

CHAPTER 308A

EXEMPT INSURANCE

1983-9

This Act came into operation on 4th October, 1983 by Proclamation (S.I. 1983 No. 160).

Amended by:

<i>1985-6</i>	<i>1998-47</i>	<i>2004-7</i>
<i>1986-10</i>	<i>1999-27</i>	<i>2004-22</i>
<i>1988-13</i>	<i>2000-32</i>	<i>2006-16</i>
<i>1994-12</i>	<i>2001-27</i>	<i>2007-7</i>
<i>1995-22</i>	<i>2001-29</i>	
<i>1998-31</i>	<i>2002-23</i>	

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1998	2007
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Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 308A

EXEMPT INSURANCE 1983-9

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**BARBADOS****EXEMPT INSURANCE
1983-9**

An Act to enable companies to carry on exempt insurance business from within Barbados.

[Commencement: 4th October, 1983]

**PART I
PRELIMINARY****Short title**

1. This Act may be cited as the *Exempt Insurance Act*.

Interpretation

- 2.(1) In this Act,

“actuary” means a person who

- (a) has qualified as an actuary by examination of a prescribed actuarial society, institute or professional association; and

(b) is a fellow of an internationally recognised society or institute of actuaries;

[2006-16]

“agent” means any individual, firm or body corporate appointed by a licensee, and not being an employee of the licensee, to solicit applications for or negotiate exempt insurance business on behalf of the licensee and, if authorised to do so by the licensee, to effectuate and countersign insurance contracts in respect of that business;

[1998-31]

“auditor” means a member of the Institute of Chartered Accountants of Barbados who holds a practising certificate from that Institute, or a person who for the time being is authorised by the Minister under section 35C to be appointed as an auditor for the purposes of this Act;

“broker” means any individual, firm or body corporate who in any manner solicits, negotiates or procures exempt insurance business or the renewal or continuance of that business on behalf of a licensee other than himself, or on behalf of agents, or who arranges business with the licensee or agent on behalf of prospective policy holders;

[1998-31]

“Caribbean Community” means the Caribbean Community established by the Revised Treaty of Chaguaramas signed in the Bahamas on the 5th day of July, 2001, and includes the members of the CARICOM Single Market and Economy within the meaning of section 5 of the *Caribbean Community Act*, Cap. 15;

[2004-7]

“financial year” means the period not exceeding 53 weeks at the end of which the balance of the licensee’s accounts is struck or, if no balance is struck or if a period in excess of 53 weeks is employed, then a calendar year;

[1986-10]

“general insurance business” includes insurance business of all or any of the following classes:

(a) property insurance;

- (b) accident and sickness insurance;
- (c) employers' liability insurance;
- (d) motor vehicle insurance;
- (e) marine, aviation and transit insurance;
- (f) general liability;
- (g) product liability;
- (h) professional liability;
- (i) financial insurance;
[1995-22]
- (j) workmen's compensation insurance;
[1995-22]
- (k) public liability insurance;
[1995-22]

“holding company” has the meaning ascribed to it by section 28A;
[1988-13]

“insurance business” means the business of effecting and carrying out contracts

- (a) that provide for the protection of persons against loss or liability in respect of risk to which such persons may be exposed;
- (b) by virtue of which the company assumes the obligation to pay a sum of money or other thing of value upon the happening of an event; and
- (c) that provide for re-insurance;

[2001-27; 2004-7]

“long-term insurance business” means insurance business of all or any of the following classes:

- (a) ordinary life insurance;
- (b) industrial life insurance;

(c) bond investment;

(d) any insurance business that is incidental to any of the classes of business specified in paragraphs (a) to (c);

[1986-10]

“management services” includes the provision of accounting, administrative, brokerage and underwriting services, and the processing of claims for exempt insurance business;

[1988-13]

“manager” means a person who, not being an employee of a licensee, provides management services to one or more licensees;

[1998-31]

“premium income” means the net premium earned after deducting any premiums paid by the licensee for re-insurance;

[1998-31]

“resident representative” means the licensee’s management company or such individual as the Supervisor approves for the purpose of managing the business of the licensee;

[1988-13]

“salesman” means an individual employed by a licensee, an agent or broker to solicit applications for insurance or to negotiate insurance on behalf of the licensee, the agent or the broker, as the case may be;

[1998-31]

“securities” has the meaning assigned to it by section 4 of the *Securities Exchange Act*, Cap. 318A;

[1998-31]

“Supervisor” means the Supervisor of Insurance;

“variable annuity business” has the meaning assigned to that term by section 2 of the *Insurance Act*, Cap. 310;

[2001-27]

“variable insurance business” means insurance business, under a policy or contract, in respect of which the benefits payable to the policyholder under the policy are to be determined wholly or partly

- (a) according to the investment experience of a separate account or accounts maintained by the licensee in respect of that policy or class of policy;
- (b) by reference to the value of, or income from property of any description allocated in the general accounts of the licensee in respect of that policy or class of policy whether specified in the policy; or
- (c) by reference to fluctuations in, or in an index of, the value of property of any description, whether specified in the policy, and includes variable life insurance business and variable annuity business;

[2001-27]

“variable life insurance business” has the meaning assigned to that term by section 2 of the *Insurance Act*, Cap. 310.

