CHAPTER 347

INSURANCE

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FIRST SCHEDULE (Section 4)
THE INSURANCE COMMISSION OF THE BAHAMAS

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PROVISIONS RELATING TO DEPOSITS

CHAPTER 347

INSURANCE

An Act to revise the law regulating the carrying on of insurance business in The Bahamas in order to strengthen the protection given to policyholders under the existing Act; to increase the capital and solvency requirements of insurance companies; to expand the existing regulatory framework; to provide for the establishment of a supervisory authority; to include the regulating of all insurance intermediaries; and to give effect to matters related thereto.

16 of 2005
14 of 2009
9 of 2011
13 of 2011
15 of 2013
36 of 2013

[Assent 4th October, 2005]

[Commencement 2nd July, 2009] *S.I. 67/2009.*

PART I - PRELIMINARY

1. This Act may be cited as the Insurance Act. Short title.

2. (1) In this Act — Interpretation.

"actuary" means a person who satisfies the Commission that he is a fellow of a professional body of actuaries that is internationally recognised;

"adjuster" means a person who —

(a) on behalf of an insurer or an insured, for compensation, directly or indirectly —

(i) solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or fidelity, surety or a guarantee bond issued by an insurer; or

(ii) investigates, adjusts or settles such loss or claim; or

(b) holds himself out as an adjuster, investigator, consultant or advisor with respect to the settlement of such losses or claims, but does not include a person employed as an engineer, or other expert solely for the purpose of giving expert

advice or evidence or a person who acts as an adjuster of marine losses only;

"agent" means a body corporate appointed by a registered insurer and not being an employee of the insurer, who solicits applications for insurance, collects money by way of premiums and acting in accordance with the relevant agency agreement may bind the registered insurer for whom the agent acts in the issue of insurance cover;

"annuity" means a policy under which an insurer assumes the obligation to make, after the expiration of a certain period or during a specified period, a payment or a series of periodic payments to a particular person, in exchange for a premium or series of premiums paid to the insurer;

"annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely for the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons, being a fund which is registered under the Superannuation and Other Trust Funds (Validation) Act;

Ch. 178.

"association" means an association of underwriters registered pursuant to Part IV;

"association of underwriters" means an association of incorporated and unincorporated underwriters, organized according to the system known as Lloyds whereby every underwriting member of a syndicate becomes liable for a separate part of the sum secured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured;

"auditor" means —

(a) a person who is a member of The Bahamas Institute of Chartered Accountants who holds a practicing certificate from that Institute; or

(b) a person recognised by the Commission as being suitably qualified to act as an auditor

by reason of his knowledge and experience;

"beneficiary" means the person named in a life insurance policy to receive the insurance proceeds upon the death of the policyholder or upon the maturity of an endowment;

"broker" means a body corporate which acting with complete freedom as to their choice of undertaking and for commission or other compensation bring together, with a view to the insurance or reinsurance of risks, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance, and where appropriate, assist in the administration and performance of such contracts;

"carry on insurance business in The Bahamas", and its derivatives, includes —

(a) opening or maintaining a place of business or an office, or appointing or using a representative in The Bahamas, whether or not insurance business is being arranged in or from The Bahamas;

(b) the use in The Bahamas of any business description or business title, in any language whatever, of the words "insurance", "assurance", "indemnity", "guarantee", "underwriting", "reinsurance", "surety", "casualty", or any of their derivatives, or any expression which connotes or is intended to connote insurance business;

(c) the making in The Bahamas of any representation in any handbill, letter, letterhead, circular, advertisement, paper, notice, or in any manner whatsoever offering, either directly or indirectly, to arrange contracts of insurance; and

(d) the assumption of the obligation of a company to cover risks or liabilities in any class of insurance business;

"class of insurance business" means any class of insurance business specified in subsection (1) of section 3;

"the Commission" means the Insurance Commission of The Bahamas established under section 4;

"company" means a body corporate that carries on or proposes to carry on insurance business in The Bahamas;

"consultant" means an independent advisor who specializes in some aspect of insurance;

"foreign company" means an insurance company incorporated or established outside The Bahamas;

"general insurance business" means insurance business of any class specified in paragraph (a) of subsection (1) of section 3;

"industrial policy" means a policy in respect of which the premiums are contracted to be paid at intervals of less than two months and are contracted to be received or are usually received by means of collectors, and includes —

(a) a policy that has at any time been such a policy; and

(b) a paid up policy, not being a policy expressed to be a non-industrial policy, granted in lieu of an industrial policy or of a policy referred to in paragraph (a);

"insurance business" means —

(a) the assumption of the obligations of a company in any class of insurance business;

(b) the assumption of the business of insuring risk or liabilities;

(c) the renewal and issuing of documents of renewal of existing insurances and liabilities;

(d) the receiving of first, subsequent or renewal premiums including reinsurance;

(e) reinsurance business; and

(f) pensions business and other business directly connected to insurance business;

"insurance intermediary" means a broker, agent, sub-agent, adjuster, risk manager, consultant, or such other persons who give advice by way of directly offering, advertising or on a person-to-person basis in respect of an insurance product and includes the promotion of such product or the facilitation of an agreement or contract between an insurer and a customer;

"insured" means the party named on or in a policy or certificate;

"Insurer" means any company carrying on insurance business and, except where otherwise stated, includes all the members of an association of underwriters that is registered as an insurer;

"life insurance fund" means the fund to which the receipts of a company in respect of the life insurance business of the company are deposited and from which payments in respect of that business are made;

"life insurance policy" means an ordinary life insurance policy, an industrial life insurance policy or a sinking fund policy;

"life insurer" means a company carrying on life insurance business;

"local policy" means a policy issued in The Bahamas and includes an ordinary life insurance policy issued outside The Bahamas and subsequently made payable in The Bahamas at the written request of the policyholder;

"long-term insurance business" means insurance business of any class specified in paragraph (b) of subsection (1) of section 3;

"Minister" means the Minister responsible for Insurance (excluding National Insurance);

"mutual company" means a company whose capital is owned by the policyholders of that company and includes a company which has agreed to purchase back or is in the process of purchasing back its share capital at a fixed price and is recognised by the Commission as a mutual company;

"policyholder" means the person who for the time being has the legal title to the policy, and includes

any person to whom a policy is for the time being assigned;

"prescribed securities" means any securities or class of securities prescribed by the Commission in regulations made under section 233;

"principal office" means the office notified to the Commission in accordance with subsection (2) of section 56;

"principal representative" means the representative notified to the Commission in accordance with subsection (2) of section 56;

"registered insurance agent" means an insurance agent registered in accordance with Part V;

"registered insurance broker" means an insurance broker registered in accordance with Part V;

"registered insurer" means an insurance company or association registered in accordance with Part III or Part IV as the case may be;

"responsible officer" means the individual who is responsible for the conduct of the brokerage/agency business of the registered broker or agent;

"risk manager" means a person who deals with the identification and analysis of risks which may threaten the assets or earning capacity of an enterprise and recommends or takes measures to avoid and minimise loss;

"salesperson" means a licensed individual engaged by either a registered insurer or registered insurance intermediary to sell insurance products, and whose primary responsibility is to solicit applications relative thereto;

"statutory fund" means a fund that a company is required to maintain pursuant to section 45;

"sub-agent" means any person appointed by an agent with the authority of the company that is the agent's principal, and not being an employee of the agent, to solicit applications for insurance or to negotiate insurance through that agent;

"technical representative" means an individual, other than one performing clerical or non-insurance

related functions, and who is employed by an insurer, broker or agent, who provides advice to a policyholder or potential policyholder on insurance matters, or negotiates or arranges contracts of insurance on behalf of an insurer, broker, or agent;

"underwriting liabilities", in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the governing body of the association and approved —

(a) in the case of an association constituted in The Bahamas, by the Minister; and

(b) in the case of an association constituted in a country outside The Bahamas by the authority in whom is vested the administration of the law relating to associations of underwriters in that country.

(2) For the purposes of this Act —

(a) a person shall not be treated as carrying on insurance business in The Bahamas if the only reason for so treating the person is the fact that the risk covered by a policy of insurance issued by that person is situated in The Bahamas;

(b) any of the following activities effected in any manner by an unregistered insurer or any person with the actual or apparent authority of the insurer or on his behalf, shall be deemed to constitute the carrying on of insurance business in or from The Bahamas —

(i) making of or proposing to make as an insurer an insurance contract;

(ii) making of or proposing to make, as guarantor or surety, any contract of guaranty or surety-ship as a business and not merely incidental to any other of the guarantor's or surety's legitimate business or activity;

(iii) taking or receiving an application for insurance;

(iv) receiving or collecting any premium, commission, membership fees, assessments, dues or other consideration for insurance or any part thereof;

(v) issue or delivery in The Bahamas of contracts of insurance to persons resident in The Bahamas or authorised to do business in The Bahamas;

(vi) solicitation, negotiation, procurement or effecting of insurance or renewals thereof;

(vii) dissemination of information as to coverage or rates;

(viii) forwarding of applications, delivery of policies or contracts;

(ix) inspection of risks, fixing of rates or investigation or adjustment of claims or losses;

(x) transaction of matters subsequent to or arising out of the effecting of the contract;

(xi) representing or assisting a person or insurer in the transfer of risks with respect to properties, risks or exposures located or to be performed in The Bahamas;

(xii) transaction of any class of insurance business specifically recognised as transacting an insurance business within the meaning of this Act;

(xiii) offering of insurance or transacting of insurance business;

(xiv) offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

(3) In determining whether a person is a fit and proper person for the purpose of this Act, the Commission shall consider whether he is a person —

(a) who, whether in The Bahamas or elsewhere —

(i) has not been convicted of an offence involving dishonesty; or

(ii) is not an undischarged bankrupt;

(b) whose employment record does not give the Commission reasonable cause to believe that the person carried out any act involving dishonesty or any act involving impropriety in the handling of insurance business; or

(c) who, in the Commission's opinion is a person of sound probity, is able to exercise competence, diligence and sound judgement in fulfilling his responsibilities in relation to insurance business and whose relationship with an insurance company will not threaten the interests of policyholders; and for the purposes of this paragraph, the Commission shall have regard to any evidence that he has —

(i) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper which reflect discredit to his method of conducting business;

(ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of insurance, investment or other financial services, or in the management of companies or due to bankruptcy.

(4) For the purposes of this Act, the following persons shall be treated as being associated with a given person ("A") and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or has ceased to exist —

(a) a holding company or subsidiary of A;

(b) a subsidiary of a holding company of A;

(c) a holding company of a subsidiary of A;

(d) any company of which A has control;

(e) any company of which A and persons connected with A together have control;

(f) any company which together with A constitute a group;

(g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person as aforesaid;

(h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

(5) In subsection (4) "group" in relation to a company, means that company and —

(a) any other company which is its holding company or subsidiary;

(b) any other company which is a subsidiary of the holding company;

(c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a), (b) or (c) of subsection (4).

Application of Act.

3. (1) Subject to this section, this Act applies to all companies, whether established within or outside The Bahamas, that carry on within The Bahamas insurance business of all or any of the following classes —

(a) general insurance business namely —

(i) accident insurance business;

(ii) liability insurance business;

(iii) marine, aviation and transport insurance business;

(iv) motor vehicle insurance business;

(v) pecuniary loss insurance business;

(vi) property insurance business;

(b) long-term insurance business namely —

(i) industrial life insurance business;

(ii) ordinary life insurance business;

(iii) variable life insurance business;

(iv) sickness or health insurance business, including group health;

(v) pension fund management;

(vi) annuities;

(vii) variable annuity business;

(c) all other classes of insurance not specified in (a) and (b) above and including but not limited to medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometry and other similar health service plans.

(2) Definitions of the classes of general and long-term insurance business pursuant to subsection (1) are as prescribed in the regulations.

(3) A body corporate incorporated under the Companies Act which carries on insurance business of a class specified in subsection (1) in any jurisdiction other than The Bahamas shall, for the purposes of this Act, be deemed to be a company carrying on that business within The Bahamas. Ch.308.

(4) For the purposes of this Act, the reinsurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the re-insurer, and all the provisions of this Act 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 43, 120 or 141.

(5) Part III shall not apply to associations of underwriters.

(6) This Act shall not apply to any organisation which is registered under the enactments relating to the National Insurance Board, to friendly societies, or to Trade Unions.

(7) This Act shall not apply to a person registered pursuant to the External Insurance Act to carry on external insurance business in The Bahamas, in respect of such business. Ch. 348.

PART II - INSURANCE COMMISSION

Establishment of the Insurance Commission.

4. (1) There is hereby established for the purposes of this Act a body corporate to be known as the Insurance Commission of The Bahamas.

(2) The Commission shall be a body corporate having perpetual succession and a common seal, with

power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(3) The Commission may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Commission of any document of whatsoever kind shall be made by delivering the document to, or sending it by registered post addressed to, the Superintendent at the office of the Commission.

First Schedule.

(4) The First Schedule shall have effect with respect to the Commission, its members and staff.

Seal of the Commission.

5. (1) The seal of the Commission shall be kept in the custody of any officer of the Commission as the Commission may approve, and may be affixed to instruments pursuant to a resolution of the Commission and in the presence of the Superintendent or the Deputy Superintendent and one other officer.

(2) The seal of the Commission shall be authenticated by the signature of the Superintendent or Deputy Superintendent and one other officer, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the Superintendent or Deputy Superintendent.

Commission may open accounts.

6. The Commission may open accounts for, accept deposits from, and collect moneys for or on account of the Government or any company or insurance intermediary.

Property Tax Exemption.
Ch.375.

7. The Commission shall be exempt from tax under the Real Property Tax Act.

Functions and powers of the Commission.

8. (1) The functions of the Commission shall be —

(a) to supervise compliance with the provisions of this Act;

(b) to maintain surveillance over the insurance market;

(c) to promote and encourage sound and prudent insurance management and business practices;

(d) to advise the Minister responsible for insurance matters regarding the insurance market;

Ch.368.

(e) to ensure that the provisions of the Financial Transactions Reporting Act, and other anti-

money laundering legislation are being complied with; and

(f) to do such other things as may be prescribed by this Act or any other written law.

(2) The Commission shall have power to do anything which is calculated to facilitate or is incidental or conducive to the proper discharge of its functions under subsection (1) and in particular shall have power to —

(a) impose any condition, limitation or restriction on companies or intermediaries, their operations or their investments;

(b) amend or revoke any registration, authorisation, permission, condition, restriction or limitation;

(c) require that companies and intermediaries, or their directors, officers, employees, shareholders or policyholders, take or refrain from taking any action the Commission deems necessary;

(d) require the filing of any document or information, and determine the form and content of any document;

(e) require the production of any information, documentation or explanation from any company or insurance intermediary, including the directors, officers, auditor, actuary and any former auditor or actuary employees, shareholders or policyholders of such company or insurance intermediary;

(f) require an appraisal of the real property of a company, the cost of which shall be borne by the company;

(g) substitute the appraised value of an asset in place of the value stated by the company;

(h) specify additional classes of insurance business in which a company is authorised to engage;

(i) treat insurance business of a specified class as if it were insurance business of another unspecified class;

(j) extend any period of time specified in the Act or the regulations;

(k) exempt any person or class or persons, or any class or part of any class of insurance business from any provision of this Act or the regulations, subject to such terms and conditions, as may in the Commission's opinion be appropriate;

(l) assist and cooperate with local and overseas regulatory authorities;

(m) make rules and issue directives providing for such matters as may be necessary or expedient for the carrying out of its responsibilities;

14 of 2009, s. 2.

(n) delegate any of its powers as it sees fit.

Reports.

9. (1)The Commission shall report annually to the Minister on the operation and conduct of the Commission.

(2) The Commission shall advise the Minister on all matters relating to the conduct of insurance in The Bahamas and assist the Minister in the education of the public on insurance issues.

(3) The Commission shall furnish the Minister with any returns, accounts and other information as he may from time to time require with respect to the property and activities of the Commission and shall afford to him facilities for verifying the information in any manner and at such time as he may reasonably require.

Funds and resources of the Commission.

10. The funds and resources of the Commission shall consist of —

(a) any moneys as from time to time are provided by Parliament;

13 of 2011, s. 2.

14 of 2009, s. 3.

(b) any moneys as from time to time may accrue to the Commission from its operations, including fees, fines and twenty-five percent of the business licence tax collected from registered insurers and associations by the Business Licence Office and remitted to the Commission;

(c) any moneys as from time to time are borrowed by the Commission pursuant to section 11;

(d) any moneys as from time to time are advanced to the Commission pursuant to section 12;

(e) any moneys or other property as from time to time may in any manner be lawfully paid to or vested in the Commission whether or not in respect of any matter incidental to its functions.

Borrowing powers.

11. (1) Subject to this section, the Commission may borrow moneys required by it for meeting any of its obligations or discharging any of its functions and may in respect of any borrowing, issue debentures in such forms as the Commission may determine.

(2) Any borrowing of the Commission pursuant to subsection (1) shall be subject to the approval of the Minister of Finance as to the amount to be borrowed, the source of the borrowing and the terms on which the borrowing may be effected.

(3) An approval given for the purposes of this section may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

Advances and guarantee of borrowings.

12. (1) Subject to subsection (3), the Minister of Finance may at the request of the Commission make advances to the Commission for the purposes of enabling the Commission to defray expenditure properly chargeable to its capital account, including provisions of working capital.

(2) Subject to subsection (3), the Minister of Finance may at the request of the Commission guarantee, in any such manner and on any such conditions as it thinks fit, the repayment of the principal of, and the payment of interest and other charges on, any authorised borrowing of the Commission made under section 11.

(3) No guarantees shall be given under this section unless prior approval thereof has been signified by the House of Assembly in accordance with section 17 of the Financial Administration and Audit Act. Ch. 359.

(4) Where any sum is paid pursuant to a guarantee given under this section, the Minister shall as soon as practicable after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereof is finally discharged, lay before the House of Assembly a statement relating to that sum.

(5) Any sums required by the Minister of Finance for making, advancing and discharging any guarantees under this section shall be charged on and issued out of the Consolidated Fund.

(6) In this section and in this Part "financial year" means the period of twelve months beginning on July l, in any year.

Repayment of interest.

13. (1) The Commission shall make to the Minister of Finance at such times and in such manner as the Minister of Finance may direct, payments on any amount as may be so directed in or towards repayment of any sums issued in fulfillment of any guarantee given under section 12 and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister of Finance may direct, and different rates of interest may be directed as respects different periods.

(2) The Minister of Finance shall lay before the House of Assembly a statement of any payment due from the Commission under subsection (1) that is not duly paid to him as required thereunder.

Surplus funds.

15 of 2013, s. 2.

14. (1) Subject to subsection (2), the Commission shall at the end of each financial year pay into the Consolidated Fund all excess of revenue over expenditure standing to the credit of the Authority.

(2) The Minister of Finance may, at the end of the financial year, authorise the Commission to reserve from surplus funds for current budgetary purposes, investment, or otherwise such sums, if any, as the Minister may determine.

Reserve fund.

15. (1)The Commission shall establish a reserve fund.

(2) The Commission may determine the management of the fund, the sum to be carried from time to time to the credit of the fund and the application of the fund.

(3) No part of the reserve fund shall be applied otherwise than for the purposes of the Commission.

Balancing of revenue account and surplus revenue.

16. (1) The Commission shall discharge its functions to ensure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue accounts and its funds under sections 14 and 15 taking one year with another.

(2) Any excess of the revenue of the Commission for any financial year over the sum properly chargeable to its revenue account and its funds under sections 14 and 15 for that year shall be applied by the Commission for the purposes of the Commission.

Accounts and audit.

17. (1) The Commission shall keep proper accounts of all transactions and shall prepare in respect of each financial year a statement of accounts in an approved format.

(2) Such accounts shall be audited annually by an auditor appointed by the Commission.

Annual report.

18. (1) The Commission shall, as soon as practicable after the expiration of each financial year and in any event not later than June 30 in any year submit to the Minister a report containing —

(a) an account of its transactions throughout the preceding financial year;

(b) a statement of the accounts of the Commission audited in accordance with section 17.

(2) The Minister shall cause a copy of the report together with a copy of the audited financial statements and the auditor's report to be laid on the table of both Houses of Parliament.

Commission to maintain registers.

19. (1) The Commission shall cause to be maintained —

(a) separate registers of —

(i) companies;

(ii) intermediaries; and

(iii) associations;

(b) such other registers as may be required to be maintained pursuant to this Act or the regulations.

(2) The registers referred to in subsection (1) shall contain, in respect of each registrant —

(a) the constitutive documents;

(b) the address of the principal office, and, where applicable, the address of the principal representative;

(c) a copy of the certificate of registration;

(d) a copy of the most recent balance sheet and other financial statements determined by the Commission;

(e) the names and addresses of the officers;

(f) the companies and intermediaries with which business is conducted in The Bahamas,

and such other information and documentation as may be directed by the Commission.

(3) Any person may, upon payment of such fee as may be prescribed or established by the Commission, inspect during normal business hours any register at the office of the Commission and may make a copy of any document in such register.

Commission may act as arbitrator.

20. (1) Where, in relation to a policy, any dispute or difference arises between an insurer and a policyholder, the Commission may with the consent of the parties involved, act as arbitrator of the dispute or difference.

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(2) An arbitration under this section shall be conducted in accordance with the Arbitration Act.

Immunity and actions by the Commission.

21. (1) No liability should be incurred by and no suit, action or proceeding shall lie against the Commission, or any person acting under its authority for anything done or omitted to be done bona fide for the purpose of executing any of the provisions of this Act or the regulations in the performance or intended or supposed performance of their duties under this Act or under any other enactment that imposes duties upon them.

(2) The Commission may bring actions and institute proceedings in its name or office for the enforcement of any of the provisions of this Act or the regulations or for the recovery of fees and any other sum payable under this Act or regulations.

(3) The Commission shall not be required to prosecute, defend or take part in any proceedings outside the jurisdiction of any court in The Bahamas unless it is indemnified by or on behalf of the person who wishes it to act against any judgement, order or costs that may be awarded against it by deed guarantee or deposit as the Commission may require.

PART III - REGULATION OF INSURANCE COMPANIES

Registration

Only bodies corporate may carry on insurance business in The Bahamas.

22. Subject to this Act —

(a) no person other than a body corporate may carry on insurance business in The Bahamas;

(b) no company may be registered to carry on both long-term and general insurance business at the same time.

Requirements to carry on insurance business.

23. (1)Subject to section 25, a company shall not carry on in The Bahamas insurance business of any of the classes specified in subsection (1) of section 3 unless —

(a) the Commission is satisfied that the articles of the company restrict it to the carrying on of insurance business solely;

(b) it is registered by the Commission under this Act in respect of that class of insurance business;

(c) it has made the deposit required by section 43 and established the statutory fund required by section 45 in respect thereof; and

(d) in the case of a foreign company, it has filed with the Commission the names and addresses of one or more persons resident in The Bahamas and authorised to accept on behalf of the company service of process in any legal proceedings.

