CHAPTER 369C

SEGREGATED ACCOUNTS COMPANIES

LIST OF AUTHORISED PAGES

1 – 14D	LRO 1/2017
15 – 24	LRO 1/2006
25 – 28B	LRO 1/2017
29 – 38	LRO 1/2006
39 – 42	LRO 1/2017

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

SECTION

1. Short title.
2. Interpretation.

PART II
REGISTRATION

3. Application for registration to operate segregated accounts.
4. Documents to be filed.
5. Application to court by parties who object to registration of segregated accounts company.
6. Register of segregated accounts companies.
6A. Register of a segregated company to which cap 308 or cap 309 applies.
7. Refusal of Registrar to register segregated accounts company.
8. Deregistration of segregated accounts company.
8A. De-registration.
8B. Reinstatement of a SAC on the register.
8C. Restoration on sub-register of segregated account.

PART III
MANAGEMENT AND ADMINISTRATION

9. Company to inform persons they are dealing with segregated accounts company.
10. Segregated accounts representative.
11. Replacement of segregated accounts representative.
12. Governing Instrument.
13. Apportionment of assets among segregated accounts.

14. Issue of securities linked to a segregated account.
15. Dividends, repurchases and other acquisitions of shares.
16. Reductions of capital of a segregated account.
17. Application to court for confirming order.
18. Court directs a list of creditors entitled to object.
19. Order of court confirming reduction.
20. The Registrar to register the order and minute.
21. Contributories liable to pay debt of creditors of altered segregated accounts.
22. Non-application of the Act to a SAC to which the IBC Act applies.
23. Application of IBC Act to reductions of capital of a segregated account.
24. Accounts' records.
25. Financial statements of a segregated account.
26. Court may order immediate production of statements.
27. Register of owners of segregated accounts.
28. Nature of segregated accounts.
29. Assets of the general accounts.
30. Liability of a segregated accounts company.
31. Priority rights of parties to segregated accounts.
32. Internal transactions.
33. Arbitration.
34. Creditor enforcement rights limited to account assets.
35. Legal rights and obligations of a segregated accounts company.
36. Account owners beneficial interests in segregated account.
37. Remedies in law and equity for parties of a segregated account.

PART IV
RECEIVERSHIP AND WINDING UP

38. Receivership orders.
39. Application for receivership orders.
40. Parties of segregated accounts company may appoint a receiver.
41. Functions and powers of a receiver.
42. Discharge and variation of a receivership order.
43. Remuneration of a receiver.
44. Companies Act disapplied in respect of receivership.
45. Winding up of segregated accounts companies.
46. Application of assets by liquidator.

PART V
GENERAL

47. Power to make regulations.
48. Effect on transactions and interest in a segregated account of infringement of this Act.

49. Annual declaration.
50. Offences.
51. Fees.
52. Penalties for late payment and non-payment of fees.

SCHEDULE — FEES TO BE PAID TO THE REGISTRAR.

This page is intentionally blank
The next page is 5

CHAPTER 369C

SEGREGATED ACCOUNTS COMPANIES

An Act to make provisions in respect of segregated accounts companies.

20 of 2004
47 of 2011
34 of 2013

[Assent 20th September, 2004]
[Commencement 29th September, 2004] *S.I. 77/2004*

PART I
PRELIMINARY

1. This Act may be cited as the Segregated Accounts Companies Act. Short title.

2. (1) In this Act — Interpretation.

"account owner" in relation to a segregated account means any person who is —

(a) the registered holder of shares which are —

(i) issued by the segregated accounts company; and

(ii) linked to that segregated account; or

(b) expressly identified in the governing instrument linked to a segregated account as being an account owner for the purposes of this Act in respect of that segregated account; or

(c) expressly designated in the records of the segregated accounts company as being an account owner in respect of that segregated account,

and the interests of an account owner in any of the foregoing capacities in relation to any segregated account are referred to in this Act as "account holdings";

"Commission" means the Securities Commission established by section 3 of the Securities Industry Act; Ch. 363.

"contract" includes written agreements, instruments or other writings (including electronic records) which create or affect rights or obligations;

"counterparty" means any party (other than the segregated accounts company itself, save where section 32(1) applies) to a transaction to which the segregated accounts company is a party, and under which assets or liabilities are wholly or partly linked to a segregated account, but an account owner shall not (in that capacity) also be a counterparty;

"court" means the Supreme Court;

"creditor" means, in respect of any segregated account (and in that regard may include a counterparty of the segregated account) or the general account respectively, any person to whom any liability is owed by the segregated accounts company and such liability is linked to that segregated account or is a liability of the general account, but, except as provided for in section 36(5), an account owner shall not (in that capacity) also be a creditor;

"general account" means an account comprising all of the assets and liabilities of a segregated accounts company which are not linked to a segregated account of that company;

"general shareholder" means any member of a segregated accounts company not being the holder of a share linked to a segregated account;

"governing instrument" means one or more written agreements, instruments, Memorandum or Articles of Association, prospectuses, resolutions of directors, registers or other documents (including electronic records), setting out the rights, obligations and interests of account owners in respect of a segregated account;

"insurance business" means insurance business either as defined in section 2 of the Insurance Act or in section 2 of the External Insurance Act;

Ch. 347.
Ch. 348.

"known creditors" means creditors whose identity and whereabouts are known to, or with due diligence could be discovered by, the company;

"linked" means referable by means of —

(a) an instrument in writing including a governing instrument or contract; or

(b) an entry or other notation made in respect of a transaction in the records of a segregated accounts company,

which identifies an asset, right, contribution, liability or obligation as belonging or pertaining to a segregated account;

"manager" means any person who, by virtue of the terms of a governing instrument or otherwise with the consent of a segregated accounts company, has control of a segregated account;

"officer" in relation to a segregated accounts company, includes director and secretary;

"operative date" means the date on which this Act comes into force;

"Minister" means the Minister responsible for Companies;

"primary regulator" means a person or supervisory body in charge of regulating and governing the activities of companies engaged in the business of investment funds, issuing securities, insurance business and any other business as prescribed by the Minister;

"register" means the register of segregated accounts companies maintained under section 6;

"registered" means registered under section 6;

"Registrar" means the Registrar of Companies appointed under section 2 of the Companies Act; Ch. 308.

"security" in relation to a segregated accounts company, means any share, note, bond, debenture, evidence of indebtedness, certificate, unit, warrant, derivative or right conferring an option to acquire shares or any other right issued by or pertaining to the company, but does not include a contract of insurance unless the terms of the contract so provide;

"segregated account" means a separate and distinct account (comprising or including entries, recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a segregated accounts company

pertaining to an identified or identifiable pool of assets and liabilities of such segregated accounts company which are segregated or distinguished from other assets and liabilities of the segregated accounts company for the purposes of this Act;

"segregated accounts company" means a company which is registered under section 6 and, unless the context otherwise requires, references to "the company" shall be construed as references to such company; and

"transaction" means any dealing of whatever nature, which may be evidenced by a governing instrument (in the case of a transaction with an account owner) or contract (in the case of a transaction with a counterparty), including the issue of any security, by which assets or liabilities become linked to a segregated account or by which the assets or liabilities linked to a segregated account are otherwise affected, or, in the case of assets linked to a segregated account which are intended by the parties to be applied to a risk of any nature and any dealing which exposes such assets to liability or loss.

