and diversity of the insurer's business; and

(b) systems and controls that are sufficient to ensure that the investment strategy and policies are effectively implemented.

(2) Without limiting subsection (1), the investment strategy and policies of a licensed local insurer shall address—

- (a) the risk profile of the insurer;
- (b) mixture and diversification of investment by type, including the long-term asset mix over the main investment categories;
- (c) the establishment of limits for the allocation of assets by geographical area, markets, sectors, counterparties and currency;
- (d) the extent to which the holding of some types of assets is restricted or disallowed, for example illiquid or volatile assets;
- (e) the conditions under which the insurer can pledge or lend assets; and
- (f) clear accountability for all asset transactions and associated risks.

#### **Application of section 34 to 38 to foreign insurer**

39. Section 34 to 38 applies to a licensed foreign insurer with respect to the business of the licensee carried on in the Islands.

#### **Procedures to detect fraud**

40. A licensed insurer shall allocate appropriate resources and implement effective procedures and controls to deter, detect, record and as required, promptly report fraud to the appropriate authorities.

#### *Other Obligations of, and Restrictions on, Insurers*

#### **Requirements with respect to domestic business**

41. Every contract of domestic business effected by a licensed insurer or by an approved external insurer shall be subject to the laws and jurisdiction of the Islands and any provision of the contract to the contrary shall be null and void.

**Separate accounts for long term and general insurance business**

42. (1) A licensed insurer shall not, unless granted an exemption by the Commission, carry on both long term insurance business and general insurance business.

(2) A licensed insurer that carries on both long term insurance business and general insurance business pursuant to an exemption granted by the Commission shall keep separate accounts in respect of each of those businesses.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction, to a fine of \$50,000 or to a term of imprisonment of one year, or to both.

**Further provisions relating to long term insurance business accounts**

43. (1) A licensed insurer that carries on long term insurance business shall place receipts of moneys in respect of that business in a separate long term insurance business fund and payments to and from the long term business insurance fund shall not be made directly or indirectly for any purpose other than those of the insurer's long term insurance business.

(2) A licensed insurer that carries on long term insurance business may establish any number of separate accounts in respect of the respective premiums paid to it to provide—

- (a) annuities on human life;
- (b) contracts on human life; and
- (c) endowment policies,

and such respective premiums shall be kept segregated one from the other and independent of all funds of the insurer.

(3) Notwithstanding the provisions of any other enactment to the contrary, the long term insurance business fund and the accounts specified in subsection (2) shall not be chargeable with any liability arising from any other business of the insurer nor be available to a liquidator to offset general liabilities of the insurer except to the extent of any surplus disclosed on an actuarial valuation and certified by an approved actuary to be distributable otherwise than to policyholders.

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction, to a fine of \$50,000 or to a term of imprisonment of one year, or to both.

**Statutory fund**

44. (1) Every insurer licensed to carrying on any class of insurance business in the Islands shall establish and maintain a statutory fund in respect of all such classes of business.

(2) The statutory fund shall be established on the date—

(a) on which the insurer commences the carrying on of any class of insurance business referred to in subsection (1); or

(b) on the commencement of its financial year next after the commencement of this Ordinance,

whichever is the later date.

(3) The statutory fund referred to in subsection (1)—

(a) consist of the trust assets, maintained in the manner set out in subsections (4), (5) and (6); and

(b) be established under an appropriate name in respect of each class of insurance business referred to in subsection (1).

(4) Every licensed insurer carrying on long-term insurance business in the Islands shall place in trust in the Islands assets equal to its liabilities and contingency reserves with respect to its policyholders in the Islands as established by the balance sheet of the insurer as at the end of its previous financial year.

(5) Every licensed insurer carrying on general insurance business in the Islands shall place in trust in the Islands assets equal to its liabilities and contingency reserves with respect to its policyholders in the Islands as established by the balance sheet and revenue account of the company as at the end of its previous financial year.

(6) Assets required to be placed in trust pursuant to subsections (4) and (5) shall be so placed not more than three months after the end of the financial year to which the balance sheet or the revenue account, as the case may be, of the insurer relates.

**Method of creating trust**

45. (1) A trust referred to in section 44(4) and (5) shall be created by a trust deed the contents of which shall be approved by the Commission before the trust is created and the deed shall be in such form as approved by the Commission.

(2) The trust shall be exclusively used to discharge the licensed insurer's domestic business obligations to policyholders in the Islands and for no other purpose.

(3) The trust property shall not to be made the subject of any charge, security interest, mortgage, trust assignment lien or other dealing.

(4) Except with the prior written consent of the Commission any distribution, dealing or undertaking entered into in contravention of subsections (2) and (3) shall be void.

(5) Notice of termination of the trust agreement by the licensed insurer or the trustee must be approved by the Commission.

(6) A person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine of \$100,000 or to a term of imprisonment of two years or to both.

(7) For the purposes of this section, the assets required to be placed in trust are to be held by a licensed trustee in the Islands and approved by the Commission.

### **Segregation of assets by class of business**

**46.** (1) Subject to subsections (2) and (3), the assets representing each statutory fund of a licensed insurer shall not be applied directly or indirectly to any class of business other than that in respect of which the fund was established and is being maintained.

(2) Where the value of the assets mentioned in subsection (1) is shown on an actuarial investigation made under this Ordinance to exceed the amount of the liabilities attributable to any class of insurance business referred to in section 44, the restriction imposed by subsection (1) shall not apply to so much of those assets as represents the excess.

(3) Nothing in subsection (1) shall be construed as precluding a licensed insurer from exchanging, at fair market value, assets representing each statutory fund for other assets of the insurer.

(4) The provisions of subsection (1) shall apply notwithstanding any arrangements for the subsequent repayment to the fund of any money out of the receipts of any other class of insurance business.

(5) Any mortgage or charge including a charge imposed by a court on the application of a judgment creditor shall be void to the extent to which it contravenes the provisions of subsection (1).

(6) An insurance company carrying on insurance business in any class shall not declare a dividend at any time without the prior approval of the Commission.

(7) A licensed insurer that carries on more than one class of insurance business in respect of which it is required to establish and maintain a statutory fund shall keep such books of accounts and other records as are necessary for the purpose of identifying—

- (a) the assets respecting each statutory fund; and
- (b) the liabilities attributable to each class of insurance business.

