

## CHAPTER 310

### INSURANCE

1996-32

This Act came into operation on 17th February, 1997 by Proclamation (S.I. 1997 No. 8).

#### Amended by:

<i>1998-31</i>	<i>2001-26</i>	<i>2004-24</i>
<i>1998-47</i>	<i>2002-23</i>	<i>2006-16</i>
<i>1999-27</i>	<i>2004-4</i>	<i>2007-7</i>
<i>2000-32</i>	<i>2004-7</i>	<i>2007-21</i>
<i>2001-25</i>	<i>2004-22</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Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

1997	2002
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 310

### INSURANCE 1996-32

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**BARBADOS**

## INSURANCE

1996-32

*An Act to revise the law regulating the carrying on of insurance business in Barbados in order to strengthen the protection given to policyholders; to increase the capital and solvency requirements of insurance companies; to expand the existing regulatory framework to include the regulating of all insurance intermediaries; and to give effect to matters related thereto.*

[Commencement: 17th February, 1997]

## PART I

## PRELIMINARY

**Short title**

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

**Interpretation**

- 2.(1) For the purposes of this Act,  
“accident and sickness insurance business” means the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal

accidents, whether fatal or not, disease or sickness, or any class of personal accident, disease or sickness;

“actuary” means a person who has qualified as an actuary by examination of a prescribed actuarial society, institute or professional association and who,

- (a) in the case of a person who is a national or a permanent resident of any Member State of the Caribbean Community, is;
  - (i) a fellow of an internationally recognised society or institute of actuaries; and
  - (ii) a current member in good standing of the Caribbean Association of Actuaries;
- (b) in the case of a person who is not a national or a permanent resident of any Member State of the Caribbean Community, is
  - (i) a fellow of an internationally recognised society or institute of actuaries who is a holder of a valid work permit; and
  - (ii) a current member in good standing of the Caribbean Association of Actuaries; or
- (c) in the case of a person who works for a qualifying insurance company, is a fellow of an internationally recognised society or institute of actuaries;

[2006-16]

“adjuster” means a person who represents an insurer in investigations and dealings with respect to the settlement of claims;

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

“annuities on human life” does not include superannuation allowance and annuities payable out of any fund applicable solely to 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 *Income Tax Regulations, 1969* (S.I. 1969 No. 109) ;

“association of underwriters” means an association of individual underwriters organised according to the system known as “Lloyd’s”, 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 Institute of Chartered Accountants of Barbados and holds a practising certificate from that Institute; or
- (b) a person recognised by the Minister as being suitably qualified to be appointed as an auditor by reason of his knowledge and experience;

“bond investment business” means the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodic intervals of less than 6 months, contracts to pay the bond holder a sum at some future date, not being life insurance business, but includes sinking fund and capital redemption insurance business;

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

“CARICOM Single Market and Economy” has the meaning assigned to it by section 2 of the *Caribbean Community Act, Cap. 15*;

[2004-7]

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

“company” means a body corporate that carries on or proposes to carry on insurance business in Barbados;

“foreign company” means a company incorporated outside the area of the Caribbean Community and CARICOM Single Market and Economy;

[2004-7]

“general insurance business” means insurance business of any class specified in subsection (1) of section (3) other than long-term insurance business;

“gross revenues from insurance premiums” referred to in the definitions “international insurance business” and “qualifying insurance company” includes all fees and other business income derived from insurance business and from activities undertaken in connection with insurance business that gives rise to gross revenues, but does not include investment income;

[1998-31]

“industrial life insurance business” means the business of effecting insurance upon human life, premiums in respect of which are payable at intervals of less than 2 months in each case and are contracted to be received, or are usually received, by means of collectors sent by the insurance company to each policy-holder, or to his residence or place of work;

“industrial policy” means a policy in respect of which the premiums are contracted to be paid at intervals of less than 2 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” includes

- (a) the assumption of the obligations of an insurer in any class of insurance business;
- (b) re-insurance business; and

(c) pensions business and other business directly connected to insurance business.

“insurance intermediary” means any broker, salesman, agent, sub-agent, adjuster, loss assessor or insurance surveyor;

“insurance surveyor” means a person qualified by knowledge and skill to make a report on the condition and value of property and the cause of damage to that property;

“insurer” means a 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;

“international insurance business” means the business of insurance carried on by a qualifying insurance company in respect of which all the risks insured and all of the gross revenues from insurance premiums originate outside the CARICOM Single Market and Economy;

[1998-31; 2004-7]

“life insurance business” means

(a) the undertaking of liability under policies of insurance upon human life;

(b) the granting of annuities upon human life; or

(c) the undertaking of liability referred to in paragraph (a) or the granting of annuities referred to in paragraph (b) that can be termed “variable life insurance business” or “variable annuity business” respectively;

[2001-25]

“life insurance fund” means the fund to which the receipts of an insurer in respect of the life insurance business of the insurer are carried 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 registered insurer carrying on life insurance business;

“local company” means a company incorporated in Barbados under the *Companies Act*, Cap. 308; or any other Act for the time being in force in Barbados;

“local policy” means a policy issued in Barbados and includes an ordinary life insurance policy issued outside Barbados and subsequently made payable in Barbados at the request of the policy-holder which the policy-holder has agreed in writing shall be treated as a local policy for the purposes of this Act; but does not include an ordinary life insurance policy made payable outside Barbados at the request of the policy-holder which the policy-holder has agreed in writing shall not be treated as a local policy for the purposes of this Act;

“long-term insurance business” means insurance business of all or any of the following classes, namely, life insurance business, industrial life insurance business and bond investment business;

“loss assessor” means a person appointed by the insured to assess and agree on the settlement of a claim under an insurance policy;

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

- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or the equipment of vessels or aircraft; or
- (b) upon goods, merchandise or property of any description whatever on board vessels or aircraft; or
- (c) upon the freight of, or any other interest in or relating to, vessels or aircraft; or
- (d) against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks; or
- (e) against risks incidental to the construction, repair or docking of vessels, including third-party risks; or



- (f) against transit risks, whether the transit is by sea, inland water, land or air, or partly one and partly another, including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance, but not including risks the insurance of which is motor vehicle insurance business; or
- (g) against any other risks the insurance of which is customarily undertaken in conjunction with or as incidental to any business referred to in the foregoing paragraphs of this definition;

“motor vehicle insurance business” means the business of effecting contracts of insurance against loss of, or damage to or arising out of or in connection with the use of, motor vehicles, including third-party risks;

“mutual company” means a company whose capital is owned by the policy-holders 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 Supervisor as a mutual company;

“ordinary life insurance business” means insurance whereby an insurer assumes in return for the payment of a sum or sums of money, a contingent obligation dependent on human life but does not include industrial life insurance, personal accident, sinking fund or cancellable group life insurance;

“policy-holder” 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 Minister in regulations made under section 182;

“principal office” means the office notified to the Supervisor in accordance with subsection (2) of section 37;

“principal representative” means the representative notified to the Supervisor in accordance with subsection (2) of section 37;

“property insurance business” means the issue of, or the undertaking of liability under, policies of insurance against loss or damage to real or personal property of every kind and interests therein from any hazard or cause, or against loss consequential upon such loss or damage, not being risks the insurance of which is motor vehicle insurance business or marine, aviation and transit insurance business;

“qualifying insurance company” means a registered insurer in respect of which

(a) at least 90 per cent of gross revenues from insurance premiums originate outside the CARICOM Single Market and Economy;

*[2004-7]*

(b) at least 90 per cent of all risks insured originate outside the CARICOM Single Market and Economy; and

*[2004-7]*

(c) the Supervisor has issued a Certificate of Qualification in accordance with section 13A(1);

*[2004-7]*

*[1998-31]*

“registered insurance agent” means an insurance agent registered in accordance with Part IV;

“registered insurance broker” means an insurance broker registered in accordance with Part IV;

“registered insurer” means an insurer registered in accordance with Part II or Part III, as the case may be;

“reinsurance business” means the business of providing to an insurer a contract of insurance against risk assured by the insurer under a policy of insurance issued by the insurer to a third party;

*[2004-22]*

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

“sinking fund policy” means a policy whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment from time to time of certain sums of money by the other party to the contract;

“spouse” has the meaning assigned to it by subsections (3) to (5) of section 2 of the *Succession Act*, Cap. 249;

“statutory fund” means a fund that a company is required to maintain pursuant to section 25;

“sub-agent” means any person appointed by an agent with the authority of the insurance 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, and includes a person appointed by a sub-agent, and not being an employee of the sub-agent, to solicit applications for insurance or to negotiate insurance through the sub-agent;

“Supervisor” means the Supervisor of Insurance referred to in section 4;

“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 Barbados, by the Minister;  
and
- (b) in the case of an association constituted in a country outside Barbados, by the authority in whom is vested the administration of the law relating to associations of underwriters in that country;

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

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

[2001-25]

“variable insurance business” means variable life insurance business, variable annuity business or any other insurance business that satisfies the criterion of being a policy under which benefits are payable to the policyholder in the manner specified in paragraphs (a) to (c) of the definition of “variable life insurance business”;

[2001-25]

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

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

- (c) by reference to fluctuations in, or in an index of, the value of property of any description whether or not it is specified in the policy.

[2001-25]

(2) For the purposes of this Act, a person shall not be treated as carrying on insurance business in Barbados if the only reason for so treating that person is the fact that the risk covered by a policy of insurance issued by that person is situated in Barbados.

### **Application**

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

- (a) ordinary life insurance business;
- (aa) variable life insurance business;  
[2001-25]
- (b) industrial life insurance business;
- (bb) variable annuity business;  
[2001-25]
- (c) property insurance business;
- (d) accident and sickness insurance business;
- (e) liability insurance business;
- (f) bond investment business;
- (g) motor vehicle insurance business;
- (h) marine, aviation and transit insurance business;  
[1998-31]
- (i) international insurance business; or  
[1998-31]

(j) all other classes of insurance business not specified in the preceding paragraphs.

[1998-31]

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

(3) For the purposes of this Act, the re-insurance 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 reinsurer, and all the provisions of this Act shall apply to the re-insurance save that a company or an association of underwriters carrying on the re-insurance shall not be required to make in respect of the re-insurance any deposit as required by section 23 or 79.

(4) Part II does not apply to associations of underwriters.

(5) This Act does not apply to any organisation which is registered under the enactments relating to friendly societies or to trade unions.

### **Supervisor of Insurance**

4.(1) For the purposes of this Act there shall be a Supervisor of Insurance who, subject to the Minister, shall be responsible for the general administration of this Act, and whose office shall be a public office.

(2) Where any function is by this Act or by any statutory instrument made or issued hereunder, required, permitted or otherwise required to be performed by the Supervisor, that function may be performed by some other public officer authorised to do so by the Supervisor.

### **Supervisor may act as arbitrator**

5.(1) Where, in relation to a policy, any dispute or difference arises between an insurer and a policy-holder, the Supervisor may act as arbitrator of the dispute or difference.

(2) An arbitration under this section shall be conducted in accordance with the *Arbitration Act*, Cap. 110.

**Registers to be maintained by Supervisor**

6. The Supervisor shall cause to be maintained separate registers of
- (a) companies registered to carry on in Barbados the various classes of insurance business specified in subsection (1) of section 3;
  - (b) associations of underwriters; and
- such other registers as may be required to be maintained under this Act or the regulations.

PART II

REGULATION OF INSURANCE COMPANIES

*Registration*

**Only bodies corporate may carry on insurance business**

7. Subject to this Act, no person other than a body corporate may carry on insurance business in Barbados.

**Only registered bodies corporate may carry on insurance business**

8.(1) Subject to section 9, a body corporate shall not carry on in Barbados insurance business of any of the classes specified in subsection (1) of section 3 unless

- (a) the Supervisor is satisfied that the articles of the body corporate restrict it to the carrying on of insurance business solely;
- (b) it is registered by the Supervisor under this Act in respect of that class of insurance business;
- (c) it has made the deposit required by section 23 in respect thereof; and

- (d) in the case of a foreign company, or any company incorporated outside Barbados it has filed with the Supervisor the names and addresses of one or more persons resident in Barbados and authorised to accept on behalf of the body corporate service of process in any legal proceedings.
- (2) Any person who contravenes section 7 or this section is guilty of an offence and is liable on summary conviction
- (a) in the case of an individual, to a fine of \$2 500 or to imprisonment for one year or to both and, in the case of a continuing offence, to a further penalty of \$250 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 of \$10 000 and, in the case of a continuing offence, to a further penalty of \$1 000 for each day on which the offence is continued after conviction thereof.

### **Share capital and deposit required for registration**

- 9.(1)** Subject to subsection (4), no company may be registered to carry on in Barbados
- (a) long-term insurance business unless it has a minimum paid-up share capital of not less than \$3 000 000;
- (b) general insurance business unless it has a minimum paid-up share capital of not less than \$3 000 000;
- (c) both long-term and general insurance business unless it has a minimum paid-up share capital of not less than \$5 000 000;
- (d) motor vehicle insurance business only, unless it has a minimum paid-up share capital of not less than \$1 000 000;
- (e) industrial life insurance business unless it has a minimum paid-up share capital of not less than \$1 000 000; and



- (f) qualifying insurance business, unless it has a minimum paid up share capital of not less than \$250 000 or such amount as the Supervisor determines,  
[1998-47]

or an equivalent sum in other currency approved by the Supervisor, the capital to be fully paid up in cash.

(2) No foreign company may be registered to carry on long-term insurance business in Barbados unless, in addition to complying with subsection (1), it has deposited with the Supervisor the deposits required under section 23.