(2) For the purposes of this Act, excluding section 45(1) —

(a) a segregated accounts company shall be deemed to be solvent if the general account without reference to any liabilities of a segregated account is able to pay its liabilities as they become due; and

(b) a segregated account shall be deemed to be solvent if it is able to pay its liabilities (excluding obligations to account owners in that capacity) as they become due.

(3) For the avoidance of doubt it is declared that, notwithstanding section 35, a segregated accounts company is not by reason only of the operation of segregated accounts carrying on trust business in or from within The Commonwealth of The Bahamas for the purposes of the Banks and Trust Companies Regulation Act.

Ch. 316.

(4) For the avoidance of doubt, and notwithstanding that a segregated accounts company may have created one or more segregated accounts pursuant to the provisions of this Act —

(a) a segregated accounts company is a single legal person; and

(b) the establishment by a segregated accounts company of a segregated account does not create, in respect of that segregated account, a legal person separate from the company.

(5) The provisions of the Companies Act shall, subject to the provisions of this Act, and unless the context otherwise requires, apply *mutatis mutandis* in relation to a segregated accounts company to which the Companies Act applies. Ch. 308.

(6) The provisions of the International Business Companies Act shall, subject to the provisions of this Act, and unless the context otherwise requires, apply *mutatis mutandis* in relation to a segregated accounts company to which the International Business Companies Act applies. Ch. 309. Ch. 309.

PART II
REGISTRATION

3. (1) Any company to which the Companies Act or the International Business Companies Act applies — Application for registration to operate segregated accounts. Ch. 308. Ch. 309.

(a) if it is engaged in the business of investment funds with the written consent of the Commission or if applicable an Investment Fund Administrator; or

(b) if it is engaged in the business of issuing securities with the written consent of the Commission; or

(c) if it is engaged in insurance business, with the written consent of the Registrar of Insurance; or

(d) if it is a subsidiary of a Bank or Trust Company and not licensed by the Central Bank with the written consent of the Central Bank of The Bahamas; or

(e) if it is engaged in any other business, with the written consent of a primary regulator who may be prescribed by the Minister,

may, by filing a request under section 4, apply to be registered under section 6.

Ch. 316.

(2) No company licensed under the Banks and Trust Companies Regulation Act shall apply under this section to be registered under section 6.

(3) Before a company can be registered under this Act it must consult with its primary regulator who may —

(a) impose such conditions on the registration of a company as he may consider necessary to ensure the reputation of The Bahamas as an off-shore financial centre and in particular to verify the identity of the account owners of segregated accounts as prescribed by regulations and to ensure compliance with this Act; and

(b) require the company to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its segregated accounts business in a particular way.

(4) The primary regulator may revoke or vary any condition or requirement imposed under subsection (3) by giving notice thereof to the company.

(5) From the date of registration under this Act, a segregated accounts company shall be bound by, and may avail itself of, the provisions of this Act and from such date it may, without in any way limiting the generality of the foregoing, establish one or more segregated accounts to which the provisions of this Act shall apply.

Documents to be filed.

4. (1) The request to be registered as a segregated accounts company under section 6 shall be filed with the Registrar and shall contain the following information —

34 of 2013, s. 2.

(a) the name of the proposed company which shall include at the end the expression "SAC", "Sac" or "Segregated Accounts Company";

(b) the nature of the business of the company;

(c) the address of the registered office of the company in The Bahamas; and

(d) the date of incorporation of the company.

(2) Where the company has conducted business prior to its registration, the company, in filing a request under subsection (1), shall —

(a) file with the primary regulator a statutory declaration made by at least two directors as at the date of the request setting out a true and accurate statement of —

(i) the assets and liabilities of the company as at a date within three months prior to the date of the request;

(ii) a description of any transaction or event which, as of the date of the request, has occurred, or is expected to occur, between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a segregated accounts company which, if it had occurred before the date of that statement, would have caused material changes to the assets and liabilities disclosed therein; and

(iii) the segregated accounts the company intends to operate and the assets and liabilities which the company proposes to assign to each of those segregated accounts;

(b) declare that on registration —

(i) the company and each segregated account will be solvent;

(ii) no known creditor of the company will be prejudiced;

(iii) the liabilities transferred or to be transferred to a segregated account, that the known creditors in respect of such liabilities of the company have consented in writing to the company proceeding to register; or

(iv) the liabilities transferred or to be transferred to a segregated account, that adequate notice has been given in accordance with subsection (4) to all known creditors of the company in respect of such liabilities and no such creditor objects to the registration otherwise than on grounds that are frivolous or vexatious; and

(c) attach evidence of the consent in writing to registration of 75% in number of those persons who would, on the registration of the company, be the account owners of the segregated accounts of the company and 75% of those

persons who would, on the registration of the company, be creditors.

(3) The company, in filing a request under this section, shall —

(a) in the event that the company is an investment fund, attach evidence of the consent in writing to registration, of either the Commission or the Investment Fund Administrator;

(b) in the event that the company is engaged in the business of issuing securities, attach evidence of the consent in writing to registration, of the Commission;

(c) in the event that the company is engaged in insurance business under the Insurance Act, or the External Insurance Act, attach evidence of the consent in writing to registration, of the Registrar of Insurance;

Ch. 347.

Ch. 348.

(d) in the event that the company is a subsidiary of a Bank or Trust Company, attach evidence of the consent in writing to registration, of the Central Bank; or

(e) in any other case, attach evidence of the consent in writing to registration, of the primary regulator designated by the Minister.

(4) For the purposes of subsection (2)(b)(iv) adequate notice is given if —

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1,000; and

(b) notice is published in the Gazette,

in each case stating that the company intends to register under this Act and that a creditor of the company may object to the registration within 14 days from the date of such notice, or publication of such notice.

Application to court by parties who object to registration of segregated accounts company.

5. (1) Where the company has conducted business prior to its registration, subject to subsection (2), account owners or creditors who object to the registration of the company may apply to the court for the annulment of the registration of the company.

(2) An application under subsection (1) may only be made by —

(a) not less than 20% in number of such persons who are as a result of the registration of the company, account owners;

(b) not less than 20% in number of such persons who are as a result of the registration of the company, creditors; or

(c) not less than 20% in number of such persons as are mentioned in paragraphs (a) and (b) combined who are account owners or creditors on registration:

Provided that an application shall not be made by any person who has voted in favour of the registration or has given to the company a statement in writing duly signed that he, having had notice, consents to the registration.

(3) An application under subsection (1) shall be made within 28 days from the date of registration, and may be made on behalf of the persons entitled to make the application by one or more of their number as they may appoint in writing for the purpose.

(4) On an application under subsection (1) the court may make an order annulling or confirming the registration, either wholly or in part, and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase or other disposition of the interests of persons objecting to the registration, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

Register of segregated accounts companies.

6. (1) The Registrar shall maintain a register of segregated accounts companies.

(2) Upon application and upon payment of such fees as may be prescribed the Registrar, if satisfied —

(a) that the company complies with this Act; and

(b) that the necessary consents have been obtained under section 4(3),

shall register the company as a segregated accounts company and publish in the Gazette a notice of the registration of the company.

(3) After registering a company pursuant to subsection (2), the Registrar shall issue a certificate showing the date of registration.

(4) The Registrar shall place a copy of the certificate referred to in subsection (3) on the public file maintained by him in respect of the company.