[2001-27]

(2) For the purposes of this Act, the following are residents of Barbados:

- (a) an individual ordinarily resident in Barbados;
[1986-10]
- (b) any incorporated or other body, incorporated, formed or organised in Barbados,
 - (i) the majority of the shares or other ownership of which is beneficially held by persons resident in Barbados; or
 - (ii) the shares or other ownership of which is beneficially held by persons resident outside Barbados, and such incorporated or other body is a licensee, the business of which is managed and controlled in Barbados;

[1986-10]

- (c) a company providing management services in accordance with section 27 from within Barbados and the business of the company is managed and controlled in Barbados.

[1986-10]

- (3) Where an individual referred to in section 2(2)(a) is ordinarily resident in Barbados only by reason of a working relationship with a company licensed or registered under this Act, the individual may, notwithstanding any enactment, hold shares in that company.

[1986-10]

- (4) For the purposes of subsections (2)(b)(ii) and (2)(c),

- (a) a company providing management services shall be deemed to be managed and controlled in Barbados if it holds its annual general meetings and the majority of its other meetings of directors and shareholders in Barbados; and

- (b) every licensee shall be deemed to be managed and controlled in Barbados.

[1995-22]

[1986-10]

Exempt insurance business

3.(1) Subject to this Act, exempt insurance business is the business of insuring risks located outside Barbados in respect of which premiums originate outside Barbados, and includes the business of an underwriter, broker, agent, dealer or salesman in respect of that business.

(2) A company that is a qualifying insurance company within the meaning of section 2(1) of the *Insurance Act*, Cap. 310 and carries on the business of a qualifying insurance company shall not be regarded as carrying on exempt insurance business within the meaning of subsection (1).

[1998-31; 2001-27]

PART II
LICENSING OF EXEMPT INSURANCE COMPANIES

Licensing requirements

- 4.(1) No person may engage in exempt insurance business from within Barbados without a licence issued under this Act.
- (2) No licence may be issued under this Act to a person other than
- (a) a body corporate incorporated in Barbados that satisfies the following requirements:
 - (i) it is incorporated under the *Companies Act*, Cap. 308 as a company limited by shares or as a mutual insurance company;
 - (ii) its objects and activities are the transaction of exempt insurance business;
 - (iii) *[Repealed by 2004-7]*;
 - (iv) *[Repealed by 2004-22]*;
 - (v) its articles of incorporation are acceptable to the Minister; and
 - (vi) its paid-up capital or, in the case of a mutual insurance company approved by the Supervisor, its contribution reserves, accord with the requirements of section 17;
 - (b) a body corporate incorporated outside of Barbados that satisfies the following requirements:
 - (i) it is lawfully constituted in accordance with the laws of the country in which it is incorporated;
 - (ii) it is duly authorised and licensed, under the laws of the country in which it is incorporated or any other country, to undertake insurance business, and has undertaken insurance business in that country for a period satisfactory to the Supervisor of Insurance;

- (iii) the corporate instruments of the body corporate are acceptable to the Supervisor of Insurance; and
- (iv) the capital of the body corporate accords with the requirements of section 17.

[2001-27]

(3) The citizen of Barbados to whom this section refers must before the registration of the articles of the company file with the Registrar of Companies a consent signed by him to act as director.

[2004-22]

Participation

4A. A licensee, notwithstanding that it is a resident, may participate in the ownership of another licensee.

[1986-10]

Application requirements

5.(1) Notwithstanding the *Companies Act*, Cap. 308, no company may be incorporated under that Act for the purpose of engaging in exempt insurance business from within Barbados unless its incorporation has been consented to by the Minister.

(2) Notwithstanding anything in its articles of incorporation, no company incorporated under the *Companies Act*, Cap. 308 before 4th October, 1983 has capacity to engage in exempt insurance business from within Barbados unless its articles of incorporation are, or are amended to be, satisfactory to the Minister.

[1986-10; 1988-13]

Contents of application

6.(1) A company wishing to obtain a licence under this Act may apply to the Minister, giving particulars of the type of exempt insurance business it

proposes to do from within Barbados and providing such other information as may be prescribed.

(2) An application for a licence must be accompanied by a certified copy of the articles of incorporation of the applicant company and the prescribed application fee.

[1986-10; 1988-13]

(3) An application for a licence and all documents submitted pursuant to this Act in support of the application must be signed by at least 2 directors of the applicant company.

Examination of applicants

7. On receipt of an application for a licence under this Act, the Minister may cause such investigation to be made of the applicant company, its financial circumstances and any associates of the applicant as the Minister considers necessary in the public interest.

Issue or refusal of licence

8.(1) When the Minister is satisfied that it is proper to do so, he may issue or refuse a licence under this Act.

(2) On refusal of a licence, the applicant is entitled to repayment of the application fee.

Conditions of licence

9.(1) In issuing a licence under this Act, the Minister may specify the class or classes of insurance business in which the licensee may engage.

(2) Notwithstanding section 8 of the *Aliens Act*, Cap. 185, the Minister may attach such conditions to the issue of a licence relating to the real property investments and holdings of a licensee as the Minister thinks fit.

(3) It is a condition of a licence under this Act that the licensee will not, without the prior approval in writing of the Minister,

- (a) enter into a merger or consolidation;
- (b) transfer, otherwise than in the ordinary course of its business including a transfer by way of re-insurance, the whole or any part of its assets or liabilities;
- (c) charge the whole or any part of its assets;
- (d) change its name from that set out in the licence;
- (e) engage in a class of insurance business other than that specified in its licence;
- (f) alter its articles of incorporation.