#### **Provision relating to assets held in trust**

47. The assets which form the subject matter of the trust referred to in section 44(4) and (5) shall consist of—

- (a) cash;
- (b) unencumbered securities of, or guaranteed by, a government approved by the Commission;
- (c) other securities as approved by the Commission; or
- (d) any combination of paragraphs (a) to (c).

#### **Restriction on trustee dealing with assets**

48. (1) A trustee shall—

- (a) be licensed under the Trustee Licensing Ordinance;
- (b) not be an affiliate of the insurer; and
- (c) be approved by the Commission.

(2) A trustee shall submit to the Commission annually, three months after the end of the financial year, in a form approved by the Commission, a list of the assets held in trust by him pursuant to section 44.

#### **Insurer to furnish particular of liabilities and assets with respect to fund**

49. A licensed insurer shall, within three months after the date on which it establishes its statutory fund and thereafter within three months of the expiration of its financial year, furnish to the Commission a statement in the approved form showing—

- (a) particulars of the liabilities of the insurer in respect of which the fund is established, as at the date of the establishment of the fund; and
- (b) particulars of the assets comprising the fund.

**Assets in statement deemed to be assets of statutory fund**

50. The assets shown as assets of a particular statutory fund in a statement furnished to the Commission pursuant to section 49, or in any variation of the statement, shall be deemed to form part of the assets of that fund unless they more properly form part of the assets of some other statutory fund.

**Depreciation of trust assets**

51. (1) Where the Commission is satisfied that, by reason of depreciation in the value of securities or other cause, the value of money and specified securities deposited on trust or on behalf of a licensed insurer falls short of the value required by section 44 it shall, by notice in writing, require the insurer to deposit on trust money or specified securities or both to a value deemed by the Commission to be sufficient to bring the amount of the trust to the value required by section 44, as the case may be.

(2) A notice under this section shall not be issued until the Commission has given an opportunity to the company to be heard in connection with the matter.

(3) A licensed insurer who fails to deposit on trust money or specified securities or both as required by it under this section commits an offence, and the Commission may, if it considers it necessary in the interest of the policyholders, cancel the license of the company.

**Substitution of securities**

52. A licensed insurer may at any time substitute for any security or money held on trust, any specified security, so that the total amount then held in trust is not less than the amount required by section 44, and any security so substituted shall become part of the trust property as was the security of the assets withdrawn.

**Restriction on transfer of surplus assets of statutory fund**

53. (1) A licensed insurer shall not pay, apply, allocate or transfer any part of the surplus assets of its long term insurance statutory fund except with the approval of the Commission, on the certification of its approved actuary and in a manner consistent with the provisions of the articles of incorporation, by-laws or other constituent document of the insurer.

(2) The amount paid, applied or allocated to or for the benefit of the shareholders of the insurer and the amount transferred to another statutory fund in respect to that part of the surplus assets which is derived from participating policies

registered in the Islands shall not exceed one-quarter of the amount paid or allocated to or for the benefit of the holders of these policies.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction, to a fine of \$50,000 or to a term of imprisonment of one year, or to both.

### **Appropriation of profits towards surplus**

**54.** (1) A licensed insurer carrying on general insurance business shall not pay, apply, allocate or transfer any part of the surplus assets of its general insurance statutory fund except with the approval of the Commission.

(2) The Commission may give directions as to the portions of surplus of a licensed local insurer that shall be invested in the Islands.

### **Inaccurate or misleading particulars**

**55.** (1) Where it appears to the Commission that—

- (a) a statement furnished to it under section 49 is in any respect unsatisfactory, incomplete, inaccurate, misleading or otherwise fails to comply with the requirement of that section; or
- (b) the value of the assets or of the assets included in a particular class as shown by the statement, is insufficient or excessive,

the Commission, after considering any explanation made by or on behalf of the insurer, shall give to the insurer such directions in writing as it thinks necessary for the variation of the statement or for an increase or decrease in the value of the assets.

(2) A licensed insurer shall comply with any directions given to it by the Commission under subsection (1) within thirty days of receiving the same.

### **Insurer to furnish Commission with information**

**56.** The Commission may, for the purpose of exercising its powers under section 55 in respect of a licensed insurer, request from that insurer such information as it considers necessary; and the insurer shall furnish the information within thirty days of the request.

### **Investments to be made in corporate name**

**57.** (1) All investments and deposits of the funds of the licensed insurer shall be made in its corporate name and no

director or officer of the insurer and no member of a committee that can exercise any authority over the investment or disposition of the funds of the insurer shall—

- (a) either directly or indirectly be a beneficiary or accept any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of the insurer; or
- (b) have pecuniary interest in any purchase, sale or loan made by or on behalf of the insurer, whether solely or jointly,

except where the director, officer or member of the committee is a policyholder then he is entitled to all the benefits accruing to him under the terms of his contract.

(2) Nothing in this section shall be construed as precluding a licensed insurer from making in the name of or transferring or assigning to another person or company the investments and deposits necessary to comply with the laws of any state or country where—

- (a) the insurer transacts or is about to transact insurance business in that state or country; and
- (b) the laws of the state or country require that the investments and deposits be made in the name of or be transferred or assigned to any person or company other than the insurer.

(3) In this section “funds” means all funds of an insurer.

### **Prohibitions relating to acquisition of shares and loans**

**58.** (1) Subject to any regulations made under this Ordinance, a licensed local insurer shall not, without the prior approval of the Commission, directly or indirectly—

- (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;
- (b) lend any of its funds to a related party i.e., the parent or an entity within the parent group;
- (c) lend any of its funds to a director or an officer of the insurer or to a husband, wife or a child of a director or an officer except on the security of the insurer's own policies or some other adequate security;
- (d) lend any of its funds to a company if more than one-half of the shares of the company are owned

by a director or an officer of the insurer or the husband, wife or a child of a director or an officer, or by any combination of those persons;

- (e) grant unsecured credit facilities to any person except for temporary cover in the case of general insurance where such cover does not exceed one hundred and eighty days or except in the case of advances to insurance agents or to full-time employees against commissions or salaries to be earned; or
- (f) enter into any guarantee or provide any security in connection with a loan by any other person to any such person or company as is mentioned in paragraph (c), (d) or (e).

(2) Notwithstanding subsection (1), the prohibition against lending does not extend to commercial arms' length issuance of performance bonds or mortgage indemnity insurance.

(3) A licensed foreign insurer shall not directly or indirectly grant unsecured credit facilities to any person in the Islands except in the case of general insurance for temporary cover not exceeding one hundred and eighty days or for advances to insurance agents or full-time employees against commissions or salaries to be earned.