(5) The register shall be available for inspection by members of the public.

Register of a segregated company to which cap 308 or cap 309 applies.

34 of 2013, s. 3.

6A. The Registrar shall not register a segregated accounts company to which the Companies Act, or the International Business Companies Act, applies unless —

(a) the name of the company as appears in its memorandum of association or articles of continuation is identical to the proposed name of the company contained in the request for registration filed in accordance with section 4; or

(b) application has been made to the Registrar, in accordance with section 18(2) or section 84A of the International Business Companies Act, to amend the company's Memorandum of Association or articles of continuation to change the name to make it identical to the proposed name of the company contained in the request for registration filed in accordance with section 4;

Ch. 309.

(c) application has been made to the Registrar, in accordance with section 29 of the Companies Act, to amend the company's Memorandum of Association to change the name to make it identical to the proposed name of the company contained in the request for registration filed in accordance with section 4.

Ch. 308.

Refusal of Registrar to register segregated accounts company.

7. Where the Registrar refuses to register a company as a segregated accounts company pursuant to section 6(2), he shall assign a reason for his refusal and his decision shall be subject to appeal in court.

Deregistration of segregated accounts company.

8. (1) If 75% of the accounts owners in number and value of a segregated accounts company and 75% of the counterparties in number and in value who are creditors submit a written request to the Registrar for deregistration, then the Registrar shall remove the company from the register and the provisions of this Act shall cease to apply to the company.

(2) A segregated accounts company must notify all creditors and all account owners of the segregated accounts company of the removal of the company from the register.

(3) An account owner of a segregated account or any creditor who is aggrieved by a request made pursuant to subsection (1) may, within 21 days of receipt of notice of the request, apply to the Registrar to refuse to remove the segregated accounts company from the register or, if the removal has already occurred, to reinstate the company on the register.

(4) Where an application has been made under subsection (3) and the Registrar has made a decision on the application, any person who is aggrieved by that decision may, within 21 days of the decision, appeal to the court and the court shall hear the matter and make such order as it thinks fit.

(5) The making of a request pursuant to subsection (1) shall not of itself effect the removal of a segregated accounts company from the register and the Registrar in his absolute discretion shall determine whether to give effect to the removal of the company from the register and, in this regard may require such information from the company as he considers necessary to render such a decision.

De-registration.

34 of 2013, s. 4.

8A. (1) Subject to subsection (2), the directors of a segregated accounts company may, by resolution in such form as the Registrar may direct, apply to the Registrar to remove a segregated account from the sub-register of the segregated accounts company.

(2) Notwithstanding any other provision of this Act, the Registrar shall not without leave of the court —

(a) remove from the register of segregated accounts companies a company of which any segregated account is subject to a receivership order under Part IV;

(b) remove from the sub-register of a segregated accounts company a segregated account which is subject to a receivership order under Part IV.

Reinstatement of a SAC on the register.

34 of 2013, s. 4.
Ch. 308.
Ch. 309.

8B. (1) A company incorporated under the Companies Act or the International Business Companies Act may, within twelve months of its de-registration as a segregated accounts company, apply to the Registrar for reinstatement of the company on the register of segregated accounts companies.

(2) Section 4 shall apply to a request under subsection (1) for reinstatement on the register mutatis mutandis as it applies to an original request by the company for registration.

Restoration on sub-register of segregated account.

34 of 2013, s. 4.

8C. The Registrar shall, where a segregated account has been removed from the sub-register of a segregated accounts company for non-payment of fees in accordance with section 52(4), restore such account to the sub-register upon payment in full of the restoration fee and all outstanding fees payable in respect of such account.

PART III
MANAGEMENT AND ADMINISTRATION

Company to inform persons they are dealing with segregated accounts company.

9. (1) A segregated accounts company shall —

(a) inform any person with whom it enters into a transaction that it is a segregated accounts company;

(b) where the transaction relates to a segregated account, for the purposes of that transaction identify or specify that segregated account; and

(c) include a reference to the fact that the company is a company registered under this Act on its letterhead and contracts.

(2) If in contravention of subsection (1), a segregated accounts company —

(a) fails to inform a person that he is transacting with a segregated accounts company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a segregated accounts company; or

(b) fails to identify the segregated account in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which segregated account he is transacting with,

then in either such case:

(i) the directors shall (notwithstanding any provision to the contrary in the relevant governing instrument or a contract which is binding on those parties in relation to the affected segregated account or general

account), incur personal liability to that person in respect of the transaction; and

(ii) unless otherwise provided for in the governing instrument the directors shall have a right of indemnity against the assets of the general account unless they were fraudulent, reckless, negligent or acted in bad faith.

(3) Notwithstanding subsection (2)(i), the court may relieve a director of all or part of his personal liability thereunder if he satisfies the court that he ought fairly to be so relieved because —

(a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless, negligent, nor acted in bad faith; or

(b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Where, pursuant to subsection (3), the court relieves a director of all or part of his personal liability under subsection (2)(i), the court may order that the liability in question shall instead be met from such assets of a segregated account or the general account of the company as may be specified in the order.

(5) Any provision in the articles of a segregated accounts company or the governing instrument in respect of a segregated account, and any other contractual provision under which the segregated accounts company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity against the assets of the general account by virtue of subsection (2)(ii), shall be void.

Segregated accounts representative.

10. (1) This section shall only apply to a segregated accounts company which has applied for approval to be registered pursuant to section 3(1)(e).

(2) A segregated accounts company shall appoint and maintain a segregated accounts representative in The Bahamas who shall be a person approved by the primary regulator designated by the Minister, as the segregated accounts representative of the company. This

The next page is 15

representative shall be resident and licensed in The Bahamas as —

(a) a licensee under the Banks and Trust Companies Regulation Act; Ch. 316.

(b) a licensee under the Financial and Corporate Service Providers Act; Ch. 369.

(c) a licensee under the Securities Industry Act; Ch. 363.

(d) a licensee under the Investment Funds Act; Ch. 369A.

(e) a licensee under the Insurance Act; or Ch. 347.

(f) a licensee under the External Insurance Act. Ch. 348.

(3) The particulars of the segregated accounts representative of a segregated accounts company shall be included in the register of directors and officers of the company.

(4) It is the duty of the segregated accounts representative within 30 days of —

(a) his reaching the view that there is a reasonable likelihood of a segregated account or the general account of a segregated accounts company for which he acts becoming insolvent; or

(b) it coming to his knowledge or his having reason to believe that the segregated accounts company for which he acts has failed to comply with —

(i) any term or condition imposed under section 3(3);

(ii) any requirement imposed by sections 12, 15, 16 or 24;

(iii) any regulation made under section 47; or

(iv) has become involved in any criminal proceedings in The Bahamas or elsewhere,

to make a written report to the primary regulator setting out all the particulars of the case that are available to him relating to the insolvency, failure or involvement.

Replacement of segregated accounts representative.

11. (1) Where the segregated accounts company is a company with a representative appointed under section 10(2) and this representative resigns or has its licence revoked pursuant to the provisions under its principal Act and the company has not notified the primary regulator designated by the Minister of any replacement of its representative, the primary regulator shall serve on the company at its registered office, a notice directing the company to replace the representative.

(2) If the segregated accounts company fails within thirty days from the date of the notice to notify the primary regulator of any replacement of its representative, the primary regulator shall recommend to the Registrar that the company be removed from the register.