(2) Any person who contravenes section 22 of this Act is guilty of an offence and is liable on summary conviction —

(a) in the case of an individual, to a fine not exceeding one hundred thousand dollars or to imprisonment for two years or to both and, in the case of a continuing offence, to a further penalty of one thousand five hundred dollars for each day on which the offence is continued after the conviction thereof; and

(b) in the case of a person who is not an individual, to a fine not exceeding five hundred thousand dollars and, in the case of a continuing offence, to a further penalty of seven thousand dollars for each day on which the offence is continued after conviction thereof.

Sale of insurance products.

24. (1) No registered insurer may sell or otherwise distribute any insurance products in The Bahamas other than through a registered insurance intermediary as prescribed.

(2) Any company that contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

Share capital and deposit required for registration.

25. (1) Subject to subsections (2) and (5), no company shall be registered to carry on any class of insurance business in The Bahamas, unless it has paid-up capital and surplus of the prescribed amount.

(2) No foreign company may be registered to carry on long-term or general insurance business in The Bahamas unless, in addition to complying with subsection (1), it has deposited with the Commission the deposits required under section 43.

(3) Subject to subsection (4), subsection (1) shall not apply to an insurance company that is a mutual company.

14 of 2009, s. 4.

(4) No company shall be registered as a mutual company unless it has a minimum excess of assets over liabilities of not less than that required for companies with paid-up share capital.

(5) Subsection (1) shall not apply to a company registered pursuant to the repealed Insurance Act immediately prior to the coming into force of this Act.

Companies carrying on insurance business before the commencement of this Act.

26. (1) Every company carrying on insurance business in The Bahamas immediately before the commencement of this Act shall, within two years increase its paid-up share capital, or in the case of a mutual company increase its uncommitted reserves, to the prescribed amount.

(2) A company which immediately before the commencement of this Act is registered to carry on insurance business shall, in accordance with section 27, apply for registration to the Commission which shall, if satisfied that the conditions for registration specified in section 28 have been met, register the company within three months after the receipt of the application.

Application for registration.

27. (1) An application for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and by such documents as may be prescribed or as may be required by this Act.

(2) The Commission may, upon receipt of an application under this section, request the applicant to furnish such additional information as it may consider to be relevant in relation to the application and the applicant shall comply with the request.

Conditions for registration.

28. (1) Where the Commission, after appropriate enquiry or by the production of documentary evidence or both, is satisfied in respect of the applicant that —

(a) the requirements of sections 22, 25 and 27, in so far as they are applicable, have been complied with;

(b) the applicant is solvent under the provisions of section 78;

(c) the applicant is likely to be able to comply with such of the provisions of this Act as would be applicable to it;

(d) the name of the applicant is not identical with or does not so closely resemble the name of a company already registered under this Act as to be likely to confuse or deceive;

(e) the applicant has made adequate arrangements for re-insurance of the class of insurance it intends to carry on or that there is no justification for making those arrangements;

(f) the beneficial owners are fit and proper persons to hold an insurance licence in The Bahamas;

(g) the person holding the office of Managing Director, Chief Executive Officer or Principal Representative of the applicant is a fit and proper person to hold that office;

(h) a business plan is submitted in accordance with the regulations;

(i) the required deposit has been made;

(j) where the applicant is carrying on long-term or general insurance business, a statutory fund is established with the amount of assets as the Commission may prescribe;

(k) being a foreign company —

(i) it is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least five years before the date of the application; and

(ii) it has appointed some person resident in The Bahamas to be its principal representative in The Bahamas and has informed the

Commission in writing of the name and address of that person,

the Commission shall, either unconditionally or subject to such conditions as it may specify, register the applicant in respect of the class or classes of insurance business and shall notify the applicant accordingly.

(2) Where the Commission is not satisfied, in relation to all or any of the classes of insurance business in respect of which the application is made, as to one or more of the conditions set out in subsection (1) it shall notify the applicant in writing that —

(a) it proposes to refuse to register it; or

(b) that it proposes to refuse to register it in respect of one or more of the classes of insurance business for which application is made,

giving its reasons for so doing and shall notify it of its rights of appeal to the Commission for reconsideration and under section 228.

Certificate of registration.

29. The Commission shall furnish to every insurer registered under this Act a certificate in the prescribed form that the company has been so registered, and the certificate shall state the class or classes of insurance business for which it is registered and shall be *prima facie* evidence that the company specified in the certificate has been so registered.

Notification of change in particulars.

30. (1) Where, after the registration of any insurer under this Act any material change takes place in the particulars specified in the application of the company for registration or in the particulars of the information or documents required to accompany the application, the company shall, within thirty days of the change, notify the Commission in writing of the change.

(2) No company registered under this Act may alter its Memorandum or Articles of Association without the prior consent in writing of the Commission.

(3) Notwithstanding the provisions of the Memorandum and Articles of Association of the company, and of the Companies Act, notice in writing shall be given to the Commission of any meeting at least fourteen days prior to the meeting at which it is proposed to effect any alteration of the company's Memorandum or Articles of

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Association, together with a copy of the proposed resolution.

(4) No company registered under this Act shall in any way effect a change in its beneficial ownership without the prior approval of the Commission.

(5) Where a company registered under this Act proposes to open a branch office in another jurisdiction or establish a subsidiary in another jurisdiction, the prior approval of the Commission must be obtained in writing. *14 of 2009, s. 5.*

(6) Upon any occurrence of the matters mentioned in this section the Commission shall have the authority to review the company's license and may revoke it or impose conditions upon it after conducting a regulatory hearing therefor pursuant to the powers contained in sections 33 and 34.

Restriction on reinsurance with affiliate.

31. Without prior approval of the Commission —

(a) no registered insurer shall cause itself to be reinsured in respect of risk; and

(b) no registered foreign insurer shall cause itself to be reinsured in respect of risks in The Bahamas,

by an affiliate of the registered insurer that is not itself a registered insurer.

Restrictions may be imposed by regulations.

32. Additional restrictions may be imposed by regulations or by directive of the Commission on the extent to which —

(a) a registered insurer may cause itself to be reinsured against risks; and

(b) a registered foreign insurer may cause itself to be reinsured against risks in The Bahamas.

Suspension of registration.

33. (1) Subject to subsection (2), the Commission may suspend the registration of a company in respect of all or any of the classes of business in relation to which it is registered, if it is satisfied that the company is in breach of any provision of this Act in circumstances where the breach would constitute a ground for cancellation as specified in section 34.

(2) Before taking action under subsection (1) the Commission shall notify the company concerned of its intention to suspend the company's registration giving reasons therefor and requiring the company to take such

action as is specified in the notice to remedy the breach within the time so specified.

(3) Where a company fails to comply with a notice under subsection (2), the Commission may —

(a) extend the period specified in the notice under subsection (2); and

(b) if the breach is not remedied within that extended period, cancel the company's registration in accordance with section 34.

Grounds for cancellation of registration.

34. (1) Subject to subsection (3) and section 36, the Commission may, for any of the reasons specified in subsection (2), notify in writing a company that it proposes to cancel the company's registration, giving reasons for so doing, and notifying the company of its rights of appeal to the Commission for reconsideration and under section 228.

(2) The reasons referred to in subsection (1), are that —

(a) the company's registration was procured as a result of misleading or false representation or in consequence of incorrect information, whether the representation was made or information was supplied wilfully or otherwise;

(b) the company is insolvent in terms of section 78;

(c) the company's insurance business or any class thereof is not being conducted in accordance with sound insurance principles and practice;

(d) any of the company's reinsurance arrangements are not satisfactory;

(e) the company has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by it;

(f) a final judgment has been obtained against the company in a court in The Bahamas and remains unsatisfied for more than one month;

(g) the company has failed to remedy a breach of this Act, or failed to comply with any condition, direction or requirement imposed under this Act by the Commission.

14 of 2009, s. 6.

(3) Cancellation of registration by the Commission for a particular class of business shall prevent the company

from accepting any new or renewal policies in respect of that class of business but such cancellation shall not relieve the company of its responsibility for complying with the requirements of this Act as may be required to discharge its liabilities in respect of the class of business.

Implementation of proposal to refuse register or to cancel registration.

35. Where a company has been notified under subsection (2) of section 28 or under subsection (1) of section 34 of its right to request the Commission to reconsider and the company having made a request the result of the review is the confirmation, with or without variation, of the Commission's proposal, then, subject to any such variation, the Commission shall give effect to the proposal and notify the company in writing accordingly.

Summary cancellation of registration.

36. The Commission may at any time cancel the registration under this Act of a company where —

(a) proceedings for its winding-up have commenced;

(b) it is satisfied that the company has not, within two years of its registration, commenced the carrying on in The Bahamas of insurance business of any class;

(c) it is satisfied that the company has ceased to carry on insurance business in The Bahamas for more than one year; or

(d) the company, or its liquidator, judicial manager or trustee so requests.

Effect of cancellation of registration.

37. (1) Notwithstanding section 23, upon the cancellation of the registration of a company —

(a) it shall be lawful for the company to continue to carry on business relating to policies issued before the date on which it is notified of the cancellation, hereinafter in this section referred to as "the date of notification" and it shall continue to carry on such business unless the Commission is satisfied that the company has made suitable arrangements for its obligations under those policies to be met;

(b) it shall not be lawful for the company, after the date of notification, to issue any new policy or to enter into any new contract in relation to which registration under this Act is required.

(2) Nothing in paragraph (a) of subsection (1) shall be taken as authorising the renewal, after the date of

notification, of any policy issued before that date; and where any such policy is renewed after that date the company shall be regarded as having issued a new policy in contravention of paragraph (b) of subsection (1).

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction —

(a) in the case of a failure to comply with paragraph (a) of subsection (1), to the penalties provided for in sections 237 and 238; and

(b) in the case of a contravention of paragraph (b) of subsection (1), to the penalties provided for in subsection (2) of section 23.

Application of section 37 where registration refused.

38. The provisions of section 37 shall apply with the necessary modification in relation to a company that was carrying on insurance business in The Bahamas immediately before the commencement of this Act and whose registration is refused as they apply to an insurance company whose registration has been cancelled under section 37.

Display and surrender of registration certificate.

39. (1) Every company registered under this Part shall prominently display its registration certificate at its principal place of business in The Bahamas, in an area to which the public has access; and a copy of the certificate certified by the Commission shall be similarly displayed at each of its branches in The Bahamas.

(2) On the notification to a company that its registration has been cancelled under section 34, the company shall forthwith surrender the registration certificate and every copy of the certificate to the Commission.

(3) Every person who, without lawful excuse, fails to comply with this section, or who displays a registration certificate or any copy of the certificate that is not currently valid, is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars.

Registered company may be prohibited from writing new business.

40. (1) Where, after consideration of the report of an Inspector appointed by the Commission under section 71 to investigate the affairs or any part of the affairs of a company or after other appropriate enquiry, the Commission is satisfied that it is in the interest of the policyholders or prospective policyholders to do so, the Commission may by notice in writing prohibit a company

from writing new policies in any class of insurance business in respect of which the company is registered.

(2) The Commission shall in any notification under subsection (1) state the reasons for its decision and inform the company of its rights of appeal to the Commission for reconsideration and under section 228.

Contracts with non-registered companies.

41. (1) No person shall, except in the case of reinsurance, place or cause to be placed with a company not registered under this Act, insurance in respect of –

(a) property situated in The Bahamas; or

(b) liabilities arising in The Bahamas.

(2) Any person who desires to enter into an insurance contract with a non-registered company, except a contract relating to reinsurance, may apply to the Commission for permission to do so and the Commission may grant permission if it is satisfied that it is not possible to obtain similar protection at a comparable cost from a company registered under this Act.

(3) For the avoidance of doubt, it is hereby declared that the Commission, by granting permission under subsection (2), does not assume any liability towards the applicant in relation to the insurance contract concerned or its replacement.

Duty of company to furnish commission with form of application, form of policy or form of endorsement.

42. (1) Every company registered under this Act to carry on any class of insurance business shall, at least two months prior to the date of the issue of a new form of policy or of the use of a standard form of endorsement or of a form of application for a policy, furnish the Commission with copy of the standard form of policy or of the standard form of endorsement or of the form of application.

(2) The Commission may prohibit a company issuing or using a new form of policy, a standard form of endorsement or a form of application for a policy the issue of which, in its opinion, is fraudulent, unjust or not in the public interest.

(3) A company which continues to issue or use a form of policy, a standard form of endorsement or a form of application for a policy the issue or use of which is prohibited by the Commission under subsection (2) is guilty of an offence.

(4) Approval of the Commission may be deemed sixty days after filing if no response is received. However, where approval is deemed to have been given, it may be rescinded for cause.

DEPOSITS BY INSURANCE COMPANIES

Amount and form of deposit by all companies.

43. (1) A company may not be registered under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Commission the prescribed deposit.

(2) The Commission may, for the purposes of this section, allow the required deposits to be lodged with a licensed financial institution approved by the Commission and to the order of or on behalf of the Commission.

(3) Any deposit made under this section may be in the form of a combination of cash and other assets, the nature, manner and value of which shall be prescribed by regulations.

Further provisions relating to deposits.

44. The Second Schedule shall have effect in relation to deposits made with the Commission pursuant to this Part.

Second Schedule.

STATUTORY FUNDS

Establishment of statutory funds.

45. (1) Every company registered under this Act to carry on long-term or general insurance business shall establish and maintain a statutory fund in respect of each such class of business.

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

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

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

whichever is the later date.

(3) The fund referred to in subsection (1) shall be established and maintained —

(a) in a financial institution approved by the Commission; and

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

(4) Every foreign company carrying on long-term insurance business in The Bahamas shall place in trust in The Bahamas assets equal to its liability and contingency reserves with respect to its policyholders in The Bahamas as established by the balance sheet of the company as at the end of its last financial year.

(5) Every foreign company carrying on general insurance business in The Bahamas shall place in trust in The Bahamas assets equal to its liabilities and reserves less the amount deposited on account of the business pursuant to section 43(1) with respect to its policyholders in The Bahamas as established by the revenue account of the company as at the end of its last financial year.

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

(7) For the purposes of computing the liability referred to in subsections (4) and (5), no account shall be taken of the liability of the company to its shareholders.

Restriction on use of assets representing statutory funds.

46. (1) Subject to subsections (2) and (3), the assets representing each statutory fund of a company 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 section 62 to exceed the amount of the liabilities attributable to any class of insurance business referred to in section 45, the restriction imposed by subsection (1) shall not, subject to the restriction on payment of dividends under section 55, apply to so much of those assets as represents the excess.

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

(4) 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) No company carrying on long-term insurance business or general insurance business and no company of which any such company is a subsidiary shall declare a dividend at any time when the value of the assets representing a fund established and maintained by the company as determined in such manner as may be prescribed, is less than the amount of the liabilities attributable to that business.

Method of creating trust.

47. (1) A trust for a foreign company referred to in subsections (4) and (5) of section 45 shall be created by a trust deed the contents and the trustees of which shall be approved by the Commission before the trust is created and the deed shall be in such form as may be prescribed.

(2) For the purposes of this section, the assets required to be placed in trust are to be held by a licensed financial institution in The Bahamas and approved by the Commission.

(3) The assets required to be vested in trust shall be valued at an amount which shall not exceed the total of their book values less an investment valuation reserve in such amount as may be prescribed or on the directive of the Commission.

(4) Notwithstanding anything to the contrary contained in this Act the Commission may determine the value at which assets shall be accepted for the purposes of this Act.

Obligation to submit list of assets.

48. A trustee shall submit to the Commission in such form and at such times as may be prescribed, a list of the assets held in trust by him pursuant to section 47.

Company to furnish particulars of liabilities and assets with respect to fund.

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

(a) particulars of the liabilities of the company 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.

Inaccurate or misleading particulars.

50. (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 may, after considering any explanation made by or on behalf of the company, give to the company 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 company shall comply with any directions given to it by the Commission under subsection (1) within thirty days of receiving the same.

Assets shown in statement deemed to be assets in statutory fund.

51. 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.

Investment of assets of statutory fund.

52. (1) The assets of a statutory fund shall not be invested except in securities specified by regulations.

(2) Subject to any other requirement set out in this Act, the regulations, or any directive of the Commission, a registered insurer shall in respect of the assets which it has vested in trust, establish and adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in comparable circumstances.

Investments to be made in corporate name.

53. (1) All investments and deposits of the funds of a registered insurer shall be made in the company's name.

(2) The involvement of directors or officers of the company over the investment or disposition of the funds of the company shall be as prescribed by regulations.

(3) Nothing in this section shall be construed as precluding a local company 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 local company 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 local company.

(4) In this section "funds" means all funds of a company.

Prohibitions relating to acquisition of shares and loans.

54. (1) A local company 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 company or to a wife or a child of a director or an officer except on the security of the company'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 company or the 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 agents or to full-time employees against commissions or salaries to be earned;

(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 (b), (c) or (d).

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

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

Dividend not to impair capital.

55. No dividend or return of capital shall be paid by any company 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 78 nor shall any dividend be paid that would reduce its assets below the same amount or impair its capital.

ADMINISTRATIVE AND ACCOUNTING REQUIREMENTS FOR INSURANCE COMPANIES

Insurance companies to maintain principal office and appoint principal representative.

56. (1) Every insurer registered under this Act shall maintain a principal office in The Bahamas and shall appoint with the consent of the Commission some person resident in The Bahamas and qualified in the class or classes of insurance business for which it is registered to be its principal representative in The Bahamas.

(2) Every registered insurer shall notify the Commission in writing of the address of its principal office and of the name and qualifications of its principal representative.

(3) Where a company changes the address in The Bahamas of its principal office or appoints a new principal representative, it shall, within twenty-one days of the change or appointment, give written notice thereof to the Commission.

(4) The principal representative shall accept service of process on behalf of the company.

Maintenance and separation of funds.

57. (1) Subject to this Act, where a company —

(a) carries on insurance business of one only of the specified classes; or

(b) carries on insurance business of two or more of the specified classes, referred to in subsection (4),

the receipts and expenditure of such class of insurance business, or of each class of insurance business, as the case may be, shall be entered in a separate account and shall be carried to and form a separate insurance fund with an appropriate name.

(2) Nothing in this section shall require the investments of any fund to be kept separate from the investments of any other fund.

(3) Subject to this Act, a fund of any particular class —

(a) shall be absolutely the security of the policyholders of that class as though it belonged to a company carrying on no other business than insurance business of that class;

(b) shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class; and

(c) shall not be applied, directly or indirectly, for any purpose other than those of the class of business to which the fund is applicable.

(4) For the purposes of subsection (1),

"specified classes" means the classes of ordinary life insurance business, variable life insurance business, industrial insurance business, sickness and health and such other classes as may be prescribed.

Preparation of annual accounts, etc.

58. (1) Subject to subsections (4) and (11), every insurer registered under this Act shall, at the end of each financial year, prepare in the prescribed form and manner —

(a) a general balance sheet showing the financial position of all the insurance business of the company at the close of that year;

(b) except in the case of a mutual company, a profit and loss account in respect of all its insurance business in that year; and

(c) separate revenue accounts for —

(i) life insurance business;

(ii) industrial life insurance business;

(iii) bond investment business;

(iv) such other class or classes of insurance business as may be prescribed;

(d) an analysis of its long-term policies in force at the end of that year;

(e) a certificate that the assets of its insurance business are in the aggregate at least of the value shown in the balance-sheet;

(f) where the company carries on —

(i) life insurance business, a certificate that the value of the assets of the life insurance fund exceeds the liabilities;

(ii) general insurance business, a certificate that the value of its assets exceeds the amount of its liabilities by such amount as the Commission determines;

(g) such other documents and information relating to the accounts and balance-sheets referred to in this subsection as may be prescribed.

14 of 2009, s. 8.

(2) Every company shall publish its balance-sheet and other statements in a manner to be prescribed.

(3) Every account, balance-sheet, statement or other document required by subsection (1) to be prepared shall be furnished to the Commission within four months after the end of the period to which the account, balance-sheet, statement or other document relates.

(4) All the documents referred to in subsection(1) shall be certified by an independent auditor and in the case of long-term business, by an actuary and shall relate to the worldwide business of the company; but the Commission may require in addition a statement showing in respect of the company's business in The Bahamas, the amounts of premiums and considerations for annuities received, claims paid and outstanding surrenders, including surrenders of bonuses, annuities paid, bonuses paid, commission and expenses of management.

(5) A foreign company shall submit annually a copy of the statutory returns it is required to file in the country in which its head office is situated within thirty days of its filing in such country.

(6) Where, in the opinion of the Commission, a document furnished by a company under this section is incorrect or incomplete in any respect or is not prepared in accordance with this Act, it may, by notice in writing, call upon the company to amend the document or to furnish a correct or complete document or, as the case may be, a document prepared in accordance with this Act.

(7) Where a company fails to comply with a notice referred to in subsection (6) to the satisfaction of the Commission, the Commission may itself either amend the document in question, giving the company particulars of the amendments, or reject the document.

(8) A document amended by the Commission or by a company under this section shall be treated as having been submitted to the Commission in its amended form.

(9) Where a document furnished by a company under this section has been rejected by the Commission under subsection (7), the company shall be treated as having failed to comply with this section in relation to that document unless and until it has furnished another document in accordance with the directions of the Commission.

(10) A company that is liable under a local life insurance policy shall, at the request of the policyholder, and for a reasonable fee, furnish the policyholder with a copy of the relevant revenue account, profit and loss account and balance-sheet prepared by the company under subsection (1) in respect of its last preceding financial year.

(11) The requirements of this section shall not apply in the case of a company that carries on only insurance business of a class or classes declared exempt for the time being under section 235.

Group accounts.

59. (1) Where two or more companies, which operate as separate entities that can be wound-up in accordance with the law under which they are incorporated, are associated together in a group, then, in addition to the separate accounts required by section 57, the Commission may require the parent company of the group to prepare, at the end of its financial year and in the prescribed form and manner —

(a) a consolidated balance sheet showing at the close of that year the financial position as a group of the parent company and all its subsidiary companies;

(b) a consolidated profit and loss account showing the profit or loss as a group of the parent company and all its subsidiary companies during that year; and

(c) such other documents as may be prescribed.

(2) The balance-sheet and profit and loss account to which subsection (1) refers, shall bear a certificate by an auditor approved by the Commission as to whether in the opinion of the auditor it gives a true and fair view of the financial position as a group at the close of that year or, as the case may be, of the profit and loss as a group during that year, of the parent company and all its subsidiary companies.

Audit of accounts of companies.

60. (1) The accounts of every registered insurer shall be audited annually by an independent auditor who shall not be an employee or an officer of the company.

(2) The auditor of every company shall satisfy himself that the accounts of the company have been properly prepared in accordance with international accounting standards or in accordance with such other accounting principles acceptable to the Commission, and shall certify whether —

(a) he has obtained adequate information from the books and records of the company;

(b) the accounts of the company accord with the information given to him by the company for the purposes of the audit;

(c) in the case of a company other than a mutual company, the balance-sheet and profit and loss account respectively of the company give a true and fair view of the company's financial position and profit and loss; and

(d) in the case of a mutual company, the balance-sheet and funds give a true and fair view of the company's financial position.

Keeping of records by companies.