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

(4) No company shall be registered as a mutual company unless it has minimum reserves of not less than those required of companies with paid-up share capital.

(5) A segregated cell company registered to carry on reinsurance business under this Act shall have a minimum, aggregate paid-up capital of \$3 000 000, and each cell shall have a minimum paid-up capital of \$500 000.  
[2004-22]

(6) For the purposes of subsection (5), “segregated cell company” has the meaning assigned to it in section 356.23 of the *Companies Act*, Cap. 308.  
[2004-22]

#### **Application by companies carrying on insurance business before the commencement of this Act**

**10.** Every company carrying on insurance business in Barbados immediately before the commencement of this Act shall, within 12 months of the date or such further period as the Minister may by order direct, and in accordance with section 11, apply for registration to the Supervisor, who shall, if satisfied that the conditions for registration specified in section 12 have been met, register the company within 3 months after the receipt of the application.

**Applications for registration**

**11.(1)** An application for registration under this Part shall be made to the Supervisor 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 Supervisor may, upon receipt of an application under this section, request the applicant insurance company to furnish such additional information as he may consider to be relevant in relation to the application, and the company shall comply with the request.

**Conditions for registration**

**12.(1)** Where the Supervisor, after appropriate enquiry or by the production of documentary evidence or both, is satisfied in respect of the applicant insurance company that

- (a) the requirements of sections 7, 9 and 11, in so far as they are applicable, have been complied with;
- (b) the company is solvent under the provisions of section 58 or the *Fourth Schedule*, as the case may be;  
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- (c) the company 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 company is not identical with or does not so closely resemble the name of an insurance company already registered under this Act as to be likely to deceive;
- (e) the company has made adequate arrangements for reinsurance of the class of insurance it intends to carry on, or that there is no justification for making those arrangements;
- (f) the Supervisor is satisfied that the person holding the office of Managing Director, Chief Executive Officer or Principal

Representative of the company is a fit and proper person to hold that office;

- (g) a business plan is submitted in accordance with the regulations;
- (h) where the applicant insurance company is carrying on longterm or motor-vehicle insurance business, a statutory fund is established in the amount of \$250 000 or such greater amount as the Minister may by order prescribe;
- (i) being a foreign company, it
  - (i) 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 5 years before the date of the application; and
  - (ii) has appointed some person resident in Barbados to be its principal representative in Barbados and has informed the Supervisor in writing of the name and address of that person,

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

(2) Where the Supervisor 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 section 9(1), or the registration of the applicant would not be in the public interest, he shall notify the insurance company in writing that

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

giving his reasons for so doing, and shall notify it of its right under section 177 to request the Supervisor to refer his proposal for review by the Minister.

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**Certificate of registration**

**13.** The Supervisor shall furnish to every company 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 insurance company specified in the certificate has been so registered.

**Certificate of qualification**

**13A.(1)** The Supervisor shall issue a Certificate of Qualification to

(a) a registered insurer; or

(b) a registered insurer that was licensed as an exempt insurance company

that intends to carry on international insurance business and meets the requirements specified in paragraphs (a) and (b) of the definition of “qualifying insurance company” in section 2(1).

(2) A Certificate of Qualification that is issued under paragraph (a) of subsection (1) shall take effect from the date on which the certificate is issued.

(3) A Certificate of Qualification that is issued under paragraph (b) of subsection (1) shall be deemed to take effect from the commencement of the income year during which that certificate was issued.

(4) Where the Supervisor has issued a Certificate of Qualification pursuant to subsection (1) or section 15A(3), the Supervisor shall immediately after that issue give written notification of the issuance of the Certificate to the Commissioner of Inland Revenue, the Comptroller of Customs and the Exchange Control Authority.

(5) Notwithstanding subsection (1), the Supervisor may refuse to issue a Certificate of Qualification where

(a) the Supervisor is not satisfied that the insurer has complied with the provisions of subsection (1); or

- (b) in the opinion of the Supervisor it is not in the public interest to do so.
- (6) Where the Supervisor refuses to issue a Certificate of Qualification under subsection (5) and states that the refusal is in the public interest, no further ground of refusal need be given.
- (7) The provisions of this section shall take effect in respect of income years commencing on or after January 1st, 2003.
- (8) 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.

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[2004-7]

**13B.** [Repealed by 2004-7.]

#### **Notification of change in particulars specified in application**

**14.** Where after the registration of any company under this Act any 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 30 days of the change, notify the Supervisor in writing of the change.

#### **Grounds for cancellation of registration**

**15.(1)** Subject to subsection (3), the Supervisor may, for any of the reasons specified in subsection (2), notify in writing an insurance company registered under this Act that he proposes to cancel its registration, giving reasons for so doing and notifying the company of its right under section 177 to request the Supervisor to refer his proposal for review by the Minister.

- (2) Where at any time the Supervisor is satisfied in respect of a company, that
- (a) its 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) the company is insolvent in terms of section 58 or the *Fourth Schedule*, as the case may be;  
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- (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 its re-insurance arrangements are not satisfactory;
- (e) it has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by it;
- (f) it has contravened any provision of this Act or of any regulations, or any condition, direction or requirement imposed under this Act by the Minister or by the Supervisor, or has been an accessory to the contravention thereof by any other person; or
- (g) a final judgment has been obtained against the company in a court in Barbados and remains unsatisfied for more than one month.

(3) Where an insurance company is under any liability in respect of local policies belonging to any class of insurance business, the Supervisor shall not cancel the company's registration in respect of that class unless he is satisfied that adequate provision has been or will be made for that liability and that adequate arrangements will exist for payment in Barbados of premiums and claims on those policies.

### **Cancellation of Certificate of Qualification**

**15A.(1)** Where the Supervisor determines that a registered insurer no longer meets the requirements of a qualifying insurance company, the Supervisor shall first notify the registered insurer in writing that he proposes to cancel the Certificate of Qualification, giving reasons for so doing, and shall notify the insurer of its right under section 177 to request the Supervisor to refer the case

to the Minister for review; and thereafter shall, if no review is requested, or if on review the Minister confirms the cancellation, cancel the Certificate.

(2) Where the Certificate of Qualification of a registered insurer has been cancelled in accordance with subsection (1) the Supervisor shall notify the registered insurer, the Exchange Control Authority, the Commissioner of Inland Revenue and the Comptroller of Customs of the cancellation.

(3) Where the Certificate of Qualification of a registered insurer has been cancelled pursuant to subsection (1), the insurer may, on application, be granted another Qualifying Certificate where the Supervisor is satisfied that the insurer is able to comply with the requirements of a qualifying insurance company.

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### **Changing from a registered insurer to an exempt insurer**

**15B.** A registered insurer who is desirous of becoming licensed under the *Exempt Insurance Act*, Cap. 308A shall first notify the Supervisor, who shall

- (a) require the licensee to provide such information as the Supervisor considers necessary in the interests of any existing policy-holders or generally in the public interest;
- (b) where the registered insurer qualifies to be licensed under the *Exempt Insurance Act*, cancel the registration of the insurer from the date of the issue of the licence under the *Exempt Insurance Act*; and
- (c) notify the parties mentioned in section 15A(2), and

thereafter, the provisions of this Act shall cease to apply to the insurer.

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

**16.** Where an insurance company has been notified under subsection (2) of section 12 or under subsection (1) of section 15 of its right to request the Supervisor to refer the proposal concerned to the Minister for review and the company either

- (a) fails to make a request; or
- (b) having made a request, withdraws the request; or

the result of the review is the confirmation, with or without variation, of the Supervisor's proposal, then, subject to any such variation, the Supervisor shall give effect to the proposal and notify the company in writing accordingly.

**Summary cancellation of registration**

**17.** The Supervisor may at any time cancel the registration under this Act of an insurance company where

- (a) proceedings for its winding-up have commenced;
- (b) he is satisfied that it has not, within 2 years of its registration, commenced the carrying on in Barbados of insurance business of any class;
- (c) he is satisfied that it has ceased to carry on insurance business in Barbados for more than one year; or
- (d) the insurance company, or its liquidator, judicial manager or trustee so requests.



**Effect of cancellation of registration**

**18.(1)** Notwithstanding section 8, upon the cancellation of the registration of an insurance 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 Supervisor 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 that subsection.

(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 section 182; and
- (b) in the case of a contravention of paragraph (b) of subsection (1), to the penalties provided for in subsection (2) of section 8.

**Application of section 18 where registration refused**

**19.** The provisions of section 18 shall apply with the necessary modifications in relation to an insurance company that was carrying on insurance business in Barbados immediately before 17th February, 1997 and whose

registration is refused as they apply to an insurance company whose registration has been cancelled.

**Display and surrender of registration certificate**

**20.(1)** Every company registered under this Part shall prominently display its registration certificate at its principal place of business in Barbados, in an area to which the public have access; and a copy of the certificate shall be similarly displayed at each of its branches in Barbados.

(2) On the notification to an insurance company that its registration has been cancelled under section 17, the company shall forthwith surrender the registration certificate and every copy of the certificate to the Supervisor.

(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 \$500.

**Registered company may be prohibited from writing new business**

**21.(1)** Where, after consideration of the report of an Inspector appointed by the Supervisor under section 51 to investigate the affairs or any part of the affairs of a registered insurance company or after other appropriate enquiry, the Supervisor is satisfied that it is in the interest of the policy-holders or prospective policy-holders to do so, the Supervisor may by notice in writing prohibit a registered insurance company from writing new policies in any class of insurance business in respect of which the company is registered.

(2) The Supervisor shall in any notification under subsection (1) state the reasons for his decision and inform the insurance company of its right under section 177 to request the Supervisor to refer his decision for review by the Minister.

**Contracts with non-registered company**

**22.(1)** No person shall, except in the case of re-insurance, place or cause to be placed with an insurer not registered under this Act, insurance in respect of

- (a) property situated in Barbados;
- (b) liabilities arising in Barbados; or
- (c) goods being imported into Barbados.

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

**Compliance by qualifying insurance companies**

**22A.** A qualifying insurance company shall comply with the requirements set out in the *Fourth Schedule* with respect to its international insurance business.

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*Deposits by Insurance Companies***Amount and form of deposit by all insurance companies**

**23.(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 Supervisor the appropriate deposit specified in subsection (2).

- (2) Where
- (a) a company proposes to carry on long-term insurance business, the deposit shall be \$1 000 000;
  - (b) a company proposes to carry on any class of general insurance business, the deposit shall be an amount equal to 40 per cent of the premium

income of the company with respect to the general insurance business of the company in Barbados during the financial year last preceding the date of deposit but not less than \$250 000 and not more than \$1 000 000.

(c) a company does not intend to write any new business, the deposit shall be \$200 000.

(3) Subject to subsection (4), at the end of each subsequent financial year a company, having made a deposit as required by paragraph (b) of subsection (2) shall, where necessary, deposit or be refunded, as the case may be, an amount equal to the difference between the last preceding deposit and 40 per cent of the premium income during the financial year.

(4) Any deposit made under this section may be either in the form of cash or in the form of prescribed securities or partly in cash and partly in prescribed securities.

#### **Further provisions relating to deposits**

**24.** The *First Schedule* shall have effect in relation to deposits made with the Supervisor pursuant to this Part.

#### *Statutory Funds*

#### **Establishment of statutory funds**

**25.(1)** Every company registered under this Act to carry on longterm insurance business or motor-vehicle insurance business or both in Barbados 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 of either class of business referred to in subsection (1); or

(b) not later than 4 months after 17th February, 1997,

whichever is the later date.

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

(a) in the manner set out in subsections (4), (5) and (6); and

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

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

(5) Every company carrying on a motor-vehicle insurance business in Barbados shall place in trust in Barbados assets equal to its liabilities and reserves less the amount deposited on account of the business pursuant to this Act with respect to its policy-holders in Barbados 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 4 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.

### **Restriction on use of assets representing statutory funds**

**26.(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 this Act to exceed the amount of the liabilities attributable to any class of insurance business referred to in section 25, the restriction imposed by subsection (1) shall not, subject to section 150 apply to so much of those assets as represents the excess.

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

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

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

(6) No insurance company carrying on long-term insurance business or motor-vehicle insurance business and no insurance company of which any such insurance company is a subsidiary shall declare a dividend at any time when the value of the assets representing each 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.

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

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

### **Method of creating trusts**

**27.(1)** A trust referred to in subsections (4) and (5) of section 25 shall be created by a trust deed the contents and the trustees of which shall be approved by the Supervisor before the trust is created and the deed shall be in such form as may be prescribed.

(2) Notwithstanding the provisions of subsection (1), the Supervisor may on such terms and conditions as the Minister thinks fit, allow the assets required to be held in trust in Barbados to be placed in trust outside Barbados.

(3) The Supervisor may for the purposes of this section allow the assets required to be placed in trust to be held by a bank to the order of or on behalf of the Supervisor and such assets shall be deemed to be placed in trust and the bank shall be deemed to be a trustee.

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

**28.(1)** A trustee may not deal with any assets held in trust by him without the prior general or specified approval of the Supervisor.

(2) A trustee shall submit to the Supervisor in such form and at such times as may be prescribed, a list of the assets held in trust by him pursuant to section 27.

(3) A trustee who contravenes the provisions of subsection (1) shall be under the same liability as if the appropriate policy-holders had been beneficiaries of the trust.

#### **Company to furnish particulars of liabilities and assets with respect to fund**

**29.** A company shall, within 3 months after the date on which it established its statutory fund and thereafter within 4 months of the expiration of its financial year, furnish to the Supervisor 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**

**30.(1)** Where it appears to the Supervisor that

- (a) a statement furnished to him under section 29 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 Supervisor, after considering any explanation made by or on behalf of the company, shall give to the company such directions in writing as he 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 Supervisor under subsection (1) within 30 days of receiving the same.