[1986-10; 1988-13]

(4) It shall not be a condition of a licence issued under this Act that the licensee commences business within a specific period of time; and a licensee shall not be struck off the register of companies or incur penalty or sanction for not commencing business within a specified period of time, notwithstanding any other enactment to the contrary.

[1986-10]

(5) Subsection (3)(b) does not apply where the licensee has filed documents specifying procedures which in the opinion of the Minister are satisfactory for effecting the full discharge of any liabilities that may arise under the laws of Barbados in relation to the licensee.

(6) Subsection (3)(c) does not apply where the charge is by way of letters of credit issued to secure the insurance of reinsurance obligations of the licensee.

(7) Where a transfer under this section is effected pursuant to subsection (5), the licensee shall as soon as possible thereafter notify the Supervisor.

(8) In respect of a licensee engaged in variable insurance business, it shall be a condition of the licence that the licensee comply with sections 146A through 146G of the *Insurance Act*, Cap. 310, as may be applicable.

[2001-27]

Misleading name

10. No licensee may be granted a licence under a name that in the opinion of the Supervisor may mislead or confuse persons for whom the proposed licensee intends to provide its services.

Validity of licence

11. A licence issued under this Act remains valid until revoked or suspended under this Act, subject to the payment of an annual prescribed fee, or any tax payable under section 29(2), as the case may be.

[1995-22]

Revocation or suspension of licence

12.(1) The Minister may revoke a licence if the licensee

- (a) fails to comply with a condition of its licence;
- (b) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act; or
- (c) ceases to carry on business under its licence.

(2) The Minister may by notice in writing addressed to the licensee direct the licensee to remedy any breach of this Act within the time specified in the notice.

(3) Where the licensee fails to comply with the Minister's directions, the Minister may suspend the licence for a period not exceeding 90 days, and his decision thereon is final.

(4) Where the Minister intends to revoke or suspend a licence under this section, it is his duty to give the licensee notice of his intention to do so and reasonable opportunity to show cause why the licence should not be revoked or suspended, as the case may be.

(5) It is the duty of the Minister to give the licensee notice of the suspension or revocation of the licence.

Appeal on revocation

13.(1) A person who is aggrieved by the revocation of a licence by the Minister may within 30 days of the giving of the notice of revocation under section 12 appeal against that revocation to a Judge in chambers, whose decision thereon is final.

(2) The Minister may, pending the determination of an appeal under subsection (1), suspend the operation of the revocation of the licence in relation to the existing business of the licensee.

(3) Where the Minister revokes a licence and there is no appeal or where there is an appeal that is disallowed, the notice of revocation must be published in the *Official Gazette* and in a daily newspaper published and circulated in Barbados.

Cancellation

13A.(1) Subject to subsection (4), where a licensee is desirous of becoming a registered insurer under the *Insurance Act*, Cap. 310 the licensee shall give notice to this effect to the Minister and obtain the approval of the Minister to be so registered.

(2) Where the approval of the Minister is sought and obtained under subsection (1) and the licensee referred to in that subsection becomes registered under the *Insurance Act*, Cap. 310, the licence of that company issued under this Act shall be cancelled from the date of the registration.

(3) Where a licence has been cancelled pursuant to subsection (2), section 29 of this Act shall be deemed not to apply to the licensee from the commencement of the income year in which the licensee was granted a licence under the *Insurance Act*, Cap. 310.

[2004-7]

(4) The Minister may refuse to approve the registration referred to in subsection (1) if, in his opinion, it is not in the public interest to do so.

(5) Subsection (3) shall be deemed to have taken effect in respect of the income years commencing on or after 1st January, 2003, and for the purposes of this section “income year” has the meaning assigned to it by section 85(1) of the *Income Tax Act*, Cap. 73.

[2004-7]

[1998-31]

Service of documents

14.(1) Before engaging in exempt insurance business from within Barbados, a licensee shall deposit with the Supervisor a certificate setting out the address in Barbados of the licensee’s registered office and the name and address of the person resident in Barbados acceptable to the Supervisor as a person on whom documents relating to the licensee are to be served.

(2) Notwithstanding any other enactment, any notice, instrument or other document or legal process to be delivered to or served on a licensee may be delivered or served by leaving it at the registered office of the licensee.

(3) If the registered office cannot reasonably be found or is not open to business during normal working hours, the notice, instrument, document or legal process may be delivered or served by leaving it at the office of the Supervisor, who must publish that fact in the *Official Gazette*.

Records of licensee

15. When a licensee begins engaging in exempt insurance business, it shall maintain in Barbados, in addition to its registered office and the person referred to in section 14(1), such registers of policies, claims registers, books and business records as the Supervisor requires.

[1986-10; 1988-13]

Delegation of functions

16. The Minister may by instrument in writing delegate to the Supervisor any of the functions conferred on him by this Act.

PART III**FINANCIAL OBLIGATIONS****Capital requirements**

17.(1) A licence may be issued to a company under this Act when that company has a minimum paid-up capital of \$250 000 or, in the case of an approved mutual insurance company, minimum contributed reserves of \$250 000.

(2) Notwithstanding subsection (1), a licence may be issued to a company that satisfies the requirements of section 4 when that company has paid-up capital or contributed reserves of such amount that is less than the minimum specified in subsection (1) as the Minister approves and the company certifies to the satisfaction of the Minister that it does not propose to begin engaging in exempt insurance business immediately after the issue of the licence.