Governing Instrument.

12. (1) The rights, interests and obligations of account owners in a segregated account shall be evidenced in a governing instrument and the rights, interests and obligations of counterparties shall be evidenced in the form of contracts.

(2) The governing instrument in relation to any segregated account shall be governed by the laws of The Bahamas and the parties thereto shall submit to the jurisdiction of the courts of The Bahamas and, in relation to such governing instrument —

(a) a person shall become an account owner and shall become bound by the governing instrument if such person complies with the conditions, if any, for becoming an account owner as set out in the governing instrument;

(b) an account owner shall take such interest in a segregated account as may be stipulated in respect of him in accordance with the terms of the governing instrument and, absent such stipulation or other compelling indication (in the discretion of the directors of the company, exercised reasonably), the extent of the interest of such account owner shall be nil;

(c) if no other provision for management is specified in the governing instrument, the company shall manage the segregated account and may —

(i) appoint and supervise the officers, managers, employees and other persons who have management of the segregated account; and

(ii) enter into financial arrangements for payment for services including the charging of fees, disbursements and other charges which may be withdrawn from the segregated account;

(d) unless otherwise provided in the governing instrument, the company may take any action, including —

(i) the amendment of the governing instrument;

(ii) the appointment of one or more managers;

(iii) for the benefit of the segregated account only, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the segregated account, or the orderly winding-up of the affairs and termination of the segregated account, or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of account holdings that was not previously outstanding, without the vote or approval of any particular manager or account owner, or class, group or series of managers or account owners;

(e) the company may, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to —

(i) notice of the time, place or purpose of any meeting at which any matter is to be voted on;

(ii) waiver of any such notice;

(iii) action by consent without a meeting;

(iv) the establishment of record dates;

(v) quorum requirements;

(vi) voting in person, by proxy or in any other manner; or

(vii) any other matter with respect to the exercise of any voting rights;

(f) unless otherwise provided in the governing instrument in relation to a segregated account, the company may in respect of that account grant to, or withhold from, all or certain managers or account owners, or a specified class, group or series of managers or account owners, the right to vote, separately or with any or all other classes, groups or series of managers or account owners, on any matter, such voting

being on a per capita, number, financial interests, class, group, series or any other basis;

(g) unless otherwise provided in the governing instrument in relation to a segregated account, the company in respect of that account may create further segregated accounts to which all or any part of the assets, liabilities, profits or losses linked to any existing segregated account may be transferred, and for the conversion of the interest (or any part thereof) of all or certain account owners in an existing segregated account into interests of account owners in the separate segregated account; and

(h) unless otherwise provided in the governing instrument in relation to a segregated account, the company in respect of that account may set forth provisions therein regarding —

(i) the governance of the business (or any aspect thereof) of the segregated account and the rights, powers and duties of the company, any manager and the account owner and their respective servants, agents, employees, successors or assigns;

(ii) the identity of the segregated account to which the transaction and any assets or liabilities are linked; and

(iii) the extent of the interest of the account owners and others (if any) therein and subordination thereof (if any).

(3) Any written contract by the company governing a transaction with a counterparty, including those executed outside The Bahamas, shall include the name of the counterparty, and, unless otherwise provided therein, shall include a term that the parties select the law of The Bahamas as its governing law and submit to the jurisdiction of the courts of The Bahamas.

(4) Unless otherwise expressly agreed in writing by the parties to the transaction by virtue of a governing instrument or contract which is binding on those parties in relation to the affected segregated account or general account and which is executed by parties having authority in relation to those accounts any contract pertaining to a transaction shall be deemed to contain a statement that the rights of the counterparty shall not extend to, and the

counterparty will not have recourse to, the assets which are linked to any other segregated account or to the general account.

(5) For the avoidance of doubt, it is hereby declared that any provision of a contract or governing instrument relating to the segregation of assets or liabilities of a segregated account shall be governed by and construed in accordance with this Act, and the parties may not contract otherwise in such regard.

Apportionment of assets among segregated accounts.

13. (1) Notwithstanding any other provision of this Act, a segregated accounts company may apportion an asset or liability among two or more segregated accounts and the general account.

(2) Where a segregated accounts company has apportioned an asset or liability pursuant to subsection (1), the extent to which the asset or liability is linked to each segregated account shall be clearly indicated in the contract or governing instrument effecting the apportionment.

(3) Notwithstanding the contents of any governing instrument or subsections (1) and (2) above, it shall be the duty of the directors of a segregated accounts company to keep the assets and liabilities of each segregated account and the general account separate and separately identifiable from assets and liabilities of each other segregated account and the general account.

Issue of securities linked to a segregated account.

14. (1) A segregated accounts company may create and issue securities in one or more classes or series linked to the same segregated account, the proceeds of issue of which shall be included in the assets linked to that segregated account.

(2) Where the company has effected a transaction by issuing a security linked to a segregated account, the issue of the security shall be identified as being linked to the segregated account in the accounts, books and records required to be kept by the company pursuant to this Act.

(3) The proceeds of the issue of shares or other securities, other than securities linked to a segregated account, shall be included in the general assets of the company only and except as provided for in this Act and the general shareholders shall have no rights to the assets of any segregated account by reason only of being a general shareholder.

Dividends, repurchases and other acquisitions of shares.

15. (1) A segregated accounts company may pay a dividend in respect of securities of any class linked to a segregated account whether or not a dividend is declared on any other class of securities linked to the same or any other segregated account or any other securities issued by the company.

(2) Notwithstanding any other provision of this Act, a dividend shall not be declared or paid in respect of securities linked to a segregated account if there are reasonable grounds for believing that —

(a) the segregated account is not, or would after the payment not be, solvent; or

(b) the realisable value of the assets of the segregated account would be less than the sum of its total liabilities other than deferred taxes, as shown in the books of account, and its issued and outstanding share capital.

(3) Dividends in respect of securities linked to a segregated account shall be paid or made on or in respect of those securities by reference only to the assets and liabilities of the segregated account linked to those securities, and not by reference to the general account or any other segregated account, and otherwise in accordance with the rights of such securities.

(4) Notwithstanding any other statutory provision a segregated accounts company may purchase or otherwise acquire the shares or securities linked to a segregated account using the assets linked to the relevant segregated account provided that on the date of purchase or other acquisition, after taking into account the purchase or other acquisition, there are reasonable grounds for believing that —

(a) the relevant segregated account is solvent; and

(b) the realisable value of the assets of the segregated account would be more than the aggregate of its liabilities and its issued share capital of all classes.

(5) Where a company in respect of a segregated account having a share capital has —

(a) purchased or otherwise acquired any of its own shares in respect of a segregated account; or

(b) cancelled any shares, otherwise than in connection with reduction of share capital under section 16,

the company shall within thirty days after so doing give notice thereof to the Registrar specifying the shares purchased or otherwise acquired or cancelled and the Registrar shall register any such particulars.

Reductions of capital of a segregated account.

16. In any case where a segregated accounts company in respect of a segregated account has share capital, if authorised by a resolution of the account owners of the segregated account to which the shares are linked and subject to the governing instrument in relation to that segregated account, on such terms as it may decide, the company may reduce its capital in any way, and in particular, without prejudice to the generality of the foregoing power, may —

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital that is in excess of the requirements of the company,

and may, so far as is necessary, alter its memorandum accordingly.