#### **Company to furnish Supervisor with information**

**31.** The Supervisor may, for the purpose of exercising his powers under section 30 in respect of a company, request from that company such information as he considers necessary; and the company shall furnish the information within 30 days of the request.

#### **Assets in the statement deemed to be assets in statutory fund**

**32.** The assets shown as assets of a particular statutory fund in a statement furnished to the Supervisor pursuant to section 29 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**

**33.(1)** The assets of a statutory fund shall not be invested except in the securities specified in the *Second Schedule*.

(2) The Minister may by order published in the *Official Gazette*, amend the *Second Schedule*.

#### **Local assets ratio**

**34.(1)** Every company shall invest in Barbados an amount equal to at least 80 per cent of the value of the assets in each statutory fund.



(2) For the purposes of subsection (1), assets not exceeding 10 per cent of the value of each statutory fund shall be deemed to be assets in amalgamation of insurance business of foreign companies where the assets

- (a) are approved by the Supervisor; and
- (b) originate in any of the member states of the Caribbean Community.

(3) Where a company establishes and maintains a statutory fund in respect of long-term insurance business for the purpose of determining whether the company is complying with the provisions of subsection (1), policy loans shall be excluded from the assets and deducted from the liabilities of the company.

(4) For the purposes of this section

“assets in Barbados” means assets which

- (a) originate in Barbados;
- (b) are denominated in Barbados dollars; and
- (c) are physically held in Barbados;

“Caribbean Community” means the Caribbean Community established by the Treaty signed at Chaguaramas on 4th July, 1973.

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

**35.(1)** All investments and deposits of the funds of a local company shall be made in its corporate name and no director or officer of the company and no member of a committee that can exercise any authority over the investment or disposition of the funds of the company shall

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

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

(2) Nothing in this section shall be construed as precluding a 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.

(3) In this section “funds” means all funds of a company.

#### **Prohibition relating to loans**

**36.(1)** A local company shall not, 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 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;
- (c) 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;
- (d) grant unsecured credit facilities to any person except for temporary cover in the case of general insurance where such cover does not exceed 180 days or except in the case of advances to agents or to full-time employees against commissions or salaries to be earned;

- (e) 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) or (c).
- (2) A foreign company shall not directly or indirectly grant unsecured credit facilities to any person in Barbados except in the case of general insurance for temporary cover not exceeding 180 days or of advances to agents or full-time employees against commissions or salaries to be earned.
- (3) 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.

*Administrative and Accounting Requirements for Insurance Companies*

**Insurance companies to maintain principal office and appoint principal representative**

- 37.(1) Every insurance company registered under this Act shall maintain a principal office in Barbados and shall appoint an officer or director of the company resident in Barbados to be its principal representative in Barbados.
- (2) Every insurance company shall notify the Supervisor in writing of the full address of its principal office and of the name of its principal representative.
- (3) Where an insurance company changes the address in Barbados of its principal office or appoints a new principal representative, it shall, within 21 days of the change or appointment, give written notice thereof to the Supervisor.

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**Maintenance and separation of funds**

- 38.(1) Subject to this Act, where an insurance company
- (a) carries on international insurance business;
  - (b) carries on insurance business of one only of the specified classes; or

(c) carries on insurance business of 2 or more of the specified classes, the receipts and expenditure of the international insurance business and 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 as absolutely the security of the policy-holders 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 life insurance business, industrial life insurance business, and bond investment business.

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### **Preparation of annual accounts, etc.**

**39.(1)** Subject to subsections (4) and (11), every company 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) a separate balance-sheet showing the financial position of the company at the close of that year in respect of its long-term business;
- (c) except in the case of a mutual company, a profit and loss account in respect of all its insurance business in that year where the company carries on more than one class of insurance business;
- (d) 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;
- (e) an analysis of its long-term policies in force at the end of that year;
- (f) a certificate that the assets of its insurance business are in the aggregate at least of the value shown in the balance-sheet;
- (g) 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 but not life insurance business, a certificate that the value of its assets exceeds the amount of its liabilities by whichever is the greater of the amounts specified in sub-paragraphs (i) and (ii) of paragraph (b) of subsection (1) of section 58,
  - (iii) where the company carries on both life insurance business and general insurance business, a certificate that the value of its assets, including the life insurance fund, exceeds its liabilities by the amount specified in subparagraph (ii) of paragraph (b) of subsection (1) of section 58; and

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

(2) Every company shall publish

(a) the balance sheets referred to in paragraphs (a) and (b); and

(b) the profit and loss account referred to in paragraph (c),

of subsection (1) annually in the *Official Gazette* and in a daily newspaper within 4 months of the end of the financial year.

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(3) Every account, balance-sheet, statement or other document required by subsection (1) to be prepared shall be furnished to the Supervisor within 4 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 auditor and in the case of long-term business, by an actuary and shall relate to the worldwide business of the company; but the Supervisor may require in addition to a statement showing in respect of the company's business in Barbados, the amounts of premiums and considerations for annuities received, claims paid and outstanding surrenders, including surrenders of bonus, annuities paid, bonuses paid, commission and expenses of management.

(5) An insurance company that is 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.

(6) Such of the documents required to be prepared by subsection (1) as may be prescribed shall be certified by an independent auditor or, by an actuary.

(7) Where, in the opinion of the Supervisor, 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, he 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.

- (8) Where a company fails to comply with a notice referred to in subsection (7) to the satisfaction of the Supervisor, the Supervisor may himself either amend the document in question, giving the company particulars of the amendments, or reject the document.
- (9) A document amended by the Supervisor or by a company under this section shall be treated as having been submitted to the Supervisor in its amended form.
- (10) Where a document furnished by a company under this section has been rejected by the Supervisor under subsection (8), 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 Supervisor.
- (11) A company that is liable under a local life insurance policy shall, at the request of the policy-holder, furnish the policy-holder free of charge 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.
- (12) 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 183.

### **Group accounts**

**40.(1)** Where 2 or more insurance companies, which operate as separate entities that can be wound up in accordance the law under which they are incorporated, are associated together in a group, then in addition to the separate accounts required by section 39, the Supervisor 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 Supervisor 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 insurance companies**

- 41.(1)** The accounts of every insurance company 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 insurance company shall satisfy himself that the accounts of the company have been properly prepared in accordance with generally accepted accounting principles 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 an insurer other than a mutual company, the balance-sheet and profit and loss account respectively of the insurer give a true and fair view of the insurer'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 insurer's financial position.



**Keeping of records by companies**

**42.(1)** All foreign companies shall keep within Barbados and shall make available to the Supervisor 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 re-insurance; and
- (d) such other books, records, receipt vouchers as are necessary to allow the company to prepare for transmission to the Supervisor a statement of the insurance business carried on by it in Barbados.

(2) The Supervisor may examine the books and records of the company, and the company must cause these books to be readily available for examination and facilitate the examination.

**Periodical investigations to be made into financial position of companies carrying on long-term business**

**43.(1)** Every insurance company that carries on long-term business shall, not less than once annually or for such other period as the Supervisor may allow but not exceeding 3 years, cause a review of the company's operations to be carried out by an actuary, including a valuation of its liabilities.

(2) Every insurance company 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 Supervisor in the prescribed form within 4 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 (11) of section 39 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 39.

(4) In the case of a mutual insurance 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 Supervisor 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 Supervisor to request information and appraisal**

**44.** The Supervisor may

- (a) require a director, manager, principal representative, auditor, or actuary to provide within such time as he may specify, such information as he 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.

#### **Appointment of actuary**

**45.(1)** Every company that carries on long-term insurance business in Barbados shall within one month of the commencement of the business, appoint an actuary to the company, and whenever an appointment as actuary to the company under this Act comes to an end, the company shall as soon as practicable make a new appointment.

(2) A company that makes an appointment under this section shall within 14 days of the appointment, serve on the Supervisor a written notice stating the name and qualifications of the person appointed; and where the appointment

comes to an end, the company shall so inform the Supervisor by written notice within 14 days of that fact.

### **Transfer or acquisition**

**46.(1)** Any company, whether or not it has ceased to issue new policies of insurance or assume fresh liabilities in Barbados, 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 sanction of the Supervisor in writing.

(2) The Supervisor may sanction any transfer, acquisition or amalgamation either unconditionally or subject to such conditions as he specifies in writing.

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

- (a) the benefits accruing are from policies issued by those companies and payable in Barbados; or
- (b) the policies are subject to the jurisdiction of the courts in Barbados.

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

(5) For the purposes of this section and sections 47, 48 and 49, “insurance business” means

- (a) the assumption of the obligations of an insurer in any class of business;
- (b) the assumption of the business of insuring risks or liabilities;
- (c) the renewal and issuing of documents of renewal of existing insurances and liabilities; or
- (d) the receiving of first, subsequent or renewal premiums, and includes re-insurance.

**Procedure in respect of transfers, acquisitions and amalgamations**

**47.(1)** Subject to section 46, the chairman and at least 3 directors of each company desiring the transfer, acquisition or amalgamation of an insurance business shall, in seeking the sanction of the Supervisor in pursuance of that section, make application to the Supervisor in the form of a petition

- (a) stating the nature of the transfer, acquisition or amalgamation, in this section and sections 48 and 49 referred to as the Scheme;
- (b) giving details of the facts contained in any deed or agreement under which the Scheme is proposed to be effected;
- (c) submitting copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary; and
- (d) submitting such number of copies of an audited account of the assets and liabilities of the companies affected by the Scheme as the Supervisor approves.

(2) Notwithstanding subsection (1), before the making of an application by a company to the Supervisor in pursuance of this section

- (a) notice of an intention to make the application shall be published by the company in the *Official Gazette* and in a newspaper published in Barbados and approved by the Supervisor, stating the date on or after which the application will be made; the date being at least 30 days after the publication of the notice;
- (b) 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 copy each of the actuarial and other reports upon which the agreement is founded, including a report by an independent actuary,

shall, by registered mail, be served by the company on the shareholders, members and the policy-holders in Barbados of the companies concerned in such time that delivery of the mail may be effected at least 30 days before the date mentioned in the notice as being the date on or after which the application will be made; but the Supervisor may dispense with the service if he is satisfied that the circumstances so warrant; and

- (c) the agreement under which the Scheme is proposed to be effected shall be opened at the offices in Barbados of the companies concerned, to the inspection of the shareholders, members and policy-holders for a period of at least
  - (i) 30 days after the publication of the notice or service of the notice under paragraph (b); or
  - (ii) 30 days after the date of the decision of the Supervisor to dispense with service of the notice under paragraph (b), and every shareholder, member or policy-holder is entitled to a copy of the agreement on making a request for the agreement in writing.

(3) Where, in pursuance of an agreement between

- (a) an insurer, in this section and section 48 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 Barbados, 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 Barbados, 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**

**48.(1)** Any person who is likely to be affected by a proposed Scheme may, within 30 days of publication of the notice referred to in section 47(2) or of service upon him of the notice, as the case may be, make an application to the Supervisor in respect of any matter related to the Scheme.

(2) The Supervisor shall upon receiving an application under subsection (1), fix a date for the hearing by him of the application and shall

- (a) in writing inform the applicant of the date of the hearing; and
- (b) not less than 14 days before the hearing, publish a notice of the application and the date of the hearing in the *Official Gazette* and a newspaper published in Barbados.

(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 Supervisor, is likely to be affected,

and the Supervisor may hear such evidence as he deems necessary.

(4) The Supervisor shall not sanction a Scheme where

- (a) the provisions of section 47 are not complied with;
- (b) subject to paragraph (c), a number of policy-holders 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 policy-holders 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) he is not satisfied that
  - (i) the continuing insurer is incorporated in Barbados, or
  - (ii) the acquisition, amalgamation or transfer is in the public interest.

(5) Notwithstanding subsection (4), the Supervisor may refuse to sanction a Scheme where a number less than that indicated in subsection (4) dissents from the Scheme, where

- (a) in his opinion the circumstances of the case so require;
- (b) he is satisfied that a proposed amalgamation is not in the public or national interest; or
- (c) he is satisfied that the transfer or amalgamation is detrimental to the policy-holders.

(6) All expenses incurred by the Supervisor 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 Supervisor from those companies as a debt due to the Crown in civil proceedings before a magistrate for District “A” notwithstanding that the amount sought to be recovered exceeds the normal monetary limit on the jurisdiction of the Magistrates’ courts.

(7) 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 Supervisor and appeals**

**49.(1)** Subject to subsection (3), a Scheme, after being sanctioned by the Supervisor, is binding on the companies affected by it, and on all shareholders, members and policy-holders 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 by-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 Corporate Affairs.

(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 30 days after the date of the implementation of the Scheme, lodge with the Supervisor

- (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 Supervisor either sanctioning or disapproving a Scheme lies to a Judge in Chambers and shall be made within 15 days of that decision.



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*Investigations by the Supervisor***Supervisor may demand information**

**50.(1)** The Supervisor may demand from any local company information relating to any matter in connection with its insurance business.

(2) The Supervisor may demand from any foreign company information relating to any matter in connection with the insurance business carried on by it in Barbados.

**Power to make investigations**

**51.(1)** Where it appears to the Supervisor 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 sections 38 to 43;
- (c) a company has not, within a period of one month as from the date on which the Supervisor demanded from the company in writing any information which the Supervisor was entitled under this Act to demand, furnished that information duly and satisfactorily; or
- (d) any information in the possession of the Supervisor warrants an investigation into the whole or any part of any class of the insurance business of the company,

the Supervisor may serve on the company a notice in writing calling upon it to show cause within such period, not less than 30 days from the date of the notice as is specified in the notice, why he 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 Supervisor the results of the investigations.