[1986-10]

(3) When a company that has been licensed under subsection (2) proposes to begin, and in any case not later than 7 days after beginning, to engage in exempt insurance business, it shall so notify the Supervisor, and shall certify to his

satisfaction that it has minimum paid-up capital or contributed reserves in compliance with the requirements of subsection (1).

[1986-10]

(4) Notwithstanding section 30 of the *Companies Act*, Cap. 308, paid-up capital or contributed reserves may be in the form of valid and irrevocable letters of credit drawn on or confirmed by a bank licensed under the *Banking Act*, Cap. 322, or the *Off-shore Banking Act*, Cap. 325, and representing a stated capital account of not less than \$250 000 or such other amount as the Minister approves.

[1986-10]

[1986-10]

Financial statements

18.(1) Not later than 6 months after the close of the financial year of a licensee or such longer period as the Supervisor or the Commissioner of Inland Revenue, as the case requires, allows, the licensee shall submit

- (a) to the Supervisor, one copy of its audited financial statements in a form that complies with generally accepted accounting principles, together with such other related information as may be prescribed; and
- (b) to the Commissioner of Inland Revenue, a copy of the statements referred to in paragraph (a).

(1A) The statements referred to in paragraph (b) of subsection (1) shall be in satisfaction of the licensee's obligation to file a tax return under section 52 of the *Income Tax Act*, Cap. 73 in respect of its income from exempt insurance business.

(1B) A licensee who pays the amount of tax determined under section 29(2) within 28 days after the close of the financial year of the licensee, or such longer period as the Commissioner of Inland Revenue allows, shall be deemed to have satisfied its obligations with respect to the payment of income tax in respect of income derived by the licensee from its exempt insurance business.

(1C) Notwithstanding subsections (2) and (3), a licensee shall comply with a demand made by the Commissioner of Inland Revenue in accordance with the *Income Tax Act*, Cap. 73 requiring the licensee to provide such information in the form of a return of income or a return of information or otherwise as would enable the Commissioner to fulfill his obligations under any agreement made between Barbados and another country or territory respecting the avoidance of double taxation, the prevention of fiscal evasion or any other related matters.

(1D) A licensee that fails to comply with a demand referred to in subsection (4) is guilty of an offence and is liable on summary conviction to a fine of \$50 000.

(2) The financial statements and any other related information submitted to the Supervisor under subsection (1) shall be accompanied by the auditor's report in the prescribed form.

[1988-13]

(3) A licensee engaged in long-term insurance business shall, in addition, submit to the Supervisor a certificate of an actuary approved by the Supervisor stating that the licensee's reserves are adequate to meet its liabilities.

[1995-22]

(4) A licensee shall submit to the Supervisor, together with the documents required by this section, the certificate of an auditor stating whether in his opinion the licensee has complied with the solvency criteria prescribed by section 24 at the balance sheet date and with such other requirements as may be prescribed.

[1988-13]

(5) A licensee whose outstanding claims, including those claims that are incurred but that are not reported to the licensee, exceed 200 per cent of its capital and surplus accounts shall submit to the Supervisor an annual review of those claims given by an actuary approved by the Supervisor.

(6) This section does not apply to a licensee described in section 17(2) while it is not engaged in exempt insurance business.

[1986-10]

[1988-13; 1995-22]

Segregation of funds

18A.(1) Every licensee carrying on long term business may establish any number of separate accounts in respect of premiums paid to it to provide

- (a) annuities; and
- (b) ordinary life insurance,

and such premiums shall be kept separate one from the other and independent of all other funds of the licensee.

(2) Notwithstanding any other enactment to the contrary, premiums referred to in subsection (1) are not chargeable with any liability arising from any other business of the licensee.

(3) Funds referred to in subsections (1) and (2) shall not be included in the calculation of the minimum share capital of the licensee.

[1995-22]

PART IV
WINDING-UP OF LICENSEES

Definition

19. In this Part, “licensee” includes a former licensee whose licence to engage in exempt insurance business has been revoked by the Minister.

[1986-10]

Petition for compulsory winding-up

20.(1) A Judge may order the compulsory winding-up of a licensee in accordance with the *Companies Act*, Cap. 308 but subject to this Part

- (a) on the petition of the Supervisor;

- (b) in the case of a licensee engaged in long-term insurance business, on the petition of the policy holders with an aggregate sum insured of \$500 000;
 - (c) in the case of a licensee engaged in general insurance business, on the petition of the policy holders whose volume of annual premiums is \$100 000;
 - (d) in the case of a licensee engaged in both long-term and general insurance business, on the petition of the policy holders who qualify under either paragraph (b) or (c) above.
- (2) No petition for the compulsory winding-up of a licensee may be presented without leave of the High Court, which must be satisfied that a *prima facie* case has been established
- (a) on the petition of the Supervisor, of the licensee being unable to pay its debts; and
 - (b) on the petition of a policy holder, of the licensee failing to pay a substantial claim that is uncontested or awarded by a court.
- (3) The Supervisor shall be a party to any winding-up proceedings under this Part and shall be given such information as he may require concerning the affairs of the licensee.

Petition by Supervisor

21. If the Supervisor is of the opinion that it is necessary or proper to do so, he may with the leave of the High Court present a petition

- (a) for winding-up by the Court of a licensee on the ground that the licensee is unable to pay its debts;
- (b) for an order that the licensee or any part of the insurance business of the licensee be placed under judicial management in accordance with sections 44 to 48 of the *Insurance Act*, Cap. 310, on the grounds that it is in the public interest to do so,

and the Court may order accordingly.