61. (1) All companies shall keep within The Bahamas and shall make available to the Commission on request —

(a) a record of all local policies issued by the company showing the company's rights and obligations thereunder;

(b) a record of the aggregate amount of the premiums received on all local policies issued by the company;

(c) an accurate record of all premiums paid on reinsurance; and

(d) such other books, records, receipt and vouchers as are necessary to allow the company to prepare for transmission to the Commission a statement of the insurance business carried on by it in The Bahamas.

(2) The Commission may examine, during ordinary office hours the books and records of the company, and the company must cause such books and records to be readily available for examination and facilitate the examination.

Periodical actuarial investigations.

62. (1) Every company that carries on long-term business shall, not less than once annually or for such other period as the Commission may allow but not exceeding two years, cause a review of the company's operations to be carried out by an actuary, including a valuation of its liabilities.

(2) Every company that carries on long-term business shall, whenever its financial position is reviewed with a view to a distribution of surplus or in compliance with subsection (1), prepare and furnish to the Commission in the prescribed form within four months of the end of the financial year a copy of the report of the actuary by whom the review was made and a statement of its long-term business at that date.

(3) Subsections (7) and (10) of section 58 shall, with such modifications as may be necessary, apply in relation to a copy of the report or statement of an actuary to which subsection (2) refers, as they apply in relation to a document required to be prepared by section 58.

(4) In the case of a mutual company that carries on life insurance business or industrial life insurance business and whose profits are allocated to members wholly or mainly by annual abatements of premium, the company shall, where the copy of the report required by this section is not made annually, include with the copies of each report furnished to the Commission under this section, particulars as to the rates of abatement of premium applicable to different classes of insurance offered during the period between the current review and the preceding review.

Power of Commission to request information and appraisal.

63. The Commission may —

(a) require a director, manager, principal representative, auditor or actuary to provide within such time as it may specify, such information as it deems necessary to determine the ability of the company to meet its obligations in respect of policies issued by it; and

(b) request an appraisal of the real property of a company the cost of which shall be met by the company and may substitute the appraised value if it is substantially less.

TRANSFER, ACQUISITION OR AMALGAMATION OF AN INSURANCE COMPANY

Transfer, acquisition or amalgamation.

64. (1) Any company, whether or not it has ceased to issue new policies of insurance or assume fresh liabilities in The Bahamas, that desires to have the whole or any part of its insurance business transferred to, acquired by or amalgamated with the insurance business of another company, shall, before the transfer, acquisition or amalgamation, obtain the approval of the Commission in writing.

(2) The Commission may approve any transfer, acquisition or amalgamation either unconditionally or subject to such conditions as it specifies in writing.

(3) This section applies in respect of the transfer, acquisition or amalgamation of the insurance business of foreign companies where —

(a) the benefits accruing are from policies issued by those companies and payable in The Bahamas; or

(b) the policies are subject to the jurisdiction of the courts in The Bahamas.

(4) Subject to this Act, nothing operates to prevent a contract relating to insurance that has been entered into in The Bahamas from being transferred by one company to another company without the approval of the person insured.

Control over registered company. *14 of 2009, s. 7.*

64A. (1) Any person that proposes to take control of, or increase his interest in a registered insurance company or intermediary shall obtain the prior approval of the Commission, in writing.

(2) Any person who, without any conscious action on his part acquires control of a registered insurance company or intermediary shall notify the Commission before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

(3) A person who is under the duty to notify the Commission imposed by subsection (1) shall also give notice to the Commission on acquiring or increasing the control in question.

(4) A person who fails to comply with the requirements in subsections (1), (2) and (3) commits an offence and the Commission may declare the transaction null and void.

(5) For the purposes of this section, a person ("the acquirer") acquires control over a registered company ("A") on first falling within any of the cases in subsection (6).

(6) The cases referred to in subsection (5) are where the acquirer —

(a) holds 10% or more of the shares in A;

(b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;

(c) holds 10% or more of the shares in a parent undertaking ("P") of A;

(d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;

(e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;

(f) is able to exercise significant influence over the management of A by virtue of its voting power in A;

(g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or

(h) is able to exercise significant influence over the management of P by virtue of his voting power in P.

(7) In subsection (6), "the acquirer" means —

(a) the acquirer;

(b) any of the acquirer's associates; or

(c) the acquirer and any of his associates.

(8) For the purpose of this section, each of the following is to be regarded as a kind of control —

(a) control arising as a result of the holding of shares in A;

(b) control arising as a result of the holding of shares in P;

(c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in A;

(d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.

(9) On being notified pursuant to subsections (1), (2) and (3), the Commission, after due consideration, may approve the acquisition of control with or without conditions, or alternatively it may refuse approval on the grounds that —

(a) the acquirer is not a fit and proper person to have control over the registered insurer or intermediary; and

(b) the interests of consumers would be threatened by the acquirer's control or by his acquiring that control.

(10) The policies and procedures for the notification by the acquirer and any approval and refusal of the Commission shall be in such manner as may be prescribed by the Commission.

Procedure in respect of transfer, acquisitions and amalgamations.

65. (1) Subject to section 64, the Board of directors of each company desiring the transfer, acquisition or amalgamation of an insurance business shall, in seeking the approval of the Commission in pursuance of that section, make application to the Commission in the form of a joint petition —

(a) stating the nature of the transfer, acquisition or amalgamation, in this section and sections 67 and 68 referred to as the Scheme;

(b) providing relevant Board resolutions authenticating the validity of the proposed transactions;

(c) giving details of the facts contained in any deed or agreement under which the Scheme is proposed to be effected;

(d) submitting copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary satisfactory to the Commission; and

(e) submitting such number of copies of an audited account of the assets and liabilities of the companies affected by the Scheme as the Commission approves.

(2) Notwithstanding subsection (1), before the making of an application by a company to the Commission in pursuance of this section, notice of an intention to make the application shall be approved by the Commission and if approved shall be published by the company in the Gazette and in a newspaper of general circulation stating the date on or after which the application will be made; that date being at least thirty days after the publication of the notice.

(3) Once the commission approves the notice of an intention, a copy of the notice together with —

(i) a statement of the nature and terms of the agreement under which the Scheme is proposed to be effected;

(ii) a summary of the material facts embodied in the agreement; and

(iii) a summary of each of the actuarial and other reports upon which the agreement is founded, including the report by an independent actuary, shall, by personal service or registered mail, be served by the company on the shareholders, and policyholders in The Bahamas of the companies concerned in such time that delivery of the mail may be effected at least thirty days before the date mentioned in the notice as being the date on or after which the application will be made; but the Commission may dispense with the service or alter the time periods specified above if it is satisfied that the circumstances so warrant.

(4) The agreement under which the Scheme is proposed to be effected shall be opened at the offices in The Bahamas of the companies concerned, to the inspection of the shareholders, members and policyholders for a period of at least —

(i) thirty days after the publication of the notice or service of the notice under paragraph (b); or

(ii) thirty days after the date of the decision of the Commission to dispense with service of the notice under paragraph (b), and every shareholder, member or policyholder is entitled to a copy of the agreement on making a request for the agreement in writing.

(5) Where, in pursuance of an agreement between —

(a) an insurer, in this section and section 67 referred to as "the continuing insurer"; and

(b) another insurer, in this section referred to as "the retiring insurer",

in anticipation of the retiring insurer ceasing to do business in The Bahamas, the continuing insurer assumes liability under contracts of insurance specified in the agreement issued by the retiring insurer, and the retiring insurer does in fact cease to do business in The Bahamas, an insured person may enforce any rights accruing to him under any of those contracts as if the contracts had been issued by the continuing insurer.

Application by persons affected by Scheme.

66. (1) Any person who is likely to be affected by a proposed Scheme may, within thirty days of service upon him under subsection (2) (b) of section 67 make an application to the Commission in respect of any matter related to the Scheme.

(2) Upon receiving an application under subsection (1), the Commission may fix a date for the hearing by it of the application and shall —

(a) in writing inform the applicant of the date of the hearing; and

(b) not less than fourteen days before the hearing, publish a notice of the application and the date of the hearing in the Gazette and a newspaper published in The Bahamas.

(3) The following persons are entitled, either in person or by their legal representatives, to be heard at the hearing of an application made under this section —

(a) the person making the application;

(b) every company interested in the application; and

(c) any person who, in the opinion of the Commission, is likely to be affected,

and the Commission may hear such evidence as it deems necessary.

(4) The Commission shall not approve a Scheme where —

(a) the provisions of section 67 are not complied with;

(b) subject to paragraph (c), a number of policyholders representing not less than one-tenth of the total amount assured in any one portfolio in the Scheme dissents from the Scheme;

(c) in the case of a group policy, a number of policyholders representing not less than one quarter of the total group in any one portfolio to which the Scheme relates and not less than one quarter of the insured, dissents from the Scheme; or

(d) it is satisfied that —

(i) the continuing insurer is not incorporated in The Bahamas; or

(ii) the proposed acquisition, amalgamation or transfer is detrimental to the policyholders; or

(iii) the proposed acquisition, amalgamation or transfer is not in the public interest.

(5) All expenses incurred by the Commission in obtaining any report on the Scheme, including the report of any actuary, shall be defrayed by the companies concerned and any moneys due as a result of those expenses may be recovered by the Commission from those companies as a debt due to the Crown notwithstanding that the amount sought to be recovered exceeds the normal monetary limit on the jurisdiction of the Magistrates' courts.

(6) For the purposes of subsection (4), "group policy" means a policy of insurance, not being a policy that operates in favour of a family or a group of creditors, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person.

Effect of decisions of Commission and appeals.

67. (1) Subject to subsection (3), a Scheme, after being sanctioned by the Commission, is binding on the companies affected by it, and on all shareholders, members and policyholders and has effect notwithstanding —

(a) anything contained in any policy or in any instrument constituting the companies; or

(b) anything contained in any rules or bye-laws of the companies,

and the directors of those companies shall cause a copy of the Scheme as approved to be filed with the Registrar of Companies.

(2) The company to which insurance business is transferred under a Scheme, the company acquiring such insurance business or the company carrying on the amalgamated insurance business, as the case may be, shall, not later than thirty days after the date of the implementation of the Scheme, lodge with the Commission —

(a) a certified copy of the agreement or deed under which the Scheme was effected; and

(b) a declaration made before a Notary Public by the chairman, managing director or principal officer of the company —

(i) setting out every payment made or to be made to any person on account of the Scheme; and

(ii) containing a statement to the effect that no other payments beyond those so set out have been or are to be made in money, policies, bonds, valuable securities, property of any description or any other valuable consideration within the knowledge of any parties to the Scheme.

(3) An appeal from a decision of the Commission either approving or disapproving a Scheme lies to a Judge

in Chambers and shall be made within fifteen days of that decision.

CORPORATE GOVERNANCE, APPOINTMENT OF AUDITORS AND ACTUARIES; ESTABLISHMENT OF COMMITTEES

Regulations for auditors and actuaries.

68. The Commission shall prescribe regulations for the appointment and responsibilities of auditors and actuaries, and for the establishment of audit, conduct review and other relevant Committees.

INVESTIGATIONS BY THE COMMISSION

On-site inspections.

69. The Commission may conduct an annual on-site inspection of each registered insurer or association. However, the Commission may decide on more or less frequent inspections.

Commission may demand information.

70. (1)The Commission may request from any company information relating to any matter in connection with its insurance business and the company shall comply with that request.

(2) The Commission shall, for the purpose of carrying out the provisions of this Act, satisfy itself that the provisions of the Financial Transactions Reporting Act are being complied with.

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Power to make investigations.

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

(a) a company is, or is likely to become, unable to meet its obligations;

(b) a company has failed to comply with any of the provisions of this Act, the regulations, or any directives of the Commission;

(c) a company has not, within a period of one month as from the date on which the Commission demanded from the company in writing any information which the Commission was entitled under this Act to demand, furnish that information duly and satisfactorily; or

(d) any information in the possession of the Commission warrants an investigation into the whole or any part of any class of the insurance business of the company,

the Commission may serve on the company a notice in writing calling upon it to show cause within such period, not less than thirty days from the date of the notice as is specified in the notice, why it should not, on the grounds so specified, investigate the whole or any part of the business of the company or appoint a person, in this Part referred to as the Inspector, to make such an investigation and report to the Commission the results of the investigation.

(2) Where the company fails within the period specified in the notice to show cause to the satisfaction of the Commission, the Commission may cause an investigation to be made by the Inspector.

(3) In connection with any investigation, the Commission shall have the power and authority to engage such professional or other expert as may, in its opinion, be necessary or desirable and the costs incurred in connection with obtaining such expert shall be borne by the company that is under investigation.

Power to obtain information.

72. (1) In making an investigation under this Part, the Commission or the Inspector may —

(a) require the company to produce any securities, books, accounts, documents or statistics of the company for inspection and to allow for the making of such extracts from them as are considered necessary;

(b) examine on oath in relation to the company's business, any person who is, or has at any time been, a director, auditor, officer, agent, servant or shareholder of the company or the holder of a policy issued by the company or the personal representative of the holder; and

(c) for the purpose of paragraph (b), administer oaths.

(2) A person specified in paragraph (b) of subsection (1) shall produce to the Commission or the Inspector on request any securities, books, accounts, documents or statistics of the company which are available to the person and shall give to the Commission or the Inspector, on request, any information in his possession relating to the business of the company.

(3) A person specified in paragraph (b) of subsection (1) shall not refuse to be sworn or to give information on

examination on oath, and shall not, in reply to a request made under subsection (2), give any false information.

Entry and search of premises.

73. (1) Where a magistrate is satisfied on information on oath laid by the Commission or by any person authorised by the Commission for the purpose, that there are reasonable grounds for suspecting that there are on any premises any securities, books, accounts, documents or statistics, production of which has been required by virtue of section 72 and which have not been produced in compliance with that requirement, the magistrate may issue a warrant authorising any member of the Police Force, together with any other persons named in the warrant —

(a) to enter the premises specified in the information using such force as is reasonably necessary for the purpose;

(b) to search the premises and seize and remove any securities, books, accounts, documents or statistics appearing to be the securities, books, accounts, documents or statistics required by the Commission; or

(c) to take, in relation to any securities, books, accounts, documents or statistics so appearing, any other steps that may appear necessary for preserving them and preventing interference with them.

(2) A warrant issued under this section shall continue in force until the expiration of the period of one month after the date on which it is issued.

(3) Any securities, books, accounts, documents or statistics that have been seized under this section may be retained for a period of three months or, if within that period criminal proceedings have been brought in respect of the seizure, until the conclusion of those proceedings.

Confidentiality.

74. (1)Subject to subsections (2) and (3), the Commission or any officer, employee, agent or advisor of the Commission who discloses any information relating to —

(a) the affairs of the Commission;

(b) any application made to the Commission;

(c) the affairs of a company or insurance intermediary; or

(d) the affairs of a customer, client or policyholder of a company or insurance intermediary,

that it or he has acquired in the course of it or his duties or in the exercise of the Commission's functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

(2) Subsection (1) shall not apply to a disclosure —

(a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;

(b) for the purpose of assisting the Commission to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;

(c) in respect of the affairs of a company or insurance intermediary or of a customer, client or policyholder of a company or insurance intermediary, with the consent of the company, insurance intermediary, customer, client or policyholder, as the case may be, which consent has been voluntarily given;

(d) where the information disclosed is or has been available to the public from any other source;

(e) where the information disclosed is in a manner that does not enable the identity of any company, or insurance intermediary, or of any customer, client or policyholder of the company or insurance intermediary, to which the information relates to be ascertained;

(f) to a person with a view to the institution of, or for the purpose of —

(i) criminal proceedings;

(ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties;

(iii) disciplinary proceedings relating to the discharge by a public officer, or a member or

employee of the Commission of his duties; or

(g) in any legal proceedings in connection with —

(i) the winding-up or dissolution of a company or insurance intermediary; or

(ii) the appointment or duties of a receiver of a company or insurance intermediary.

(3) Subject to subsection (6), the Commission may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Commission may take into account —

(a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and

(b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Commission may decline to exercise its powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(6) Nothing in subsection (3) authorises a disclosure by the Commission unless —

(a) the Commission has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or

(b) the Commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and

(c) the Commission is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and

(d) the Commission is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority which request shall be entertained by such Magistrate, the Commission shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae,* to appear or take part in any proceedings in The Bahamas or in any appeal from such proceedings arising directly or indirectly from any such request.

(8) The Commission may provide information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law to any other regulatory authority in The Bahamas where it considers such information may be relevant to the functions of such other regulatory authority.

(9) In this section "overseas regulatory authority" means an authority which, in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission.

Action after completion of investigation.

75. (1) After an investigation under this Part in respect of any company has been completed, the Commission —

(a) shall transmit to the company a summary of the conclusions arrived at by it as a result of the investigation; and

(b) may, without affecting any other powers conferred by this Part, issue such directions in writing to the company, in respect of any or all classes of insurance business, as it thinks necessary or proper to deal with the situation disclosed in those conclusions, including, without prejudice to the generality of the foregoing, directions prohibiting or regulating the issue of new policies, the renewal of existing policies or the entering into any new contracts; but in the case of a foreign company no such directions shall apply to the issue or renewal of policies or the entering of contracts in the course of its business outside The Bahamas.

(2) No direction issued to a company under this section shall remain in force for more than twelve months, but nothing in this subsection shall prevent the Commission from issuing any further directions to the company.

Appointment of Administrator, proceedings etc. *14 of 2009, s. 9.*

75A. (1) The Commission may appoint an Administrator who shall seize the management and control of a company or any part of the insurance business of the company in any of the following circumstances —

(a) the capital and the value of the assets of the company have, in the opinion of the Commission, reached a level or are eroding in a manner that may detrimentally affect its policyholders or creditors, with no reasonable prospects of timely restoration of such capital and value;

(b) the realizable value of the assets of the company, in the opinion of the Commission, is not sufficient to give adequate protection to the policyholders and creditors of the company, or is less than its liabilities, or the company's financial condition suggests that it will shortly be in that circumstance;

(c) the company has failed to pay its liabilities or, in the opinion of the Commission, is likely to be unable to meet its liabilities and other obligations as they mature or become due;

(d) the business of the company is being conducted in a manner detrimental to its policyholders and creditors or is not being conducted in accordance with this Act;

(e) the company has refused to submit to audit or examination of its records by the Commission;

(f) the licence of the company has been revoked or limited under this Act;

(g) any asset appearing on the books or records of the company or held under its administration is not, in the opinion of the Commission, satisfactorily accounted for;

(h) where in the opinion of the Commission, any state of affairs exists in respect of the company that may be materially prejudicial to the interests of the policyholders or creditors of the company or of the owners of any assets under the administration of the company, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in The Bahamas or elsewhere in respect of the financial holding company or other holding body corporate of the company;

(i) where in the opinion of the Commission, the company, intermediary or a person with respect to a company —

(i) is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business of the company; or

(ii) is pursuing, or is about to pursue any course of conduct that is an unsafe or unsound practice in conducting the business of the company.

(2) For the purposes of this Act, the person appointed as Administrator shall be referred to as the Statutory Administrator.

(3) Notice of the appointment of a Statutory Administrator by the Commission shall forthwith be published in the *Gazette* or in any other manner as may be prescribed by the Commission.

(4) The Commission shall have the power to revoke any appointment made under this section at any time upon written notice to the person so appointed, and that person forthwith shall cease to act as Statutory Administrator, and the Commission may elect to carry out such functions on

their own behalf or appoint a successor to act as Statutory Administrator.

Proceedings after appointment of Administrator.

14 of 2009, s. 9.

75B. (1) Within ninety days after the appointment of the Statutory Administrator under this Act, the Statutory Administrator shall make an application to the Supreme Court —

(a) for an order for the compulsory winding-up of the company if the Statutory Administrator determines that there is no reasonable prospect for the return of the company to financial soundness through re-organisation or otherwise;

(b) for an order that the company or any part of the insurance business of the company be placed under judicial management under section 77(1) (b) of this Act; or

(c) for approval of a plan of re-organisation of the company developed under section 75D and submitted with the application, if the Commission determines that there is a reasonable prospect of restoring the company to financial soundness through such re-organisation.

(2) In proceedings under subsection (1) in respect of a company, the Supreme Court may order —

(a) the compulsory winding-up of the company;

(b) that the company or any part of the insurance business of the company be placed under judicial management under section 77(1)(b) of this Act; or

(c) the re-organisation of the company pursuant to the plan of re-organisation with such changes and subject to such terms and conditions as the Supreme Court may determine; or

(d) the return of the management and control of the company to its shareholders, directors and officers, subject to such safeguards or conditions, if any, as the Supreme Court may consider necessary for the purposes of this Act.

(3) The Commission shall, immediately after it makes an application under subsection (1) in relation to a company, give notice of the application to —

(a) the directors and shareholders of the company or the principal representative of a foreign company; and

(b) the policyholders and other creditors of the company.

Powers of Administrator after appointment. *14 of 2009, s. 9.*

75C. (1) The Statutory Administrator shall have the exclusive power to manage and control the affairs of the company.

(2) Without limiting its powers under subsection (1), the Statutory Administrator may, in respect of the company —

(a) continue or discontinue the company's operations;

(b) stop or limit the payment of the company's obligations;

(c) employ staff to participate in the operations or control of the company;

(d) execute any instrument in the company's name;

(e) initiate, defend and conduct in the company's name any action or proceeding to which the company is or might be a party;

(f) take such steps as may be necessary to protect the assets of the company, including any assets in The Bahamas of the foreign insurance company of which a foreign company is a branch that were under the control of the principal representative of the foreign company;

(g) end the seizure of the licensee by restoring it to its directors and shareholders.

Re-organisation. *14 of 2009, s. 9.*

75D. (1) Where the Statutory Administrator considers it feasible to restore the company to financial soundness, he shall develop a plan of re-organisation for the company.

(2) Without limiting the generality of subsection (1), the plan of re-organisation may provide for the Statutory Administrator to carry out or cause the company to carry out —

(a) a transaction or series of transactions to achieve one or more of the following —

(i) an increase in the capital or assets in The Bahamas of the company;

(ii) the issue of shares or the sale of all or part of the outstanding shares in the company;

(iii) reconstitution of the board of directors or appointment of new officers of the company, including the principal representative of a foreign company;

(iv) the amalgamation of the company with any other company operating under the provisions of this Act;

(v) the sale or other disposition of all or part of the assets of the company or the assumption of all or part of its liabilities, or both;

(vi) the sale or other disposition of all or part of the insurance business of a local company or the insurance business in The Bahamas of a foreign company; and

(b) any other transaction or series of transactions the purposes of which is to re-organise a substantial part of the business of the company.

(3) Where the Supreme Court has ordered a re-organisation under paragraph 75B(2)(c), the Statutory Administrator shall deliver, a copy of the re-organisation plan, to each of the policyholders and other creditors of the company who under the plan would not receive full restitution or payment of their claims.

(4) The copy of the re-organisation plan must be accompanied by a notice requiring that objections to the plan be delivered to the Statutory Administrator not later than thirty days after the last of the copies have been delivered under subsection (3).

(5) If within the time provided under subsection (4) the Statutory Administrator does not receive any objections in writing to the re-organisation from at least twenty percent of the policyholders of the company, the Administrator may carry out the re-organisation plan referred to in subsection (1).