Application to court for confirming order.

17. Where a segregated accounts company passes a resolution approving a reduction of capital pursuant to section 16, it shall apply to the court for an order confirming the reduction.

Court directs a list of creditors entitled to object.

18. (1) Subject to subsection (2), where the proposed reduction of share capital in respect of a segregated account involves either a decrease in liability in respect of unpaid share capital or the payment to any account owner of any paid-up share capital in respect of a segregated account, and in any other case if the court so directs —

(a) every creditor of the segregated account who at the date fixed by the court shall be entitled to any debt or claim which, if that date were the commencement of the winding up of the

segregated account, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day within which creditors not entered on the list are to be excluded from the right of objecting to the reduction; and

(c) where a creditor entered on the list, whose debt or claim is not discharged or has not determined, does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount —

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it then the full amount of the debt or claim; and

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or nor ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(2) The court may, having regard to any special circumstances of the case, direct that subsection (1) shall not apply as regards any class or any classes of creditors in respect of a segregated account.

Order of court confirming reduction.

19. (1) The court, if satisfied with respect to every creditor of a segregated account who under section 18 is entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make any order confirming the reduction on such terms and conditions it thinks fit.

(2) Where the court makes an order under subsection (1) it may —

(a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified by the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced" those words shall, until the expiration of the period, if any, specified in the order, be deemed to be part of the name of the company.

The Registrar to register the order and minute.

20. (1) The Registrar, on production to him of an order of the court confirming the reduction of the share capital of a segregated account, and the delivery to him of a copy of the order and a minute approved by the court showing, with respect to the share capital of the segregated account as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount, if any, at the date of registration deemed to be paid-up on each share, shall register the order and minute.

(2) On the registration of the order and minute, the resolution for reducing share capital in respect of a segregated account as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court directs.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall constitute conclusive evidence that the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the segregated account is such as is stated in the minute.

(5) The minute when registered shall be deemed, so far as is necessary to be substituted for the corresponding

part of the memorandum, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute for part of the memorandum of the company shall be deemed so far as is necessary to be an alteration of the memorandum within the meaning of section 29 of the Companies Act.

Ch. 308.

Contributories liable to pay debt of creditors of altered segregated accounts.

21. (1) Subject to subsection (2) in the case of a reduction of share capital in respect of a segregated account an account owner of the segregated account, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount if any, which is to be deemed to have been paid, on the share.

(2) If any creditor, entitled in respect of any debt or claim to object to the reduction of share capital in respect of a segregated account is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and immediately after the reduction, the segregated account is unable, within the meaning of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then —

(a) every person who was an account owner of the segregated account at the date of the registration of the order for reduction and the minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount, if any, which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance, may if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders, on the contributories settled on the list as if they were ordinary contributories in a winding up.

(3) Nothing in subsections (1) and (2) shall affect the rights of the contributories among themselves.

(4) Any officer of a segregated accounts company who —

(a) wilfully conceals the name of any creditor entitled to object to a reduction of capital of a segregated account;

(b) wilfully misrepresents the nature or amount of the debt or claim of any such creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b), is guilty of an offence and shall be liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for two years, or to both.

Non-application of Act to a SAC to which IBC Act applies. Ch. 309.

22. Sections 16 to 21 (inclusive) shall not apply to a segregated accounts company to which the International Business Companies Act applies.

Application of IBC Act to reductions of capital of a segregated account. Ch. 309.

23. (1) In any case where the International Business Companies Act applies to a segregated accounts company and, in respect of a segregated account's share capital, if authorised by a resolution of the directors and subject to the governing instrument in relation to that segregated account, on such terms as it may decide, the company may reduce its capital in any way, and in particular, without prejudice to the generality of the foregoing power, by —

(a) returning to account owners any amount received by the company upon the issue of any of its shares, the amount being surplus to the company;

(b) cancelling any capital that is lost or not represented by assets having a realisable value; or

(c) transferring capital to surplus for the purpose of purchasing, redeeming or otherwise acquiring shares that the directors have resolved to purchase, redeem or otherwise acquire; and

(d) cancel any capital that is lost or not represented by assets having a realisable value.

(2) Where a segregated accounts company reduces its capital pursuant to subsection (1), no reduction of capital shall be effected unless the directors determine that immediately after the reduction —

(a) the segregated account will be able to satisfy its liabilities as they become due in the ordinary course of its business; or

(b) the realisable value of the assets of the segregated account will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining issued and outstanding share capital,

and in the absence of fraud, the decision of the directors as to the realisable value of the assets of the segregated account is conclusive unless a question of law is involved.

Accounts' records.

24. (1) A segregated accounts company shall —

(a) maintain records in accordance with generally accepted accounting principles used in the preparation of the financial statements of the company so that the records shall, to the best of the knowledge, information and belief of the directors and officers of the company, clearly show the share capital (if any), proceeds of rights, issues, securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked to each segregated account;

(b) maintain a record of each transaction entered into by the company; and

(c) maintain a general account with records in accordance with this Act and with all of the assets and liabilities of the company which are not linked to a segregated account and which discloses any assets intended by the parties to be applied to a risk of any nature, and which therefore exposes such assets to liability or loss.

47 of 2011, s. 2.

(2) For the purposes of subsection (1), accounting records maintained shall —

(a) correctly explain all transactions;

(b) enable the financial position of the company to be determined with reasonable accuracy at any time;

(c) allow financial statements to be prepared; and

(d) include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate (a), (b) and (c).

47 of 2011, s. 2.

(3) Accounting records maintained pursuant to this section shall be kept for a minimum period of five years from the date of the transaction to which such records relate.

(4) A person who contravenes, or fails to comply with an obligation imposed by, this section commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars. *47 of 2011, s. 2.*

(5) The records maintained with respect to a segregated account may be inspected by any account owner of that segregated account, but an account owner shall not have a right to inspect the records relating to any other segregated account or (in such capacity) the general account. *47 of 2011, s. 2.*

Financial statements of a segregated account.

25. (1) A segregated accounts company shall prepare or cause to be prepared financial statements in respect of each segregated account provided that the account owner of a segregated account may agree in writing to waive his right to have laid before a general meeting financial statements or the auditor's report thereon for an indefinite period but such waiver shall be expressed to be revocable at the option of such account owner.

(2) Subject to subsection (1), a copy of the financial statements of a segregated account shall be made available to the account owner of a segregated account at such intervals and for such periods as are agreed between the company and the account owner of the segregated account, but in any event shall be made available not less frequently than once in each financial year.

Court may order immediate production of statements.

26. If —

(a) the records maintained with respect to a segregated account; or

(b) the financial statements of a segregated account,

are not made available for the inspection by any account owner of that segregated account, the court may, on application by the affected account owner, by order compel immediate production of the records or financial statements.

Register of owners of segregated accounts.

Ch. 308.

27. (1) A segregated accounts company shall maintain a register of account owners setting out their respective interests in any segregated account together with the particulars required in respect of members of the company as set out in section 56(1) of the Companies Act,

Ch. 309.

or section 29(1) of the International Business Companies Act, (as the case may be).

(2) The register of account owners shall not be open to inspection, provided that an account owner shall be entitled to receive a copy of the information in the register pertaining to his interest in the company.