(4) A director of a licensed local insurer who knowingly contravenes subsection (1)(b) is liable at the instance of an aggrieved party to make good any loss occasioned by the contravention.

### **Dividend not to impair capital**

**59.** No dividend or return of capital shall be paid by a licensed local insurer without the prior consent in writing of the Commission at any time while its assets are less than the amount required for solvency by section 19 nor shall any dividend be paid that would reduce its assets below the same amount or impair its capital.

### **Preparation of certified actuarial valuation of assets and liabilities**

**60.** (1) A licensed insurer carrying on long term insurance business shall each year cause its approved actuary to make a valuation of its assets and liabilities in respect of every class of long term insurance business, in accordance with the prescribed method, and shall submit the actuarial report to the Commission within three months after the end of its financial year.

(2) A licensed insurer carrying on general insurance business shall, at least once every three years, cause its approved actuary to make a valuation of its assets and liabilities in respect of every class of general insurance business, in accordance with the prescribed method, and shall submit the actual report to the Commission within three months after the end of its financial year.

(3) The Commission may extend the period specified in subsection (1) or (2) by such period or periods as it considers appropriate, except that such extension, or if more than one extension is granted, the aggregate of such extensions, shall not exceed a period of two months.

(4) Notwithstanding subsection (1) or (2), the approved actuary may use a method not in accordance with the prescribed method to value the liabilities as at the end of each of the first three financial year ends next after commencement of this Ordinance:

Provided that the method is prospective in nature and full details of the method are sent to the Commission at least three months before the end of the relevant financial year.

(5) The Commission may request in writing further information or require modifications to the method referred to in subsection (4) if, in the opinion of the Commission, the method is not suitable; and provided that such a request or requirement is sent within twenty days of receiving full details of the method.

(6) Where the Commission receives further information requested under subsection (5), it may continue to request in writing further information or require modifications to the method; provided that such request or requirements is sent within twenty days of receipt of the further information.

(7) If the Commission does not request further information or require modifications to the method referred to in subsection (3), in accordance with subsection (5) or (6) the approved actuary may use the method sent to the Commission under subsection (3) or as subsequently modified by the Commission.

(8) The actuary shall value the actual reserves and the policy liabilities of the insurer on a consolidated basis and for the local book of business, as at the end of each financial year.

(9) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$50,000 or to a term of imprisonment of one year, or to both.

*Merger, Transfer of Business and Run-off***Merger, transfer of business and run-off**

**61.** (1) Subject to section 42, a licensed insurer shall not, without the prior written approval of the Commission,—

- (a) merge with any other person;
- (b) merge its insurance business with the business of any other person;
- (c) transfer its insurance business, or any part thereof, to another person;
- (d) accept from any other insurer a transfer of its insurance business, or any part thereof; or
- (e) run-off all or part of its insurance business.

(2) The Commission may grant approval under subsection (1) subject to such conditions as it may deem appropriate and, in exercising its discretion, the Commission shall have primary regard to the protection of the policyholders and creditors of the insurer concerned.

(3) The Commission in considering whether to grant approval under subsection (1) shall consider any recommendation made to it by any person likely to be affected by the merger, transfer or acquisition of an insurance business.

(4) Where the Commission grants approval, refuses to grant approval, or where the Commission grants conditional approval, the Commission's decision may be appealed to the Court within fifteen days of the Commission's decision.

(5) Regulations may make further provision for mergers, transfers of business and the running-off by a licensed insurer of its business, including—

- (a) specifying requirements for applications made under this section;
- (b) providing for notices to be given with respect to, and the advertising of, applications made under this section; and
- (c) specifying procedures for the determination by the Commission of applications under this section.

(6) A person who contravenes subsection (1) commits an offence and is liable on conviction, to a fine of \$100,000 or to a term of imprisonment of two years, or to both.

**Restrictions on compromises and arrangements under the Companies Ordinance**

**62.** (1) Notwithstanding anything to the contrary in the Companies Ordinance, a licensed local insurer shall not make an application to the Court under section 95 of the Companies Ordinance with respect to a compromise or arrangement unless the Commission has given its approval to the application.

(2) The Commission is entitled to be heard at every hearing of the Court in respect of an application made by an insurer under section 95 of the Companies Ordinance and the Court shall not make an order under section 95 or 96 of the Companies Ordinance unless the Commission has been given notice of the hearing at which the order is to be made.

*Further Provisions in Respect of Insurers Carrying on General Insurance Business*

**Provisions to be included in financial statements**

**63.** (1) Every licensed insurer carrying on general insurance business shall include in its financial statements and returns adequate provisions for unearned premium, unexpired risks and outstanding claims.

(2) Every licensed insurer carrying on general insurance business shall furnish to the Commission details of the methods and assumptions used in calculating the liabilities required under subsection (1) at the time of submission of its financial statements and returns.

(3) The Commission may disallow any methods or assumptions used in calculating the liabilities referred to in subsection (1) where, in the opinion of the Commission, they do not result in adequate provision for liabilities.

(4) The Commission may require a licensed insurer carrying on general insurance business to cause an approved actuary to undertake a valuation of its liabilities and to furnish the Commission with a report of the results.

**Establishment of insurance pools**

**64.** (1) The Commission may require licensed insurers carrying on general insurance business to establish an insurance pool for the purpose of covering risk for a particular class of persons if the Commission determines that—

(a) it is in the national interest to do so; and

(b) a particular insurance cover is not readily available.

(2) The insurance pool referred to in subsection (1) shall be regulated in such manner as may be prescribed.

(3) In this section “insurance pool” means an arrangement entered into by insurers that enable those insurers to form a facility for the purpose of underwriting insurance business of a specific nature.

### **Self-insurance**

**65.** (1) After the date of commencement of this Ordinance, no company other than a company carrying on insurance business, shall insure itself under an insurance policy of the company unless it does so in a manner prescribed by regulations.

(2) Regulations made pursuant to subsection (1) shall specify—

- (a) the categories of insurance to be permitted;
- (b) the method to be used by the company for the insurance; and
- (c) the manner in which funds obtained from the insurance may be invested.

### **Disclosure of pro rata condition of average**

**66.** (1) Where a contract of insurance contains a *pro rata* condition of average, the condition is of no effect unless, before the contract is entered into, the licensed insurer informs the policyholder in writing of the nature and effect of the condition requiring that the policyholder be his own insurer for the proportion by which the value at risk exceeds the sum insured.