(6) When an objection to the re-organisation plan is received from twenty percent or more of the policyholders the Statutory Administrator shall submit further re-organisation plans in like manner until such time as fewer than fifteen percent of the policyholders object within the time provided under subsection (4), or it may refer the

matter back at any time to the Supreme Court for further directions.

(7) The Supreme Court may extend the time limit imposed by subsection (4), and upon cause shown may exempt the Statutory Administrator from delivering the plan to some or all of the persons mentioned in subsection (3).

Inability of execution. *14 of 2009, s. 9.*

75E. If, in the course of the re-organisation of a company, it appears to the Statutory Administrator that circumstances render the plan of re-organisation or its execution undesirable, the Statutory Administrator may apply to the Supreme Court for an order —

(a) to modify the plan;

(b) to wind-up the company compulsorily.

JUDICIAL MANAGEMENT AND WINDING-UP

Winding-up. Ch.308.

76. (1) The court may order the winding-up in accordance with the Companies Act of a company, and that Act shall apply accordingly, subject to this section and sections 79 to 93 and to the modification that the company may be ordered to be wound-up on the petition of ten or more policyholders owning policies of an aggregate sum assured of not less than one hundred thousand dollars or on the petition of the Commission.

(2) A petition referred to under subsection (1) shall not be presented except by leave of the court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the court and where the petition is presented by a person other than the Commission until security for costs for such amount as the court may think reasonable has been given.

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(3) The Commission shall be a party to any proceedings under the Companies Act relating to the winding-up of a company and the liquidator in such a winding-up shall give the Commission such information as it may require about the affairs of the company.

(4) Reference in this section to a company shall extend also to a company that has ceased to be registered but remains under any liability in respect of local policies.

Petition for judicial management or winding-up. *14 of 2009, s. 10.*

77. (1) Where the Commission is of the opinion that it is necessary or proper to do so, it may, with the leave of the court, present a petition —

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(a) for the winding-up by the court, in accordance with the Companies Act of an insurance company on the ground that —

(i) the company has contravened section 23;

(ii) in the case of a company that was carrying on insurance business in The Bahamas before the commencement of this Act and whose registration under this Act has been refused, it is in the interests of the policyholders that the company be wound-up;

(iii) in the case of a company whose registration under this Act has been cancelled, it is in the interest of the policyholders that the company be wound-up;

(iv) any officer of the company or its holding company refuses to comply with any requirements made under subsection (1) (a) of section 72 or refuses to answer any question put to him under subsection (1) (b) of section 72;

(v) the results of an investigation made under section 71 in respect of the company are such that it is in the interest of the policyholders that the company be wound-up; or

(vi) the company is insolvent;

(b) for an order that the company or any part of the insurance business of the company be placed under judicial management on the ground that —

(i) the company is in financial difficulties;

(ii) the insurance business of the company is not being conducted in accordance with sound insurance principles and practice;

(iii) the assets of the company are not sufficient to give adequate protection to its policyholders and creditors;

(iv) assets appearing on the records of the company are not satisfactorily accounted for;

(v) the capital or value of the assets vested in trust by the company has reached a level or

are eroding in a manner that may detrimentally affect its policyholders or creditors;

(vi) it is otherwise in the interest of the policyholders that such an order be made,

and the court may make an order accordingly.

(2) An insurance company may, in respect of the company, after giving the Commission one month's notice in writing of its intention to do so, petition the court for any order specified in subsection (1).

(3) Both the company and the Commission shall be entitled to be heard on any petition presented to the court under this section.

(4) Where a petition is presented under this section for an order in respect of any company, all actions and the execution of all writs, summonses and other processes against it shall, by virtue of this section, be stayed and shall not be proceeded with without the leave of the court being first obtained or unless the court otherwise directs.

(5) Notwithstanding anything contained in this Act, where a company that is registered in a jurisdiction outside The Bahamas —

(a) is being wound-up in that jurisdiction; and

(b) has a subsidiary in The Bahamas,

the Commission, upon learning of the winding-up, shall investigate whether any policyholders of the subsidiary are likely to suffer loss as a result of the winding-up and may institute proceedings for the protection of those policyholders; and the court may grant such relief to the policyholders as it thinks fit, whether or not the relief granted was the relief prayed for by the Commission.

(6) Costs awarded the Commission under subsection (5) may be recovered at the discretion of the Commission, either against the subsidiary or the company that is being wound-up.

Indemnification by Commission.

36 of 2013, s. 2.

77A. (1) The Commission may—

(a) where the Commission has appointed a Statutory Administrator in respect of a company pursuant to section 75A, indemnify such Administrator for reasonable costs incurred in conducting or participating in the statutory administration of such company;

(b) where the court has made an order in respect of a company pursuant to an application by the Statutory Administrator under section 75B or a petition by the Commission under section 77, indemnify a liquidator for reasonable costs incurred in conducting or participating in the liquidation of such company;

(c) pursuant to an order or direction of the court pursuant to section 79, indemnify a judicial manager for reasonable costs incurred in conducting or participating in the judicial management proceedings of a company.

(2) The Commission shall not indemnify a liquidator, judicial manager or Statutory Administrator under this section unless —

(a) the assets of the company are insufficient for the remuneration of the liquidator, judicial manager or Statutory Administrator, as the case may be; and

(b) the conduct of, or participation in, the liquidation, judicial management or administration of the company by the liquidator, judicial manager or Administrator, as the case may be, has been conducted in an economical, expeditious and proper manner and in accordance with this Act.

Margin of solvency. Ch.308.

78. (1) Subject to this section and section 201 an insurance company shall, for the purposes of the Companies Act be deemed to be unable to pay its debts if at any time the value of its admissible assets does not exceed its liabilities by such amount as the Commission may prescribe, having regard to the types of risks to which the company may be subjected.

(2) For the purposes of this section —

(a) subject to paragraph (b) in computing the amount of the liabilities of a company, all contingent and prospective liabilities shall be taken into account, but not liabilities in respect of share capital;

(b) in computing the assets and liabilities of a company carrying on variable insurance business, there shall not be included in such computation the assets of any one or more separate accounts maintained by the company in respect of its variable insurance business, or the liabilities chargeable against such accounts, in respect of such business;

(c) the premium income of a company in respect of its general business in any financial year shall be taken to be the net amount, after deduction of any premiums paid by the company for reinsurance, of the premiums received by that company in that year in respect of all insurance business of a class specified in subsection (1) of section 3 other than long-term business.

Judicial management.

79. (1) Where an order for the judicial management of a company or of part of the business of a company is made after the hearing of a petition under section 77, the provisions of this section and of sections 81 to 84 shall apply.

(2) The court shall appoint a judicial manager who shall receive such remuneration as the court directs, and the court may at any time cancel the appointment and appoint some other person as judicial manager.

(3) The court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the company in such order of priority in relation to any existing charge on that property as it thinks fit.

(4) The management of the company, or of such part of the business of the company as the order of the court directs, shall, on a date specified in the order, vest in the judicial manager appointed by the court to the exclusion of any person vested with any such management immediately before that date; but the judicial manager shall not issue

any new policy or renew any existing policy or enter into any new contract except with the leave of the court.

(5) The court shall issue directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case.

(6) The judicial manager shall act under the control of the court and may apply to the court at any time for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

(7) The judicial manager shall give the Commission such information as the Commission requires and shall report to the Commission whenever he intends to apply to the court for instructions and shall, at the same time, furnish to the Commission particulars of the application.

(8) The Commission shall be entitled to be heard on any application referred to under subsection (7) and may itself make application to the court with reference to the conduct of the judicial management.

36 of 2013, s. 3.

(9) The Commission may, in an application to the court made pursuant to subsection (8), request an order directing the Commission to indemnify a judicial manager for reasonable costs incurred in conducting or participating in the judicial management proceedings of the company.

36 of 2013, s. 3.

(10) The court shall not give a direction pursuant to subsection (3), or make an order pursuant to subsection (9), for the Commission to indemnify a judicial manager unless —

(a) the assets of the company under judicial management are insufficient for the remuneration of the judicial manager; and

(b) the judicial manager's conduct of, or participation in, the judicial management of the company has been conducted in an economical, expeditious and proper manner and in accordance with this Act.

Cancellation of judicial management order.

80. Where at any time, on the application of the judicial manager or of any person appearing to the court to have an interest in the matter, it appears to the court —

(a) that the purpose of the order for the judicial management of the company or of part of the business of the company has been fulfilled; or

(b) that for any reason it is undesirable that the order should remain in force,

the court may cancel the order and on cancellation the judicial manager shall be divested of the management which shall again vest in the board of directors or other governing body of the company.

Report by judicial manager.

81. (1) The judicial manager shall conduct the management of the company with the greatest economy compatible with efficiency and shall, as soon as practicable, file with the court a report stating which of the following courses is in the circumstances, in his opinion, most advantageous to the general interest of the policyholders of the company and seeking an order accordingly —

(a) the transfer of all or any part of the insurance business of the company to some other company in pursuance of a scheme prepared by the judicial manager and annexed to the report;

(b) the carrying on of its business by the company either unconditionally or subject to such conditions as the judicial manager may suggest;

(c) the winding-up of the company; or

(d) such other course as he considers advisable.

(2) The judicial manager shall forthwith, after filing the report, furnish a copy of the report to the Commission.

(3) The report or a copy of the report shall be open for inspection by any person during official hours, at the registry of the court in which the report is filed or at such place as the Commission determines.

Decision of court on report of judicial manager.

82. (1) The court shall on the hearing of an application made under section 81 —

(a) after hearing the Commission, the judicial manager and any other person who in the opinion of the court is entitled to be heard; and

(b) after considering the report of the judicial manager,

make an order giving effect to the course whether similar or not to any of the courses mentioned in subsection (1) of section 81 that it considers in the circumstances to be most advantageous to the interests of the policyholders of the company.

(2) The order of the court shall be binding on all persons and shall have effect notwithstanding anything in the instruments constituting the company or in the articles of association or other rules of the company or in any contract.

Immunity.

83. The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the discharge or in connection with the discharge, of the functions conferred on the judicial manager under this Part.

Subsidiary companies.

84. (1) Where the parent company is being wound-up by or under the supervision of the court, the court —

(a) shall, subject to this section, order the subsidiary company to be wound-up in conjunction with the parent company;

(b) may by the same or any subsequent order appoint the same person to be liquidator for the two companies; and

(c) may make provision for such other matters as may seem to the court necessary, with a view to the companies being wound-up as if they were one company.

(2) The commencement of the winding-up of the parent company shall, save as otherwise ordered by the court, be the commencement of the winding-up of the subsidiary company.

(3) In adjusting the rights and liabilities of the members of the several companies between themselves, the court shall have regard to the constitution of the companies and to the arrangements entered into between the companies, in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding-up of a single company, or as near thereto as circumstances admit.

(4) Where any company alleged to be a subsidiary is not in the process of being wound-up at the same time as

the parent company to which it is a subsidiary, the court shall not direct the subsidiary company to be wound-up unless, after hearing all objections, if any, that may be urged by or on behalf of the company against its being wound-up, the court is of the opinion that the company is a subsidiary to the parent company and that the winding-up of the company in conjunction with the parent company is just and equitable.

(5) An application may be made in relation to the winding-up of any subsidiary company in conjunction with a parent company by any creditor of, or person interested in, the parent or subsidiary company.

(6) Where a company is a parent company in relation to another company, and is a subsidiary company in relation to some other company, or where there are several companies that are subsidiary companies in relation to one parent company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

(7) Notwithstanding anything contained in this Act, where a company that is registered in a jurisdiction outside The Bahamas —

(a) is being wound-up in that jurisdiction; and

(b) has a subsidiary in The Bahamas,

the Commission, upon learning of the winding-up, shall investigate whether any policyholders of the subsidiary are likely to suffer loss as a result of the winding-up and may institute proceedings for the protection of those policyholders.

(8) Where the Commission institutes proceedings under subsection (7), the court may grant such relief to the policyholders as it thinks fit, whether or not the relief granted was the relief prayed for by the Commission.

(9) Costs awarded the Commission by the court under subsection (8) may be recovered either against the subsidiary or the company that is being wound-up.

Supplemental provisions as to winding-up.

85. In any proceedings upon a petition to wind-up a company presented by the Commission under section 77, evidence that the company was insolvent at any time before such proceedings, shall be evidence that the

company continues to be unable to pay its debts, unless the contrary is proved.

Ascertainment of value of liability under policies.

86. (1) Where a company is being wound-up by or subject to the supervision of the court or voluntarily, the value of a policy of any class or of a liability under such a policy required to be valued in the winding-up shall be estimated in the manner applicable to policies and liabilities of that class provided for by such rules as may be prescribed, and the liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by the company, shall —

(a) ascertain the value of the liability of the company to each person in accordance with the rules or in such other manner or upon such other basis as the court may approve; and

(b) give notice of that value to the persons in such manner as the court may direct.

(2) Any person to whom notice is given pursuant to subsection (1) (b) shall be bound by the value ascertained in accordance with that subsection unless he gives notice of his intention to dispute the value in the manner and within a time to be specified by an order of the court or by rules of court.

Reduction of contracts as alternative to winding-up.

87. In the case of a company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the court thinks just, in place of making a winding-up order.

Application of deposits.

88. Upon the winding-up of a company, all moneys and securities for the time being held as a deposit in respect of that company under section 43 or 44 shall be delivered to the liquidator and shall be applied by him, in the first instance, in the discharge of the liabilities of the company in respect of local policies.

Rules.
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89. Rules may be made under section 76 of the Supreme Court Act for the purpose of carrying into effect the provisions of this Act relating to the winding-up of companies and to judicial managers.

Guaranteed companies.

90. (1) Where, on the application of a company carrying on general business, the Commission is satisfied that it is guaranteed by another company satisfying the requirements of a guarantor set out in subsection (2), the Commission may by order direct that, subject to such

conditions as may be specified in the order, section 81 shall not apply to the first-mentioned company.

(2) A guarantor shall be required for the purposes of this section to be either —

(a) a company which satisfies such of the requirements of section 25 as are applicable thereto and the value of whose assets exceeds the amount of its liabilities by the amount required by section 78; or

(b) a member of an association of underwriters to whom this Part does not apply by virtue of subsection (4) of section 3; or

(c) a company that, being itself guaranteed by another company, is the subject of an order under this section,

and for the purposes of this section a company shall be deemed to be guaranteed by another company if, but only if, all its liabilities to policyholders in respect of insurance business of any class specified in subsection (1) of section 3 are re-insured with or guaranteed by the other company.

(3) Any order made under this section may be revoked by the Commission —

(a) if it ceases to be satisfied of the matters on the ground of which the order was made; or

(b) if it is satisfied that any condition in the order has not been complied with.

Priority of distribution of assets.

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91. Where the court makes a winding-up order in respect of a company, the priority of distribution of the assets of the company shall be in accordance with the Companies Act except that the policyholders of the company shall, after the cost and expenses of the winding-up, have a first priority on the assets of the company and shall rank above all unsecured creditors.

VOLUNTARY LIQUIDATION

Insolvent company.

92. No registered insurer which is insolvent within the meaning of this Act, the regulations or any directive of the Commission may elect to go into voluntary liquidation without obtaining the prior consent of the Commission.

Application for voluntary liquidation.

93. A registered insurer which has no property and no liabilities, or which has, to the satisfaction of the

Commission, made adequate provision for the discharge of all of its liabilities, may, if authorized 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.

Company to publish notice of intention.

94. Prior to the submission of the application referred to in section 93, the company shall —

(a) cause to be effected the relevant resolution of shareholders authorizing 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 Bahamas, and broadcast over any electronic media in The Bahamas, 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 registered 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.

No further action until application made.

95. Notwithstanding anything to the contrary contained in any other Act, no action directed towards the voluntary liquidation and dissolution of a company shall be taken by the registered insurer, other than as provided in sections 97 and 98, until an application made by the company pursuant to section 97 has been approved by the Commission.

Representation by shareholders and policyholders.

96. (1) 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 made, by written notice to the Commission, indicate his wish to

make representations to the Commission in respect of any matter relating to the proposed voluntary liquidation.

(2) The Commission shall, upon receiving any such request to make representations, fix a date on which it will hear the representations and shall —

(a) inform the company and the person wishing to make representations in writing of the date of the hearing; and

(b) not less than fourteen days before the hearing, *Gazette*, and publish in a newspaper of general circulation in The Bahamas, a notice of the date of the hearing.

(3) The following persons are entitled, either in person or by counsel and attorney, to be heard at the hearing of any representations made under this section —

(a) the persons wishing to make representations;

(b) the company; and

(c) any person who, in the opinion of the Commission, is likely to be affected by the voluntary liquidation.

Commission's approval or refusal in respect of voluntary liquidation.

97. (1) The Commission may make such determination with respect to the application for approval as it may deem appropriate, and whether or not any objections have been received or a hearing held, provided that it shall not grant its approval where —

(a) the provisions of section 94 have not been complied with;

(b) it is not satisfied that —

(i) the company has in accordance with the regulations —

(A) transferred or made satisfactory arrangements to transfer all or substantially all of its policies;

(B) reinsured or made satisfactory arrangements to cause itself to be reinsured against all or substantially all of the risks undertaken by it; or

(C) otherwise made adequate provision for the discharge of all of its liabilities;

(ii) the voluntary liquidation and dissolution is in the policyholders' interest or in the public interest;

(iii) the circumstances warrant the voluntary liquidation and dissolution of the company; or

(c) the court has made an order pursuant to subsection (1) of section 79.

(2) Upon the Commission's determination of an application made pursuant to section 93, it shall forthwith serve upon the company and upon every person who made representations in connection with the application, by personal service or registered post, a notice of determination, including, where the application is refused, the reasons for such refusal.

(3) Where the Commission refuses the application, it shall notify the company of its right of appeal pursuant to section 228.

Company to publish notice of approval.

98. Where the Commission has approved an application made pursuant to section 93, the company shall, within fourteen days of receipt of the notice of approval, *Gazette*, and publish in a newspaper of general circulation in The Bahamas, notification of the approval.

Effect of approval.

99. Where the Commission has approved an application made pursuant to section 93, the company shall commence voluntary liquidation in accordance with this Act and with the Companies Act and shall in accordance with this Act, transfer its remaining policies or cause itself to be reinsured against the remaining risks undertaken by it.

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Dissolution of company.

100. (1) Where the Commission has approved an application pursuant to section 93 with respect to a company, and the company has complied with section 99 —

(a) the Commission shall recommend to the Registrar of Companies that the company be dissolved; and

(b) the company shall, forthwith, apply to the Registrar of Companies to be dissolved.

(2) Upon the company being dissolved pursuant to subsection (1) a representative of the company shall, not later than ten days after the date of dissolution, notify the Commission of such dissolution.

Voluntary liquidation may be stayed.

101. All proceedings taken pursuant to section 93 to voluntarily liquidate and dissolve a company shall be stayed if the company is at any time found to be insolvent within the meaning of this Act, the regulations or any directive of the Commission.

Expenses to be paid by company.

102. All expenses incurred by the Commission in connection with any proposal for voluntary liquidation, including the report of any actuary, shall be paid by the company.

Application to the court.

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103. (1) The Commission or any other interested party may at any time during the voluntary liquidation of a company apply to the court for an order for the continuance of the voluntary liquidation subject to the supervision of the court in accordance with the Companies Act and this Act.

(2) Where a person other than the Commission makes an application pursuant to subsection (1), the person shall give the Commission notice of the application and the Commission may appear and be heard in person or by counsel and attorney at the hearing of the application.

Liquidator to provide information.

104. A liquidator appointed in connection with the voluntary winding up of a company shall provide the Commission with such information relating to the business and affairs of the company as the Commission may require.

Duties of liquidator.

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105. A liquidator shall, in addition to his duties under the Companies Act —

(a) forthwith after appointment, give notice thereof to the Commission and to each claimant and creditor of the company known to the liquidator; and

(b) in accordance with the provisions of this Act relating to the transfer of business, transfer the remaining policies of the company, or cause the company to be reinsured against the remaining risks undertaken by it.

Notice of dissolution.

106. Upon the company being dissolved, the liquidator shall, not later than ten days after the date of dissolution notify the Commission of such dissolution.

Unclaimed money on winding-up.

107. (1) Where the business of a company is being wound-up, the liquidator or the company shall pay to the Commission on demand, and, in any event, before the final winding up of that business, any amount that is payable by

the liquidator or the company to any person entitled thereto to whom payment thereof has not, for any reason, been made.

(2) Where a liquidator makes a payment to the Commission pursuant to subsection (1), the liquidator or the company shall also forward to the Commission all records and registers in the possession of the liquidator or company that relate to the entitlement of that person.

(3) The Commission shall transfer to the Central Bank all amounts paid to it pursuant to subsection (1) and shall cause appropriate notices to be published in the press to try and identify legitimate claimants.

(4) Payment by a liquidator or a company to the Commission pursuant to subsection (1) shall discharge the liquidator and the company in respect of which the payment is made from all liability for the amount so paid, and transfer by the Commission to the Central Bank pursuant to subsection (3) shall discharge the Commission from all liability for the amount so paid.

(5) Where the Commission is informed of the appearance of the legitimate claimant to any unclaimed proceeds, the Commission if satisfied as to the identity of the claimant and the validity of the claim shall direct that such claim be paid to the claimant by the Central Bank.

(6) All moneys transferred to the Central Bank pursuant to subsection (3), and which remain unclaimed for seven or more years, shall be transferred into the insurance pool established under section 203.

Custody of records after dissolution.

108. A person who has been granted custody of the records and registers of a dissolved company shall keep them available for production for six years following the date of the dissolution of the company or until the expiration of such shorter period as may be ordered by the court when it orders the dissolution.

PART IV - ASSOCIATIONS OF UNDERWRITERS

Associations of underwriters to be registered.

109. (1) No association of underwriters may carry on insurance business in The Bahamas unless it is registered in accordance with this Part.

(2) A member of an association may, after the date of registration, carry on its Bahamian insurance business other than long-term insurance business.

Application for registration by association of underwriters.

110. An application by an association of underwriters for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of the payment of the prescribed fee and by the following documents and information —

(a) a copy of its statute or deed of the association;

(b) the names and addresses of persons in The Bahamas who as brokers or agents place insurance business with the applicant; and

(c) in the case of an applicant constituted outside The Bahamas —

(i) a certificate signed by the appropriate public authority in the country in which it is constituted stating that the applicant has been established for at least five years, that the legislation of such country provides for the regulation of association of underwriters and that it is operating in accordance with that legislation; and

(ii) the names and addresses of one or more persons resident in The Bahamas who are authorised to accept, on behalf of the members of the association, service of process in any legal proceedings,

and by such further information as the Commission may require.

Conditions for registration.