(3) The register of account owners shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) A segregated accounts company must file the number of segregated accounts it has with the Registrar so that fees can be properly assessed.

34 of 2013, s. 5.

(5) A segregated accounts company shall, when paying the annual fees payable by segregated accounts, specify by name each segregated account filed with the Registrar in respect of which payment is being made.

34 of 2013, s. 5.

(6) The Registrar shall maintain in the register of segregated accounts companies a sub-register in respect of each segregated accounts company containing the names and number of segregated accounts operated by the company.

Nature of segregated accounts.

28. (1) Notwithstanding any other provision of this Act, the establishment of a segregated account does not create a legal person distinct from the company.

(2) Notwithstanding any enactment or rule of law to the contrary, but subject to this Act, any liability linked to a segregated account shall be a liability only of that account and not the liability of any other account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant account and not of any other account, and, for the avoidance of doubt, any asset which is linked by a segregated accounts company to a segregated account —

(a) shall be held by the company as a separate fund which is —

(i) not part of the general account and shall be held exclusively for the benefit of the account owners of the segregated account and any counterparty to a transaction linked to that segregated account; and

(ii) available only to meet rights of the account owners and liabilities to creditors of that segregated account; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the general shareholders and from the creditors of the company who are not creditors with claims linked to segregated accounts.

Assets of the general accounts.

Ch. 308.
Ch. 309.

29. (1) For the purposes of this Act, the Companies Act and the International Business Companies Act, the assets recorded in the general account shall be the only assets of a segregated accounts company available to meet liabilities of the company that are not linked to a segregated account.

(2) No assets of the general account may be transferred from the general account to a segregated account unless, on the date from which the transfer is to be effective, and taking into account that transfer, the general account is solvent or all the shareholders and creditors of the general account on that date have expressed in writing their concurrence to the transfer, and in the event a transfer is made to a segregated account in breach of this subsection, on an application by an affected party, the court may declare that the transfer is void, without prejudice to the rights of *bona fide* purchasers for value without notice.

Liability of a segregated accounts company.

30. (1) Unless otherwise expressly agreed in writing by the affected parties —

(a) by virtue of one or more contracts, governing instruments or other documents which are

This page is intentionally blank
The next page is 29

binding on those parties in relation to the affected segregated accounts or general account, and which are executed by parties having authority in relation to those accounts,

where a liability of a segregated accounts company to a person arises from a transaction or matter relating to, or is otherwise imposed in respect of or attributable to, a particular segregated account, that liability shall —

(b) extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the assets linked to that segregated account;

(c) not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the assets linked to any other segregated account; and

(d) not extend to, and that person shall not in respect of that liability, be entitled to have recourse to, the general account.

(2) Where a liability of a segregated accounts company to a person —

(a) arises otherwise than in respect of a particular segregated account; or

(b) is imposed otherwise than in respect of a particular segregated account,

that liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the general account.

Priority rights of parties to segregated accounts.

31. (1) In the event that a segregated account has insufficient assets to pay all its obligations in full, the order and priority of the rights in relation to assets linked to a segregated account shall (without prejudice to the rights of any parties holding valid security interests against assets linked to that segregated account and any valid preferential claims in respect of that segregated account) be determined by the terms of the governing instrument and any contracts pertaining to that account, and any ambiguity in respect of the order and priority rights shall be resolved as follows:

(a) the claims of creditors shall rank ahead of the claims of account owners;

(b) the claims of creditors amongst themselves shall rank equally; and

(c) the claims of account owners amongst themselves shall rank equally.

(2) A segregated accounts company may, with the consent in writing of all account owners of, and counterparties who are creditors with claims linked to, a given segregated account, transfer to the general account or another segregated account an asset from the segregated account to which it is linked, if the segregated account to which such asset is linked, taking into account the proposed transfer, remains solvent, and, in the event a transfer is made to the general account or another segregated account in breach of this subsection, on an application by an affected party, the court may declare that the transfer is void, without prejudice to the rights of *bona fide* purchasers for value without notice.

(3) Any asset transferred in accordance with subsection (2) shall cease to be linked to the segregated account from which it was transferred on the date of the transfer.

(4) Subject to the terms of the governing instrument relating to a given segregated account, on dissolution of the company or termination of the segregated account and after paying creditors of the segregated account, any property linked to that segregated account shall be paid *pro rata* to the account owners of such segregated account or, if there are no account owners, shall be deemed to fall into the general account.

(5) Without prejudice to the rights of parties to resolve disputes by reference to arbitration or to the court, where —

(a) there is, on grounds that are reasonable, uncertainty as to whether any given interest in a segregated account is an interest as a counterparty or an interest as an account owner, that interest shall be deemed to be an interest as a counterparty; and

(b) a given liability is not linked to a particular segregated account, or where there is, on grounds that are reasonable, uncertainty as to whether the liability is linked to a segregated account, that liability shall be deemed to be the liability of the general account.

Internal transactions.

32. (1) Notwithstanding any enactment or rule of law to the contrary —

(a) a segregated accounts company acting in respect of the general account may enter into transactions with the company acting in respect of one or more segregated accounts; and

(b) a segregated accounts company acting in respect of a segregated account may enter into transactions with the company acting in respect of one or more other segregated accounts.

(2) For the avoidance of doubt —

(a) a transaction referred to in subsection (1); and

(b) any transaction between the company in respect of one segregated account and a third party,

shall have effect or otherwise as the transaction would have done under the general law if the transaction had been entered into between the company and a third party, and without restricting the generality of the foregoing —

(c) such a transaction shall be void, at the instance of any creditor of the company in respect of the relevant segregated account or at the instance of the company itself in respect of the relevant segregated account or at the instance of any other person if the transaction would have been void, by such person under any rule of law which would have applied to the transaction if the transaction had been entered into between the company and a third party in the same circumstances; and

(d) an account owner, counterparty, or receiver of any given segregated account shall have standing to pursue, on behalf of the relevant segregated account, any rights of action (including recourse to arbitration under section 33) available to the company in respect of that segregated account pursuant to this section.

(3) Notwithstanding any enactment or rule of law to the contrary —

(a) where a manager or officer of or other person on behalf of a segregated accounts company or a segregated account is also acting in respect of the general account and one or more of the segregated accounts or in respect of two or more segregated accounts which are entering into a transaction, he may so act notwithstanding any material interests or conflicts which may exist as

between the manager, officer or directors or which any of them may have in acting in respect of such accounts; and

(b) where —

(i) a given segregated account enters into a transaction as described in paragraph (a);

(ii) the manager, officer or such other person has disclosed in writing to the company the nature and extent of their interest; and

(iii) the governing instrument of the segregated account so authorises, or a majority of the account owners consent in writing to the entry into of such a transaction,

then the manager, officer or such other person, the company and the company in respect of any segregated accounts shall not be held liable to the company in respect of that segregated account or any of its account owners in respect of any conflict of interest arising in relation to the transaction.

Arbitration.

33. (1) Any dispute which arises in connection with a transaction under section 32(1) —

(a) as between the company in respect of a given segregated account and the company in respect of any one or more other segregated accounts; or

(b) as between the company in respect of the general account and the company in respect of one or more segregated accounts,

may be referred to the court or may be submitted to arbitration under the Arbitration Act.

Ch.180.