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

### **Power to obtain information**

**52.(1)** In making an investigation under this Part, the Supervisor or the Inspector may

- (a) require the company to produce any securities, books, accounts, documents or statistics of the company for his inspection and to allow him to make such extracts from them as he considers fit;
- (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 Supervisor or the Inspector at his request any securities, books, accounts, documents or statistics of the company which are available to the person and shall give to the Supervisor or the Inspector, at his 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**

**53.(1)** Where a magistrate or justice of the peace is satisfied on information on oath laid by the Supervisor or by any person authorised by the Supervisor 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 52 and which have not been

produced in compliance with that requirement, the magistrate or justice of the peace 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; 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 3 months or, if within that period criminal proceedings have been brought in respect of the seizure, until the conclusion of those proceedings.

#### **Penalty for divulging of information and other offences**

- 54.(1)** A person shall not either directly or indirectly, except in the performance of any duty under this Act, make a record of, or divulge or communicate to any person, any information acquired by him under this Part.
- (2) A person performing any duty under this Part shall take an oath, in the manner and form specified, to maintain secrecy in conformity with this section.
- (3) Any person who contravenes any of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for one year, or to both.

**Action after completion of investigation**

**55.(1)** After an investigation under this Part in respect of any company has been completed, the Supervisor

- (a) shall transmit to the company a summary of the conclusions arrived at by him 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 he 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 contract; 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 Barbados.

(2) No direction issued to a company under this section shall remain in force for more than 12 months, but nothing in this subsection shall prevent the Supervisor from issuing any further directions to the company.

*Judicial Management and Winding-Up*

**Winding-up**

**56.(1)** The court may order the winding-up in accordance with the *Companies Act*, Cap. 308, of a company, and that Act shall apply accordingly, subject to this section and sections 57 to 69 and to the modification that the company may be ordered to be wound up on the petition of 10 or more policyholders owning policies of an aggregate sum assured of not less than \$100 000 or on the petition of the Supervisor.

(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 until security for costs for such amount as the court may think reasonable has been given.

(3) The Supervisor 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 Supervisor such information as he 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 wind-up**

**57.(1)** Where the Supervisor, by reason of the conclusion arrived at by him as a result of an investigation under section 51 in respect of any company, is of the opinion that it is necessary or proper to do so, he may, with the leave of the court, present a petition

- (a) for the winding-up by the court, in accordance with the *Companies Act*, Cap. 308, of an insurance company on the ground that
  - (i) the company has contravened section 8;
  - (ii) in the case of an insurance company that was carrying on insurance business in Barbados before 17th February, 1997 and whose registration under this Act has been refused, it is in the interest of the policy-holders that the company be wound up;
  - (iii) in the case of an insurance company whose registration under this Act has been cancelled, it is in the interest of the policy-holders that the company be wound up;
  - (iv) any officer of the company or its holding company refuses to comply with any requirements made under paragraph (a) of subsection (1) of section 52 or refuses to answer any question put to him under paragraph (b) of that subsection;

- (v) the results of an investigation made under section 51 in respect of the company are such that it is in the interest of the policy-holders that the company be wound up; or
- (vi) that 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; or
  - (iii) it is otherwise in the interest of the policy-holders 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 Supervisor 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 Supervisor 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 insurance 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 Barbados

- (a) is being wound up in that jurisdiction; and
- (b) has a subsidiary in Barbados,

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

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

### **Margin of solvency**

**58.(1)** Subject to this section and section 69, an insurance company shall, for the purposes of the *Companies Act*, Cap. 308, be deemed to be unable to pay its debts

- (a) in the case of an insurance company carrying on long-term business and no general business, where the value of its admissible assets does not exceed the amount of its liabilities by such an amount as is prescribed by regulations;
- (b) in the case of an insurance company carrying on general business and no long-term business, where the value of its assets does not exceed the amount of its liabilities by
  - (i) \$500 000 or an equivalent sum; or
  - (ii) 25 per cent of its premium income in respect of its general business in its last preceding financial year,

whichever is the greater amount;

- (c) in the case of an insurance company carrying on both long-term business and general business, where the value of its total assets does not exceed its total liabilities by the greater of the amounts specified in sub-paragraphs (i) and (ii) of paragraph (b); or

- (d) until the contrary is proved, if the company fails to furnish to the Supervisor any certificate or certificates specified in paragraphs (f) and (g) of subsection (1) of section 39 within the time specified in subsection (3) of that section.
- (2) For the purposes of this section,
- (a) subject to paragraph (aa), in computing the amount of the liabilities of an insurance company, all contingent and prospective liabilities shall be taken into account, but not liabilities in respect of share capital;  
*[2001-25]*
- (aa) 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; and  
*[2001-25]*
- (b) the premium income of an insurance 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 re-insurance, 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 longterm business.
- (3) In this section, “admissible assets” means such assets as the Minister may prescribe to be admissible assets but does not include goodwill.

### **Judicial management**

**59.(1)** Where an order for the judicial management of an insurance company or of part of the business of an insurance company is made after the hearing of a petition under section 56, the provisions of this section and of sections 60 to 63 shall apply.



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- (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 insurance company in such order of priority in relation to any existing charges on that property as it thinks fit.
- (4) The management of the insurance company, or of such part of the business of the insurance 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 Supervisor such information as the Supervisor requires and shall report to the Supervisor whenever he intends to apply to the court for instructions and shall, at the same time, furnish to the Supervisor particulars of the application.
- (8) The Supervisor shall be entitled to be heard on any application referred to under subsection (7) and may himself make application to the court with reference to the conduct of the judicial management.

**Cancellation of judicial management order**

**60.** 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**

**61.(1)** The judicial manager shall conduct the management of the insurance 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 policy-holders 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 insurance 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 Supervisor.

(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 Supervisor determines.

### **Decision of court on report of judicial manager**

**62.(1)** The court shall on the hearing of an application made under section 60

- (a) after hearing the Supervisor, 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 61 that it considers in the circumstances to be most advantageous to the interests of the policy-holders 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.

### **Indemnity**

**63.** The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of any thing 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**

**64.(1)** Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first-mentioned company, in this section called the “subsidiary company”, or the creditors of the subsidiary company has or have claims against the company to which the transfer was made,

in this section called “the principal company”, then, if the principal 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 principal company;
  - (b) may by the same or any subsequent order appoint the same person to be liquidator for the 2 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 principal 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 subsidiary is not in process of being wound up at the same time as the principal company to which it is 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 subsidiary to the principal company and that the winding-up of the company in conjunction with the principal 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 principal company by any creditor of, or person interested in, the principal or subsidiary company.
- (6) Where an insurance company is a principal company in relation to another insurance company, and is a subsidiary company in relation to some other

insurance company, or where there are several insurance companies that are subsidiary companies in relation to one principal 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 Barbados

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

(b) has a subsidiary in Barbados;

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

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

(9) Costs awarded the Supervisor 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**

**65.** In any proceedings upon a petition to wind-up an insurance company presented by the Supervisor under section 57, 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**

**66.(1)** Where an insurance 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 paragraph (b) of subsection (1) 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**

**67.** In the case of an insurance 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**

**68.** Upon the winding-up of an insurance company, all moneys and securities for the time being held as a deposit in respect of that company under section 23 or 24 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**

**69.** Regulations may be made under section 429 of the *Companies Act*, Cap. 308, for the purpose of carrying into effect the provisions of this Act relating to the winding-up of insurance companies and to judicial managers.

**Guaranteed companies**

**70.(1)** Where, on the application of an insurance company carrying on general business, the Supervisor is satisfied that it is guaranteed by another insurance company satisfying the requirements of a guarantor set out in subsection (2), the Supervisor may by order direct that, subject to such conditions as may be specified in the order, section 59 shall not apply to the first-mentioned insurance company.

- (2) A guarantor shall be required for the purposes of this section to be either
- (a) a body corporate which satisfies such of the requirements of section 9 as are applicable thereto and the value of whose assets exceeds the amount of its liabilities by the amount required by section 59; 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) an insurance company that, being itself guaranteed by another insurance company, is the subject of an order under this section,

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

- (3) Any order made under this section may be revoked by the Supervisor
- (a) if he ceases to be satisfied of the matters on the ground of which the order was made; or
  - (b) if he is satisfied that any condition in the order has not been complied with.

## PART III

## ASSOCIATIONS OF UNDERWRITERS

**Associations of underwriters to be registered**

**71.(1)** No association of underwriters may carry on insurance business in Barbados unless it is registered in accordance with this Part.

(2) A member of an association of underwriters which has been registered in accordance with this Part may, after the date of registration, carry on its Barbados insurance business other than longterm insurance business.

**Applications for registration by associations of underwriters**

**72.** An application by an association of underwriters for registration under this Part shall be made to the Supervisor 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 association;
- (b) the names and addresses of persons in Barbados who as brokers or agents, place insurance business with the association; and
- (c) in the case of an association constituted outside Barbados
  - (i) a certificate signed by the appropriate public authority in the country in which it is constituted stating that the association has been established for at least 5 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 Barbados 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 Supervisor may require.



**Conditions for registration**

**73.(1)** Where the Supervisor, after appropriate enquiry or by the production of documentary evidence, or both, is satisfied in respect of the applicant association of underwriters that

- (a) the relevant requirements of this Part have been complied with;
- (b) the association is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
- (c) being an association of underwriters constituted outside Barbados
  - (i) it has made or caused to be made with the Supervisor the deposit required by subsection (1) of section 79; and
  - (ii) there are one or more persons resident in Barbados who are authorised to accept on behalf of the members of the association, service of process in any legal proceedings, being persons authorised for that purpose by the association;
- (d) the persons who managed the association are of good character and are otherwise fit and proper persons to manage the association; 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 Supervisor shall, either unconditionally or subject to such conditions as he may specify, register the association of underwriters and notify the applicant accordingly.

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

section 174, to request the Supervisor to refer his proposal for review by the Minister.

**Documents and information relating to insurance business to be furnished to the Supervisor**

**74.** An association of underwriters registered in accordance with this Part, in this Part referred to as a registered association, shall within 4 months of the end of each financial year furnish to the Supervisor

- (a) in the case of an association constituted outside Barbados,
  - (i) 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 responsible Minister or other public authority in the country in which the association is constituted,
  - (ii) 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,
  - (iii) the latest annual list of members and the names of its Committee or other governing body, and
  - (iv) a statement of receipt and expenditure by its members in Barbados during the preceding year;
- (b) in the case of an association constituted in Barbados, such documents and information as the Supervisor may require.

**Grounds for cancellation of registration**

**75.(1)** Subject to subsection (2), the Supervisor may notify in writing a registered association that he proposes to cancel its registration, giving his reasons for so doing and notifying the registered association of its right under

section 174 to request the Supervisor to refer his proposal for review by the Minister where the Supervisor

- (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 Minister or by the Supervisor;
  - (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 Barbados 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 Supervisor may at any time cancel the registration under this Part of a registered association
- (a) where he 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 Barbados; or
  - (b) at the request of the association.

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

**76.** Where a registered association has been notified under subsection (2) of section 73 or subsection (1) of section 75 of its right to request the Supervisor to refer the proposal concerned to the Minister for review and the association either

- (a) fails to make the request; or
- (b) having made the request, withdraws the request,

or the result of the review is the confirmation, with or without variation, of the Supervisor's proposal then subject to any such variation, the Supervisor shall give effect to his proposal and notify the association accordingly.

**Registered association may be prohibited from writing new business**

**77.(1)** The Supervisor may prohibit a registered association from writing new policies in any class of insurance business where he is satisfied that it is in the interest of the policy-holders or prospective policy-holders to do so.

(2) The Supervisor shall notify the registered 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**

**78.** An association

- (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 only continue to carry on business relating to policies issued by it before the date on which it was notified of the rejection or cancellation unless the Supervisor is satisfied it has made suitable arrangements for its obligations under these policies to be met.

**Deposits by associations of under writers**

**79.(1)** Subject to this section, an association of underwriters which is constituted outside Barbados 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 Supervisor in cash or in prescribed securities or partly in cash and partly in prescribed securities an amount equal to \$1 000 000.

(2) The *First Schedule* shall have effect in relation to deposits made with the Supervisor pursuant to this section.

## PART IV

## REGISTRATION OF INSURANCE INTERMEDIARIES

**Registration of insurance intermediaries**

**80.(1)** Subject to subsection (2), no person may in Barbados in relation to insurance of any class specified in subsection (1) of section 3, carry on or purport to carry on business as, or act as, an insurance intermediary unless that person is registered under this Part to carry on that business.

(2) This section shall not, for a period of 3 months after 17th February, 1997 or such further period as the Minister may by order direct, apply to a person who was immediately before that date carrying on in Barbados business as an adjuster, loss assessor or insurance surveyor.

(3) Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$2 500 or to imprisonment of 12 months or to both and, in the case of a continuing offence, to a further penalty of \$250 for each day on which the offence is continued after the conviction.

**Application for registration**

**81.(1)** An application for registration under this Part shall be made to the Supervisor 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 a broker is made under subsection (1) of section 80, the Supervisor may request of the applicant security by way of a bond or such other security as may be prescribed.

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

**General restrictions regarding registration**

**82.(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 18 years in the case of a salesman;
- (b) under the age of 21 years in the case of a broker, agent, sub-agent, adjuster, loss assessor or insurance surveyor;
- (c) an undischarged bankrupt unless the person has been granted leave to carry on such business by the court that adjudged that person bankrupt; or
- (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*, Cap. 45.