Petition by licensee

22.(1) On giving the Supervisor one month's notice in writing, or such shorter period of notice as the Supervisor may agree to, of its intention so to do, a licensee may petition the Court without leave for an order to be voluntarily wound-up.

(2) Both the licensee and the Supervisor are entitled to be heard on any petition presented to the Court under this section.

[1995-22]

Stay of legal process

23. Where a petition is presented under this Part for an order in respect of a licensee, all actions and the execution of all writs, summonses and other process against the licensee are, by virtue of this section, stayed and may not be proceeded with without the leave of the Court.

[1986-10]

Assets of separate accounts to be kept separate in bankruptcy

23A. 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 licensee, shall not be liable to be applied or made available in payment of the debts of the policyholder, by any judgment, order or process of any court, and no creditor of the policyholder may attach any rights or interests in the policy 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 owed 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 3 months of the date of purchase of the policy.

[2001-27]

Margin of solvency

24.(1) Unless the Supervisor otherwise determines, a licensee carrying on general insurance business is unable to pay its debts if

- (a) at any time in its first financial year, the value of its assets does not exceed the amount of its liabilities by \$250 000;
- (b) at any time after the expiration of the first financial year, the value of its assets does not exceed its liabilities
- (i) by \$250 000, where the premium income of the licensee in the preceding financial year did not exceed \$1 500 000;
- (ii) by one-fifth of the premium income for the preceding financial year, where the premium income exceeded \$1 500 000 but did not exceed \$10 000 000;
- (iii) by the aggregate of \$2 000 000 and one-tenth of the amount by which the premium income in the preceding financial year exceeded \$10 000 000, where the premium income for that year exceeded \$10 000 000.

[1995-22]

(2) A licensee carrying on long-term insurance business is unable to pay its debts if the value of its assets does not exceed its liabilities.

[1995-22]

(3) In computing a licensee's liabilities for the purposes of this section, all contingent and prospective liabilities, other than liabilities in respect of share capital or contributed reserves, are to be taken into account.

[1988-13]

(3A) In the making of a determination of whether a licensee is unable to pay its debts, there shall not be included in the calculation, the assets of any one or more separate accounts maintained by the licensee in respect of its variable insurance business, or the liabilities chargeable against such accounts in respect of such business.

[2001-27]

(4) For the purposes of this section

(a) “assets” include

(i) cash,

(ii) fixed deposits,

[1998-31]

(iiA) bonds, debentures and equities that are

(A) listed on a recognised stock exchange; or

(B) not listed on a recognised stock exchange but approved by the Supervisor,

[1998-31]

(iii) mortgage loans on real estate,

(iv) net investment income due and accrued,

(v) premiums receivable,

(vi) reinsurance balances receivable,

(vii) funds held by ceding reinsurers,

(viii) accounts receivable (except from a person with whom the exempt insurer is associated, unless approved by the Supervisor),

(ix) irrevocable letters of credit drawn or confirmed by a bank licensed under the *Financial Institutions Act*, Cap. 324A or the *Off-shore Banking Act*, Cap. 325,

(x) deferred acquisition costs,

[1998-31]

(xi) prepaid reinsurance costs,
[1998-31]

(xii) prepaid expenses approved by the Supervisor other than general and administrative expenses; and
[1998-31]

(b) liabilities are comprised of loss reserves and other outstanding liabilities, but do not include capital and surplus.

[1995-22]

Resident representative

24A.(1) A licensee shall appoint a resident representative for the purposes of this Act.

(2) Within 30 days from the date of an appointment under subsection (1), a licensee shall submit in writing to the Supervisor particulars respecting the name, address and terms of appointment of its resident representative.

(3) Where any change occurs in relation to the appointment of a resident representative that materially affects the particulars submitted to the Supervisor under subsection (2), the licensee shall within 30 days of the change give written notice to the Supervisor of the particulars of the change.

(4) (a) No licensee may terminate the appointment of its resident representative; and

(b) no resident representative may cease to act as such,

unless the licensee or the resident representative gives 30 days written notice to the Supervisor of the intention to do so.

(5) A licensee or a resident representative that fails to comply with the provisions of this section is guilty of an offence and liable on summary conviction to a fine of \$50 000.

[1988-13]

Non-application to resident licensee

24A.1. Section 24A.(1) shall not apply where a licensee is resident in Barbados and is operated by persons resident in Barbados.

[2004-22]

Resident representative to report certain events

24B.(1) It is the duty of the resident representative within 14 days of

- (a) becoming aware that there is a likelihood of the licensee for which such representative acts being unable to pay its debts; or
- (b) becoming aware or having reason to believe that an event to which this section applies has occurred,

to report in writing to the Supervisor all the particulars that are available to him on the matter, and to send a copy of that report to the auditor.

(2) In relation to a resident representative, this section applies to the following events:

- (a) failure by the licensee
 - (i) to comply with the solvency criteria prescribed by section 24,
 - (ii) to comply with any other requirements of this Act;
- (b) the licensee's ceasing to carry on business under its licence.

(3) A resident representative that fails to discharge the duty imposed by subsection (1) is guilty of an offence and liable on summary conviction to a fine of \$50 000.

[1988-13]

Notice to resident representative

24C. The resident representative

- (a) shall be notified of all meetings of shareholders and directors; and
- (b) may inspect corporate records of the licensee.

[1995-22]

Evidence

25. In any proceedings upon a petition presented for the winding-up of a licensee, evidence that the licensee was insolvent at any time before the proceedings is evidence that the licensee continues to be unable to pay its debts, unless the contrary is proved.