(2) For the purpose of this section, “value” means—

- (a) if the policy is on a reinstatement basis, the cost of reinstating the buildings or contents to their condition when new or the cost of replacement at the date of any loss or damage, whichever shall be less;
- (b) if the policy is on an indemnity basis, the cost of reinstatement calculated as in paragraph (a), less a reasonable provision for depreciation.

(3) This section shall not apply in respect of an insurance contract entered into or renewed before the date of commencement of this Ordinance.

**Adequacy of reinsurance**

67. Every licensed insurer shall include in its annual audited accounts a statement from an approved auditor or an approved actuary expressing an opinion on the adequacy of the insurer's reinsurance arrangements having due regard to the risk profile of the insurer's business.

**PART IV****INSURANCE INTERMEDIARIES****Restrictions on dealing with unlicensed insurers**

68. (1) A licensed insurance agent shall not solicit applications for insurance, or negotiate for insurance business, on behalf of an unlicensed insurer or provide advice to clients of an unlicensed insurer.

(2) A licensed insurance broker shall not, unless special dispensation has been applied for by the insurance broker and granted by the Commission—

- (a) on behalf of a client resident in the Islands, solicit or negotiate insurance business, including the renewal and continuance of such business, with an unlicensed insurer; or
- (b) introduce a client resident in the Islands to, or bring such a client together with, an unlicensed insurer with a view to the insurance of risks.

(3) For the purposes of this section, an insurer is deemed to be an unlicensed insurer with respect to any insurance business that it is not permitted by its licence to carry on.

(4) A licensed insurance broker shall be personally liable to the policyholder on all contracts of insurance unlawfully made by or through him directly with any insurer not licensed to carry on insurance business on the Islands in the same manner as if the insurance broker were the insurer.

(5) A person who contravenes subsection (1) or (2), commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

**Requirements applicable to insurance agents and insurance sub-agents**

69. (1) Unless otherwise authorised by the Commission, a licensed insurance agent shall act only on behalf of a single

insurer (“the principal”) and a licensed insurance sub-agent may only act on behalf of a single insurance agent.

(2) A licensed insurance agent shall at all times have, and maintain in the Islands—

- (a) a written agency agreement with the principal setting out the terms of their relationship and the scope of the insurance agent's authority to act on the principal's behalf; and
- (b) a written sub-agency agreement with any insurance sub-agent it appoints setting out the terms of their relationship and the scope of the insurance sub-agent's authority to act on the insurance agent's behalf.

(3) If a principal of a licensed insurance agent provides a certificate to the effect that it is responsible, on a vicarious basis, for the acts or omissions of the insurance agent and any insurance sub-agent appointed by the latter, then the insurance agent shall be exempted from any obligation to maintain in force professional indemnity insurance.

(4) If a licensed insurance agent is not in possession of a certificate from his principal, as provided in subsection (3), then such insurance agent shall maintain in force on his own behalf professional indemnity insurance on an equivalent basis to an insurance broker under section 72(1) and (2).

(5) A licensed insurance agent shall have vicarious liability for the acts of any insurance sub-agent appointed by him and shall ensure that, in the absence of acceptance of vicarious liability by the principal, in the manner specified in subsection (3), the professional indemnity insurance specified in subsection (4) extends to acts or omissions of the insurance sub-agent.

(6) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Annual returns by insurance agents and insurance sub-agents**

**70.** (1) A licensed insurance agent, if a company, shall submit to the Commission within three months of the end of his financial year, the following—

- (a) financial statements for that financial year;
- (b) a copy of the auditor's management letter, if any;
- (c) the certificate of compliance required by section 79(3);

- (d) any certifications prepared by the auditor in accordance with section 14(1)(c);
- (e) the report of its auditor on the financial statements;
- (f) in respect of its domestic business—
  - (i) the name of each principal for which the insurance agent has at any time in the financial year acted and for which it is, at the date of the return, acting;
  - (ii) a copy of every certificate that has been provided to it by a principal specified in subparagraph (i) in accordance with section 69(3) and, if appropriate, evidence that the professional indemnity insurance required under section 69(4) has been and remains in place; and
  - (iii) a list of the insurance sub-agents, if any, authorised by the said insurance agent to solicit domestic business on its behalf and on behalf of the principal it represents; and
- (g) such other documents as may be specified in regulations.

(2) A licensed insurance agent may in writing apply to the Commission for an extension on time for the submission of the documents under subsection (1) up to a maximum of two months.

(3) A licensed insurance sub-agent, if a company, shall submit to the Commission within three months of the end of each calendar year the following returns in respect of its domestic business—

- (a) the name(s) of that principal(s) for which the said insurance sub-agent is acting;
- (b) written confirmation from the insurance sub-agent that the information set out in its original licence application, as modified by any subsequent notifications notified under section 79(2), remains correct and gives a full and fair picture of its business.

(4) Where the licensed insurance agent or subagent is an individual, he shall prepare and submit to the Commission, in a form approved by the Commission, a statement of affairs with respect to each financial year.

(5) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

**Insurance broker to maintain professional indemnity insurance**

**71.** (1) A licensed insurance broker shall at all times maintain in force, with an insurer approved by the Commission, such professional indemnity insurance as may be specified in regulations.

(2) If the professional indemnity insurance required to be maintained under subsection (1) is cancelled, withdrawn or for any reason lapses, the insurance broker shall immediately—

- (a) inform the Commission and each of his clients;
- (b) cease soliciting any new business as an insurance broker or acting for any new clients in that capacity until the required professional indemnity insurance has been reinstated or replaced or for such period of time as the Commission may specify.