(2) No person may be registered under this Part as an agent of an insurance company unless that company is registered under Part II 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 sub-agent or exempted from registration thereunder.
- (4) No person may be registered under this Part as a salesman unless the insurance company, agent or sub-agent by whom he is so employed is registered under Part II or under this Part, or is exempted from registration thereunder, as the case may be.
- (5) No insurance company and no person carrying on business as a salesman, an agent or a sub-agent shall be registered as a broker, and no person carrying on business as a broker shall be registered as a salesman, an agent or a sub-agent.
- (6) No person carrying on business as an adjuster, a loss assessor, or an insurance surveyor shall be registered as a salesman, an agent, a sub-agent or a broker.

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### **Registration of brokers**

- 82A.(1)** A person is entitled to be registered as a broker under this Part if, on application made to the Supervisor, that person satisfies the Supervisor that he
- (a) is qualified to be a broker in Barbados;
  - (b) is
    - (i) a citizen or a permanent resident of Barbados within the meaning of the *Immigration Act*, Cap. 190; or
    - (ii) a national of a Member State of the Caribbean Community;
  - (c) is insured with a registered insurer against liability for not less than \$1 000 000 or such greater amount as may be prescribed for claims arising out of any error or omission on the part of the broker, his employees or agents;

- (d) complies with
    - (i) subsections (5) and (6) of section 82; and
    - (ii) paragraph (b) of subsection (1) of section 99;
  - (e) is not holding an official position at any insurance company; and
  - (f) has established a permanent office in Barbados.
- (2) For the purposes of paragraph (a) of subsection (1), a person is qualified as a broker in Barbados if,
- (a) in the case of a person working in the long-term insurance business, that person
    - (i) is a Chartered Life Underwriter or the equivalent with not less than 5 years experience with a registered insurer; or
    - (ii) has at least 10 years experience with a registered insurer, including not less than 3 years in a managerial position;
  - (b) in the case of a person working in the general insurance business, that person
    - (i) is an Associate of a Chartered Insurance Institute with not less than 3 years experience in a managerial position or senior technical position with a registered insurer, agent or broker; or
    - (ii) has at least 7 years experience in a senior technical position with a registered insurer, agent or broker;
  - (c) in the case of a person working in the long-term and general insurance business, that person
    - (i) is a Chartered Life Underwriter or the equivalent;
    - (ii) is an Associate of a Chartered Insurance Institute; and
    - (iii) has at least 10 years experience with a registered insurer of which not less than 3 of those years are in a managerial or senior technical position with a registered insurer, agent or broker.



- (3) For the purposes of this section,
- (a) “national of a Member State” means a person who
- (i) is a citizen of a Member State;
  - (ii) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or
  - (iii) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and is substantially owned and effectively controlled by persons mentioned in sub-paragraphs (i) and (ii);
- but does not include a person who has attained nationality by virtue of an economic connection;
- (b) “Caribbean Community” includes the CARICOM Single Market and Economy.

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### **Conditions for registration**

- 83.(1)** Where the Supervisor is satisfied in respect of the applicant
- (a) that the requirements of sections 81 and 82A have been complied with;  
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  - (b) that section 82 does not apply;
  - (c) that the applicant is a person of good character and is otherwise a fit and proper person to be an insurance intermediary;

- (d) 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;
- (e) in the case of a person who was, before 17th February, 1997, carrying on business in Barbados as an insurance intermediary, that he conducted such business in a sound and proper manner;
- (f) that
  - (i) where the applicant is an individual, 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;
- (g) where the application is for registration as an insurance intermediary and 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, 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; and
- (h) where the applicant is then required by regulations to pass any examination, that he has passed the examination,

the Supervisor shall, either unconditionally or subject to such conditions as the Supervisor may specify, register the applicant as an insurance intermediary in respect of such class or classes of insurance as he shall specify, and shall notify the applicant accordingly.

(2) Where the Supervisor 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), he shall notify the applicant in writing that he proposes to refuse to register the applicant or, that he proposes to refuse to register the applicant in respect of one or more of the classes of insurance applied for, giving his reasons for so doing and notifying him of his right under section 177 to request the Supervisor to refer his proposal for review by the Minister.

(3) Nothing in this section shall be interpreted to permit an agent, sub-agent or salesman to be registered in respect of general insurance business or long-term insurance business for more than one insurance company at any given time.

### **Certificate of registration**

**84.** The Supervisor shall furnish to every person registered under this Part a certificate in the prescribed form that the person has been registered as a broker, salesman, agent or sub-agent, adjuster, loss assessor or insurance surveyor, as the case may be, and the certificate shall

- (a) state the class or classes of insurance 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 subagent, specify the insurance company or person 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.

**Grounds for cancellation of registration subject to right of appeal**

**85.(1)** The Supervisor may notify in writing a person registered under this Part that he proposes to cancel the person's registration, giving his reasons for so doing and notifying the person of his right under section 177 to request the Supervisor to refer the proposal for review by the Minister where at any time the Supervisor is satisfied that

- (a) the registration was procured as a result of any misleading or false representation or in consequence of any incorrect information, whether the representation or information was made or supplied wilfully or otherwise;
- (b) the person has become disqualified for such registration by virtue of any of the provisions of section 83;
- (c) the person is carrying on business otherwise than in accordance with sound insurance principles and practice;
- (d) the person has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by or through him;
- (e) the person has not, within a period of one month from a date on which the Supervisor demanded from him in writing any information which he was entitled under this Act to demand from him, furnished that information duly and satisfactorily;
- (f) the person has been guilty of a fraudulent or dishonest practice;
- (g) in the case of an individual, the person has demonstrated that he is not a fit and proper person, or in the case of a body, not all the persons managing or controlling the body or not all the partners are fit and proper persons;

- (h) the person has demonstrated that he is not sufficiently competent and knowledgeable to carry on business in the class or classes of insurance in respect of which he was registered or that he is otherwise not a fit and proper person to carry on the business; or
  - (i) the person has contravened any of the provisions of this Act or any condition, direction or requirement imposed under this Act by the Minister or by the Supervisor or has been an accessory to the contravention thereof by any other person.
- (2) Where the Supervisor has notified any person that he proposes to cancel the registration of that person, he may suspend the registration pending the outcome of any review under section 177 of that proposal and shall notify that person of the suspension.

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

**86.** Where any person has been notified under subsection (2) of section 83 or under subsection (1) of section 85 of his right to request the Supervisor to refer the proposal concerned to the Minister for review and

- (a) fails to make the request, or having made the request, withdraws the request, or
- (b) the result of the review is the confirmation, with or without variation, of the proposal of the Supervisor,

then, subject to any variation, the Supervisor shall give effect to the proposal and notify the person in writing accordingly.

**Summary cancellation of registration**

**87.** The Supervisor may at any time cancel the registration of a person under this Part

- (a) where he is satisfied that the person has not carried on business in Barbados as an insurance intermediary within a year of registration or

- has not carried on business in Barbados for a period of more than a year; or
- (b) in the case of a person registered as an agent or sub-agent, that the registration under this Act of the insurance 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 request.

### **Information to be supplied to Supervisor**

**88.(1)** Where an agency or sub-agency in respect of which a person has been registered under this Part as an agent or, as a subagent is terminated, notice in writing in the prescribed form shall immediately be given to the Supervisor both by the person and by the person for whom he was appointed as an agent or sub-agent.

(2) Where the employment of a salesman registered under this Part is terminated, notice in writing in the prescribed form shall immediately be given to the Supervisor both by the salesman and his employer in that employment, and upon the salesman entering any new employment, notice in writing in the prescribed form shall forthwith be given to the Supervisor both by the salesman and his new employer.

(3) The Supervisor 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 person's business as an insurance intermediary.

(4) Any person who contravenes any of the provisions of this section is guilty of an offence.

### **Prohibition of certificate of registration**

**89.(1)** A person registered under this Part shall, if requested to do so by the Supervisor or by any person authorised by the Supervisor or by any person with

whom the first-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.

#### MISCELLANEOUS PROVISIONS RELATING TO INSURANCE INTERMEDIARIES

##### **Agency**

**90.** An agent, a sub-agent, broker or salesman shall, for the purpose of receiving a premium for a contract of insurance, be deemed to be the agent of the insurer and notwithstanding any conditions or stipulations to the contrary, the registered insurer shall be deemed to have received any premium received by the agent, sub-agent, broker or salesman.

##### **Fraudulent representation**

**91.(1)** An agent, sub-agent, broker or salesman 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, sub-agent, broker or salesman 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**

**92.** An agent, sub-agent, broker or salesman is personally liable to the insured on all contracts of insurance unlawfully made by or through him directly with any insurer not registered to carry on insurance business in Barbados in the same manner as if the agent, sub-agent, broker or salesman were the insurer.

**Advertisement**

**93.** No agent, sub-agent, salesman or broker 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**

**94.** Where an agent, sub-agent, broker or salesman 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 and fails to pay the premium over to the insurer within 15 days of the receipt by him of the premium, or such shorter or longer period as may be agreed in advance by the insurer, less his commission and any other deductions to which, by written consent of the insurer, he is entitled, he is guilty of an offence.

**Compensation to unauthorised person for placing or negotiating insurance, an offence**

**95.(1)** No insurer, and no officer, employee or agent of the insurer, and no broker or salesman shall directly or indirectly pay or allow, or agree to pay or allow, compensation or any thing of value to any person for placing or negotiating insurance on lives, property or interests in Barbados, or negotiating the continuance or removal thereof, or for attempting so to do, who, at the date thereof, is not an insurer, agent, sub-agent, broker or salesman.

(2) Any person who knowingly contravenes this section is guilty of an offence.

**Grant of rebates prohibited**

**96.(1)** No insurer, and no officer, employee or agent of an insurer, and no broker or salesman 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 Barbados.

(2) An insurer or other person who contravenes this section is guilty of an offence.

### ***Bona fide* salaried employees**

**97.** Nothing in sections 95 and 96 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 that person or so as to require that the person be licensed as an agent under this Part to effect the insurance.

### **Returns from insurers**

**98.(1)** Every insurer shall make a return to the Supervisor in such form and at such time as the Supervisor requires showing

- (a) all persons, partnerships and companies duly authorised as its agents, brokers or salesmen in Barbados; and
- (b) of 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 Barbados, or negotiating the continuance or renewal thereof, or for attempting to do so.

(2) Any person who is registered under this Act as an agent, a subagent, or a broker shall make a return to the Supervisor in such form as may be prescribed.

**Keeping of records and making of deposits by registered brokers**

- 99.**(1) Every broker registered in accordance with this Part shall
- (a) keep within Barbados and shall make available to the Supervisor on request
    - (i) a record of all local policies issued by him on behalf of members of a registered association;
    - (ii) a record of the aggregate amount of the premiums received on the policies;
    - (iii) a copy of the audited financial statements; and
    - (iv) an analysis of premiums payable to insurers by the number of days outstanding;
  - (b) deposit with the Supervisor such amount as is set out in the *Third Schedule* at the times prescribed.
- (2) A deposit referred to in subsection (1), may be in cash or securities of the amounts set out in the *First Schedule* and may be wholly or partly in cash or such securities.
- (3) The provisions contained in the *First Schedule* shall have effect in respect of deposits made pursuant to this section.

## PART V

## LONG-TERM INSURANCE BUSINESS

*Issue of Policies***Rates of premiums**

- 100.**(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 Supervisor may at any time require the company to obtain, and to furnish him 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 of 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**

**101.** 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**

**102.** 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 any 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 17th February, 1997, in respect of policies of that class, if any, issued at the rate of premium so approved, whichever is the greater.

### **Form of proposal**

**103.(1)** A company shall not issue or accept any form of proposal or policy unless the standard form has been approved by the Supervisor, and the Supervisor shall not approve the form if it is not in compliance with this Act or if it is likely to mislead a proponent or policy-holder.

(2) A form of proposal shall be framed so as to require a person making a proposal for a life policy to specify the place and date of birth of the person whose life is proposed to be insured; and it shall be the duty of the person making the proposal to supply those particulars to the best of his knowledge and belief.

### **Notice in respect of long-term policies**

**104.(1)** Subject to subsection (3) of section 105, an insurer shall not enter into a contract for the purpose of carrying on long-term insurance business unless the insurer

- (a) at the time the contract is entered into; or
- (b) not later than 7 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) An insurer who contravenes this section is guilty of an offence but the contravention does not invalidate the contract.

**Insured's right of cancellation**

**105.(1)** A person who has entered into a contract of insurance with an insurer may serve notice of cancellation on the insurer

- (a) not later than the tenth day from the date which he receives a notice referred to in section 104; 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) does not apply where an insurer ought to have served a notice under subsection (1) of section 104 and failed to do so but does so before the cancellation of the contract.

(3) A notice of cancellation need not be in the form attached to the notice required to be served under subsection (1) of section 104 and it is sufficient if the notice of cancellation indicates a desire to withdraw from the contract.

(4) 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.

(5) 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 insurer or to any person acting on behalf of the insurer for the purpose of receiving the moneys, are recoverable from the insurer as a debt in civil proceedings.

**Dividends**

**106.** A company shall, on the issue of each policy, give a written disclosure to each policy-holder of the basis on which he is entitled to a dividend, bonus or other means of distribution of profit.

**Notice regarding proof of age**

**107.** 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**

**108.(1)** Where a company declines to accept the proof of age tendered in respect of a policy, whether issued before or after 17th February, 1997, the policyholder may apply to a Judge in Chambers by summons for an offer 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.