111. (1) Where the Commission, after appropriate enquiry or by the production of documentary evidence, or both, is satisfied in respect of the applicant that —

(a) the relevant requirements of this Part have been complied with;

(b) the applicant is likely to be able to comply with such of the provisions of this Act as would be applicable to it;

(c) being an applicant constituted outside The Bahamas —

(i) it has made or caused to be made with the Commission the deposit required by subsection (1) of section 118; and

(ii) there are one or more persons resident in The Bahamas who are authorised to accept on

behalf of the applicant, service of process in any legal proceedings, being persons authorised for that purpose by the applicant;

(d) the persons who manage the applicant are of good character and are otherwise fit and proper persons to manage the applicant; and

(e) the staff the applicant employs, in relation to any class of insurance business in respect of which the application is made, is sufficiently competent and knowledgeable to carry on that business in an efficient manner,

the Commission shall, either unconditionally or subject to such conditions as it may specify, register the applicant and notify it accordingly.

(2) Where the Commission is not satisfied, in respect of the applicant, as to one or more of the conditions set out in subsection (1), it shall notify the applicant in writing that it proposes to refuse to register it, giving its reasons for so doing; and shall notify it of its right of appeal under section 228.

Suspension of registration.

112. (1) Subject to subsection (2), the Commission may suspend the registration of an association in respect of all or any of the classes of business in relation to which it is registered, if it is satisfied that the association is in breach of any provision of this Act in circumstances where the breach would constitute a ground for cancellation as specified in section 114.

(2) Before taking action under subsection(1) the Commission shall notify the association concerned of its intention to suspend the association's registration giving reasons therefor and requiring the association to take such action as specified in the notice to remedy the breach within the time so specified.

(3) Where an association fails to comply with a notice under subsection (2), the Commission may —

(a) extend the period specified in the notice under subsection (2);

(b) if the breach is not remedied within that extended period, cancel the association's registration in accordance with section 114.

Documents and information relating to insurance business to be furnished to the Commission.

113. An association shall within four months of the end of each financial year furnish to the Commission —

(a) in the case of an association Constituted outside The Bahamas a certified copy of such returns relating to the insurance business of the members during the preceding year as are required to be made to the Minister responsible or other public authority in the country in which the association is constituted —

(i) a certificate, signed by the Chairman or other presiding officer of the association and by or on behalf of the responsible Minister or other public authority, stating whether the association has complied with the requirements of the legislation for the regulation of associations of underwriters in the country in which it is constituted;

(ii) the latest annual list of members and the names of its Committee or other governing body; and

(iii) a statement of receipt and expenditure by its members in The Bahamas during the preceding year;

(b) in the case of an association constituted in The Bahamas, such documents and information as the Commission may require.

Grounds for cancellation of registration.

114. (1)Subject to subsection (2), the Commission may notify in writing an association that it proposes to cancel its registration, giving its reasons for so doing and notifying the association of its right of appeal under section 228 where the Commission —

(a) is satisfied that such registration was procured as a result of any misleading or false representation or in consequence of any incorrect information whether the representation was made or information was supplied, wilfully or otherwise;

(b) is not satisfied that the insurance business of its members is being conducted in accordance with sound insurance principles;

(c) is satisfied that the association has contravened any of the provisions of this Act or of any regulations or any condition, direction or

requirement imposed under this Act by the Commission;

(d) is satisfied that the association has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued in The Bahamas by it or on its behalf; or

(e) is satisfied that —

(i) the persons who manage the association are not of good character or are not fit and proper persons to manage the association; or

(ii) the employees of the association are not sufficiently competent and knowledgeable to carry on the business in an efficient manner.

(2) Notwithstanding subsection (1), the Commission may at anytime cancel the registration under this Part of an association —

(a) where it is satisfied that the members of the association have not commenced business within one year of registration or have ceased to carry on business within The Bahamas; or

(b) at the request of the association.

Implementation of proposal to refuse to register or to cancel registration.

115. Where an association has been notified under subsection (2) of section 114 or subsection (1) of section 116 of its right of appeal and the association having made the appeal the result of the appeal is the confirmation, with or without variation, of the Commission's proposal, then subject to any such variation, the Commission shall give effect to its proposal and notify the association accordingly.

Association may be prohibited from writing new business.

116. (1) The Commission may prohibit an association from writing new policies in any class of insurance business where it is satisfied that it is in the interest of the policyholders or prospective policyholders to do so.

(2) The Commission shall notify the association in writing of a decision taken under subsection (1) and shall state the reasons for the decision.

Policies issued before rejection of application for or cancellation of registration.

117. An association of underwriters —

(a) whose application for registration is rejected; or

(b) whose registration is cancelled in accordance with this Part,

shall, in respect of long-term business continue to carry on only business relating to policies issued by it before the date on which it was notified of the rejection or cancellation unless the Commission is satisfied that it has made suitable arrangements for its obligations under these policies to be met.

Deposits by associations of underwriters.

118. (1) Subject to this section, an association of underwriters which is constituted outside The Bahamas may not be registered under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Commission in cash or prescribed securities or partly in cash and partly in prescribed securities an amount equal to one million dollars.

Second Schedule.

(2) The Second Schedule shall have effect in relation to deposits made with the Commission pursuant to this section.

PART V - REGISTRATION OF INSURANCE INTERMEDIARIES

Registration of insurance intermediaries.

119. (1) Subject to this Act, and excluding a salesperson or prescribed category of sub-agent no person other than a body corporate may be registered under this Part to act as an insurance intermediary.

(2) No person may in The Bahamas carry on or purport to carry on business as or act as an insurance intermediary unless that person and the responsible officer are also registered under this Part.

(3) This section shall not, for a period of six months after the commencement of this Act or such further period as the Commission may by order direct, apply to a person who was immediately before such commencement carrying on in The Bahamas business as an adjustor, risk manager, or consultant.

(4) Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars and in the case of a continuing offence to a further penalty of five hundred dollars for each day on which the offence is continued after the conviction.

Application for registration.

120. (1) An application for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and by such documents as may be prescribed.

(2) Where an application for registration as an agent or broker is made under subsection (1) the Commission may request of the applicant security by way of a fidelity bond, professional indemnity insurance, or such other security as may be prescribed.

(3) The Commission may, upon receipt of the application, request the applicant to furnish such additional information as the Commission may consider to be relevant in relation to the application, and the applicant shall comply with the request.

(4) Notwithstanding subsection (3), the person submitting an application for registration shall report to the Commission any change contemplated or made in the information supplied with the application.

General restrictions regarding registration.

121. (1) No person may be registered under this Part to carry on business as an insurance intermediary if the person is —

(a) under the age of eighteen years in the case of a salesperson;

(b) under the age of twenty-one years in the case of a broker, agent, sub-agent, or adjustor;

(c) an undischarged bankrupt unless the person has been granted leave to carry on such business by the court that adjudged that person bankrupt;

(d) a person who has been found by a court to be of unsound mind or is certified to be suffering from a mental disorder within the meaning of the Mental Health Act; or

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(e) a person convicted of an offence involving fraud or dishonesty.

(2) No person may be registered under this Part as an agent of an insurer unless that insurer is registered under Part III or exempted from registration thereunder.

(3) No person may be registered under this Part as a sub-agent of another person unless that other person is registered under this Part as an agent or broker or exempted from registration thereunder.

(4) No person may be registered under this Part as a salesperson unless the long term insurer, broker, agent or sub-agent by whom he is so employed is registered under

Part III or under this Part, or is exempted from registration thereunder, as the case may be.

(5) No person carrying on business as an insurer shall be registered as a broker, agent or other insurance intermediary.

(6) No person carrying on business as an adjustor, consultant, or surveyor shall be registered as a salesperson, an agent, a sub-agent or a broker.

(7) No person shall be registered as an agent, sub-agent or broker unless there exists in respect of that person such minimum capital and/or insurance coverage as the Commission may by regulations prescribe.

(8) No person shall be registered under this Part as a responsible officer, technical representative, or salesperson unless that person possesses such minimum qualifications or participates in such minimum continuing professional development programs as the Commission may prescribe.

(9) Subject to this Act and to any regulations prescribed hereunder, a person may be registered as either a broker or an agent or both provided that:

(a) in the case of dual registrations there are separate registrations for the broking business and the agency;

(b) the restrictions under section 123(3) (a) (i) and (ii) shall apply;

(c) a broker and agent shall at all times disclose fully to every insured or prospective insured his status in relation to that insured and his function in relation to the class or classes of insurance business he is undertaking for that insured;

(d) a broker and agent shall at all times disclose fully to every insured or prospective insured his status in relation to all insurers with which he has an agency agreement or other formal or informal working relationship;

(e) a broker's or agent's appointment of a sub-agent shall similarly be subject to full disclosure as indicated in (c) and (d) above.

Foreign insurance intermediary. Ch.308.

122. (1) A person who is not a Bahamian within the meaning of section 2 of the Companies Act or a permanent resident with the right to work and who is not a full-time

employee of a registered insurer or insurance intermediary may not be registered pursuant to this Part to carry on business as an insurance intermediary except as a Non-Resident Insurance Intermediary.

(2) A Non-Resident Insurance Intermediary —

(a) may not solicit business in The Bahamas except through a registered insurance intermediary of the same classification;

(b) must maintain an agreement with a registered insurance intermediary, the terms of which must be approved by the Commission;

(c) may not otherwise operate or establish a presence in The Bahamas independent of or to the exclusion of the registered insurance intermediary with whom he has executed the agreement except as may be prescribed;

(d) must provide evidence to the satisfaction of the Commission that there exists in respect of the company such minimum capital and/or insurance coverage as prescribed under section 123(7); and

(e) may not solicit or carry on any class of insurance business unless it has deposited with the Commission such amount as may be prescribed.

(3) Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for eighteen months or both and in the case of a continuing offence to a further penalty of five hundred dollars for each day on which the offence is continued after the conviction.

Conditions for registration.

123. (1) Where the Commission is satisfied in respect of the applicant —

(a) that the requirements of section 120 have been complied with;

(b) that the restrictions contained in section 121 do not apply;

(c) that the applicant is sufficiently competent and knowledgeable to carry on business as an insurance intermediary in respect of any class or classes of insurance;

(d) in the case of a person who was, before the commencement of this Act, carrying on business in The Bahamas as an insurance intermediary, that he conducted such business in a sound and proper manner;

(e) that where the applicant is an individual —

(i) the applicant is a person of good character and is otherwise a fit and proper person to be an insurance intermediary and that each of the persons, if any, with whom he is associated, whether as a partner or otherwise in his business as an insurance intermediary, is a fit and proper person; and

(ii) having regard to the knowledge and competence of the applicant and such staff as the applicant may employ, the applicant is, in relation to any class or classes of insurance business in respect of which the application is made, capable of carrying on business efficiently as an insurance intermediary;

(f) where the applicant is a body of persons whether incorporated or not, that —

(i) each of the persons managing or controlling the body or, each of the partners, and/or owners as the case may be, is a fit and proper person; and

(ii) having regard to the knowledge and competence of the persons managing the body or of the partners and such other staff as the body may employ, it is, in relation to any class or classes of insurance business in respect of which the application is made, capable of carrying on business efficiently as an insurance intermediary;

(g) where the applicant is then required by regulations to pass any examination, that he has passed the examination, and

(h) that the applicant is a member in good standing of a professional association approved by the Commission,

the Commission shall, either unconditionally or subject to such conditions as the Commission may specify, register

the applicant as an insurance intermediary in respect of such class or classes of insurance business as it shall specify and shall notify the applicant accordingly.

(2) Where the Commission is not satisfied, in relation to all or any of the classes of insurance business in respect of which the application is made, as to one or more of the conditions set out in subsection (1), it shall notify the applicant in writing that it proposes to refuse to register the applicant or, that it proposes to refuse to register the applicant in respect of one or more of the classes of insurance business applied for, giving it reasons for so doing, and notifying him of his rights of appeal to the Commission for reconsideration under section 228.

(3) Nothing in this section shall be interpreted to permit —

(a) an agent, to be registered in respect of —

(i) general insurance business for more than five insurance companies at a time;

(ii) long-term insurance business for more than three insurance companies at a time;

(b) a sub-agent to be registered in respect of more than one general and one long term insurance agents at any given time;

(c) a salesperson to be registered for more than one agent or broker at any given time.

Certificate of registration.

124. The Commission shall furnish to every person registered under this Part a certificate in the prescribed form that the person has been registered as a broker, salesperson, agent, sub-agent, adjustor, risk manager, consultant, or surveyor as the case may be, and the certificate shall —

(a) state the class or classes of insurance business in respect of which the person is so registered;

(b) state any conditions subject to which the person has been so registered; and

(c) in the case of the registration of a person as an agent or sub-agent, specify the insurer or insurance intermediary for whom such first-mentioned person has been registered as an agent or, as the case may be, a sub-agent,

and the certificate shall be prima facie evidence that the person stated therein as having been registered has been so registered.

Suspension of registration.

125. (1) Subject to subsection (2), the Commission may suspend the registration of an insurance intermediary in all or any of the classes of business in relation to which it is registered, if it is satisfied that the insurance intermediary is in breach of any of its obligations under this in circumstance where the breach would constitute a ground for cancellation as specified in section 126.

(2) Before taking action under subsection (1) the Commission shall notify the insurance intermediary concerned of its intention to suspend the insurance intermediary's registration giving reasons therefor and requiring the insurance intermediary to take such action as is specified in the notice to remedy the breach within the time so specified.

(3) Where an insurance intermediary fails to comply with a notice under subsection (2), the Commission may —

(a) extend the period specified in the notice under subsection (2); and

(b) if the breach is not remedied within that extended period, cancel the insurance intermediary's registration in accordance with section 126.

Grounds for cancellation of registration subject to right to appeal.

126. (1) Subject to the Commission's power to cancel summarily under section 128, the Commission may, for any of the reasons mentioned in subsection (2), notify in writing an insurance intermediary that it proposes to cancel the insurance intermediary's registration, giving its reasons for so doing, and notifying the insurance intermediary of his rights of appeal to the Commission for reconsideration under section 228.

(2) The reasons referred to in subsection (1) are that —

(a) the registration was procured as a result of misleading or false representation or in consequence of incorrect information, whether the representation or information was made or supplied wilfully or otherwise;

(b) the insurance intermediary —

(i) has become disqualified for such registration by virtue of any of the provisions of section 123;

(ii) is carrying on business otherwise than in accordance with sound insurance principles and practice;

(iii) has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by or through him or it;

(iv) has not, within a period of one month from a date on which the Commission demanded from him or it in writing any information which it was entitled under this Act to demand from him or it, furnished that information duly and satisfactorily;

(v) has been guilty of a fraudulent or dishonest practice;

(vi) in the case of an individual, has demonstrated that he is not a fit and proper person, or in the case of a body corporate, not all the persons managing or controlling the body corporate or not all the partners and or owners, as the case may be, are fit and proper persons;

(vii) has demonstrated that he or it is not sufficiently competent and knowledgeable to carry on business in the class or classes of insurance in respect of which he or it was registered; or

(viii) has contravened any of the provisions of this Act or any condition, direction or requirement imposed under this Act by the Commission or has been an accessory to the contravention thereof by any other person.

(3) Where the Commission has notified any insurance intermediary that it proposes to cancel the registration of such insurance intermediary, and of its right to appeal, it may give the insurance intermediary up to sixty days to process such appeal before taking further action.

(4) Notwithstanding subsection (3), where the Commission has notified any insurance intermediary that it proposes to cancel the registration of such insurance intermediary, and where it deems such action to be in the public interest, it may suspend the registration immediately pending the outcome of any appeal and shall notify that insurance intermediary of the suspension.

Implementation of proposal to refuse to register or to cancel registration.

127. Where any insurance intermediary has been notified under subsection (2) of section 123 or under subsection (1) of section 126 of his right to request the Commission to reconsider its decision and the result of the review is the confirmation, with or without variation, of the proposal of the Commission, then, subject to any variation, the Commission shall give effect to the proposal and notify the insurance intermediary in writing accordingly.

Summary cancellation of registration.

128. The Commission may at any time cancel the registration of an insurance intermediary under this Part —

(a) where it is satisfied that the insurance intermediary has not carried on business in The Bahamas as an insurance intermediary within a year of registration or has not carried on business in The Bahamas for a period of more than a year; or

(b) in the case of an agent or sub-agent that the registration under this Act of the company or person for whom the first-mentioned person was registered as an agent or sub-agent has been cancelled or that the agency or sub-agency has been terminated; or

(c) if the person so requests.

Information to be supplied to Commission.

129. (1) Where an agency or sub-agency agreement in respect of which a person has been registered under this Part as an agent or, as a sub-agent is terminated, notice in writing in the prescribed form shall immediately be given to the Commission both by the insurance intermediary and by the person for whom he was appointed as an agent or sub-agent.

(2) Where the engagement of a responsible officer, technical representative, or salesperson is terminated, notice in writing in the prescribed form shall immediately be given to the Commission both by the responsible officer, technical representative, or salesperson and his employer in that employment, and upon the responsible

officer, technical representative or salesperson entering any new employment, notice in writing in the prescribed form shall forthwith be given to the Commission both by the responsible officer, technical representative or salesperson and his new employer.

(3) The Commission may demand in writing from any person registered under this Part or from his employer or principal any information relating to any matter in connection with that insurance intermediary.

(4) Any person who fails to provide —

(a) the notices required under subsections (1) and (2); and

(b) the information required under subsection (3),

is guilty of an offence, and subject to the penalties under section 237.

Production of certificate of registration.

130. (1) An insurance intermediary shall, if requested to do so by the Commission or by any person authorised by the Commission or by any person with whom the mentioned person is dealing in the course of his business as an insurance intermediary, produce his certificate of registration for inspection.

(2) Every person who fails to comply with subsection (1) is guilty of an offence, and subject to the penalties under section 237.

MISCELLANEOUS PROVISIONS RELATING TO INSURANCE INTERMEDIARIES

Agency.

131. A registered agent, sub-agent, or broker shall, for the purpose of receiving a premium for a contract of insurance on behalf of a registered insurer with whom the agent, sub-agent, or broker has an agency agreement, be deemed to be the agent of the insurer and notwithstanding any conditions or stipulations to the contrary, the insurer shall be deemed to have received any premium received by the agent, sub-agent, or broker.

Fraudulent representation.

132. (1) An agent, a sub-agent, a broker or a salesperson who knowingly procures by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy is guilty of an offence.

(2) An agent, a sub-agent, a broker or a salesperson who causes an insured to discontinue any policy of

insurance without being satisfied on reasonable grounds that the discontinuance is to be for the benefit of the insured is guilty of an offence.

Liability for unlawful contracts.

133. (1) An agent, a sub-agent, or a broker is personally liable to the insured on all contracts of insurance made by or through him directly with any insurer not registered to carry on insurance business in The Bahamas in the same manner as if the agent, sub-agent, or broker were the insurer.

(2) Any agent, sub-agent or broker who desires to enter into an insurance contract with a non-registered company, except a contract relating to reinsurance, may apply to the Commission for permission to do so and the Commission may grant permission if it is satisfied that it is not possible to obtain similar protection at a comparable cost from a company registered under this Act.

(3) A person who does not obtain the permission of the Commission commits an offence and is liable on summary conviction to the penalty provided in section 237 of this Act, and is liable to the insured in the same manner as if he were the insurer.

(4) For the avoidance of doubt, it is hereby declared that the Commission, by granting permission under subsection (2), does not assume any liability towards the applicant in relation to the insurance contract concerned or its replacement.

Advertisement.

134. No agent, sub-agent, broker or salesperson or other person shall orally make any statement or issue, or permit to be issued, any advertisement, statement, circular, descriptive booklet or other document or make or permit to be made a statement by means of any broadcasting or other medium which misleads or tends to mislead the public.

Failure to pay over premiums received on behalf of insurer, an offence.

135. (1) Where an agent, sub-agent, broker or salesperson acts in negotiating or renewing or continuing a contract of insurance with an insurer, and receives any money or substitute for money as a premium for the contract from the insured, he is deemed to hold such premium in trust for the insurer.

(2) If the agent, sub-agent, broker or salesperson fails to pay the premium he receives pursuant to subsection (1) over to the insurer in accordance with the terms agreed with the insurer, less his commission and any other deductions to which, by written consent of the insurer, he

is entitled, his failure shall be deemed *prima facie* evidence that he is guilty of breach of trust.

Compensation to unauthorised person for placing or negotiating insurance, an offence.

136. (1) No insurer, and no officer or employee of the insurer, and no insurance intermediary shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in The Bahamas, or negotiating the continuance or removal thereof, or for attempting so to do, who, at the date thereof, is not a registered insurer or insurance intermediary.

(2) Any person who knowingly contravenes this section is guilty of an offence.

Grant of rebates prohibited.

137. (1) No insurer, and no officer, employee or agent of an insurer, and no broker or salesperson shall directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in The Bahamas.

(2) An insurer or other person who contravenes this section is guilty of an offence.

Bona fide salaried employees.

138. (1) Nothing in sections 136 and 137 shall affect any payment by way of dividend, bonus, profit or savings that is provided for by a policy, or shall be construed so as to prevent an insurer compensating a bona fide salaried employee of its head or branch office or a spouse or child thereof, in respect of insurance issued by the employing insurer upon the life or property of the person or so as to require that the person be licensed as an agent under this Part to effect the insurance.

(2) Nothing in sections 136 and 137 shall be construed so as to prevent an insurer or intermediary compensating a *bona fide* employee of its head or branch office for the introduction of insurance business to the company under a limited employee incentive scheme, as prescribed.

Information on intermediaries.

139. (1) Every insurer shall make a return to the Commission in such form and at such time as the Commission requires showing —

(a) all persons, partnerships and companies duly authorised as its agents or salesmen in The Bahamas; and

(b) all persons, partnerships or companies to whom it has, within such period as the form of return requires, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in The Bahamas or negotiating the continuance or renewal thereof, or for attempting to do so.

(2) Any person who is registered under this Act as an insurance intermediary shall where applicable make an annual return to the Commission in such form as may be prescribed.

Management of agents.

140. (1) Every registered insurer that authorizes one or more agents to act on its behalf shall establish and maintain a system that —

(a) is reasonably designed to ensure that each agent complies with the requirements of this Act and any regulations made hereunder;

(b) provides for the screening of each agent for suitability to carry on business as an agent.

(2) An insurer shall report to the Commission if it has reasonable grounds to believe that an agent who acts on its behalf is not suitable to carry on business as an agent.

Keeping of records and making of deposits by registered brokers and agents.

141. (1) Every agent or broker registered in accordance with this Part shall —

(a) keep within The Bahamas and shall make available to the Commission on request —

(i) a record of all local policies issued by him on behalf of each registered insurer or registered association;

(ii) a record of the aggregate amount of the premiums received on the policies;

(iii) a copy of the financial statements;

(iv) an analysis of outstanding premiums payable to insurers; and

(v) such other books, vouchers, receipts, and documents as are necessary for the purpose

of verifying information provided to the Commission pursuant to the Act;

(b) deposit with the Commission such amount as may be prescribed.

(2) A deposit referred to in subsection (1), may be in cash or securities of the amounts set out in the regulations and may be wholly or partly in cash or such securities.

Second Schedule.

(3) The provisions relating to deposits in the Second Schedule shall have effect in respect of deposits made pursuant to this section.

(4) The Commission may at any time examine the records of a registered insurance intermediary, and the registered insurance intermediary, shall facilitate the examination and shall cause such information and produce such records as are in his possession to be made available for examination.