PART V**MANAGEMENT COMPANIES AND ANCILLARY PERSONNEL****Management services**

26.(1) Notwithstanding any other enactment and subject to subsection (2), no person other than a management company may offer or provide management services to a licensee engaged in exempt insurance business from within Barbados.

(2) Subsection (1) shall not apply to a company that has satisfied the Supervisor that

- (a) it is resident in Barbados; and
- (b) the majority of its directors are resident in Barbados.

[2004-22]

[2004-22]

Management companies

27. A management company is a body corporate that satisfies the following requirements:

- (a) its main object and activity are the provision of management services other than banking business as defined by section 2 of the *Financial Institutions Act*, Cap. 324A or offshore banking business as defined by section 4 of the *Off-shore Banking Act*, Cap. 325 to
 - (i) licensees under this Act; or
 - (ii) qualifying insurance companies within the meaning of section 2(1) of the *Insurance Act*, Cap. 310;
[1998-31]
- (b) it is registered with the Supervisor in compliance with section 28.
[1986-10]

Registration of management companies

28.(1) A company that is desirous of registering as a management company under this Act may apply to the Supervisor to be registered setting out the management services that it proposes to offer to a licensee under this Act or to a qualifying insurance company within the meaning of section 2(1) of the *Insurance Act*, Cap. 310, and providing a copy of its articles of incorporation and such other information as may be prescribed.

(2) An application under subsection (1) must be accompanied by the prescribed application fee.

(3) In considering an application under this section, the Supervisor shall take into account

- (a) the ability of the company to provide the proposed management services;
- (b) the net value of the assets of the company; and

- (c) the character and reputation of the company.
- (4) When the Supervisor is satisfied that a company is registrable under this section, he shall, upon payment of the prescribed fee, but subject to subsection (5), issue to the company a certificate of registration containing the name and business address of the company and the date of its registration as a management company.
- (5) Where in considering the registration of a company the Supervisor is of opinion that there are circumstances requiring that the company's registration should be subject to conditions, he may attach any of those conditions to the registration as are specified in the certificate as the circumstances require.
- (6) Subject to the payment of the annual prescribed fee, a certificate of registration remains valid until revoked or suspended by the Supervisor.
- (7) The Supervisor may suspend or revoke the registration of a management company in such circumstances as are prescribed by paragraphs (a), (b) and (c) of section 12(1); and sections 12 and 13 apply with such adaptations as are necessary to the certificate of registration as they apply to a licence under this Act.

[1986-10; 1988-13; 1998-31]

PART VA

HOLDING COMPANIES AND RELATED MATTERS

Definition of holding company

28A. For the purposes of this Act, a holding company is a body corporate that satisfies the following requirements:

- (a) it is incorporated under the *Companies Act*, Cap. 308 and its sole object is to own shares in
- (i) a company whose objects and activities are the transaction of exempt insurance business; or

- (ii) a company that is a qualifying insurance company within the meaning of section 2(1) of the *Insurance Act*, Cap. 310;
- (b) at least one of its directors is a resident citizen of Barbados;
- (c) [Repealed by 2004-22;]
- (d) it is registered with the Supervisor in compliance with section 28C.

[1998-13]

Resident citizen not required to hold shares

28B.(1) A resident citizen who is appointed a director in compliance with this section shall not subscribe for nor acquire any shares of the company, either by way of qualification or otherwise.

(2) A resident citizen who has consented to his appointment as a director of a holding company must, before the registration of the articles of incorporation of the company, file with the Registrar of Companies a consent signed by him to act as a director.

[1988-13]

Registration of holding companies

28C.(1) A company that is desirous of registering as a holding company under this Act may apply to the Minister for approval to be so registered.

(2) An application under this section must be accompanied by a certified copy of the articles of incorporation of the company under the *Companies Act*, Cap. 308 and the prescribed application fee.

- (3) In considering the application, the Minister shall
- (a) ensure that the sole object of the holding company is to own shares in a company whose objects and activities are the transaction of exempt insurance business from within Barbados;
 - (b) take into account the character and reputation of the company.

(4) Where the Minister is satisfied that a company is registrable under this section, he shall, subject to subsections (5) and (6), approve the registration of the company.

(5) On receipt of the Minister's approval under subsection (4), the Supervisor shall, upon payment of the prescribed fee, issue to the company a certificate of registration containing the name and business address of the company and the date of its registration as a holding company.

(6) Notwithstanding anything contained in this section, where the Supervisor is of the opinion that there are circumstances requiring the company's registration to be subject to conditions, he may, in addition to requiring the company to submit one copy of its financial statements in a form that complies with generally accepted accounting principles and such other information as may be prescribed, specify such other conditions in the certificate of registration as the circumstances require.

[1995-22]

(7) Subject to the payment of an annual registration fee, the certificate of registration remains valid until revoked or suspended by the Minister.

(8) The Minister may suspend or revoke a certificate of registration where a holding company

(a) fails to comply with a condition specified in that certificate; or

(b) is in breach of any duty or obligation imposed upon it by or under this Act

and sections 12 and 13 apply, with such adaptations as are necessary, to the certificate of registration as they apply to a licence under this Act.

[1988-13]

PART VB**INSURANCE INTERMEDIARIES (INSURANCE MANAGERS, BROKERS,
AGENTS AND SALESMEN)**

[1998-31]

Duty of managers

28D. A manager shall maintain an accurate list of all licensees for which he acts as manager and shall, if requested in writing at any time to do so by the Supervisor, provide the Supervisor with a copy of that list.