**Mis-statement of age, and non-avoidance of policy**

**109.(1)** A policy is not avoided by reason only of a mis-statement 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 policy-holder the amount of over-payments 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 3 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**

**110.** Nothing in any term or condition of a life policy issued after 17th February, 1997 or in the law relating to insurance shall operate to exempt an insurance 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.

### **Minors**

**111.(1)** A minor who has attained the age of 10 years but has not attained the age of 16 years may with the written consent of his parent or of a person standing *in loco parentis* to the minor

- (a) effect a policy upon his own life or upon another life in which the minor has an insurable interest; or
- (b) take an assignment of a policy.

(2) A minor who has attained the age of 16 years may

- (a) effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) take an assignment of a policy,

and, subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policy-holder in relation to a policy of which he is the holder as he would be if he were of full age.

(3) A minor who has attained the age of 16 years may assign or mortgage a policy with the prior consent in writing of his parent or of a person standing *in loco parentis* to the minor.



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*Group Life Insurance***Policy of group insurance**

**112.** Where a contract of insurance is entered into for the provision of group insurance, the insurer 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 insurer;
- (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 insurer 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 insurer**

**113.** 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.

*Designation of Beneficiaries***Designation of beneficiaries**

**114.(1)** The provisions of this section and sections 115 to 126, subject to anything to the contrary contained in those sections, apply in respect of policies taken out after 17th February, 1997.

(2) A policy-holder 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 116 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 policy-holder.

**Irrevocable designations of beneficiaries**

**115.(1)** Subject to subsections (3), (4) and (5) a policy-holder may, by declaration in writing filed with the insurer at the time the policy is taken out or at any time thereafter, designate irrevocably a named person to be beneficiary under the policy and, in such a case

- (a) the policy-holder subject to section 128 may not during the life time 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 policy-holder or the creditors of the policy-holder 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 a former spouse and the marriage ended in divorce or the common law union has come to an end, as the case may be.
- (3) Where the insured purports to designate a beneficiary irrevocably in declaration that has not been filed with the insurer 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 only be made by a policyholder in favour of a spouse or a child.
- (5) A designation by a policy-holder 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 policy-holder; and there is sufficient evidence that it was explained to the policy-holder that the designation was irrevocable.

### **Designation of beneficiaries in wills**

**116.** A designation by a will does not affect a designation made under a policy.

### **Trusts for beneficiaries**

- 117.(1)** A policy-holder 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 insurer.

(3) A payment by an insurer to a trustee for a named beneficiary discharges the insurer from payments to the beneficiary to the extent of the payment.

### **Beneficiary pre-deceasing policy-holder**

**118.(1)** Where under section 114, by a declaration filed with the insurer, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy pre-deceases the policy-holder and no provision is made in the declaration for the disposition of moneys payable under the policy in the event of the beneficiary pre-deceasing the policy-holder then, without limiting or affecting the application of section 115, the monies 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 policy-holder or policy-holders personal representatives, if there are no surviving beneficiaries.

(2) Where 2 or more beneficiaries are designated otherwise than alternatively by a policy-holder, 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**

**119.** 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 pre-deceased the person whose life is insured.

### **Enforcement by beneficiary of trustee**

**120.** A beneficiary may enforce for his own benefit and a trustee appointed pursuant to section 117 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 insurer may invoke against the beneficiary or trustee any defence available against the policy-holder or the policy-holder's personal representative.

### **Designated beneficiary**

**121.(1)** Where a beneficiary other than a personal representative has been designated by a policy-holder, 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 policy-holder or any of them is in effect, the rights and interests of the policy-holder 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 127.

### **Assignment of policy**

**122.(1)** Where a beneficiary is not designated irrevocably, the policy-holder 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 insurer.

(2) Where a beneficiary is designated irrevocably, the policy-holder 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**

**123.(1)** Notwithstanding the designation of a beneficiary irrevocably, the policy-holder is entitled, while living, to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Unless the policy-holder otherwise directs, the insurer may apply the dividends or bonuses declared on the policy for the purpose of keeping the policy in force.

### **Effect of assignment on beneficiaries**

**124.(1)** An assignee of a policy who gives notice in writing of the assignment to the head office of the insurer or to the agent of the insurer 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 as provided in section 115 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this section.

(2) Where a policy is assigned as security, the rights of an 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 policy-holder by the policy and by this Part and shall be deemed to be the policy-holder.

(4) A provision in a policy to the effect that the rights or interests of the policy-holder or in the case of group insurance, the group life insured, are not assignable, is valid.

### **Structured settlements**

**125.(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 3 years as the court may specify.

(2) Nothing in subsection (1) operates to prevent an insurer and a person who has made a claim against an insurer from entering into a settlement agreement for the payment by the insurer of specified payments at specified intervals over a specific period in satisfaction of the claim that has been made.

(3) Notwithstanding the provisions of the *Income Tax Act*, Cap. 73 no tax is payable under that Act by the insured or the beneficiary in respect of payments made or received pursuant to this section.

### **Third party rights**

**126.(1)** Notwithstanding anything contained in this Act, where premises are insured by

- (a) an owner or occupier; or
- (b) an independent contractor,

against risk of injury to visitors or to workmen, as the case may be, a visitor or a workman who sustains injury on those premises is entitled to claim directly under a policy from the insurer without reference to the owner, occupier or independent contractor.

(2) A person who is entitled to a claim against an insurer under subsection (1), may demand that the owner, occupier or independent contractor produce the policy or a copy thereof for examination by him either before or at any stage of legal proceedings instituted for the enforcement of the claim.

(3) Where a policy or a copy of a policy is produced to a person claiming by virtue of a claim made under subsection (2), the owner, occupier or insurer is not entitled to rely on any matter expressed in any supplementary document that was not produced to the person so claiming; but the person so claiming may rely on any such supplementary document at any time that it comes to his notice.

**Insurable interest**

**127.(1)** For the purposes 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 18 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;  
[2001-25]
- (e) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person; and  
[2001-25]
- (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 subsection (1) shall be deemed to have an insurable interest in the life of such other person.  
[2001-25]

(2) This section shall apply to policies whether effected before or after 17th February, 1997.

(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.



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*Protection of Policies***Interest of insured protected in certain cases**

**128.(1)** The property and interest of any person in a policy effected, whether before or after 17th February, 1997, 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 17th February, 1997 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.

(4) Subject to subsections (1), (2) and (3), the rights and interests of a policy-holder 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 policy-holder by any judgment, order or process of any court; and no creditor of such policy-holder may attach any right or interests therein or claim payment thereof, except where

- (a) the purchase of the policy, or the acquiring, conveying, transferring or settling of the assets used to purchase the policy was made with the

intent to wilfully defeat an obligation owed by the policy-holder to a creditor; or

- (b) proceedings in bankruptcy have been commenced by or against the policy-holder in a court of competent jurisdiction at the date of purchase of the policy or within 3 months of the date of the purchase of the policy.

[2001-25]

*Paid-Up Policies, Surrender Values and Non-Forfeiture*

**Paid-up policies**

**129.(1)** A policy-holder who desires to discontinue further premium payments on a policy on which premiums have been paid 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 policy**

**130.** 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**

**131.** Where the Supervisor is of the opinion that the payment in cash of surrender values as required by section 130 would be prejudicial to the financial stability of the company or to the interests of the policy-holders of that company, he may, on application by a company, suspend or vary for such period and subject to such conditions as the Supervisor 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**

**132.(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 proceeding 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 compound interest on the premium, on terms not less favourable to the policy-holder than such terms as may be prescribed.

(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 policy-holder 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 28 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 30 days has passed after the service of the notice.

(5) For the purposes of subsection (4), a notice posted to the last known address of the policy-holder shall be deemed to be a notice on the policy-holder.

#### **Non-forfeiture of industrial policies in certain cases of non-payment of premiums**

**133.(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 the premium has remained unpaid for not less than 4 weeks after it became due.

(2) An industrial policy on which not less than one year's but less than 2 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 not less than 8 weeks after it became due.

(3) An industrial policy on which not less than 2 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 not less than 12 weeks after it became due.

(4) In the event of an industrial policy on which not less than 3 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 policy-holder, 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 policy-holder 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.

#### **Treatment of debts on grant of paid-up policies**

**134.** Where under any provision of this Part a policy-holder is entitled to receive, or a company is required to grant, a paid-up policy and there is any debt owing 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, upon a basis approved by the Supervisor, the debt so owing to the company, and thereupon the debt shall cease to be owing to the company.

#### *Payment of Policy Moneys*

#### **Payment without probate or administration in certain cases**

**135.(1)** An insurer by whom 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 \$10 000 to any person who satisfies the insurer 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.

(2) An insurer who 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 insurer 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**

**136.(1)** Subject to this section, where a policy-holder, not being the person whose life is insured by the policy, pre-deceases 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 policy-holder, 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 policy-holder,

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) does 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 applies in relation to a policy referred to in subsection (1) whether the deceased holder dies before or after 17th February, 1997.
- (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 \$2 000; or
  - (b) a policy which is one of 2 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 \$2 000.
- (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 paid by it**

**137.** Nothing contained in this Part shall be construed as requiring a company to see to the application of any moneys paid under section 135 by the company in respect of any policy.

**Unclaimed moneys**

- 138.(1)** A company shall, not later than 60 days after the end of its financial year, deliver to the Supervisor a statement of all unclaimed moneys as at that date.
- (2) The statement shall set forth, in respect of each policy to which it refers, the name of the person whose life is insured, the name of the policy owner if known, their last known addresses, the amount due and the date on which the amount became due.
- (3) The company shall pay to the Supervisor 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.

**Further provisions relating to unclaimed moneys**

**139.(1)** Where unclaimed moneys have been paid to the Supervisor by a company under section 138 and the Supervisor is satisfied that, but for that section, a person would be paid those unclaimed moneys by the company or, where that company is no longer carrying on that class of insurance business, by a company to which that class of insurance business of the first-mentioned company has been sold or disposed of, the Supervisor shall pay those unclaimed moneys to that company and specify the person to whom the company is to pay those moneys and the company shall thereupon pay those moneys to that person.

(2) Where a company, after paying to the Supervisor an amount in respect of a policy pursuant to section 138 satisfies the Supervisor that the amount so paid exceeds the amount that would have been payable under the policy to the policy-owner, the Supervisor shall refund to the company the amount of the excess.

(3) Subject to subsection (1), a company is, upon payment to the Supervisor of an amount as required by this section, discharged from further liability in respect of that amount.

(4) All unclaimed moneys paid to the Supervisor under section 138 shall be paid by him into the Consolidated Fund to the credit of a special account and on the written authorisation of the Supervisor there shall be paid from the Consolidated Fund and charged to that account such sums as are necessary to give effect to this section.

(5) A company that fails to comply with any provision of section 138 or of this section is guilty of an offence.

(6) For the purposes of section 138 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 policy or



endowment insurance policy that are not claimed within 7 years after the maturity date of the policy.

*Provisions Relating to Industrial Life Insurance Business*

**Objection to policies**

- 140.**(1) Where, within 28 days after a company delivers an industrial policy
- (a) to the policy-holder; or
  - (b) at the residence of the policy-holder, to some other person who resides there and is apparently not less than 16 years of age and by whom any premium in respect of the policy is paid on behalf of the policy-holder,

the policy-holder 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**

**141.** 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 28 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 policy-holder.

### **Falsification**

**142.** 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.

### **Avoidance of policy by reasons of particulars in proposal filled in by agent or servant of company**

**143.(1)** Where any agent or servant of a company writes or fills in or has before 17th February, 1997 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 proponent 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 filled in unless the incorrect or untrue statement was in fact made by the proponent 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**

**144.** 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 Supervisor as to
  - (i) the right of the policy-holder to be granted a paid-up policy;
  - (ii) the right of the policy-holder 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**

**145.(1)** A company shall, in respect of each industrial policy issued by the company, issue to the policy-holder a premium-receipt book in compliance with this section at the time of the issue of the policy.

(2) Notwithstanding subsection (1), where the policy-holders concerned do not object, the company may

- (i) issue one premium-receipt book in respect of 2 or more policies if held by the same policy-holder or by 2 or more policy-holders 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 policy-holder 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 2 or more policies held by different policy-holders not being members of the same household.

(4) Where a premium-receipt book issued to a policy-holder by a company complies with the provisions of this section or it is amended to comply with those provisions and is returned to the policy-holder, 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 subsection (1) of section 144;
- (b) an entry made by the company of the following matters, namely
  - (i) the surname and initials of the policy-holder and, where the policy is issued in respect of the life of a person other than the policy-holder, the surname and initials 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 books to show date to which premiums paid, etc.**

**146.(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 clearly to indicate the date to 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 initialled 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 145 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**

**146A.**(1) An insurer shall not carry on in Barbados variable insurance business unless the Supervisor 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 Part shall be made to the Supervisor 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 Supervisor may, upon receipt of an application under this section, request the insurer to furnish such additional information as he may consider to be relevant in relation to the application and the insurer shall comply with the request.

(4) Where, after the Supervisor grants approval under subsection (1), any change takes place in the particulars of the information supplied in the application for approval, the insurer shall within 30 days of the change notify the Supervisor in writing of the change; and this requirement of notification shall be a condition of the approval.

(5) The Supervisor 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

- (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, administrative, 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 Supervisor with any information or reports in connection with the services which the Supervisor 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 benefits under the policies as may be prescribed, whether by sending notices to the policy-holders or depositing statements with the Supervisor;
- (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 this Act;
- (f) restricting the descriptions of 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 to any index of value of property in accordance with the regulations prescribed for such purpose.

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[2001-25]

### **Revocation of approval**

**146B.(1)** The Supervisor 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 90 days of its receipt of notice from the Supervisor, requiring the insurer to remedy such breach.