PART VI - LONG-TERM INSURANCE BUSINESS

ISSUE OF POLICIES

Annuities.

142. No registered insurer shall issue annuities unless it is licensed to engage in long-term insurance business.

Rates of premium.

143. (1) A company shall not issue any policy unless the rate of premium chargeable under the policy is a rate that has been approved by an actuary as suitable for the class of policy to which that policy belongs.

(2) The Commission may at any time require the company to obtain, and to furnish it with a report by an actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the company and, if the actuary considers that the rate is not suitable, a report as to the rate of premium that the actuary approves as suitable in respect of that class of policy.

(3) Where any requirement is made under subsection (2) in respect of the rate of premium chargeable under any class of policy, the company shall not issue any policy of that class until the company has, in accordance with the requirement, obtained the approval of the actuary for the rate of premium.

(4) An actuary in approving a rate or premium in respect of any class of policy under this section shall have regard to —

(a) the maximum rate of commission proposed to be paid to any person in respect of that class of policy; and

(b) the maximum rate of reduction of premium to be allowed to any person in respect of that class of policy.

Minimum surrender.

144. A company shall not issue a long-term insurance policy unless there is incorporated in that policy a table indicating the minimum cash surrender value of that policy or contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy.

Commissions and reductions of premium.

145. Where a rate of premium is approved by an actuary in respect of any class of policy, the company shall not, except with the approval of an actuary, pay or allow in respect of any policy of that class, a commission or reduction of premium at a rate greater than —

(a) the maximum rate of commission or reduction of premium to which the first-mentioned actuary had regard when approving the rate of premium; or

(b) the maximum rate of commission or reduction of premium payable by the company, immediately before the commencement of this Act, in respect of policies of that class, if any, issued at the rate of premium so approved,

whichever is the greater.

Form of proposal.

146. Subject to section 42, an application form shall be framed so as to require an applicant for a life policy to specify the date of birth of the person whose life is proposed to be insured; and it shall be the duty of the applicant to supply those particulars to the best of his knowledge and belief.

Notice by company in respect of long-term policies.

147. (1)Subject to subsection (3) of section 149, a company shall not enter into a contract for the purpose of carrying on long-term insurance business unless the company —

(a) at the time the contract is entered into; or

(b) not later than seven days after the contract is entered into,

serves on the other party to the contract a notice containing the information specified in subsection (2).

(2) A notice referred to in subsection (1) —

(a) shall specify the nature and type of the policy; and

(b) shall have annexed thereto a form of notice of cancellation for use by the other party to the contract.

(3) A company which contravenes this section is guilty of an offence but the contravention shall not invalidate the contract.

Insurer to deliver policy.

148. (1)Where a person has entered into a contract of insurance, the registered insurer shall serve the policy within thirty days on the policyholder personally, or send it to the policyholder by registered post to the last known postal address.

(2) A registered insurer carrying on life insurance business shall provide annually to each policyholder a statement of policy transactions including total premiums paid, deposits made, cash surrender value, paid-up policy and applicable interest rates or at such other periods not to exceed three years.

(3) Premiums paid prior to the issuance of the contract of long term insurance and received as such by the registered insurer shall render the contract voidable at the instance of the policyholder.

(4) A registered insurer who contravenes subsection (1) without just cause is guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars.

Rights of cancellation.

149. (1) A person who has entered into a contract of insurance with a company may serve notice of cancellation on the company —

(a) not later than the tenth day from the date on which he receives a notice referred to in section 147; or

(b) not later than the tenth day from the date on which he first became aware that the contract was entered into,

whichever is the later.

(2) Subsection (1) shall not apply where a company ought to have served a notice under subsection (1) of section 147 and failed to do so but does so before the cancellation of the contract.

(3) A life assurance policy may be cancelled by the registered insurer in the event of non-payment of any renewal premiums due but only after notice in writing specifying the default and the intention of the insurer to cancel the policy has been given to the insured by personal service or sent to the policyholder's last known postal or home address:

Provided that a life assurance policy shall not be cancelled by reason only of the non-payment of a premium unless at least thirty days has elapsed since the premium became due.

(4) Any policy of insurance may be cancelled by the mutual consent in writing of the insurer and the insured made prior to the date of intended cancellation.

(5) A notice of cancellation need not be in the form attached to the notice required to be served under subsection (1) of section 147 and it is sufficient if the notice of cancellation indicated a desire to withdraw from the contract.

(6) Service of a notice of cancellation operates —

(a) as a rescission of the contract, if it is served after the contract has been entered into; and

(b) as a withdrawal of offer in any other case.

(7) Where a contract has been rescinded or an offer has been withdrawn as a result of the service of a notice of cancellation, any moneys paid by way of premium or otherwise, whether to the company or to any person acting on behalf of the company for the purpose of receiving the moneys shall be refunded to the policyholder forthwith and are recoverable from the company as a debt in civil proceedings.

(8) Where no notice of termination has been delivered to the registered insurer within ten days as required under subsection (1), the insurer shall be entitled to retain or claim a portion of the premium on a pro-rata basis with respect to the period of time for which the policy was in force.

Period of grace.

150. (1)Where a premium of long-term insurance business other than the initial premium is not paid at the time it is due, the premium may be paid within a period of grace of —

(a) twenty-eight days from the day on which the premium is due; or

(b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer.

(2) Where the happening of the event upon which the policy proceeds becomes payable occurs during the period of grace and before the overdue premium is paid the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding the current market rate, and the balance, if any, of the current year's premium, may be deducted from the policy proceeds.

Dividends.

151. Where a policy provides an entitlement to a dividend, bonus or profit sharing, the company shall, on the issue of each such policy, give a written disclosure to each policyholder of the basis on which he is entitled to a dividend, bonus or other means of distribution of profit.

Notice regarding proof of age.

152. Where a company issues a life policy that provides that proof of age of the person whose life, is insured, is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.

Procedure where company declines to accept proof.

153. (1)Where a company declines to accept the proof of age tendered in respect of a policy, whether issued before or after the commencement of this Act, the policyholder may apply to a Judge in chambers by summons for an order directing the company to accept the proof tendered.

(2) On an application under subsection (1), the Judge in chambers may make such order in relation to the application as he thinks just.

(3) Every order under this section shall be binding on the company and shall be complied with on the part of the company.

Misstatement of age, and non-avoidance of policy.

154. (1)A policy is not avoided by reason only of a misstatement of the age of the person whose life is insured.

(2) Where the true age as shown by the proof is greater than that on which the policy is based, the company may vary the sum insured by the policy, and any bonuses allotted to the policy, so that as varied, they bear the same proportion to the sum insured by the policy, and any bonuses allotted to the policy before variation, as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the policy was based, the company shall either —

(a) vary the sum insured by, and any bonuses allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by the policy, and any bonuses, allotted to the policy before variation, as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or

(b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay the policyholder the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(4) A policy shall not be avoided by reason only of any incorrect statement, other than a statement as to the age of the person whose life is insured, made in any proposal or other document on the faith of which the policy was issued or reinstated by the company unless the statement —

(a) was fraudulently made; or

(b) being a statement material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the person whose life is insured, whichever is the earlier.

Provisions relating to state of health of insured.

155. Nothing in any term or condition of a life policy issued after the commencement of this Act or in the law relating to insurance shall operate to exempt a company from liability under the policy or to reduce the liability of the company under the policy on the ground of any matter relating to the state of health of the person whose life is insured, other than the ground of the proposer's having, when making the proposal or thereafter and before the making of the contract, either —

(a) made an untrue statement of his knowledge and belief as regards the matter; or

(b) failed to disclose to the company something known or believed by him as regards that matter.

GROUP LIFE INSURANCE

Policy of group insurance.

156. Where a contract of insurance is entered into for the provision of group insurance, the company shall —

(a) set out in the policy the following particulars —

(i) the name or sufficient description of the insured;

(ii) the method of determining the persons whose lives are insured;

(iii) the beneficiaries under the policy;

(iv) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;

(v) the period of grace, if any, within which the premium may be paid;

(vi) whether the policy provides for participation in the distribution of surplus or profits that may be declared by the company;

(vii) the terms under which the company may make changes to the terms of the contract;

(b) issue to the insured and to each group life insured, a certificate or other document, in which the following particulars are set out —

(i) the name of the company and the identification number or other means of identifying the policy;

(ii) the amount or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the policy;

(iii) the circumstances in which the insurance terminates and the rights, upon such termination, of the group life insured or of any person whose life is insured under the policy.

Power of group life insured to sue company.

157. A person insured under a group life Policy may, in his own name enforce a right given him under the policy, subject to any defence available to the insurer against him or against the insured.

BENEFICIARIES

Designation of beneficiaries.

158. (1) The provisions of this section and sections 160 to 171, subject to anything to the contrary contained in those sections, shall apply in respect of policies taken out after the commencement of this Act.

(2) A policyholder may at the time the policy is taken out or at any time thereafter by declaration in writing, designate his personal representative or a named person to be the beneficiary under his policy and may subject to section 160 alter or revoke the designation by declaration in writing.

(3) A designation in favour of "heirs", "next of kin", "estate" or similar designation shall be deemed to be a designation of the personal representative of the policyholder.

Irrevocable designation.

159. (1) Subject to subsections (3), (4) and (5) a policyholder may, by declaration in writing filed with the company at the time the policy is taken out or at any time

thereafter, designate irrevocably a named person to be the beneficiary under the policy and, in such a case —

(a) the policyholder subject to section 171 may not during the lifetime of the named beneficiary, alter or revoke the designation without the consent of the beneficiary; and

(b) the moneys payable under the policy are not subject to the control of the policyholder or the creditors of the policyholder and do not form part of his estate.

(2) Notwithstanding paragraph (a) of subsection (1), the consent of the beneficiary is not required where the beneficiary under a policy of insurance is, as the case may be —

(a) a former spouse and the marriage ended in divorce; or

(b) a child who has reached the legal age of majority.

(3) Where the insured purports to designate a beneficiary irrevocably in a declaration that has not been filed with the company as required by subsection (1) or in a will, the designation has the same effect as if the insured had not purported to make the designation irrevocable.

(4) An irrevocable designation may be made by a policyholder only in favour of a spouse or a child.

(5) A designation by a policyholder shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and signed by the policyholder and there is sufficient evidence that it was explained to the policyholder that the designation was irrevocable.

Designation in wills.

160. A designation by a will does not affect a designation made under a policy.

Trusts for beneficiaries.

161. (1) A policyholder may, in writing, appoint by contract or by declaration a trustee for a beneficiary under the policy and may alter or revoke the appointment by declaration in writing.

(2) The contract or declaration referred to under subsection (1) must be filed with the company.

(3) A payment by a company to a trustee for a named beneficiary discharges the company from payments to the beneficiary to the extent of the payment.

Beneficiary predeceasing policyholder.

162. (1) Where in the case of group insurance provided for under section 156, by a declaration filed with the company, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy predeceases the policyholder and no provision is made in the declaration for the disposition of moneys payable under the policy to that beneficiary in the event of the beneficiary predeceasing the policyholder then, without limiting or affecting rights given to the policyholder under section 160, the moneys payable under the policy shall vest in the following persons in the following order —

(a) in the surviving beneficiary, if any;

(b) in the surviving beneficiaries in equal shares, if there is more than one surviving beneficiary; or

(c) in the policyholder or policyholders personal representatives, if there are no surviving beneficiaries.

(2) Where two or more beneficiaries are designated otherwise than alternatively by a policyholder, and no provision is made as to the quantum of their respective shares of the moneys payable under the policy, then, they are entitled to the moneys in equal shares.

Simultaneous deaths.

163. Unless a declaration otherwise provides, where the policyholder and a beneficiary die in circumstances that render uncertain the order of the deaths, in the absence of proof to the contrary, it shall be presumed that the beneficiary predeceased the policyholder.

Enforcement by beneficiary or trustee.

164. A beneficiary may enforce for his own benefit and a trustee appointed pursuant to section 161 may, in accordance with the terms of the contract or declaration, as the case may be, enforce payment of moneys payable under a policy even though there is no privity of contract, but the company may invoke against the beneficiary or trustee any defence available against the policyholder or the policyholder's personal representative.

Designated beneficiary.

165. (1) Where a beneficiary other than a personal representative has been designated by a policyholder, the

money payable under the policy from the time of the happening of the event upon which the insurance money becomes payable, does not form part of the estate of the insured and is not subject to claims of the creditors of the insured.

(2) While a designation in favour of a spouse or child of a policyholder or any of them is in effect, the rights and interests of the policyholder in the insurance money and in the contract are exempt from execution or seizure.

(3) For the purposes of subsection (2) "child" has the meaning assigned to it by section 169.

Assignment of policy.

166. (1) Where a beneficiary is not designated irrevocably, the policyholder may assign, exercise rights under or in respect of, surrender or otherwise deal with the policy as provided in the policy or in this Part or as may be agreed upon with the company.

(2) Where a beneficiary is designated irrevocably, the policyholder may not assign the policy, use the policy as a security, surrender it or otherwise deal with it without the consent in writing of the designated beneficiary.

Entitlement to dividends.

167. (1) Notwithstanding the designation of a beneficiary irrevocably, the policyholder is entitled, while living, to the dividends or bonuses declared on a contract, unless the contract provides otherwise.

(2) Unless the policyholder otherwise directs, the company may apply the dividends or bonuses declared on the policy for the purpose of keeping the policy in force.

Effect of assignment on beneficiaries.

168. (1) An assignee of a policy who gives notice in writing of the assignment to the head office of the company or to its agent has priority of interest as against —

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably under section 159 prior to the time the assignee gave notice to the company of the assignment in the manner prescribed in this section.

(2) Where a policy is assigned as security, the rights of a beneficiary under the policy are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Where a policy is assigned absolutely, the assignee has all the rights and interests given to the policyholder by the policy and by this Part and shall be deemed to be the policyholder.

(4) A provision in a policy to the effect that the rights or interests of the policyholder or in the case of group insurance, the group life insured, are not assignable, is valid.

Insurable interest.

169. (1) For the purpose of this Act, but without restricting the meaning of the expression "insurable interest", an insurable interest shall be deemed to be had by —

(a) a parent of a child under eighteen years of age, or a person *in loco parentis* of such a child, in the life of the child;

(b) a spouse, in the life of his or her spouse;

(c) any person, in the life of another upon whom he is wholly or in part dependent for support or education;

(d) a company or other person, in the life of an officer or employee thereof;

(e) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person; and

(f) any trustee, nominee or custodian acting on behalf of, for the direct or indirect benefit of, or at the direction of a person identified as having an insurable interest in the life of another person in this subsection shall be deemed to have an insurable interest in the life of such other person.

(2) This section shall apply to policies whether effected before or after the commencement of this Act.

(3) For the purposes of this section, the expression "child", in relation to any person, includes —

(a) an adopted child;

(b) a step-child; or

(c) any other child, living with that person and wholly or mainly maintained by that person.

(4) Subject to subsections (1), (2) and (3), the rights and interests of a policyholder in the assets of a separate

account maintained under a variable life insurance or variable annuity policy issued by a company registered under this Act, shall not be liable to be applied or made available in payment of the debts of such policyholder, by any judgement, order or process of any court, and no creditor of such policyholder may attach any right or interest therein or claim payment thereof, except where —

(a) the purchase of the policy, or the acquiring, conveying, transferring or settling the assets used to purchase the policy was made with the intent to wilfully defeat an obligation owned by the policyholder to a creditor; or

(b) proceedings in bankruptcy have been commenced by or against the policyholder in a court of competent jurisdiction at the date of purchase of the policy or within three months of the date of purchase of the policy.

PROTECTION OF POLICIES

Interest of insured protected in certain cases.

170. (1) The property and interest of any person in a policy effected, whether before or after the commencement of this Act, upon the life of that person shall not be liable to be applied or made available in payment of the debts of that person by any judgment, order or process of any court.

(2) In the event of a person who has effected a policy on his own life dying after the commencement of this Act, the moneys payable upon the death of that person under or in respect of the policy shall not be liable to be applied or made available in payment of his debts by any judgment, order or process of any court or by retainer by an executor or administrator or in any other manner whatsoever, except by virtue of —

(a) a contract or charge made by the person whose life is insured; or

(b) an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

PAID-UP POLICIES, SURRENDER VALUES AND NON-FORFEITURE

Paid-up policies.

171. (1) A policyholder who desires to discontinue further premium payments on a policy shall, where the policy has a cash surrender value or contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy, on application to the company, be entitled to receive instead of that policy, a paid up policy.

(2) The paid up policy shall be payable upon the happening of the contingency on which the amount insured under the original policy would have been payable.

Surrender of policies.

172. Notwithstanding the terms of a particular policy, where the policy has a cash surrender value or contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy, the owner of that policy shall, on application to the company be entitled to surrender the policy and to receive not less than the cash surrender value of the policy or non-forfeiture value, as the case may be, less the amount of any debt owing to the company under, or secured by the policy.

Relaxation of obligations as to surrender values.

173. Where the Commission is of the opinion that the payment in cash of surrender values as required by section 172 would be prejudicial to the financial stability of the company or to the interests of the policyholders of that company, it may, on application by the company, suspend or vary for such period and subject to such conditions as the Commission thinks fit, the obligation of the company to pay those surrender values.

Non-forfeiture of ordinary policies in certain cases of non-payment of premiums.

174. (1) An ordinary policy shall not be forfeited by reason only of the non-payment of any premium, in this section referred to as the overdue premium, where —

(a) the policy contains provisions enabling the exercise of certain options in lieu of the forfeiture of the policy; and

(b) the surrender value of the policy, calculated as at the day immediately preceding that on which the overdue premium falls due, exceeds the sum of the amount of the debts owing to the company under, or secured by, the policy and the amount of the overdue premium.

(2) The company may, until payment of the overdue premium, charge simple interest on the overdue premium at market rate until such overdue premiums are paid.

(3) The overdue premium and any interest charged on it under this section and unpaid shall for the purposes of this Act, be deemed to be a debt owing to the company under the policy.

(4) Without affecting the generality of the foregoing provisions of this section, an ordinary policy that contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due —

(a) the company liable under the policy serves a notice on the policyholder stating —

(i) the amount due or payable to the company at the date of the notice in respect of the policy;

(ii) that the policy will be forfeited at the end of twenty-eight days after the date of the notice if a sufficient sum is not paid to the company in the meantime; and

(b) a period of at least thirty days has passed after the service of the notice.

(5) For the purposes of subsection (4), a policyholder is deemed to have had notice where a notice is personally served on him or is sent to his last known postal address.

Non-forfeiture of industrial policies in certain cases of non-payment of premiums.

175. (1) An industrial policy on which not less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless after the premium has remained unpaid for more than four weeks after it became due.

(2) An industrial policy on which not less than one year's but less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for more than eight weeks after it became due.

(3) An industrial policy on which not less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for more than twelve weeks after it became due.

(4) In the event of an industrial policy on which not less than three years' premiums have been paid being forfeited by reason of the non-payment of any premium, the company shall, without requiring any application from the policyholder, grant a paid up policy for an amount not less than that specified in the table included in the policy.

(5) The paid up policy shall be payable upon the happening of the contingency upon the happening of which the amount insured under the original policy would have been payable.

(6) The company shall notify the policyholder in writing of the fact that the paid up policy has been granted and shall specify the amount of the policy and the contingency upon which the policy is payable.

(7) An industrial policy shall not be forfeited by reason only of the non-payment of any premium where the non-payment was due to non-collection by the company without just cause.

Treatment of debts on grant of paid up policies.

176. Where under any provision of this Part a policyholder is entitled to receive, or a company required to grant, a paid up policy and there is any debt owning to the company under or secured by the policy, the company may elect —

(a) to treat the debt so owing as a debt secured by the paid up policy, and thereupon the paid up policy shall be a security for the debt so owing; or

(b) in the ascertainment of the amount of the paid up policy, to reduce the amount by taking into account the debt so owing to the company, and thereupon the debt shall cease to be owing to the company.

PAYMENT OF POLICY MONEYS

Place of payment of policy proceeds.

177. (1) Unless otherwise agreed by the registered insurer and the policyholder, all policy proceeds payable in respect of a policy shall be payable at the principal office of the registered insurer.

(2) Where a registered insurer receives sufficient evidence from a claimant of —

(a) the happening of an event upon which policy proceeds become payable;

(b) the age of the person whose life is insured, where such information is relevant;

(c) the name and age of the beneficiary, where such information is relevant;

(d) other requisite information; and

(e) the right of the claimant to receive payment,

it shall, within thirty days after receiving such evidence, pay the policy proceeds to the person entitled thereto.

(3) Where the registered insurer does not pay the policy proceeds as required by subsection (1), in addition to any other sanctions pursuant to this Act, the policy proceeds payable shall bear simple interest at Bahamian market rate from the date on which they were payable until the date which they are paid.

Payment without probate or administration in certain cases.

178. (1) A company by which any moneys are payable under one or more policies to the personal representative of a deceased person may, without requiring the production of probate or letters of administration, pay out of the moneys any amount including any bonuses added to the policy or policies not exceeding ten thousand dollars to any person who satisfies the company that he is entitled to —

(a) receive the property of the deceased person;

(b) obtain probate of the will of the deceased person; or

(c) take out letters of administration of the estate of the deceased person.

(2) A company which makes a payment pursuant to subsection (1) shall be discharged from all further liability in respect of the moneys so paid.

(3) All persons to whom moneys are paid under subsection (1) shall apply those moneys in due course of administration and, if the company thinks fit, it may require those persons to give sufficient security by bond or otherwise that the moneys so paid will be so applied.

Death of holder of policy not being life insured.

179. (1) Subject to this section, where a policyholder not being the person whose life is insured by the policy, predeceases the person whose life is so insured, and a person satisfies the company that issued the policy that —

(a) he is entitled under the will or on the intestacy of the deceased policyholder, to the benefit of the policy; or

(b) he is entitled to obtain probate of the will, or to take out letters of administration of the estate of the deceased policyholder,

the company may, without requiring the production of any probate or letters of administration, endorse on the policy a declaration that the person has so satisfied the company and is the holder of the policy, and thereupon that person becomes, subject to subsection (2), the holder of the policy.

(2) Subsection (1) shall not confer on a person declared to be the holder of a policy any beneficial interest in the policy that he would not otherwise have had.

(3) This section shall apply in relation to a policy referred to in subsection (1) whether the deceased policyholder dies before or after the commencement of this section.

(4) This section does not apply in relation to —

(a) a policy the surrender value of which, at the date of the death of the deceased holder, exceeds or exceeded two thousand dollars; or

(b) a policy which is one of two or more policies held by the deceased holder and issued by the same company if the aggregate of the surrender values of those policies at the death of the deceased holder exceeds or exceeded two thousand dollars.

(5) For the purposes of subsection (4), the surrender value of a policy is the amount, including any amount in respect of bonus additions that would be paid by the company issuing the policy upon its surrender.

Company not bound to see to application of moneys.

180. Nothing contained in this Part shall be construed as requiring a company to see to the application of any moneys paid without probate or letters of administration under section 178 by the company in respect of any policy.

Power to pay money into court.