(3) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

**Annual returns by insurance brokers**

**72.** (1) Every licensed insurance broker, if a company, shall submit to the Commission within three of the end of its financial year the following—

- (a) financial statements for that financial year;
- (b) a copy of the auditor's management letter, if any;
- (c) the certificate of compliance required by section 79(3);
- (d) any certifications prepared by the auditor in accordance with section 14(1)(c);
- (e) the report of its auditor on the financial statements;
- (f) in respect of its domestic business—
  - (i) a list of all insurers with whom the insurance broker has placed insurance business during that year, the aggregate of premiums received, and the premium income payable to each insurer with respect to that business during the financial year; and an analysis of those premiums payable by the number of days outstanding; and

- (ii) evidence of the existence of professional indemnity insurance in respect of its activities as an insurance broker, as required under section 71;
  - (g) confirmation in writing that the information set out in the application for the insurance broker's licence, or as modified by subsequent notifications of changes in accordance with section 79(2), remains correct and provides a true and fair view of its business; and
  - (h) such other documents as may be specified in regulations.
- (2) Where the licensed insurance broker is an individual, he shall prepare and submit to the Commission, in a form approved by the Commission, a statement of affairs with respect to each financial year.
- (3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Insurance broker to establishment of policies, systems and controls**

- 73.** (1) A licensed insurance broker shall—
- (a) establish such strategies, policies, systems and controls as are appropriate given the nature, size, complexity, structure and diversity of the insurance broker's business and the degree of risk associated with each area of its business; and
  - (b) ensure that the strategies, policies, systems and controls are fully and clearly documented and are communicated, as appropriate, to members of staff and other functionaries.
- (2) The strategies, policies, systems and controls of a licensed insurance broker shall specify the duties and responsibilities of the board and senior management, including such responsibilities and duties as are imposed on the board and senior management by this Ordinance.
- (3) The senior management of a licensed insurance broker to which this section applies is responsible for ensuring that, insofar as it is necessary for them to perform their duties, all staff of the insurance broker—

- (a) are made aware of and understand the strategies, policies, systems and controls established and maintained by the insurance broker; and
- (b) are provided with information concerning the insurance broker and its business.

### **Premiums collected by licensed insurance intermediary**

**74.** (1) Premiums collected by a licensed insurance broker or licensed insurance agent on behalf of an insurer shall be held in a bank account separate and apart from, and shall not be intermingled with the insurance broker's or insurance agent's regular operating account.

(2) A licensed insurance broker or licensed insurance agent shall on the request of the Commission, provide bank statements of the account held on behalf of the insurer and a reconciliation of the premiums received with the balance on the insurer's account.

(3) A licensed insurance intermediary shall, for the purpose of receiving any premium for a contract of insurance, be deemed to be the insurer's agent and, notwithstanding any conditions or stipulations to the contrary, the licensed insurer shall be deemed to have received any premium received by the insurance intermediary.

(4) A licensed insurer on whose behalf and insurance intermediary has received a premium or part of a premium shall accept liability arising under the policy, notwithstanding that the insurer has not received the premium.

### **Procedures to address fraud**

**75.** A licensed insurance agent, insurance sub-agent and insurance broker shall allocate appropriate resources and implement effective procedures and controls to deter, detect, record and as required, promptly report fraud to the appropriate authorities.

### **Maintenance of minimum paid up capital**

**76.** (1) A licensed insurance agent, insurance sub-agent and insurance broker shall ensure that at all times its minimum paid up capital is maintained in an amount not less than the greater of—

- (a) the minimum applicable to it as specified in regulations; or
- (b) such amount as the Commission may direct under subsection (2).

(2) If the Commission considers it appropriate, having regard to the nature and extent of the business carried on, or proposed to be carried on, by a licensee to which subsection (1) applies, the Commission may direct the licensee to increase its paid up capital to an amount higher than the prescribed minimum capital applicable to it.

(3) A direction issued under subsection (2) shall specify a reasonable period for compliance with the direction.

(4) If the capital of a licensee to which subsection (1) applies falls below the amount that it is required to maintain under that subsection, it shall forthwith notify the Commission in writing.

(5) A person who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

## PART V

### PROVISIONS APPLICABLE TO LICENSEES UNDER THIS ORDINANCE

#### *Maintenance of Records*

#### **Obligation to maintain records**

**77.** (1) Subject to subsection (6), a licensed insurer and a licensed insurance broker shall maintain records that are sufficient—

- (a) to show and explain its transactions;
- (b) at any time, to enable its financial position to be determined with reasonable accuracy;
- (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Ordinance; and
- (d) if applicable, to enable its financial statements to be audited in accordance with this Ordinance.

(2) The records required to be maintained under subsection (1) shall be kept at—

- (a) the insurer's or insurance broker's, as the case may be, office in the Islands; or
- (b) such other place within or outside the Islands as may be approved in writing by the Commission.

(3) A licensee carrying on any business in addition to the one for which it licensed, shall maintain separate records,

including accounting records, in respect of the business for which it is licensed and shall segregate the assets and liabilities of the licensed business from those of its other business.

(4) A licensed foreign insurer shall—

- (a) maintain at its office in the Islands, or where it is required to appoint a representative, at the office of its representative in the Islands, records that are sufficient—
  - (i) to show and explain all transactions in respect of the business it carries on in the Islands and without limiting the generality of the foregoing, a record of all local policies issued by the company and a record of the aggregate amount of the premiums received on behalf of those local policies; and
  - (ii) to enable it to prepare such returns as it is required to prepare and make under this Ordinance and regulations; and
- (b) notify the Commission in writing of the place or places, whether in or outside the Islands, where its financial records, other than those specified in paragraph (a) are maintained,

and this subsection applies to a licensed foreign insurer in place of subsections (1) and (2).

(5) Regulations may prescribe—

- (a) the form and manner in which the records specified in subsections (1), (2), (3) and (4) are to be maintained; and
- (b) other records required to be maintained by a licensee under this Ordinance and the form, manner and place in which such records are to be maintained.

(6) A licensee required to maintain records under this section, and where the licence of a licensee is revoked, lapses or surrendered, a former licensee, shall retain the records required to be maintained under this section for a period of at least five years after the completion of the transaction to which they relate.

(7) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

**Additional records to be maintained by insurer**

**78.** (1) A licensed insurer shall maintain—

- (a) copies of the minutes of proceedings at general meetings and meetings of its directors and committees; and
- (b) claims records, details of its reinsurance with copies of the relevant treaties.

(2) Records required to be maintained under this section shall be maintained in such form and manner, at such place and for such period as may be specified in regulations:

Provided that if no regulations are made such records shall maintained in the form and manner as approved by the Commission.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

*Obligations of, and Restrictions on Licensees*

**Restrictions on business carried on by licensee**

**79.** (1) A licensee shall not, without the prior approval of the Commission—

- (a) carry on business other than in accordance with its business plan as from time to time approved by the Commission;
- (b) create any charge or similar encumbrance over any of its assets;
- (c) modify its memorandum or articles of association; or
- (d) change its name, or the name under which it carries on business.

(2) A licensee shall notify the Commission within fourteen days of any change in the information in its application documents.

(3) A licensee shall submit annually to the Commission, as part of its annual return, a certificate signed by its auditor or such other person as the Commission may approve to the effect that the provisions of subsections (1) and (2) have been complied with.