(2) Where the Supervisor proposes to revoke approval granted to an insurer under section 146A for a breach of any condition imposed in respect of the approval, he shall notify the insurer of its right under section 177 to request the Supervisor to refer the proposal for review by the Minister.

(3) Where the Supervisor revokes his approval under subsection (1), the insurer shall cease to issue any new policies in respect of its variable insurance business; and the Supervisor may take any further action as may be authorised by this Act.

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[2001-25]

#### **Submission of reports, annual statements etc.**

**146C.** An insurer authorised to carry on variable insurance business in accordance with this Act shall submit to the Supervisor, in addition to any other reports required under this Act, an annual statement of its variable insurance business including investment summaries in a form approved by the Supervisor, together with such additional information concerning its variable insurance operations or separate accounts as the Supervisor shall deem necessary.

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[2001-25]

#### **Allocation of assets in respect of separate accounts**

**146D.(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.



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- (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
- (a) the valuation reserves for the variable portion of the variable life insurance policies; and
  - (b) the benefit base for those policies.
- (3) Unless approved by the Supervisor 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.

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[2001-25]

#### **Authority to grant financial assistance with assets concerning separate account**

**146E.** Subject to the provisions of this Act, a company registered under this Act may grant advances, credit, financial guarantees or other forms of financial assistance with the assets allocated to or concerning a separate account without reference to the net value of the separate account.

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[2001-25]

#### **Charges against separate account**

**146F.** 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:

- (i) taxes or reserves for taxes attributable to investment gains and income of the separate account;

- (ii) actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;
- (iii) actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;
- (iv) charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate accounts;
- (v) charges, at a rate specified in the policy, for mortality and expense guarantees;
- (vi) any amounts in excess of those required to be held in the separate accounts; and
- (vii) charges for incidental insurance benefits.

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[2001-25]

### **Custody of assets of separate account**

**146G.** 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 Supervisor:

- (i) a bank or other financial institution licensed under the *Financial Institutions Act*, Cap. 324A;
- (ii) an offshore bank licensed under the *Offshore Banking Act*, Cap. 325;
- (iii) 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

- (iv) any subsidiary or affiliate of any person named in the foregoing paragraphs of this section.

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[2001-25]

*Mutualisation*

**Conversion into mutual companies**

**147.(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 Barbados that has a share capital and that is registered under this Act to transact long-term insurance business, whether alone or in combination with any other class of insurance business, may, with the permission of the Supervisor, 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 Supervisor.

(3) A company may be de-mutualised by means of the procedure specified in subsection (1).

PART VI  
GENERAL INSURANCE  
*Conditions*

**Application of this Part**

**148.** This section and sections 149 to 151 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**

**149.(1)** Every insurer shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement of account, reserves on the following basis

- (a) 80 per cent of the unearned premiums computed *pro rata per mensem*, as at the date of the statement; or
- (b) 40 per cent of the annual premium for the year of accounting, as at the date of the statement; or
- (c) such amount as is calculated actuarially if the actuarial basis is approved by the Supervisor,

whichever is higher.

(2) The Minister may, subject to such conditions and to such extent as he thinks fit, exempt any insurer from the provisions of this section.

(3) For the purpose of this section “premium” means in relation to a class of insurance business such premium as may be prescribed as being the net premium in relation to that class.

**Dividend not to impair capital**

**150.** No dividend shall be paid by any local company while its assets are less than the amount required for solvency by section 58 nor shall any dividend be paid that would reduce its assets below the same amount or impair its capital.

**Contravention**

**151.** Where it appears to the Supervisor that the assets of any company fall below the requirements for solvency of section 58 and after a reasonable time has been given to the company to be heard by him, the Supervisor shall

- (a) cancel the registration of the company; or
- (b) upon such terms and conditions as the Supervisor 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 149, or if the company has contravened the requirements of section 150, its certificate of registration shall be withdrawn.

**Appropriation of profits towards surplus**

**152.(1)** Until the surplus of a local company equates or exceeds the liability of the company in respect of outstanding unmatured policies required to be included in the annual statement in accordance with section 149, the company shall at the end of each year appropriate toward surplus at least 25 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 149.

(3) The Supervisor may give directions as to the portions of surplus of a local company or of any association of underwriters incorporated in Barbados that shall be invested in Barbados, but the Minister may prescribe the manner in which they may be invested and the extent of the investment.

### **Establishment of insurance pools**

**153.(1)** The Minister may require companies to establish an insurance pool for the purpose of covering risk for a particular class of persons if the Minister determines that

- (a) it is in the national interest to do so; and
- (b) a particular insurance cover is not readily available.

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

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

### **Self-insurance**

**154.(1)** After 17th February, 1997 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.

**Additional reserves**

**155.(1)** In addition to the reserves required under section 149, every insurer carrying on general insurance business shall, in respect of all classes of that business

- (a) provide reserves for meeting claims outstanding at the date of its annual statement of account; and
- (b) set aside reserves for meeting catastrophes in such manner as the Minister may prescribe by regulations.

(2) The reserves referred to in subsection (1), are, in relation to a class of insurance business, such reserves as may be prescribed as being the net reserves in relation to that class.

(3) The Minister may, subject to such conditions and to such extent as he thinks fit, exempt any insurer from the provisions of this section.

(4) Every company shall furnish to the Supervisor details of the method used in calculating the reserves referred to in subsection (1).

(5) The Supervisor may disallow any method used for the calculation of reserves referred to in subsection (1), where he is satisfied that such a method does not result in the provision of adequate reserves.

*Motor Vehicle Insurance*

**Notice of expiration etc. of cover notes and policies**

**156.** Section 51 of the *Road Traffic Act*, Cap. 295 applies to all insurance companies offering motor vehicle insurance in respect of

- (a) the expiration or cancellation of cover notes and insurance policies; and
- (b) a notice of total loss accepted as such by insurance companies.

**Issue of policies**

**157.** A company carrying on motor vehicle insurance business shall issue a certificate of insurance as required by the *Road Traffic Act*, Cap. 295 on or before the expiration of the cover note or, where no cover note has been issued, within 7 days of receipt of the first premium or part premium paid on behalf of the policy in respect of which that certificate is so required.

PART VII  
MISCELLANEOUS

**Registers to be kept**

**158.(1)** A company shall in accordance with section 159 keep a register of policies at its principal office in Barbados, and the register shall, at all times during the normal business hours of the company, be available for inspection by the Commissioner of Police, the Chief Technical Director attached to the Minister responsible for Public Works or by some person authorised in writing by either of them.

(2) A company shall have a representative in charge of the registry.

(3) Notice in writing of the situation of the registry and of the name of the representative in charge of the registry shall be lodged with the Supervisor.

(4) Whenever any change takes place in the situation of the registry or in the identity of the representative in charge of the registry, notice in writing of the change shall be lodged with the Supervisor.

**Registration of policies**

**159.(1)** Every policy in Barbados existing at 17th February, 1997 shall at that date be deemed to be registered by the company in the register kept at its registry in Barbados.



- (2) Every policy in Barbados issued by a company after 17th February, 1997 shall immediately after issue be registered by the company in the register kept at its registry in Barbados.
- (3) Unless otherwise agreed by the company and the policy-holder, all moneys payable in respect of a policy shall be payable at the registry at which it is for the time being registered.
- (4) Any policy may, at the request in writing of the policy-holder, and with the consent of the company, be transferred from a register outside Barbados to a register in Barbados or from a register in Barbados to a register outside Barbados.
- (5) All expenses incurred in connection with any transfer of a policy in pursuance of either subsection (3) or subsection (4) shall be borne by the policy-holder.

#### **Insurance policy documents to be issued expeditiously**

- 160.(1)** Where a person has entered into a contract of insurance with an insurer, the insurer shall forward to that person the relevant insurance policy documents within 30 days of the entering into a contract or such other time as the Supervisor may consider reasonable.
- (2) An insurer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for a term of 6 months.

#### **Lost policy**

- 161.(1)** Where
- (a) the holder of a policy; or
  - (b) a person claiming the benefit of the provisions of section 135 or section 136 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 and upon such evidence as to the loss or destruction of the original policy as the company deems sufficient, issue to the applicant a special policy in substitution for the original policy.

(2) Where an application under subsection (1) is 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 135 or 136 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) Before issuing a special policy, the company shall, if the amount insured, exclusive of bonus additions exceeds \$5 000, give at least one month's notice of its intention to do so in the *Official Gazette* and in a newspaper published in Barbados and approved by the Supervisor.

(5) The expenses of the advertisement and all other costs of the issue of a special policy shall be paid by the applicant at the time of the application.

(6) 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.

(7) 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.

(8) Where the company fails to issue a special policy within 6 months after receipt of an application in writing from the policy-holder, 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.

(9) Where the holder of a special policy or a person claiming the benefit of the provisions of section 135 or 136 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**

**162.** 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.

#### **Condition as to war risk void**

**163.** Any term or condition of a policy issued after 17th February, 1997 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 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**

**164.** 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**

**165.** Every policy issued in Barbados or to a person resident in Barbados through a person or office in Barbados shall be governed by the laws of Barbados and shall be subject to the jurisdiction of the courts of Barbados, notwithstanding any provision to the contrary in the policy or in any agreement relating to the policy.

**Payment of moneys in local currency**

**166.** Where any policy is issued after 17th February, 1997 in respect of which the premiums are payable or paid in Barbados the premiums shall be payable or paid, as the case may be, and any sums payable or paid upon the maturity of such policy shall be payable or paid, as the case may be, in Barbados dollars or any other currency which is legal tender in Barbados.

**Currency in which major medical policies may be paid****166A.(1)** Where

- (a) a policy relating to the coverage of major medical health care is issued by an insurance company in Barbados; and
- (b) the policy is issued to a person residing in Barbados or within the CARICOM Single Market and Economy,

a claim relating to that policy may be paid in the currency of the United States of America or in the currency of any other country where

- (i) the approval of the Minister was sought before the policy was issued for the claims to be so paid; and
- (ii) the insurance company satisfies the conditions specified in subsection (2).

**(2)** Where an insurance company

- (a) intends to issue a policy referred to in subsection (1), the insurance company must satisfy the Minister, before the policy is issued, that the required foreign currency would be available to meet claims arising under the policy; and
- (b) issues a policy referred to in subsection (1), section 103 shall apply to the policy.

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[2007-21]

**Power to pay money into court**

**167.(1)** Subject to rules of court, any insurance company carrying on life insurance business may, after giving notice in writing to the Supervisor, 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.

**Approval required for notice offering shares for subscription**

**168.(1)** A person shall not publish in respect of any company or in respect of a company proposed to be formed after 17th February, 1997 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 Supervisor.

(2) A person acting as promoter of a proposed company shall not accept any office of profit in the company or any payment or pecuniary advantage other than as provided in any such prospectus, notice, circular, advertisement or other invitation.

**Publication of authorised subscribed and paid-up capital**

**169.** 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**

**170.(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 with Division F of Part I of the *Companies Act*, Cap. 308 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 3 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.

(4) This section does not apply to a company that is incorporated outside Barbados.

**Inspection of documents**

**171.** Any person may, upon payment of such fee as is prescribed, inspect at the office of the Supervisor any document furnished to the Supervisor under section 39 and make a copy of, or extract from, the document.

**Documents to be received in evidence**

**172.** Every document purporting to be certified by the Supervisor to be a document lodged with him 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**

**173.** 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 Supervisor in writing of the authorisation.

**Printing of documents**

**174.** Where a document is, by this Act, required to be printed, the Supervisor may, in his discretion, permit it to be typewritten or lithographed or to be reproduced by any mechanical means approved by the Supervisor.

**Service of notices**

**175.(1)** Without prejudice to section 25 of the *Interpretation Act*, Cap. 1, 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 Supervisor 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 Supervisor or to the address filed with the Supervisor under subsection (1) of section 8,

and if it is so sent by post, shall be deemed to have been given or served on the date on which it would have been delivered in the ordinary course of post.

- (2) In this section, the expression “company” includes a body corporate that has ceased to carry on insurance business in Barbados.

#### **Power to collect statistics**

**176.(1)** The Supervisor shall collect at such times as are prescribed such statistics in relation to insurance business as are prescribed.

- (2) For the purpose of enabling the Supervisor to collect statistics under this section, every company shall furnish to the Supervisor in accordance with the prescribed form and at such times as are prescribed such particulars as are specified in that form.

#### **Decisions, etc. of Supervisor subject to review by Minister**

**177.(1)** Any person who pursuant to any provisions of this Act or of any statutory instrument is notified of any action, decision, ruling, direction, order or proposal of the Supervisor in any case may within 30 days of such notification, request the Supervisor by memorandum in writing setting out the grounds for his request, to refer the case for review by the Minister.

- (2) Where the Supervisor is requested to refer to a case for review by the Minister, he shall do so with all reasonable despatch.



- (3) Where a case is referred to the Minister for review under this section, the Minister shall, after considering the memorandum, give his decision in writing and may, subject to the following provisions of this section, confirm, vary, cancel or reverse the Supervisor's action, decision, ruling, direction, order, proposal or any part thereof, as the case may be, whether or not the request for review relates to that part.
- (4) Before reviewing any case referred to him under this section, the Minister shall, if either the person making the request, hereinafter referred to as the applicant, or the supervisor so desire, give each of them an opportunity of appearing before and being heard by a person or persons appointed by the Minister for the purpose.
- (5) The decision of the Minister on review of any case referred to him under this section shall be final.
- (6) On the review of any case referred to him under this section, the Minister shall forward a copy of his decision to the Supervisor and a copy to the applicant, together with a written statement of the reasons for his decision, if requested by the applicant.