181. (1) Subject to rules of court, any company carrying on life insurance business may, after giving notice in writing to the Commission, pay into the court any moneys payable by the company under a contract of life insurance in respect of which in the opinion of the directors, no sufficient discharge can otherwise be obtained.

(2) The receipt or certificate of the Registrar or Deputy Registrar of the court shall be a sufficient discharge to the company for the moneys so paid into court and the moneys shall, subject to rules of court and any regulations made under this Act, be dealt with according to the order of the court.

Unclaimed moneys.

182. (1) A company shall, not later than six months after the coming into force of this Act and six months after the end of each financial year thereafter, deliver to the Commission a statement of all unclaimed moneys outstanding for more than one year as at that date.

(2) The statement shall set forth, in respect of each policy to which it refers, the name of the policyholder and beneficiary if known, their last known addresses, details of the attempts made to locate the policyholder or beneficiary, the amount due and the date on which the amount became due.

(3) The company shall pay to the Commission at the time of the delivery of the statement, the total amount of unclaimed moneys shown in the statement, less any amounts the company has paid between the financial year and the date on which the statement is delivered, to the person to whom those amounts were due; and the company shall furnish particulars of the amounts in writing with the statement.

(4) Prior to the payment of moneys to the Commission, the company shall publish in a newspaper of general circulation in The Bahamas a list of the names and addresses of the policyholders whose claims remain uncollected.

(5) Where a company, after paying to the Commission an amount in respect of a policy pursuant to this section satisfies the Commission that the amount so paid exceeds the amount that would have been payable under the policy to the policyholder, the Commission shall refund to the company the amount of the excess.

(6) Subject to subsection (1), a company is, upon payment to the Commission of an amount as required by this section, discharged from further liability in respect of that amount.

(7) A company that fails to comply with the obligations imposed by this section is guilty of an offence and is liable to the penalties imposed by section 237.

Further provisions relating to unclaimed moneys.

183. (1) All unclaimed moneys paid to the Commission under section 182 shall be paid by the Commission to the Central Bank to the credit of a special account, and on the written authorization of the Commission there shall be paid from and charged to that account such sums as are necessary to give effect to any claim thereafter established to the satisfaction of the Commission.

(2) The amounts transferred to the Central Bank pursuant to subsection (1) or any other section, shall bear interest at a rate determined by the bank.

(3) Where, after unclaimed moneys have been paid to the Commission by a company pursuant to section 182 the Commission is informed of the appearance of the legitimate claimant to any such unclaimed moneys, the Commission, if satisfied as to the identity of the claimant and the validity of the claim, shall direct that such claim be paid to the claimant by the Central Bank.

(4) All moneys transferred to the Central Bank pursuant to subsection (1), and which remain unclaimed for more than seven years, shall be transferred into the insurance pool established under section 203.

(5) For the purposes of section 182 and of this section, the expression "unclaimed moneys" means all sums of money that became or become legally payable by a company in respect of policies but in respect of which the time within which proceedings may be taken for their recovery has expired, and includes sums of money payable on the maturity of an endowment insurance policy that are not claimed within seven years after the maturity date of the policy.

(6) Nothing contained in this section shall be construed as establishing a time limit within which a legitimate claimant must come forward.

PROVISIONS RELATING TO INDUSTRIAL LIFE INSURANCE BUSINESS

Objection of policies.

184. (1) Where, within twenty-eight days after a company delivers an industrial policy —

(a) to the policyholder; or

(b) at the residence of the policyholder, to some other person who resides there and is apparently not

less than sixteen years of age and by whom any premium in respect of the policy is paid on behalf of the policyholder,

the policyholder returns the policy to the company with an objection in writing to any term or condition of the policy, the company shall immediately refund any premium that has been paid in respect of the policy, and the policy shall be cancelled.

(2) Where an industrial policy is sent by post by a company to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to the person at the time at which it would reach him in the ordinary course of post.

(3) For the purposes of this section, a policy shall be deemed to have been returned to a company with an objection if the policy and the writing specifying the objection are posted for transmission to the company by registered letter.

Return of industrial policies and premium receipt books after inspection.

185. Where at any time a company that carries on industrial life insurance business or any person authorised by that company, takes possession of an industrial policy or premium receipt book or other document issued in connection with the policy, a receipt for the policy, book or document shall be given to the person from whom it was received, and the policy, book or document shall be returned to that person on demand at any time after the expiration of twenty-eight days, unless —

(a) it is required for the purposes of evidence in legal proceedings;

(b) the policy has been terminated by reason of the satisfaction of all claims capable of arising under it; or

(c) in the case of a policy, the company is entitled to retain the policy as security for money owing to the company by the policyholder.

Falsification.

186. Any person who wilfully makes, or orders or allows to be made any entry or erasure in, or omits any entry, or orders or allows any entry to be omitted from, a collecting book or premium receipt book, with intent to falsify the book, or to evade any of the provisions of this Act, is guilty of an offence and subject to the penalties imposed by section 237.

Avoidance of policy by reasons of particulars in proposal filled in by agent or company.

187. (1) Where any agent or servant of a company writes or fills in or has before the commencement of this Act, written or filled in any particulars in a proposal for an industrial policy with the company, then, notwithstanding any agreement to the contrary between the proposer and the company, any policy issued in pursuance of the proposal shall not be avoided by reason only of any incorrect or untrue statement contained in any such particulars so written or so filled in unless the incorrect or untrue statement was in fact made by the proposer to the agent or servant for the purposes of the proposal.

(2) The burden of proving that any such statement referred to under subsection (1) was so made shall lie upon the company.

(3) Nothing in this section shall be deemed to allow the avoidance of any policy for any reason or in any circumstances for or in which the policy could not have been avoided apart from this section.

Particulars to be set out in policies.

188. An industrial policy issued by a company shall contain an endorsement in distinctive type setting out —

(a) whether the policy is or is not a participating policy; and

(b) a short statement in a form approved by the Commission as to —

(i) the right of the policyholder to be granted a paid up policy;

(ii) the right of the policyholder to surrender his policy and to receive in cash the surrender value of the policy; and

(iii) the forfeiture of the policy.

Issue of premium receipt books.

189. (1) A company shall, in respect of each industrial policy issued by the company, issue to the policyholder a premium receipt book in compliance with this section at the time of the issue of the policy.

(2) Notwithstanding subsection (1), where the policyholder concerned does not object, the company may —

(i) issue one premium-receipt book in respect of two or more policies if held by the same policyholder or by two or more policyholders who are members of the same household; or

(ii) add the endorsements and entries required by this section in respect of any policy to the premium receipt book issued in respect of any earlier policy held by the same policyholder or by a member of the same household.

(3) A company shall not issue or permit to be used one premium receipt book in respect of two or more policies held by different policyholders not being members of the same household.

(4) Where a premium receipt book issued to a policyholder by a company complies with the provisions of this section or it is amended to comply with those provisions and is returned to the policyholder, it shall be deemed to be a premium receipt book issued in accordance with this section.

(5) A premium receipt book issued by a company shall contain in respect of each policy to which it relates —

(a) an endorsement in distinctive type of the particulars referred to in paragraphs (a) and (b) of section 188;

(b) an entry made by the company of the following matters, namely —

(i) the full name and date of birth of the policyholders and, where the policy is issued in respect of the life of a person other than the policyholder, the full name and date of birth of that person;

(ii) the date and number of the policy;

(iii) the amount of the weekly or other periodical premium; and

(c) a notice stating that proof of age may be required before payment of the sum insured.

Premium receipt book to show date to which premiums paid, etc.

190. (1) Every payment in respect of premiums under an industrial policy made to an agent or servant of the company shall be recorded by the agent or servant in the premium receipt book so as to clearly indicate the date on which premiums have been paid in respect of the policy or policies to which the premium receipt book relates, and the record shall —

(a) if it is the first entry on a page of the premium receipt book, be signed by the agent or servant with his usual signature; and

(b) if it is not such an entry, be signed by the agent or servant with his usual signature or be initialed by him.

(2) Where a premium receipt book relates to more than one policy and any payment for premiums on the policies is made which is less than the aggregate of the weekly or other periodical premiums in respect of all those policies, the person making the payment shall be required by the agent or servant of the company to whom the payment is made to state the policy or policies in respect of which no payment or an insufficient payment is made, and the agent or servant shall clearly record in the premium receipt book the fact stated.

(3) Unless the amount of the deficiency is paid before any further premiums are paid, the company shall cause a separate premium receipt book in compliance with section 190 to be issued in respect of any policy in relation to which the deficiency exists and shall cause the particulars and entry in the first mentioned premium receipt book relating to any such policy to be cancelled.

PROVISIONS RELATING TO VARIABLE INSURANCE BUSINESS

Grant of approval.

191. (1) An insurer shall not carry on in The Bahamas variable insurance business unless the Commission is satisfied that the general character, reputation and experience of the management of the insurer and those persons or firms proposed to supply consulting, investment, administrative or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer.

(2) An application for approval to carry on variable insurance business under this section shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and by such documents as may be prescribed or required by this Act.

(3) The Commission may, upon receipt of an application under this section, request the insurer to furnish

such additional information as it may consider to be relevant in relation to the application and the insurer shall comply with the request.

(4) Where after the Commission grants approval under subsection (1), any change takes place in the particulars of the information supplied in the application for approval, that the insurer shall within thirty days of the change, notify the Commission in writing of the change and this requirement of notification shall be a condition of the approval.

(5) The Commission may attach such further conditions to the issue of approval under subsection (1) as are relevant to the nature and class of the variable insurance business that the insurer intends to carry on including but not limited to —

(a) requiring the insurer to disclose to any applicant for a policy any one or more of the following —

(i) a statement of the investment policy of any separate account maintained in respect of such variable insurance policy including a description of the investment objectives intended for the separate account and the principal types of investments intended to be made, and any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted,

(ii) any restrictions or limitations on the manner in which the operations of such variable insurance policy are intended to be conducted;

(iii) a statement of the charges and expenses in respect of such variable insurance policy;

(iv) a summary of the method to be used in valuing assets in respect of which benefits under such variable insurance policy are to be determined; and

(v) illustrations of benefits payable under the variable insurance contract;

(b) requiring that any material contract between an insurer and suppliers of consulting, investment, administration, sales, marketing, custodial or other services with respect to variable life

insurance operations shall be in writing and provide that the supplier of such services shall furnish the Commission with any information or reports in connection with the services which the Commission may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with this Act, and any other applicable law or regulation;

(c) requiring the insurer to furnish in such manner and at such times or intervals as may be prescribed, such information relating to the value of benefit under the policies as may be prescribed, whether by sending notices to the policyholders or depositing statements with the Commission;

(d) requiring that the variable insurance policy be in a specific form or contain such mandatory provisions as may be prescribed in any regulations;

(e) requiring that the insurer maintain reserves in addition to any reserves which the insurer is required to maintain under the Act;

(f) restricting the descriptions or property or indices of value of property by reference to which benefits under the policy will be determined in accordance with the regulations prescribed for such purpose; or

(g) regulating the manner in which and frequency with which property of any description is to be valued, for the purpose of determining the benefits, and the times at which reference is to be made for that purpose.

Revocation of approval.

192. (1) The Commission may revoke any approval to carry on variable insurance business if the insurer fails to remedy a breach of any condition imposed in respect of such approval, within ninety days of its receipt of notice from the Commission, requiring the insurer to remedy such breach.

(2) Where the Commission proposes to revoke approval granted to an insurer under section 191 for a breach of any condition imposed in respect of the approval,

it shall notify the insurer of its rights of appeal under section 228 of this Act.

(3) Where the Commission revokes its approval under subsection (1), the insurer shall cease to issue any new policies in respect of its variable insurance business and the Commission may take any further action as may be authorised by this Act.

Submission of reports, annual statements, etc.

193. An insurer authorised to carry on variable insurance business in accordance with this Act, shall submit to the Commission, in addition to any other reports required under this Act, annual financial and actuarial statements of its variable insurance business including investment summaries in a form approved by the Commission, together with such additional information concerning its variable insurance operations or separate accounts as the Commission shall deem necessary.

Allocation of assets in respect of separate accounts.

194. (1) An insurer shall allocate to the separate account maintained in respect of any variable insurance policy, all premium income, reinsurance proceeds and other income, interest, gains, expenses and losses incurred or earned, in accordance with the terms of that policy.

(2) In respect of its variable life insurance business, the insurer shall maintain in each separate account, assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for these policies.

(3) Unless approved by the Commission in writing, in respect of its variable insurance business other than variable life insurance business, the insurer shall maintain in each separate account assets with a value at least equal to the reserves and other policy liabilities with respect to the separate account.

(4) Subject to any provision of any enactment or administrative condition to the contrary, investments in the separate account shall be valued in the manner determined by the insurer's actuary.

Authority to grant financial assistance with assets concerning separate account.

195. Subject to the provisions of this Act, a company registered under this Act, may grant advances, credit, financial guarantees or other form of financial assistance with the assets allocated to or concerning a separate account without reference to the net value of the separate account.

Charges against separate account.

196. The insurer shall disclose in writing, prior to or contemporaneously with the delivery of the policy, all charges that may be made against the separate account, including the following —

(a) actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

(b) actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

(c) charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate accounts;

(d) charges, at a rate specified in the policy, for mortality and expense guarantees;

(e) any amounts in excess of those required to be held in the separate accounts; and

(f) charges for incidental insurance benefits.

Custody of assets of separate account.

197. Where the insurer is not the custodian of the assets of the separate account, no person other than any one of the following may be appointed custodian of the assets of the separate account, or be authorised to handle or deal with the assets of the separate account, without the prior written approval of the Commission —

(a) a bank or other financial institution licensed to operate in or from The Bahamas;

(b) a financial institution authorised or licensed under the laws of any other jurisdiction, to act as custodian of the assets of the separate account; or

(c) any subsidiary or affiliate of any person named in the foregoing paragraphs of this subsection.

MUTUALISATION

Conversion into mutual companies.

198. (1) Notwithstanding anything in its memorandum or other instruments of incorporation or in its articles or other rules or in this Act, a company incorporated in The Bahamas that has a share capital and that is registered under this Act to transact long-term insurance business, may, with the permission of the Commission, establish and implement a plan for the conversion of the company into a

mutual company by the purchase of shares of the company or the conversion of the shares into debentures in accordance with such conditions as may be prescribed.

(2) A mutual company, whether or not converted as such under subsection (1), may convert into a company with a share capital where —

(a) it has obtained the permission of not less than two thirds of its policyholders; and

(b) the scheme for the conversion has been approved by the Commission.

(3) A company may be de-mutualised by means of the procedure specified in subsection (1).

PART VII - GENERAL INSURANCE

CONDITIONS

Application of this Part.

199. This section and sections 201 and 202 apply to all companies registered under this Act to transact insurance business in respect of any class of such business other than long-term insurance business.

Computation of reserves liability.

200. Every registered insurer doing general business shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement of account, reserves computed on such basis as the Commission may prescribe.

Contravention.

201. Where it appears to the Commission that the assets of any company fall below the requirements for solvency by section 78 and after a reasonable time has been given to the company to be heard by it, the Commission shall —

(a) cancel the registration of the company; 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 company's registration being continued in the meantime, and upon the company's failure to make good the deficiency within the time so limited, the registration of the company shall be cancelled,

but where the company's assets are less than the total liabilities including the unearned premiums calculated as provided in section 200, or if the company has contravened

the requirements of section 58, its certificate of registration shall be withdrawn.

Appropriation of profits towards surplus.

202. (1) Until the surplus of a company equates or exceeds the liability of the company in respect of outstanding unexpired policies required to be included in the annual statement in accordance with section 200, the company shall at the end of each year appropriate towards surplus at least twenty-five per cent of the profits of the company for the year last past.

(2) For the purposes of this section, the expression "surplus" means the excess of assets over the paid-up capital of the company and all the liabilities of the company including the liability in respect of outstanding unmatured policies required to be included in the annual statement in accordance with section 200.

(3) The Commission may give directions as to the portions of surplus of a company or of any association of underwriters incorporated in The Bahamas that shall be invested in The Bahamas, and may prescribe the manner in which they may be invested and the extent of the investment.

Establishment of insurance pool.

203. (1) The Commission shall have power to establish an insurance pool and to require registered insurance companies and associations to contribute to the pool established, for the collection, allocation and application, in accordance with regulations made under this Act, of monetary contributions from insurers and associations for the purpose of covering prescribed risks, if after consultation with the Minister the Commission determines that —

(a) it is in the public 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 structured and regulated in such manner as may be prescribed.

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

Self insurance.

204. (1) After the commencement of this Act, no company other than one 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.

Cancellation of policies.

205. (1) No local policy shall be liable to cancellation except in accordance with the provisions of this section.

(2) A policy other than a life assurance policy may be cancelled at any time at the request of the insured named therein, and the insurer shall, upon the surrendering of the policy, refund the excess of any premiums paid over and above the customary short-rate premium for the period when the policy has been in force.

(3) A policy other than a life assurance policy may be cancelled at any time by an insurer after giving to the insured named therein at least thirty days notice in writing of the proposed cancellation by personal service or by registered post and upon a refund to the insured of the excess of paid premium over and above the pro rata premium for the time the policy has been in force, which repayment shall accompany the notice.

(4) Any policy of insurance may be cancelled with the mutual consent in writing of the insurer and the insured made prior to the date of intended cancellation.

(5) The classes of aviation and marine insurance business are exempted from the operation of any of the provisions of this section.

PART VIII - MISCELLANEOUS

Quarterly returns from companies.

206. Every registered insurer shall within three weeks of the end of each quarter of the calendar year, furnish to the Commission in the prescribed form, a return showing for that quarter, the amount of gross premium income and net premium income collected in that quarter, and any other information determined by the Commission with respect to risks located in The Bahamas.

Anti-money laundering returns.

14 of 2009, s. 11.
Ch. 368.

207. (1) Every registered insurance company to which the Financial Transactions Reporting Act applies shall —

(a) ensure that adequate policies and procedures are in place to comply with Anti-Money Laundering (AML) and the Combating of Financing of Terrorism (CFT) laws and obligations;

(b) establish on-going training programs to ensure that employees and agents are kept informed of new money laundering and financing of terrorism techniques, methods and trends;

(c) establish proper screening procedures to ensure high ethical and technical standards when hiring employees or appointing agents;

(d) ensure that its overseas branches or subsidiaries also have appropriate AML/CFT policies and procedures in place; and

(e) require its external auditor to submit a report during the course of the annual audit of financial statements on the adequacy of policies and procedures relating to money laundering and the combating of the financing of terrorism, pursuant to the Financial Transactions Reporting Act.

Ch. 368.

(2) A copy of the report required in paragraph (e) of subsection (1) above shall be forwarded to the Commission within four months of the end of the financial year.

Registers to be kept.

208. A registered insurer shall in accordance with section 209 keep a register of policies at its principal office in The Bahamas, and the register shall, at all times during the normal business hours of the company, be available for inspection by the Commission or by some person authorised in writing by it.

Registration of policies.

209. (1) Every policy in The Bahamas existing at the commencement of this Act shall at that date be deemed to be registered by the company in the register kept at its registry in The Bahamas.

(2) Every policy in The Bahamas issued by a company after the commencement of this Act shall immediately after issue be registered by the company in the register kept at its registry in The Bahamas.

(3) Unless otherwise agreed by the company and the policyholder, all moneys payable in respect of a policy

shall be payable at the registry at which it is for the time being registered.

Form of records.

210. Any record required or authorized by the Act to be prepared and maintained by a registered insurer or registered insurance intermediary —

(a) may be in a bound or loose-leaf form or a photographic film form; or

(b) may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable period or time.

Insurance policy documents to be issued expeditiously.

211. (1) Where a person has entered into a contract of insurance with a registered insurer, the insurer shall forward to that person the relevant insurance policy documents within ninety days of the entering into a contract or such other time as the Commission may consider reasonable.

(2) A company which contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Lost policy.

212. (1) Where —

(a) the holder of a policy; or

(b) a person claiming the benefit of the provisions of section 178 or section 179 in respect of a policy,

claims that the policy, in this section referred to as the original policy, is lost or has been destroyed, the company liable under the original policy may, subject to this section, upon application by the holder or that person issue to the applicant a special policy in substitution for the original policy.

(2) Where an application under subsection (1) made by a person referred to in paragraph (b) of that subsection, the company shall not issue a special policy unless the company is satisfied that section 177 or 178 should be applied in favour of the applicant in relation to the policy.

(3) A special policy shall —

(a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;

(b) contain copies of every endorsement on the original policy registered by the company; and

(c) state the reason for the issue of the special policy.

(4) The fact of the issue of a special policy and the reason for its issue shall be recorded by the company in the appropriate register of policies.

(5) A special policy is valid and available for all purposes for which the original policy in substitution for which it has been issued would have been valid and available and, after the issue of the special policy, the original policy in substitution for which it has been issued is void.

(6) Where the company fails to issue a special policy within six months after receipt of an application in writing from the policyholder, the court may, upon application by summons, and upon such evidence as to the loss or destruction of the original policy as the court deems sufficient, order the company, upon such terms and within such time as the court thinks fit, to issue a special policy.

(7) Where the holder of a special policy or a person claiming the benefit of the provisions of section 178 or 179 in respect of a special policy, claims that the special policy is lost or has been destroyed, this section shall apply as if the special policy were an original policy issued by the company.

Effect of suicide or capital punishment on policy.

213. A policy shall not be avoided merely on the ground that the person whose life is insured died by his own hand or act, sane or insane, or suffered capital punishment if, upon the true construction of the policy, the company thereby agreed to pay the sum insured in the events that have happened.

Disclosure of pro rata condition of average.

214. (1) Where a contract of insurance contains provision with respect to pro rata condition of average, the condition shall be void and unenforceable unless, before the contract is entered into, the insurer informs the insured in writing, in a form satisfactory to the Commission, of the nature and effect of the condition.

(2) This section shall not apply in respect of a contract of insurance entered into before the coming into operation of this Act, but shall apply to any renewal of any such contract.

Condition as to war risk void.

215. Any term or condition of a policy issued after the commencement of this Act which limits, to an amount less than the sum insured, the amount payable under the policy in the event of the death of the life insured occurring while on active military service or as a result of war, shall not have any force or effect, unless the person who effected the policy agreed in writing to the insertion in the policy of that term or condition.

Offences by company not to invalidate policies.

216. Failure on the part of a company to comply with any provision of this Act shall not in any way invalidate any policy issued by the company.

Jurisdiction of local courts.

217. In the matter of policy interpretation, every policy issued in The Bahamas or to a person resident in The Bahamas through a person or office in The Bahamas shall be governed by the laws of The Bahamas and shall be subject to the jurisdiction of the courts of the Bahamas, notwithstanding any provision to the contrary in the policy or in any agreement relating to the policy.

Payment of moneys in local currency.

218. (1) Where any policy is issued after the commencement of this Act in respect of which the premiums are payable or paid in The Bahamas the premiums shall be payable or paid, as the case may be, and any sums payable or paid under such policy shall be payable or paid, as the case may be, in Bahamian dollars or any other currency which is legal tender in The Bahamas and is acceptable to the payee.