(2) If the managers, officers, attorneys-at-law or others representing the company in respect of the separate interests of the affected accounts cannot agree on whether a particular matter should be referred to court or to arbitration, then that matter shall be referred to court.

Creditor enforcement rights limited to account assets.

34. (1) There shall be implied (except in so far as the same is expressly excluded in writing) in every contract and governing instrument entered into by a segregated accounts company the following terms —

(a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any assets attributable to any segregated

account of the company in respect of a liability not attributable to that segregated account;

(b) that if any party shall succeed by any means whatsoever or wheresoever in making liable any assets attributable to any segregated account of the company in respect of a liability not attributable to that segregated account, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him; and

(c) that if any party shall succeed in seizing or attaching by any means or otherwise levying execution against any assets attributable to any segregated account of the company in respect of liability not attributable to that segregated account, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(2) All sums recovered by a segregated accounts company as a result of any such trust as is described in subsection (1)(c) shall be credited against any concurrent liability pursuant to the implied term set out in subsection (1)(b).

(3) Any asset or sum recovered by a segregated accounts company pursuant to the implied term set out in subsection (1)(b) or (1)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the segregated account affected.

(4) Notwithstanding sections 29(2) and 31(2), in the event of any assets attributable to a segregated account being taken in execution in respect of a liability not attributable to that segregated account, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the segregated account affected, the company shall —

(a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the segregated account affected; and

(b) in priority to all other claims against the account transfer or pay, from the assets of the account to which the liability was attributable to the

segregated account affected, assets or sums sufficient to restore to the segregated account affected the value of the assets lost.

Legal rights and obligations of a segregated accounts company.

35. (1) Notwithstanding any enactment or rule of law to the contrary, any asset of a segregated accounts company which is linked to a particular segregated account is deemed to be owned by the company as a separate fund which is not part of the general account and which is not part of the company's own assets.

(2) Except to the extent otherwise provided in the governing instrument, the account owners are entitled to the same limitation of personal liability as is enjoyed by members of companies limited by shares under the Companies Act or the International Business Companies Act.

Ch. 308.
Ch. 309.

(3) A segregated accounts company may —

(a) sue and be sued in respect of a particular segregated account, and service of process upon the company in accordance with subsection (5) shall be sufficient;

(b) be sued for debts and other obligations or liabilities contracted or incurred by the company in respect of a particular segregated account, and for any damages to persons or property resulting from the negligence of the company acting in the performance of duties with respect to that account; and

(c) exercise the same rights of set-off (if any) as between accounts as apply under the general law in respect of companies, including, on an insolvent liquidation of the company, the same rights of set-off which arise in an insolvent liquidation of a company.

(4) The property of a segregated account is subject to orders of the court as it would have been if the segregated account were a separate legal person (and notwithstanding that it is not a separate legal person).

Ch. 308.
Ch. 309.

(5) A segregated accounts company may be served with process in the manner prescribed by the Companies Act, or the International Business Companies Act, in all civil actions or proceedings involving or relating to the activities of a segregated account or a breach by the company of a duty to the segregated account, or to any

account owner thereof or to a counterparty to a transaction linked thereto.

Account owners beneficial interests in segregated account.

36. (1) Except to the extent it may be agreed otherwise by virtue of the governing instrument or contract an account owner of a segregated account shall have an undivided beneficial interest in the assets linked to a segregated account, and, after satisfying in full the claims of creditors of the segregated account, account owners shall share in the profits and losses of the segregated account in such proportions of the residual undivided beneficial interest in the segregated account owned by that account owner as may be specified in any governing instrument relating to such segregated account.

(2) An account owner's beneficial interest in a segregated account is personal property notwithstanding the nature of the property of the segregated account.

(3) Except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, an account owner has no interest in specific segregated account property.

(4) Except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, an account owner's beneficial interest in the segregated account is freely transferable.

(5) Subject to the company complying with section 15, and except to the extent it may be agreed otherwise by virtue of the governing instrument or contract, at the time an account owner becomes entitled to receive a payment, distribution, allocation or dividend pursuant to any governing instrument, he has the status of, and is entitled to all remedies available to, a creditor of the segregated account with respect to the payment, distribution, allocation or dividend, and the governing instrument or contract may provide for the establishment of record dates with respect to such payment, distribution, allocation or dividend.

Remedies in law and equity for parties of a segregated account.

37. (1) To the extent that, at law or in equity, a segregated accounts company or manager has duties (including fiduciary duties) and liabilities relating to a segregated account or to an account owner or to a counterparty —

(a) that company or manager acting under a governing instrument or contract is not liable to the segregated account or to any account owner

or counterparty for the company's good faith reliance on the provisions of that governing instrument or contract to which that account owner or counterparty is a party; and

(b) the company's or manager's duties and liabilities may be expanded or restricted by provisions in a governing instrument to which the person is a party.

(2) Subject to section 34(1)(c) and (2), the provisions of this section shall operate to the exclusion of any rule of law relating to trusts dealing with the same subject matter, and no rule of law relating to trusts may be pleaded by any person to augment or modify the operation of this Act, but nothing in this section shall be construed so as to deny —

(a) the remedy of tracing in law and in equity the assets or the proceeds of the assets of any segregated account where such assets or proceeds have been commingled with the assets of any other segregated account or the general account; or

(b) any remedies available under the doctrine of constructive trusts or similar equitable remedies where those remedies would otherwise be available.

(3) To the extent permitted in the governing instruments of the affected segregated accounts, the company in respect of a segregated account may be an account owner of one or more other segregated accounts of the same segregated accounts company.

PART IV
RECEIVERSHIP AND WINDING UP

Receivership orders.

38. (1) Subject to the provisions of this section, if, in relation to a segregated accounts company, the court is satisfied that —

(a) a particular segregated account is not solvent, the general account is not solvent, a liquidation has been commenced in relation to the company, or for other reasons it appears to the court just and equitable that a receiver should be appointed; and

(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3),

the court may make a receivership order in respect of that segregated account.

(2) A receivership order may be made in respect of one or more segregated accounts.

(3) A receivership order shall direct that the business and assets linked to a segregated account shall be managed by a receiver specified in the order for the purpose of —

(a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the segregated account; or

(b) the distribution of the assets linked to the segregated account to those entitled thereto.

(4) No resolution for the winding up of a segregated accounts company of which any segregated account is subject to a receivership order shall be effective without leave of the court.

Application for receivership orders.

39. (1) An application for a receivership order in respect of a segregated account may be made by —

(a) the company;

(b) the directors of the company;

(c) any creditor of the company in respect of that segregated account; or

(d) any account owner of that segregated account; or

(e) the primary regulator.

(2) The court, on hearing an application —

(a) for a receivership order; or

(b) for leave, pursuant to section 38(4), for a resolution for winding up,

may make an interim order or adjourn the hearing conditionally or unconditionally.

(3) Notice of an application to the court for a receivership order in respect of a segregated account shall be served upon —

(a) the company;

(b) the primary regulator; and

(c) such other persons (if any) as the court may direct,

each of whom shall be given an opportunity to make representations to the court before the order is made.

Parties of segregated accounts company may appoint a receiver.

40. The account owners of a segregated account or the directors of the company may by resolution voluntarily appoint a receiver in respect of the segregated account.

Functions and powers of a receiver.