(4) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Restrictions on transfer, acquisition and disposal of significant interest**

**80.** (1) This section applies to every licensee that is a company, except a foreign insurer.

(2) A person owning or holding a significant interest in a licensee to which this section applies shall not sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest, unless the prior approval of the Commission has been obtained.

(3) A person shall not, whether directly or indirectly, acquire a significant interest in a licensee to which this section applies, unless the prior approval of the Commission has been obtained.

(4) A licensee to whom this section applies shall not, unless the prior approval of the Commission has been obtained—

(a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2);

(b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in—

(i) a person acquiring a significant interest in the licensee; or

(ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

(5) An application to the Commission for approval under subsection (1), (2), (3) or (4) shall be made by the licensee concerned.

(6) The Commission shall not grant approval under subsection (1), (2), (3) or (4) unless it is satisfied that, following the acquisition or disposal, any person who will acquire a significant interest satisfies the Commission's fit and proper criteria as specified in guidelines issued by the Commission under section 43 of the Financial Services Commission Ordinance.

(7) A person who knowingly contravenes subsection (1), (2), (3) or (4), commits an offence and is liable on summary

conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Notification of change in persons holding significant interest in foreign insurer**

**81.** (1) Subject to subsection (2), a licensed foreign insurer shall provide written notice to the Commission within fourteen days after any change in the persons who own or hold a significant interest in the insurer.

(2) The requirements of subsection (1) shall not apply or are modified with respect to a licensed foreign insurer where, in the case of a particular foreign insurer, the Commission so determines, on the application of that insurer.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Advertisements**

**82.** (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a licensee is misleading, contains an incorrect statement of fact or is contrary to the public interest, it may—

- (a) direct the licensee in writing not to issue the document or to withdraw it; or
- (b) authorise the licensee in writing to issue the document with such changes as the Commission may specify.

(3) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

(4) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document—

- (a) contrary to a direction or authorisation of the Commission under subsection (2); or

(b) contrary to any provision of regulations,  
commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Change of name**

**83.** (1) A licensee, other than a foreign insurer, shall not, without the prior approval of the Commission—

(a) change the name under which he or it carries on business; or

(b) in the case of a corporate body, change its name.

(2) A licensed foreign insurer shall within fourteen days notify the Commission in writing if it changes its name or the name under which it carries on business.

(3) A person who contravenes subsection (1) of (2) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Commission may require licensee to change name**

**84.** (1) The Commission may, by written notice, direct a licensee, other than a foreign insurer, to change the name under which it carries on business or under which it is incorporated if the Commission is of the opinion that the name is—

(a) identical to that of any other person, whether within or outside the Islands, or which so nearly resembles that name as to be likely to deceive; or

(b) otherwise misleading or undesirable.

(2) A licensee who fails to comply with a direction of the Commission made under subsection (1) commits an offence and is liable on summary conviction, to a fine of \$50,000 or to a term of imprisonment of one year, or to both.

### **Prohibition on use of certain words and phrases in name**

**85.** (1) A person shall not, except with the prior written approval of the Commission or unless authorised by another enactment—

(a) use, whether in the name under which he is registered or in the description or title under which he carries on business in or from within the Islands—

- (i) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof; or
  - (ii) any other word or phrase specified in regulations as a word or phrase that suggests insurance business or the business of an insurance intermediary; or
- (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he is carrying on, or that he is licensed or otherwise entitled to carry on—
- (i) insurance business; or
  - (ii) business as an insurance intermediary.
- (2) The name of a licensee shall reflect the business or which it is licensed by its licence to carry on.
- (3) Where the name a licensee uses suggests that it is licensed to carry on a business which it is not licensed to carry on, the licensee shall be in contravention of this section.
- (3) A person who contravenes this section commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.
- (4) A licensee in contravention of this section shall not be prosecuted within six months of the coming into operation of this Ordinance.

### **Requirement to act with due skill and diligence**

**86.** A licensee shall act with due skill, care and diligence when conducting business with or on behalf of a policyholder and shall put in place such policies and procedures as may be prescribed by regulations.

### **Business continuity plan**

**87.** (1) A licensee that is a company shall establish a business continuity plan, and put business continuity arrangements in place, aimed at ensuring that, in the event of an unforeseen interruption or disruption—

- (a) the licensee is able to continue to carry on its regulated business and to meet its regulatory obligations;
- (b) losses to its functions, systems and data are limited and any losses may be recovered in a timely manner; and

- (c) where the severity of the interruption or disruption results in the licensee ceasing its regulated business, or any part of it, it is able to resume its business in a timely manner.
- (2) The business continuity plan and arrangements shall be—
- (a) appropriate for the nature, size, complexity, structure and diversity of the licensee's business and the types and degree of risk to which it is exposed;
- (b) regularly reviewed and tested, and updated as required; and
- (c) fully documented.
- (3) Without limiting subsection (1) or (2), the interruptions and disruptions covered by the business continuity plan and arrangements shall include—
- (a) the loss or failure of internal and external resources, including human resources, systems and other assets;
- (b) the loss or corruption of data and other information; and
- (c) external events, such as criminal acts and hurricanes and other natural disasters.

## PART VI

### WINDING UP

#### **Companies Ordinance to apply with modifications**

**88.** The provisions of the Companies Ordinance shall apply to the winding up of licensees under this Ordinance with such modifications as are specified in this Part.

#### **Voluntary winding-up**

**89.** (1) A licensed local insurer may not be wound-up voluntarily without the prior approval of the Commission.

(2) Any resolution of the members or creditors of a licensed local insurer to wind up the insurer without the prior approval of the Commission is void and of no effect.

(3) The liquidator of a licensed local insurer that is being wound up voluntarily shall, in addition to his obligations under

the Companies Ordinance, advertise his appointment in such manner as may be directed by the Commission in writing.

(4) A liquidator who fails to advertise his appointment in accordance with a direction of the Commission issued under subsection (3) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

### **Winding-up by Court**

**90.** (1) A licensee may be wound-up by the Court under the Companies Ordinance on a petition presented by the Commission on the grounds that—

- (a) the licence of the licensee has been revoked under the Financial Services Commission Ordinance; or
- (b) in the case of an insurer, the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency required to be maintained under section 19; or
- (c) on the petition of ten or more policyholders owning policies of an aggregate sum assured of not less than \$100,000.

(2) Unless the Commission has been made a party to the liquidation proceedings, the liquidator appointed by the Court for purposes of winding-up shall keep the Commission informed about the conduct of such winding-up to the extent that the Court may direct.