[1998-31]

Agency etc.

28E. A broker or salesman shall, for the purpose of receiving a premium for a contract of insurance, be deemed to be the agent of the licensee and notwithstanding any condition or stipulation to the contrary, the licensee shall be deemed to have received any premium received by an agent, broker or salesman.

[1998-31]

PART VI**SPECIAL TAX AND OTHER EXEMPTIONS****Exemption from tax**

29.(1) Subject to subsections (2) and (4), and except as provided by this Part, no income tax, capital gains tax or other direct tax or imposts shall be levied in Barbados

- (a) on the profits or gains of
 - (i) a licensee derived from exempt insurance business,

- (ii) a holding company derived from its sole object as described in section 28A(a),
 - (iii) a management company derived from its main object and activity as described in section 27;
- (b) on the transfer of all or any of the assets and securities of a licensee, holding company or of a management company to any person; except that where
- (i) the transfer involves assets and securities that are more than 10 per cent of the shareholding of the company; and
 - (ii) the transferee is not a licensee, holding company or management company,

the prior written approval of the Minister must be obtained;

[1998-31]

- (c) on the issue or transfer of any security of a licensee, holding company or management company traded on a recognised securities exchange.

[1998-31]

(2) Notwithstanding the *Income Tax Act*, Cap. 73, the profits and gains of a licensee derived from exempt insurance business conducted in Barbados are subject to income tax

- (a) for the first 15 financial years of the licensee, including the year in which its licence was issued, at the rate of zero per cent; and
- (b) thereafter,
 - (i) at the rate of 2 per cent of the first \$250 000 of taxable income, and
 - (ii) at the rate of zero per cent in respect of all other taxable income in excess of \$250 000.

[1995-22]

(3) For the purposes of this section the annual fee referred to in section 11 shall not be payable by a licensee to whom paragraph (b) of subsection (2) applies.

[1995-22]

(4) A licensee shall not be granted any credit in respect of tax paid to a country other than Barbados.

[1995-22]

[1986-10; 1995-22; 2001-27]

Exemption from withholding tax

30.(1) Notwithstanding the *Income Tax Act*, Cap. 73, but subject to subsection (2), no licensee, holding company or management company need withhold any portion of any dividend, interest or other return payable to any person in respect of his holding any shares or securities of the licensee, holding company or management company.

[1988-13; 1995-22]

(2) All dividends, interest or other returns attributable to the shares or securities of a management company that are payable to or for the benefit of a resident of Barbados shall be reported by the licensee to the Commissioner of Inland Revenue in such manner as may be prescribed.

Exchange control exemption

31.(1) The provisions of the *Exchange Control Act*, Cap. 71 do not apply to a licensee or holding company.

[1986-10; 1988-13]

(2) A person who proposes to incorporate a company for the purpose of

- (a) engaging in exempt insurance business from within Barbados; or
- (b) owning shares in a company that is being incorporated for the purpose referred to in paragraph (a),

is not subject to any requirement to obtain permission under the *Exchange Control Act*, Cap. 71 in order to subscribe to membership in or shares of the proposed company.

(3) In relation to the services which it provides to licensees under this Act, a management company shall be deemed to be non-resident for the purposes of the *Exchange Control Act*, Cap. 71 and no residents of Barbados, other than licensees and management companies, shall subscribe to the capital of a management company or make loans to a management company except with the permission of the Exchange Control Authority.

[1986-10]

(4) Where the Minister has consented to the incorporation of a company for the purpose of engaging in exempt insurance business or of owning shares in such a company under this Act, that company is not subject to any requirement to obtain permission under the *Exchange Control Act*, Cap. 71 for the purpose of issuing shares to persons resident outside Barbados.

[1988-13]

Guarantees

32.(1) A licensee and a holding company are entitled upon application to the Minister to be given assurances or guarantees in the prescribed form that the benefits and exemptions contained in this Act will apply to the licensee or holding company for a period of 30 years.

(2) An assurance or guarantee given pursuant to subsection (1) is subject to negative resolution.

[1995-22]

Fixed deposits etc.

33. A licensee or management company may place fixed-term deposits and hold current accounts with a person licensed under the *Off-shore Banking Act*, Cap. 325.

Salary concessions

34.(1) Where the Minister is satisfied that a licensee or management company requires the services of specially qualified persons in order to carry on its business effectively from within Barbados and that

- (a) it is unable to acquire those services within the Caribbean Community;
and
[2001-29]
- (b) it is unable to retain or hire those services from outside the Caribbean Community without special tax benefits being made available,
[2001-29]

the Minister may grant a tax concession in respect of the income tax payable for those specially qualified persons who are resident outside the Caribbean Community.

[2001-29]

(2) The tax concession referred to in subsection (1) is one that allows a prescribed percentage of an employee's or contractor's salary, fees and any other emoluments

- (a) to be exempt from income tax in Barbados;
- (b) to be paid in a foreign currency in a trust account without being liable to income tax in Barbados as to the amount paid on any earnings;
- (c) to be paid in a foreign currency in a country specified by the employee or contractor;
- (d) to be paid in some other prescribed manner in other currency or otherwise without being liable to income tax in Barbados,

notwithstanding any provisions of the *Income Tax Act*, Cap. 73 or the *Exchange Control Act*, Cap. 71.