(2) Notwithstanding subsection (1), where a policy is issued to a non-resident, the premiums and policy proceeds or claims may be payable in United States dollars or other currency with the prior approval of the Central Bank.

Structured settlements.

219. (1) A court, in awarding judgment to a plaintiff in respect of a claim, liability for which is covered by a policy of insurance may, with the consent of both parties, instead of a lump sum, order specified payments with interest to be made at such intervals and over such period not exceeding three years as the court may specify.

(2) Nothing in subsection (1) shall operate to prevent a company and a person who has made a claim against the company from entering into a settlement agreement for the payment by the company of specified payments at specified intervals over a specific period in satisfaction of the claim that has been made.

Approval required for notice offering shares for subscription.

220. (1) A person shall not publish in respect of any company or in respect of a company proposed to be formed after the commencement of this Act a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the company or proposed company, unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Commission.

(2) A person acting as promoter of a proposed company shall not accept any office of profit in the company or any payment of pecuniary advantage other than as provided in any such prospectus, notice, circular, advertisement or other invitation.

Publication of authorised, subscribed and paid-up capital.

221. Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid-up.

Voting by post.

Ch.308.

222. (1) A company that does not have shareholders shall within one year after it is registered under this Act make arrangements for a system of voting either by way of proxy in accordance section 74 of the Companies Act with or by post in accordance with this section.

(2) Where the company intends to use a system of voting by post, it shall make arrangements for —

(a) the establishment of a postal voters' roll in relation to voting in contested elections of directors of the company or on questions as to the alterations of the instruments, constituting the company or of the articles of association or other rules of the company;

(b) the enrolment on the postal voters' roll of any member of the company entitled to vote in elections of the company or on the questions who applies to be so enrolled;

(c) the voting by post in any election or on any such question by every member so enrolled; and

(d) the making of inspections of the postal voters' roll and the taking of copies of, or extracts from, the roll, on and after the close of nominations and before the close of the voting in the election, by

any person nominated for election as a director of the company,

and all regular votes of members given in pursuance of the arrangements shall be valid and effectual for all purposes.

(3) Where a member of a company enrolled on the postal voters' roll of the company fails to exercise his right to vote by post on three consecutive occasions on which he is entitled so to vote, the company may remove his name from the roll, but the member shall be eligible for re-enrolment.

Documents to be received in evidence.

223. Every document purporting to be certified by the Commission to be a document lodged with it under this Act, and every document purporting to be similarly certified to be a copy of such a document, shall be deemed to be that document or copy, as the case may be, and shall be received in evidence as if it were the original document, unless some variation between it and the original document is proved.

Authority to sign documents.

224. Any document required by or under this Act to be signed by a director or the principal officer of a company may be signed by any other officer of the company if that officer is authorised by the board of directors to so sign and the board of directors has notified the Commission in writing of the authorisation.

Printing of documents.

225. Where a document is, by this Act, required to be printed, the Commission may, in its discretion, permit it to be typewritten or lithographed or to be reproduced by any mechanical means approved by the Commission.

Service of notices.
Ch.2.

226. (1) Without prejudice to section 7 of the Interpretation and General Clauses Act, where a notice is required or permitted by this Act to be given to or served upon a person, the notice shall be in writing and may be given or served —

(a) in the case of a notice addressed to a person other than a company, by serving it upon him personally or by sending it by registered post addressed to him at his usual or last known place of abode or business; and

(b) in the case of a notice addressed to a company, by serving it personally upon the person last known to the Commission as being a director or the principal representative or officer of the company or by sending it by registered post addressed to

him at his address last known to the Commission or to the address filed with the Commission under subsection (1) of section 23,

and if it is so sent by post, shall be deemed to have been given or served on the date shown on the postal receipts as the date on which it was delivered, or if no such date is shown, fourteen clear days after the date of posting.

(2) In this section, the expression "company" includes a body corporate that has ceased to carry on insurance business in The Bahamas.

Power to collect statistics.

227. (1) The Commission may collect such statistics at such times as may, in the Commission's opinion, be necessary or desirable.

(2) For the purpose of enabling the Commission to collect statistics under this section, every company shall provide the Commission with such particulars as may be prescribed.

Appeals.

228. Any person aggrieved by a decision of the Commission on any matter pursuant to this Act may appeal to the Supreme Court in accordance with rules of Court.

Gazetting of registration, etc.

229. (1) Where —

(a) the application for registration of an insurance company under Part III, an association of underwriters under Part IV or of any person under Part V is refused;

(b) an insurance company, an association of underwriters or a person is registered under Part III, Part IV or Part V, as the case may be;

(c) the registration of an insurance company, an association of underwriters or of any person under Part III, Part IV or Part V, as the case may be, is cancelled,

the Commission shall cause notice of the refusal, registration or cancellation to be published at least once in the *Gazette* and in a newspaper published in The Bahamas.

(2) The Commission shall from time to time cause to be published in the *Gazette* and in a newspaper published in The Bahamas up-to-date lists of companies, associations of underwriters and persons registered under Part III, Part IV or Part V, as the case may be.

Restriction on use of insurance terms.

230. Subject to this section, no person who —

(a) carries on any class of insurance business specified in subsection (1) of section 3 may have or use, or continue to have or use, the word "Insurance" or "Assurance", or any derivative thereof, in the name under which that person is carrying on business, unless that person is registered or exempted from registration under this Act;

(b) carries on any class of insurance business specified in subsection (1) of section 3 may have or use, or continue to have or use, in the name under which that person is carrying on business any words indicating that the person is an insurer unless that person is registered or exempted from registration under Part III;

(c) is registered under Part III may, without the written consent of the Commission, carry on any insurance business unless that person has and uses as part of the business name of such person the word "Insurance" or "Assurance" or a derivative thereof;

(d) is registered under Part V as a broker may, without the written consent of the Commission, carry on business as such unless that person has and uses as part of the business name of that person the words "Insurance Broker" or "Assurance Broker";

(e) is registered under Part V as an agent or sub-agent and not also registered under Part III, may, without the written consent of the Commission, carry on business as such unless such person has and uses as part of the business name of such person the words "Insurance Agent" or "Assurance Agent".

Extension of time limits.

231. Where any provision of this Act requires anything to be done within a specified period of time and no provision is made for the extension thereof, that period may in any particular case be extended by the Commission.

Technical and management agreements.

232. No company, association of underwriters or insurance intermediary shall enter into any arrangement for the provision of technical or management services outside The Bahamas in respect of a company, association or

insurance intermediary doing business in The Bahamas unless first submitting a written copy of the intended agreement to the Commission, and obtaining in writing, the approval of the Commission.

Regulations.

233. (1) The Commission may make regulations for giving effect to this Act and, in particular, the regulations may make provision in relation to all or any of the following —

(a) the prescribing of anything required or permitted by this Act to be prescribed;

(b) the forms to be used in connection with any of the provisions of this Act;

(c) the fees to be paid by registered insurers and insurance intermediaries;

(d) the matters in respect of which other fees shall be payable and the amount of such fees;

(e) deposits by companies;

(f) the maintenance and investment of funds by companies;

(g) the recovery of the expenses of any investigation under this Act;

(h) the assignment of policies generally or by way of mortgage or upon trust;

(i) the disposal and vesting of policy moneys which have remained unclaimed for the prescribed period;

(j) the recognition of examining bodies in respect of the qualifications for registration of brokers, salesmen, agents and sub-agents;

(k) amalgamations and transfers falling within section 66;

(l) the registers to be kept for the purposes of this Act;

(m) where there is no provision or not sufficient provision in this Act in respect of any matter or thing necessary to give effect to this Act, the manner or form in which the deficiency is to be supplied.

(2) Notwithstanding section 25(e) of the Interpretation and General Clauses Act, any regulation may provide for the imposition of a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years or both for any contravention of any of the provisions of the regulations. Ch.2.

(3) Regulations may contain such incidental or supplementary provisions as appear to the Commission to be expedient for the purposes of the regulations.

Guidelines.

234. Subject to section 8 of this Act and to the Regulations prescribed under section 233, the Commission may from time to time issue rules, guidelines and directives for the better management of insurance companies, reinsurers, associations and intermediaries registered under this Act.

Exemptions.

235. Without prejudice to any special power of exemption howsoever expressed conferred by any other provision of this Act, the Commission may by order —

(a) declare that, with effect from a date specified in the order, such of the provision of this Act as may be so specified shall not apply in relation to such class or division of insurance business as may be so specified;

(b) in the case of any insurance company or class of insurance company or any other person or class of persons direct that, subject to such conditions, if any, as it thinks fit, insurance business of a class specified in subsection (1) of section 3 shall be treated as if it were insurance business of another class so specified or as if it were insurance business of a class not so specified;

(c) exempt, subject to such conditions, if any, as it thinks fit, any insurance company or class of insurance company or any other person or class of person from all or any of the provisions of this Act.

Offences.

236. (1) Any person who contravenes —

(a) any provision of this Act;

(b) any provision of any statutory instrument; or

(c) any direction or requirement given or made by the Commission or an inspector appointed under section 71,

is guilty of an offence, unless he can prove that he did not knowingly commit the contravention or omission the burden of proof of which shall be on him and, in the case of a default in complying with any such provision, direction or requirement, the offence shall be deemed to be continued so long as the default continues.

(2) Where an offence against this Act is committed by a company and the offence is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, principal officer, or other officer or an actuary or auditor of the company, he, as well as the company, shall be deemed to be guilty of the offence.

(3) Where any document required by or under this Act to be signed by any person is false in any particular to the knowledge of the person who signs it, that person is guilty of an offence.

(4) Notwithstanding any limitation on the time for the taking of proceedings under any Act, summary proceedings for an offence against this Act may be commenced at any time within three years from the date on which evidence of the offence comes to the knowledge of the Commission.

(5) for the purposes of this section, a certificate purporting to be signed by the Commission as to the date on which that evidence came to its knowledge shall, in any such summary proceedings, be conclusive evidence of that date.

(6) Any proceedings against a company for an offence against this Act shall be without prejudice to any proceedings for the judicial management, or the winding-up of the company or of any part of the business of the company which may be taken in respect of the matter constituting the offence.

Penalties.

237. All offences against this Act for which no other penalty is prescribed shall be punishable on summary conviction thereof —

(a) in the case of a company, by a fine not exceeding ten thousand dollars, and where the offence is a continuing offence, by a further fine of one thousand dollars for every day during which the offence continues; and

(b) in the case of an individual, by a fine not exceeding five thousand dollars and where the offence is a continuing offence, by a further fine of five hundred dollars for every day during which the offence continues.

Power of Commission to issue sanctions including fines.

238. (1) Notwithstanding section 237, or any other provisions in this Act, the Commission may where it is satisfied under section 236 that a registered insurer, an association of underwriters, or an insurance intermediary has committed an offence —

(a) impose a penalty on the registered insurer, association of underwriters or insurance intermediary which may include —

(i) a public reprimand;

(ii) a ban on carrying out certain operations;

(iii) the temporary suspension of a manager;

(iv) the rescinding of the approval of a principal representative, auditor, or actuary;

(v) the removal of a director, responsible officer or other senior manager; or

(vi) the imposition of conditions on a licence;

(b) order the registered insurer, association of underwriters or insurance intermediary to pay a fine based on the amounts set out in section 237.

(2) Where the Commission makes an order under this section —

(a) the order shall be put in writing;

(b) the order shall specify the offence which the registered insurer, association, or insurance intermediary committed and the penalty imposed by the Commission;

(c) a copy of the order shall be given to the registered insurer, association, or insurance intermediary;

(d) once the registered insurer, association, or insurance intermediary pays the fine 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 registered insurer, association, or insurance intermediary to prove that the offence

with which it is charged has been dealt with under this section; and

(e) the order may be enforced in the same manner as an order of the court.

Insurance Advisory Committee.

239. (1) There shall be established a committee, to be known as the Insurance Advisory Committee (hereafter referred to as "Committee"), to advise the Commission with respect to general matters relating to the insurance industry within or outside The Bahamas, and with respect to such other matters as may be deemed relevant to the insurance industry in The Bahamas.

(2) The Committee shall advise the Commission on any matter which may be referred to it, and may also, on its own initiative, provide advice to the Commission concerning any matters set out in subsection (1).

(3) The composition of, appointments to and other matters related to the Committee shall be described by regulations.

Non-application. Ch. 308.

240. Sections 128 to 130 and section 193 of the Companies Act shall not apply to a company registered under this Act.

Married persons. Ch. 129.

241. The Married Women's Property Act or any legislation in force relating to married persons' property, insofar as it creates a statutory trust of a life policy shall have no effect in relation to sections 158 to 167 of this Act.

Transitional.

242. (1) A reference —

(a) in a law of The Bahamas; and

(b) in any document,

in force immediately before the date of the coming into operation of this Act to the former Registrar shall be read, deemed and taken to refer to the Commission.

(2) The persons who, immediately before the coming into operation of this Act, were the Registrar and Deputy Registrar under the repealed Act shall continue in office under the new title of Superintendent and Deputy Superintendent respectively on the same terms and conditions as existed before the coming into operation of this Act.

(3) Any officer or employee appointed or employed with the former office of the Registrar of Insurance shall continue in office or employment with the Commission on

the same terms and conditions as existed before the coming into operation of this Act.

(4) Unless otherwise stated in this Act, with respect to companies carrying on insurance business in The Bahamas and insurance intermediaries carrying on the business of insurance intermediation in The Bahamas immediately prior to the coming into force of this Act, the period of time within which such companies or intermediaries shall comply with the Act, the regulations or any portion thereof, shall be twelve months or such longer period of time as the Commission may designate by notice published in the *Gazette*.

243. *Repealed*.

FIRST SCHEDULE (Section 4)

THE INSURANCE COMMISSION OF THE BAHAMAS

A Body Corporate

1. (1) The Commission shall consist of the following persons to be appointed by the Governor-General after consultation with the Minister, that is to say —

(a) the Superintendent of Insurance ex officio;

(b) the Deputy Superintendent of Insurance ex officio;

(c) three to five other Commissioners, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, insurance, financial or commercial matters, industry, law, or administration.

(2) The Commission may make bye-laws regulating the conduct of the Commission's business, and may make regulations and issue orders for the purpose of giving effect to the provisions of this Act.

(3) Paragraphs 2 to 7 shall have effect in relation to the Commission and Commissioners other than the Superintendent and Deputy Superintendent.

2. (1) Each Commissioner shall, subject to the provisions of this paragraph, hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) A Commissioner shall not be appointed or reappointed for a period exceeding four years.

3. The Governor-General may appoint any person eligible to be appointed a Commissioner to act temporarily in the place of any Commissioner who is absent or unable to act.

4. Any Commissioner may at any time by notice in writing to the Governor-General resign his office.

5. If the Governor-General is satisfied that a Commissioner —

(a) has been absent from meetings longer than three consecutive months without permission of the Commission;

(b) has become bankrupt or made arrangements with his creditors;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a Commissioner,

the Governor-General may declare his office as Commissioner to be vacant and shall notify that fact in such manner as the Governor-General thinks fit, and thereupon that office shall become vacant.

6. The name of all the Commissioners and every change therein shall be published in the *Gazette*.

7. The Commission shall pay to the Commissioners such remuneration (if any), whether by way of salary, honorarium or fees, as the Governor-General may determine and, if a person ceases to be a Commissioner and it appears to the Governor-General that there are special circumstances which may make it right that the person should receive compensation, the Governor-General may require the Commission to pay to that person a sum of such amount as the Governor-General may determine.

8. The Superintendent, or in case of his absence or inability, the Deputy Superintendent , shall —

(a) preside as chairman at the meetings of the Commission;

(b) be responsible to the Commission for the execution of its policies;

(c) except as may otherwise be provided in this Act, the bye-laws or resolutions of the Commission, have the power to act, contract, and sign instruments and documents on behalf of the Commission and, pursuant to the resolutions of the Commission, delegate such power to other officers of the Commission.

9. (1) The Commission shall meet as often as may be required for the due performance of its functions, and in any case at least once every month.

(2) A meeting of the Commission —

(a) may be convened by the Superintendent or, in his absence, the Deputy Superintendent; or

(b) shall be convened on the written requisition of two Commissioners specifying the reasons for which the meeting is required.

(3) Three Commissioners (of whom one shall be either the Superintendent or the Deputy Superintendent) shall form a quorum at any meeting.

(4) A decision shall be adopted by a simple majority of the Commissioners present, and in the case of an equality of votes the person presiding at the meeting shall have and exercise a casting vote.

(5) A Commissioner who is directly or indirectly interested otherwise than as a Commissioner or in common with other Commissioners in a contract or other transaction made or proposed to be made by the Commission, shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts have come to his knowledge, and any such disclosure shall be recorded in the minutes of the Commission, and after the disclosure that Commissioner shall not take part in any deliberation or decision of the Commission with respect to that contract or transaction.

(6) Minutes of each meeting of the Commission shall be kept in such form as the Commission may determine.

(7) No act or proceeding of the Commission shall be invalidated merely by reason of any vacancy in the Commission or of any defect in the appointment of a Commissioner.

APPOINTMENT OF THE SUPERINTENDENT

10. The Governor-General shall appoint a person to be the Superintendent of Insurance and a person to be the Deputy Superintendent of Insurance, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, insurance, actuarial or financial matters, law or administration.

11. The person appointed Superintendent shall be the Chief Executive Officer of the office of the Insurance Commission and shall have charge of the day to day management and operation of the office.

12. The person appointed Deputy Superintendent shall perform such functions in relation to the office of the

Superintendent as are delegated to him by the Superintendent and in the event of the Superintendent's inability to act or a vacancy in the office of the Superintendent, the Deputy Superintendent shall have and may exercise the functions of the Superintendent.

13. The persons appointed Superintendent and Deputy Superintendent shall be appointed by instrument in writing for a period not exceeding five years and shall be eligible for re-appointment, they shall be appointed on such terms and conditions as may be set out in their instruments of appointment, and such terms and conditions may not be altered to their disadvantage during their tenure in office.

14. The Governor-General by instrument in writing may, for just cause and after an appropriate investigation, revoke the appointment of the person appointed Superintendent or Deputy Superintendent.

15. The person appointed Superintendent or Deputy Superintendent may at any time resign his office by instrument in writing addressed to the Commission.

16. Notwithstanding paragraph 13, the Governor-General may revoke the appointment of the person appointed Superintendent or Deputy Superintendent where —

(a) the person has become bankrupt or has made arrangements with his creditors;

(b) the person has become incapacitated by physical or mental illness; or

(c) the person is otherwise unable or unfit to discharge the functions of his office.

17. The person appointed Superintendent or Deputy Superintendent shall not borrow money from any insurance entity or from any related institution unless he first informs the Commission in writing of his intention to do so.

18. (1) The person appointed Superintendent or Deputy Superintendent shall not, while holding office as such, hold any other office of employment, whether remunerated or not, without prior approval of the Commission.

(2) Neither the person appointed Superintendent or the Deputy Superintendent may —

(a) be a member of either House of Parliament;

(b) be a director, officer or servant of an insurance entity; or

(c) be a shareholder holding a controlling interest in an insurance entity.

19. There shall be paid from the funds of the Commission to the person appointed Superintendent or Deputy Superintendent such remuneration whether by way of honorarium, salary or fees and such other allowances, if any, as the Commission may determine.

STAFF

20. (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as the Commission thinks fit, such officers and employees as the Commission considers necessary for the due discharge of the functions of the Commission.

(2) The Commission shall have power —

(a) to pay to or in respect of officers or employees of the Commission such pensions or gratuities;

(b) to make payments towards the provisions for such officers and employees of pensions and gratuities; or

(c) to maintain for them such pension schemes (whether contributory or not), as the Commission may determine.

21. Section 21 of this Act notwithstanding, the Commission may indemnify the Superintendent and the Superintendent may indemnify any person duly authorized by him under this Act against the cost of defending their actions while so discharging their functions.

SECOND SCHEDULE (Sections 43, 44, 118 and 141)

PROVISIONS RELATING TO DEPOSITS

1. The assets which a company is required to deposit with the Commission shall consist of —

(a) cash;

(b) unencumbered securities of, or guaranteed by, the government;

(c) other securities, at an accepted value and on the conditions established by the Commission; or

(d) any combination of (a) to (c).

2. (1) All deposits made by or on behalf of a company pursuant to section 43, 44, 118 or 141 shall be deemed to form part of the assets of the company.

(2) All interest and dividends accruing due on any securities deposited pursuant to section 43, 44, 118 or 141 shall be paid to the company.

3. The Commission shall, on demand by a company, furnish to the company a certificate in writing setting out the nature and extent of any deposit held by the Commission under section 43, 44,118 or 141 in respect of that company together with the particulars of the securities (if any) forming the whole or part of the deposit.

4. (1) Where the Commission is satisfied that, by reason of depreciation in the value of securities or other cause, the value of money and prescribed securities deposited by or on behalf of a company with it falls short of the value required by Part III or Part IV, it shall, by notice in writing, require the company to deposit with it money or prescribed securities or both to a value deemed by the Commission to be sufficient to bring the amount of the deposit to the value required by Part III or Part IV, as the case may be.

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

(3) Any company which fails to deposit with the Commission money or prescribed securities or both as required by it under this paragraph is guilty of an offence, and the Commission may, if it considers it necessary in the

interest of the policyholders, cancel the registration of the company.

5. Where any moneys or securities held by the Commission as, or as part of, the deposit required to be made by the company under section 44, 118 or 141 are lost, stolen, destroyed or damaged while so deposited, the injury occasioned to all persons interested in the moneys or securities shall be made good out of moneys to be provided for the purpose by Parliament.

6. (1) A company may at any time substitute for any security or cash held by the Commission as, or as part of, the deposit required to be made under section 44, 118 or 141, any prescribed security, but so that the total amount then deposited is not less than the amount required by Part III or Part IV, and any security so substituted shall be subject to the same charge or liability as the security or cash withdrawn.

(2) In respect of the release of deposits —

(a) when a company has ceased to transact business and has given written notice to that effect to the Commission, or when the registration of a company has been cancelled, the securities and cash of the company in the hands of the Commission shall not be delivered to the company until all its outstanding risks are insured or until surrenders thereof are obtained to the satisfaction of the Commission;

(b) upon making application for its securities or cash, 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 time publish, and continue the publication at least once a week for twelve consecutive weeks, in the *Gazette* and in at least one newspaper published in The Bahamas and approved by the Commission, a notice that it will apply to the Commission for the release of its securities and cash 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 named;

(c) after the day so named in the said notice, if the Commission is satisfied that the deposit of the company with it is substantially in excess of the requirements of Part III or Part IV, as the case may be, in respect of the continuing policyholders, it may 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 as provided for in Parts III and IV;

(d) thereafter from time to time as such policies lapse, or proof is adduced that they have been satisfied, further amounts may be released on the authority aforesaid;

(e) notwithstanding this paragraph, where the company is in liquidation the securities of such company may, on the order of any court having jurisdiction under this Act or the Companies Act be released by the Commission to the liquidator.

(3) Where the registration of a company which has not commenced to carry on insurance business in The Bahamas is cancelled pursuant to Part III or Part IV, the Commission shall refund to such company any moneys and deliver to it any securities, deposited by it pursuant to section 43, 118 or 141.