(3) A copy of the administrator or liquidator's report which is filed with the Court and approved shall be filed with the Commission within fourteen days of the approval of the said report.

(4) Notwithstanding the provisions of any other Ordinance to the contrary, the Court may prefer the claims of policyholders, to such degree as it may deem appropriate, over the claims of any other creditor or creditors apart from secured creditors except to the extent that security has been granted in circumstances contrary to the provisions of this Ordinance.

### **Reduction of contracts as alternative to winding up**

**91.** Subject to any regulations made under this Ordinance, where an application is made to the Court for the winding-up of a licensed local insurer if the Court is satisfied that the insurer is insolvent, it may reduce the amount of the insurer's contracts on

such conditions as it considers just instead of appointing a liquidator.

### **Continuation of long term insurance business by liquidator**

**92.** (1) The liquidator of an insurer appointed by the Court shall, unless the Court otherwise orders, carry on any long term insurance business of the insurer with a view to it being transferred as a going concern to another insurer, whether in existence or to be incorporated for the purpose.

(2) In carrying on the insurer's long term insurance business under subsection (1), the liquidator may agree to the variation of any contracts of insurance at the commencement of the liquidation, but he shall not effect any new contracts of insurance.

(3) On the application of the liquidator of an insurer to which subsection (1) applies, the Court may by order reduce the amounts of the contracts made by the insurer in the course of carrying on its long term insurance business.

(4) An order under subsection (3) may be made subject to such conditions as the Court considers appropriate.

(5) The liquidator of an insurer with long term insurance business may appoint an actuary to investigate and report to him on the long term insurance business of the insurer and, if appropriate, to conduct actuarial valuations of the business.

### **Segregated assets of insurers with long term business**

**93.** (1) Where an insurer that carried on any long term insurance business is being liquidated by order of the Court the assets of the segregated funds of the insurer shall first be applied to meet the insurer's long term insurance liabilities attributable to such funds.

(2) If the value of the assets referred to in subsection (1) exceeds the amount of the long term insurance liabilities of the insurer attributable to the segregated funds, the excess is an asset of the company available for distribution.

### **Application to liquidate assets where no liabilities exist or where provision made for all liabilities**

**94.** (1) A licensed local insurer which has no liabilities, or which has, to the satisfaction of the Commission, made adequate provision for the discharge of all of its liabilities, may, if authorised by a resolution of the shareholders, or, where the company has no shareholders, by a resolution of the board of

directors, apply to the Commission for approval to liquidate its assets.

(2) Prior to the submission of the application, the licensed local insurer shall—

- (a) cause to be effected the relevant resolution of the shareholders authorising the voluntary liquidation and where the company has issued more than one class of shares by special resolution, each shareholder shall be entitled to vote;
- (b) cause to be *Gazetted*, published in a newspaper of general circulation in the Islands, and broadcast over any electronic media in the Islands, a notice of the intention to make the application, which notice shall be approved by the Commission and shall state the date on or after which the application is to be made, such date to be not less than thirty days after the publication of the notice; and
- (c) serve on or send to each shareholder and policyholder of the insurer, a copy of the notice, by personal service or by registered post, at least forty clear days prior to the date stated in the notice as being the date on or after which the application is to be made, provided that the Commission may dispense with such publication or service or alter the time periods specified in this section where it is satisfied that the circumstances so warrant.

(3) Any shareholder or policyholder who may be affected by any voluntary liquidation may, at any time prior to the date on which the application is to be, by written notice to the Commission, indicate his wish to make representation to the Commission in respect of any matter relating to the proposed voluntary liquidation.

## PART VII

### MISCELLANEOUS

#### *Administrative*

#### **Investigatory powers**

**95.** The Commission has authority to investigate any matter or any grounds where this Ordinance imposes a reporting requirement on any person.

**Manner of making application under this Ordinance**

- 96.** (1) An application made under this Ordinance—
- (a) shall be in writing and, where a form has been approved by the Commission, shall be in the approved form; and
  - (b) shall have included with it such documents or information as may be specified by this Ordinance or regulations.
- (2) The Commission may require an applicant to—
- (a) furnish it with such documents and information, in addition to that specified in subsection (1)(b), as it reasonably requires to determine the application and any such information shall be in such form as the Commission may require; and
  - (b) verify any document and information provided in support of an application in such manner as the Commission may specify.
- (3) If, before the determination by the Commission of an application—
- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or
  - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,
- the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.
- (4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

*Offences and Penalties***False or misleading representations, statements, reports or returns**

- 97.** (1) A person who makes or assists in making a representation, statement, report or return, whether oral or written—

- (a) that is required or permitted by this Ordinance to be made to or, in the case of a document, filed with the Commission; and
- (b) that—
  - (i) contains a false statement of a material fact; or
  - (ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading,

commits an offence and is liable on summary conviction, to a fine of \$20,000 or to a term of imprisonment of one year, or to both.

(2) A person does not commit an offence under subsection (1) if he did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

### **Order to comply**

**98.** Where a person is convicted of an offence under this Ordinance, the Court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Ordinance or regulations for the contravention of which he has been convicted.

### **Criminal liability of directors**

**99.** (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commit that offence and are liable to be proceeded against and punished accordingly.

(2) In this section, “director”, in relation to a body corporate, includes any person in accordance with whose instructions or directions the directors of the body corporate or any of them act.

*Directive*

**Commission may issue directive**

**100.** (1) Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a directive—

- (a) imposing a prohibition, restriction or limitation on the business that may be undertaken by the licensee, including—
  - (i) that the licensee shall cease to engage in any class or type of business; or
  - (ii) that the licensee shall not enter into any new contracts for any class or type of business;
- (b) requiring the licensee to take such other action as the Commission considers may be necessary to protect the property of, or in the custody, possession or control of, the licensee or to protect customers or creditors or potential customers or creditors of the licensee.

(2) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a) and (b) of that subsection.

(3) Where it appears to the Commission that a person is carrying on unauthorised insurance business, the Commission may issue a directive to that person—

- (a) requiring him to cease carrying on that business; or
- (b) requiring him to take such other action as the Commission considers may be necessary to protect his property, or property in his custody, possession or control, or to protect his customers or creditors or potential customers or creditors of him.

*Regulations***Regulations**

**101.** (1) The Governor may make regulations—

- (a) generally for giving effect to this Ordinance and for its administration by the Commission; and
- (b) specifically in respect of anything required or permitted by this Ordinance to be prescribed.