[2007-7]

Confidentiality

35.(1) Except for the performance of his functions under this Act or the *Income Tax Act*, Cap. 73 or when lawfully required to do so by order of a court of competent jurisdiction, no person shall disclose any information relating to any application of a prospective licensee or to the affairs of a licensee other than such information as forms part of the public record in the possession of the Registrar of Companies.

[1985-6; 1988-13; 1995-22]

(2) Notwithstanding subsection (1), the Supervisor may disclose details concerning the affairs of a licensee to another regulatory authority where

- (a) the other regulatory authority permits reciprocal disclosure;
- (b) the disclosure is in the interest of prudential regulation of the exempt insurance industry;
- (c) the disclosure pertains to those actions of a licensee in violation of any enactment or with respect to the failure of the licensee to comply with generally accepted principles relating to the exempt insurance industry;
- (d) the licensee is given prior notification of the intention to disclose the requested information; and
- (e) any information disclosed is restricted to the information requested by the other regulatory authority.

[1995-22]

Application of Cap. 73

35A. Except as otherwise provided in this Act the *Income Tax Act* applies *mutatis mutandis* to a licensee, holding company or management company.

[1995-22]

35B. [Repealed by 1994-12.]

Power to authorise the appointment of actuaries and auditors

35C. The Minister after consultation

- (a) with the Supervisor and the Institute of Chartered Accountants of Barbados, in the case of an auditor; or
- (b) with the Supervisor, in the case of an actuary,

may by instrument authorise a person to be appointed as an actuary or auditor for the purposes of this Act, if in the opinion of the Minister that person is suitably qualified for such an appointment by reason of his knowledge and experience.

[1986-10]

PART VII
MISCELLANEOUS

Changes in directors

35D. Where there has been a change in the directors of a licensee, the manager of the licensee shall, within 30 days of the change, notify the Supervisor of that change.

[1998-31]

Regulations

36. The Minister may make regulations giving effect to the purposes of this Act and in particular with respect to

- (a) the operation and conduct of management companies;
- (b) regulating the conduct and activities of insurance brokers and agents who provide services for licensees;
- (c) prescribing anything that is required by this Act to be prescribed.

Offences

37. A person who

- (a) does exempt insurance business from within Barbados during any period in which he does not hold a licence under this Act; or
- (b) offers or provides the services of a management company to a licensee or in relation to the transaction of exempt insurance business from within Barbados during any period when that person is not a management company within the meaning of this Act,

is guilty of an offence and liable on summary conviction to a fine of \$50 000.

[1986-10]

Offences

38. A director, officer, employee or agent of a licensee or management company who, with intent to deceive

- (a) makes any false or misleading statement or entry in a book, account, record, report or statement or fails to make any entry that should be made therein; or
- (b) obstructs the carrying out by an auditor of his functions under this Act,

is guilty of an offence and liable on summary conviction to a fine of \$5 000 or imprisonment for 2 years or both.

[1986-10]

Offences

39.(1) Any person who contravenes section 14(1) is guilty of an offence and liable on summary conviction to a fine of \$5 000 and to a fine of \$250 for every day or part thereof during which the offence continues.

(2) A person who contravenes section 35 is guilty of an offence and liable on summary conviction to a fine of \$2 000 or imprisonment for 12 months or both.

[1986-10]

Penalties

39A.(1) Where an offence against this Act is committed by a body corporate and a director, officer, actuary or auditor of that body corporate knowingly authorised, permitted or acquiesced in the commission of that offence, that body corporate as well as the director, officer, actuary or auditor is guilty of the offence and is liable on summary conviction to

- (a) a fine of \$25 000; and
- (b) in the case of a continuing offence, a further fine of \$2 500 for each day that the offence continues.

(2) A licensee who fails to submit the audited financial statements as required under this Act or Regulations and fails to do so within the time stipulated in section 18

- (a) is guilty of an offence and is liable on summary conviction to a fine of \$25 000;
- (b) in the case of a continuing offence, a further penalty of \$2 500 for each day that the offence continues; and in addition to the payment of a fine referred to in this section, pay to the Supervisor a penalty of \$2 500 and a further payment of \$500 for each day the penalty remains unpaid.

(3) Where the late submission of the audited financial statements under subsection (2) is as a result of the conduct of a director, officer, actuary or auditor, that individual

- (a) is guilty of an offence and is liable on summary conviction to a fine of \$25 000; and

- (b) in the case of a continuing offence, a further penalty of \$2 500 for each day that the offence continues.
- (4) Where a licensee referred to under subsection (1) or (2) fails to pay the penalty imposed thereunder within 30 days of the date on which the penalty becomes payable, the penalty may be recovered as a debt due to the Crown in civil proceedings before a magistrate for District “A”.
- (5) All penalties received by the Supervisor in accordance with this Act shall be paid into the Consolidated Fund.
- (6) In this section, “officer” has the meaning assigned to it by subsection (1) (f) of section 2 of the *Companies Act*, Cap. 308.

[2004-7]

Non-application of specified enactments

40.(1) The *Insurance Act*, Cap. 310, except as specified in section 9 and Part IV, and the *Stamp Duty Act*, Cap. 91 do not apply to a licensee.

[1995-22; 2001-27]

(2) The *Rate of Interest Act*, Cap. 316 does not apply to a licensee in respect of exempt insurance business, nor to a management company in respect of the provisions of management services to a licensee.

(3) Sections 152, 175(4) and 371 of the *Companies Act*, Cap. 308 do not apply to a licensee.

[1995-22]