41. (1) The receiver of a segregated account —

(a) may do all such things as may be necessary for the purposes set out in section 38(3); and

(b) shall have all the functions and powers of the directors and managers of the company in respect of the business and assets linked to the segregated account.

(2) The receiver may at any time apply to the court for —

(a) directions as to the extent or exercise of any function or power; or

(b) the receivership order to be discharged or varied.

(3) In exercising his functions or powers the receiver is deemed to act as the agent of the company in respect of the segregated account, and does not incur personal liability except to the extent that his conduct amounts to misfeasance.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

(5) During the period of operation of a receivership order the functions and powers of the directors and managers and any liquidator of the company cease in respect of the business and assets linked to the segregated account in respect of which the order was made.

(6) At any time after the appointment of a receiver in respect of a segregated account, the company or any account owner or creditor of that account may, where an action or proceeding against the company in respect of that account is pending, apply to the court for a stay of those proceedings, and, on such an application being made, the

court may stay the proceedings accordingly on such terms as it thinks fit.

(7) The appointment of a receiver shall not act as a stay of execution against a counterparty with a valid security interest over the segregated account and such counterparty may enforce his security interest in accordance with its terms subject to applicable law.

Discharge and variation of a receivership order.

42. (1) The court shall not discharge a receivership order unless it appears to the court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The court, on hearing an application for the discharge or variation of a receivership order, may make any interim order it thinks fit or adjourn the hearing, conditionally or unconditionally.

(3) When making an order discharging the receiver, the court may release the receiver from liability save in respect of misfeasance.

Remuneration of a receiver.

43. The remuneration of a receiver and any expenses properly incurred by him shall be payable in priority to all other unsecured claims from the assets linked to the segregated account in respect of which the receiver was appointed but not from any assets of the general account or any assets linked to other segregated accounts.

Companies Act disapplied in respect of receivership. Ch. 308.

44. (1) Sections 141(1) and (2) of the Companies Act dealing with disqualified receivers shall apply to the receiver of a segregated account.

Ch. 308.

(2) Sections 139 to 151 (inclusive) of the Companies Act, shall not apply to the making of a receivership order in respect of a segregated account.

Winding up of segregated accounts companies. Ch. 308. Ch. 309.

45. (1) Subject to this section, a segregated accounts company shall be wound up in accordance with the provisions of this Act, and either the Companies Act, or the International Business Companies Act, depending on which Act applies to such company save that in the event of any conflict, the provisions of this Act shall prevail.

(2) For the purposes of determining whether a segregated accounts company may be wound up on the ground of insolvency the assets and liabilities linked to segregated accounts shall not be taken into account.

Application of assets by liquidator.

46. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the winding up of a segregated accounts company the liquidator shall deal with the assets and liabilities which are linked to each segregated account only in accordance with this Act and accordingly the liquidator shall ensure that the assets linked to one segregated account are not applied to the liabilities linked to any other segregated account or to the general account, unless an asset or liability is linked to more than one segregated account, in which case the liquidator shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(2) The remuneration to be paid to the liquidator shall be apportioned by the liquidator to each segregated account and the general account in such amounts as would best reflect the duties performed by the liquidator and approved by the court.

(3) The liquidator, or any person affected by a decision of the liquidator, may apply to the court for directions in relation to the remuneration of the liquidator.

PART V
GENERAL

Power to make regulations.

47. The Minister may make regulations for carrying out the provisions of this Act and without prejudice to the generality of this provision may make regulations —

(a) for prescribing fees to be paid for matters authorised by this Act; and

(b) for any other matter or thing which may be or is required to be prescribed under this Act.

Effect on transactions and interest in a segregated account of infringement of this Act.

48. Subject to sections 29(2) and 31(2), no transaction or interest in a segregated account shall be void by reason only that at the relevant time the company fails to comply with, or is in breach of, any provision of this Act.

Annual declaration.

49. A segregated accounts company shall file an annual declaration, signed by at least two directors certifying that the company is and that its operations during the preceding year were in compliance with the provisions of the Act, which declaration shall be filed by 31st January each year.

Offences.

50. Any person who —

(a) for any purpose under this Act makes a statement or declaration that he knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular, or

(b) fails to comply with a term or condition under section 3(3),

is guilty of an offence and is liable on summary conviction to a fine of $50,000 or imprisonment for two years, or to both.

Fees.
Schedule.

51. (1) The fees in relation to a segregated accounts company shall be specified in the Schedule and all such fees shall be payable to the Registrar.

Schedule.

(2) All fees paid pursuant to subsection (1) and the Schedule shall be placed in the Consolidated Fund.

Schedule.
Ch. 2.

(3) The Minister may by regulations vary the fees prescribed in the Schedule, so, however, that any such regulations which increase the amount of any fees payable under this Act shall be exempt from the provisions of section 32 of the Interpretation and General Clauses Act but instead be subject to affirmative resolution of both Chambers of Parliament.

(4) In subsection (3) the expression "affirmative resolution of both Chambers of Parliament" in relation to regulations means that the regulations are not to come into operation unless and until affirmed by a resolution of each of those Chambers.

34 of 2013, s. 5.

(5) The Registrar may refuse to take action required of the Registrar under this Act and for which a fee is prescribed until all such fees as prescribed have been paid.

Penalties for late payment and non-payment of fees.
Schedule.
34 of 2013, s. 7.

52. (1) The fees specified in the third and fourth items of the Schedule shall, where a company fails to pay such fees by the 31st day of March in each year, increase by ten per centum of the amount of such fees.

(2) The annual fees increased by ten *per centum* in accordance with subsection (1) shall, where a company fails to pay such increased amounts by the 31st day of October of the relevant year, increase by fifty per centum of the increased amount of such fees.

(3) The Registrar shall remove from the register of segregated accounts companies, from the 1st day of January next ensuing, a segregated accounts company

which fails to pay by the 31st day of December of the relevant year the annual fee, as increased pursuant to subsections (1) and (2), specified in the third item of the Schedule.

Schedule.

(4) The Registrar shall remove from the sub-register of a segregated accounts company, from the 1st day of January next ensuing, a segregated account in respect of which the annual fee specified in the fourth item of the Schedule, as increased pursuant to subsections (1) and (2), has not been paid by the 31st day of December of the relevant year.

Schedule.

(5) A fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar shall be recoverable at the instance of the Attorney-General in civil proceedings as a debt due to the Crown.

(6) A company removed from the register of segregated accounts companies under this Act shall, notwithstanding such removal, continue to be liable for all fees and penalties payable under this Act and all such fees and penalties shall have priority to all other claims against the assets of the company.

SCHEDULE (Section 51)

34 of 2013.

FEES TO BE PAID TO THE REGISTRAR

The following shall be the fees under this Act —

	Matters in respect of which fee is payable	**Amount of fee**
1.	The application fee to register a segregated accounts company	$500.00
2.	An initial filing fee for the establishment of segregated accounts	$500.00
3.	Annual fee payable by the segregated accounts company	$500.00
4.	Annual fee payable by segregated accounts	$500.00
34 of 2013, s. 8. **5.**	De-registration of a segregated accounts company	$500.00
34 of 2013, s. 8. **6.**	Reinstatement on the register of a segregated accounts company	$500.00
34 of 2013, s. 8. **7.**	Removal from sub-register of a segregated account	$250.00
34 of 2013, s. 8. **8.**	Restoration on sub-register of a segregated account	$250.00.