(2) Without limiting subsection (1), regulations may provide that engaging in an activity that would otherwise not be regarded as carrying on insurance business or the business of an insurance intermediary is deemed for the purposes of this Ordinance, or specified sections of this Ordinance, to be carrying on such a business.

(3) Regulations may—

- (a) be made for the purposes of this Ordinance or for specified provisions of this Ordinance;
- (b) make different provision in relation to different persons, circumstances or cases;
- (c) provide the fees payable under this Ordinance;
- (d) provide fines for failure to do anything within the time provided;
- (e) subject to subsection (4), provide for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations;
- (f) provide the Commission to issue guidelines in respect of certain matters; and
- (g) be made to provide for market conduct supervision.

(4) A penalty provided for an offence under the regulations shall not exceed—

- (a) in the case of a fine, the sum of \$100,000; and
- (b) in the case of a period of imprisonment, a term of one year.

#### *Final Provisions*

#### **Consequential amendments**

**102.** The enactments set out in the Schedule are amended to the extent specified therein.

#### **Transitional provisions**

**103.** Notwithstanding the repeal of any provision in the Insurance Ordinance which relates to domestic insurance business any licence issued under any of those provisions which is in force immediately before the commencement of this Ordinance—

- (a) shall have effect as from the commencement of this Ordinance as if granted under this Ordinance;
- (b) in the case of a licence for a specified period, shall remain in force, subject to the provisions of this Ordinance, for so much of that period as falls after the commencement of this Ordinance.

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## SCHEDULE

### ENACTMENTS AMENDED

1. The Insurance Premium Sales Tax Ordinance is amended in section 2, in the definitions of “domestic business”, “insurance agent”, “insurance broker”, “insurance sub-agent” and “insurer”, by repealing the words “Insurance Ordinance” and substituting the words “Domestic Insurance Ordinance”.

2. The Insurance Ordinance is amended—

- (a) in the Long Title by repealing the word “the” where it occurs for the second time and substituting “non-domestic”;
- (b) in section 1, by inserting after the word “the” the word “Foreign”;
- (c) in section 2, by repealing the definitions of “domestic business”, “external insurer”, “insurance agent”, “insurance broker”, “insurance sub-agent” and “principal insurance representative”;
- (d) in section 3(2), by repealing paragraphs (b) to (e);
- (e) in section 4(1),—
  - (i) by repealing the words “in or”;
  - (ii) by repealing paragraphs (b), (c), (e) and (f);
- (f) by repealing sections 5 and 6;
- (g) in section 8,—
  - (i) by repealing subsections (3), (4), (11), (12 and (13);
  - (ii) in subsection (10), by repealing the words “other than an approved external insurer”;
- (h) in section 11—
  - (i) by repealing subsections (1) to (5) and (9);

(ii) in subsection (6), by repealing the words “or a licensed principal insurance representative”, “or licensed principal insurance representative”, “or principal insurance representative” wherever they occur;

(i) in section 12,—

(i) in subsection (1), by repealing paragraphs (e) and (h);

(ii) in subsection (1)(f), by repealing the words “under general domestic business”;

(iii) in subsection (1)(g), by repealing the word “domestic” and the words “within the Islands”;

(iv) by repealing subsection (2);

(j) in section 13,—

(i) by repealing subsections (1) to (3) and (5);

(ii) in subsection (4)(c) and (d), by repealing the words “or principal insurance representative”; and

(k) in section 15(1) by repealing the word “domestic” and substituting “non-domestic”.

**3. The Financial Services Ordinance is amended—**

(a) in section 45, by repealing subsection (2) and substituting the following—

“(2) Notwithstanding any provisions of this Ordinance or any Financial Services Ordinance in respect of any criminal sanctions, the Commission may, where it is satisfied that a licensee has committed a disciplinary offence, take disciplinary action against that licensee.”;

(b) in section 48 by inserting after subsection (1) the following subsection—

“(2) Once the licensee pays the financial penalty as ordered, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the licensee to prove that the offence with which it is charged has been dealt with under this Part.”.

**4. The Financial Services (Financial Services Ordinance) Regulations are amended in Part II to the Schedule by inserting “Domestic Insurance Ordinance”.**

**PASSED** by the House of Assembly this    day of  
2015.

Tracey Parker  
Clerk to the House of Assembly

Robert Hall  
Speaker

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## EXPLANATORY MEMORANDUM

The purpose of this Bill is to make provision for the licensing, regulation, supervision and control of domestic insurance business and insurance intermediaries.

The Bill is made up of nine Parts.

Part I has the preliminary provisions and contains *Clause 1- 3*.

Part II of the Bill deals with general provisions regarding licensing and approval requirements and contains *Clause 4 -17*.

Clause 4 makes it an offence for a person to carry on or hold himself out as carrying on insurance business in or from within the Islands when he is not licensed at all or not licensed for that particular class of insurance business.

Clause 5 stipulates that an insurer or insurance broker shall not be licensed under the Ordinance unless it deposits a prescribed sum with a financial institution approved by the FSC.

Clause 7 sets out the categories of licence.

Clauses 8, 9 and 10 provide for the licensing under the Ordinance.

Clause 11 empowers the FSC on application of an insurance broker to approve an insurer constituted outside the Islands as an approved external insurer for the purpose of acceptance of domestic insurance business placed with it by that broker.

Clauses 12 and 13 require certain persons to satisfy the Commission's fit and proper criteria assessment.

Part III, contains provision in respect of insurers, *Clause 18 - 67* contains provisions in respect of an insurer maintaining its business in financially sound condition, restrictions on reinsurance risks, risk management, the submission of annual returns and preparation of financial statements, restriction on the merger, transfer or takeover of insurance business without the prior approval of the FSC. Insurers carrying on long term insurance business are required to establish a statutory fund.

*Clause 63 – 67*, contains provisions applicable to insurer carrying on general insurance business other than long-term insurance business.

Part IV, Insurance intermediaries, *Clause 68 – 76*, contains provisions applicable to insurance agents, sub-agents and brokers.

Part V contains provisions of general application. *Clause 77 -87* requires the keeping of records and the obligations and restrictions applicable to licensees.

Part VI, Winding-up, *Clauses 88 – 94*, contains provisions regarding voluntary winding-up and winding-up by a Court.

Part VII, Miscellaneous provisions, *Clause 95 – 103*, provides for matters that are required for the administration of the Ordinance but do not fall under the other Parts of the Bill such as change of name and the prohibition on the use of certain words and phrases in the name under which a licensee is registered.

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