**Gazetting of registration, etc.**

**178.(1)** Where

- (a) the application for registration of an insurance company under Part II, an association of underwriters under Part III or of any person under Part IV is refused;
- (b) an insurance company, an association of underwriters or a person is registered under Part II, Part III, or Part IV, as the case may be;
- (c) the registration of an insurance company, an association of underwriters or of any person under Part II, Part III or Part IV, as the case may be, is cancelled,

the Supervisor shall cause notice of the refusal, registration or cancellation to be published at least once in the *Official Gazette* and in a newspaper published in Barbados.

(2) The Supervisor shall from time to time cause to be published in the *Official Gazette* and in a newspaper published in Barbados up-to-date lists of companies, associations of underwriters and persons registered under Part II, Part III or Part IV, as the case may be.

### **Restriction on use of insurance terms**

**179.** 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 a principal insurer unless that person is registered or exempted from registration under Part II;
- (c) is registered under Part II may, without the written consent of the Supervisor, 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 IV as a broker may, without the written consent of the Supervisor, carry on business as such unless that person has and uses as part of the business name of that person the words “Insurance Brokers” or “Assurance Broker”; and
- (e) is registered under Part IV as an agent or sub-agent and not also registered under Part II may, without the written consent of the

Supervisor, 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**

**180.** 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 Supervisor.

### **Annual Report**

**181.(1)** The Supervisor shall, as soon as practicable after the 31st December in each year, furnish to the Minister for presentation to each House of Parliament a report on the working of this Act during that year, which shall contain such information as the Supervisor considers to be relevant.

(2) The Minister shall, as soon as practicable after the receipt of the Supervisor’s report, cause a copy of the report to be laid before each House of Parliament.

### **Regulations**

**182.(1)** The Minister 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 annually 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 insurance companies;
  - (f) the maintenance and investment of funds by insurance 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 47;
  - (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 subsection (10) of section 19 of the *Interpretation Act*, Cap. 1, any regulations may provide for the imposition of a fine not exceeding \$1 000 or imprisonment for a term not exceeding one year for any contravention of any of the provisions of the regulations.
- (3) Regulations may contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of the regulations.

### **Exemptions**

**183.** Without prejudice to any special power of exemption howsoever expressed conferred by any other provision of this Act, the Minister may by order

- (a) declare that, with effect from a date specified in the order, such of the provisions 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 person direct that, subject to such conditions, if any, as he 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 he 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.

### **Tax concessions**

**183A.(1)** Where the Minister is satisfied that a qualifying insurance company requires the services of a specially qualified individual in order to carry on its business effectively from within Barbados and that the company

- (a) is unable to acquire those services in Barbados; and
- (b) is unable to retain or hire those services from outside Barbados without special tax benefits being made available, the Minister may grant a tax concession in respect of the income tax payable by that individual.

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

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

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

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### **Offences**

**184.(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 Supervisor or a person appointed under section 52,

is guilty of an offence, unless he can prove that he did not knowingly commit the contravention or omission 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 one year from the date on which evidence of the offence comes to the knowledge of the Supervisor.

- (5) No proceedings under this Act shall be commenced after the expiration of 3 years from the commission of the offence.
- (6) For the purposes of this section, a certificate purporting to be signed by the Supervisor as to the date on which that evidence came to his knowledge shall, in any such summary proceedings, be conclusive evidence of that date.
- (7) 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**

**185.** 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 of \$2 500, and where the offence is a continuing offence, by a further fine of \$500 for every day during which the offence continues; and
- (b) in the case of an individual, by a fine of \$1000 or imprisonment for one year, and where the offence is a continuing offence, by a further fine of \$250 for every day during which the offence continues.

### **Non-application of certain provisions of *Companies Act***

**186.** Sections 153 to 156 and section 343 of the *Companies Act*, Cap. 308, shall not apply to a registered insurer.

### **Married persons**

**187.** The *Married Persons Act*, Cap. 219 or any legislation in force relating to married persons' property, in so far as it creates a statutory trust of a life policy, has no effect in relation to sections 114 to 123 of this Act.

**FIRST SCHEDULE***PROVISIONS RELATING TO DEPOSITS UNDER SECTIONS 24 AND 79***Interest on securities deposited with Supervisor**

- 1.(1) All deposits made by or on behalf of a registered insurer pursuant to section 24 or 79 shall be deemed to form part of the assets of the insurer.
- (2) All interest and dividends accruing due on any securities deposited pursuant to section 24 or 79 shall be paid to the registered insurer.

**Certificate of deposit**

2. The Supervisor shall, on demand by a registered insurer, furnish to the insurer a certificate in writing setting out the nature and extent of any deposit held by the Supervisor under section 24 or 79 in respect of that insurer together with the particulars of the securities (if any) forming the whole or part of the deposit.

**Increase of deposit where securities have depreciated**

- 3.(1) Where the Supervisor 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 registered insurer with him falls short of the value required by Part II or Part III, he shall, by notice in writing, require the registered insurer to deposit with him money or prescribed securities or both to a value deemed by him to be sufficient to bring the amount of the deposit to the value required by Part II or Part III, as the case may be.
- (2) A notice under this paragraph shall not be issued until the Supervisor has given an opportunity to the registered insurer to be heard in connection with the matter.
- (3) Any registered insurer who fails to deposit with the Supervisor money or prescribed securities or both as required by him under this paragraph is guilty of



an offence, and the Supervisor may, if he considers it necessary in the interest of the policy-holders, cancel the registration of the registered insurer.

#### **Responsibility for lost securities**

4. Where any moneys or securities held by the Supervisor as, or as part of, the deposit required to be made by the registered insurer under section 24 or section 79 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.

#### **Substitution and withdrawal of deposits**

5.(1) A registered insurer may at any time substitute for any security or cash held by the Supervisor as, or as part of, the deposit required to be made under section 24 or section 79, any prescribed security, but so that the total amount then deposited is not less than the amount required by Part II or Part III, and any security so substituted shall be subject to the same charge or liability as the security or cash withdrawn.

(2) (a) When a registered insurer has ceased to transact business and has given written notice to that effect to the Supervisor, or when the registration of a registered insurer has been cancelled, the securities and cash of the insurer in the hands of the Supervisor shall not be delivered to the insurer until all his outstanding risks are insured or until surrenders thereof are obtained to the satisfaction of the Supervisor.

(b) Upon making application for its securities or cash, a registered insurer shall file with the Supervisor, in respect of all policies issued locally, a list of all policy-holders who have not been so re-insured or who have not surrendered their policies and the registered insurer shall at the time publish, and continue the publication at least once a week for 12 consecutive weeks, in the *Official Gazette* and in at least one newspaper published in Barbados and approved by the Supervisor, a notice that he will apply to the Supervisor for the release of his securities and cash on a certain day not less than 3 months after the date on which the notice

is first published in the *Official Gazette* and calling upon the policy-holders opposing such release to file notice of their opposition with the Supervisor on or before the day so named.

- (c) After the day so named in the said notice, if the Supervisor is satisfied that the deposit of the registered insurer with him is substantially in excess of the requirements of Part II or Part III, as the case may be, in respect of the continuing policy-holders, he may with the concurrence of the Minister from time to time release to the insurer such portion of the excess as he thinks proper in the circumstances, and shall continue to hold the remainder of the deposit for the protection of the continuing policy-holders as provided for in Parts II and III.
  - (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 registered insurer is a body corporate, then if it is in liquidation the securities of such insurer may, on the order of any court having jurisdiction under this Act or the *Companies Act*, Cap. 308, be released by the Supervisor to the liquidator.
- (3) Where the registration of a registered insurer who has not commenced to carry on insurance business in Barbados is cancelled pursuant to Part II or Part III, the Supervisor shall refund to such insurer any moneys and deliver to him any securities, deposited by him pursuant to section 24 or section 79.

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**SECOND SCHEDULE***(Section 33(1))***PART I****ASSETS IN WHICH THE STATUTORY FUNDS MAY BE INVESTED**

- 1.** Securities of the following classes
  - (a) the bonds, debentures, stocks or other evidence of indebtedness of or guaranteed by the Government of
    - (i) Barbados,
    - (ii) any part of the Commonwealth,
    - (iii) the Republic of Ireland,
    - (iv) the United States of America or a State thereof,
    - (v) any country approved by the Minister in which the company is situated or a province or State thereof;
  - (b) the bonds or debentures of a company that are secured by the assignment to a trust company in Barbados of an annual payment that the Government of Barbados has agreed to make, where such annual payment is sufficient to meet the interest falling due on the bonds or debentures outstanding and the principal amount of the bonds or debentures maturing for payment in the year in which the annual payment is made;
  - (c) the bonds or debentures issued by a charitable, educational or philanthropic body where annual subsidies, sufficient to meet the interest as it falls due on the bonds or debentures and to meet the principal amount of the bonds or debentures on maturity, are by virtue of any enactment payable to a trust company as trustee for the holders of the bonds or debentures;

- (d) the bonds, debentures or other evidences of indebtedness of a company incorporated in Barbados that are fully secured by statutory charge upon real estate or upon the plant or equipment of the company used in the transaction of its business, if interest in full has been regularly paid for a period of at least 10 years immediately preceding the vesting thereof in trust upon the securities of that class of the company then outstanding;
- (e) the bonds, debentures or other evidences of indebtedness issued by an authority or other body without share capital established and empowered by any enactment to administer, regulate the administration of, provide or operate housing, port, harbour, airport, transportation, communication or gas services or facilities and for any of these purposes to levy, impose or make taxes, rates, fees or other charges that may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operating, maintenance and debt service charges;
- (f) the bonds, debentures and other securities of or guaranteed by the Caribbean Development Bank or the Barbados Development Bank;
- (g) the bonds, debentures or other evidence of indebtedness
  - (i) of a company incorporated in any country listed in subparagraph (a) that has paid
    - (A) a dividend in each of the 5 years immediately preceding the vesting thereof in trust at least equal to the specified annual rate upon all of its preferred shares; or
    - (B) a dividend in each year of a period of 5 years ended less than one year before the date of vesting thereof in trust upon its ordinary shares of at least 6 per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid, or

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- (ii) of or guaranteed by a company incorporated in any country listed in sub-paragraph (a) where the earnings of the company in a period of 5 years ended less than one year before the date of the vesting thereof in trust have been equal in sum total to at least 10 times and in each of any 4 of the 5 years have been equal to at least 1½ times the annual interest requirements at the date of the vesting in trust on all indebtedness of or guaranteed by it other than indebtedness classified as a current liability in the balance sheet of the company, and if the company owns directly or indirectly more than 50 per cent of the ordinary shares of another company, the earnings of the company during the said period of 5 years may be consolidated with due allowance for minority interest, if any, and in that event the interest requirements of the company shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the company; and for the purposes of this sub-paragraph “earnings” means earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability;
- (h) guaranteed investment certificates issued by a trust company incorporated in any country listed in sub-paragraph (a) that, at the date of vesting thereof in trust, complied with the requirements described in sub-paragraph (g)(i) in respect of the payment of dividends;
- (i) the preferred shares of a company incorporated in any country listed in subparagraph (a) that has paid
- (A) a dividend in each of the 5 years immediately preceding the date of vesting of such preferred shares in trust at least equal to the specified annual rate upon all of its preferred shares, or
  - (B) a dividend in each year of a period of 5 years ended less than one year before the date of the said vesting upon its ordinary

shares of at least 6 per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid;

- (j) the fully paid ordinary shares of a company incorporated in any country listed in sub-paragraph (a) that during a period of 5 years that ended less than one year before the date of purchase of the ordinary shares has either
  - (A) paid a dividend in each such year upon its ordinary shares, or
  - (B) had earnings in each such year available for the payment of a dividend upon its ordinary shares, of at least 6 per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid or in which the company had earnings available for the payment of dividends, as the case may be.

2. Mortgages or other titles for repayment of loans secured by

- (a) real estate or leaseholds for a term of years or other estate or interest in real estate in Barbados or in a country where the company carries on business, being a country listed in paragraph 1(a), where the amount of the loan together with the amount of indebtedness under any mortgage or other charge on the real estate or interest thereon ranking equally with or superior to the loan does not exceed  $\frac{3}{4}$  of the value of the estate or interest thereon subject to the exception that a company which has real estate invested in its funds may upon sale thereof, invest a mortgage or other title accepted as part payment and secured thereon for more than  $\frac{3}{4}$  of the sale price of the real estate;
- (b) real estate in leaseholds in Barbados or in a country where the company carries on business, being a country listed in paragraph 1 (a), notwithstanding that the loan exceeds the amount that the company

may otherwise invest in, if the excess is guaranteed or insured by the Government or through an agency of the Government of Barbados or of the country in which the company carries on business.

3. Real estate or leaseholds, being
  - (a) real estate or leaseholds for the production of income in Barbados or in a country where the company carries on business, being a country listed in paragraph 1(a);
  - (b) real estate or leaseholds in Barbados or in a country where the company carries on business, being a country listed in paragraph 1(a), required by the company for the purposes of its business;
  - (c) real estate acquired by a foreclosure of a mortgage on real estate, being a mortgage set out in paragraph 2.
4. Cash balances, or funds in the hands of a trustee or in a trust account maintained by the trustee in Barbados or in a country where the company carries on business, being a country listed in paragraph 1(a).

## PART II

### LIMITATIONS ON INVESTMENT IN PRESCRIBED SECURITIES AND ASSETS

5. An insurance company shall not invest
  - (a) more than 25 per cent of the accepted value of its total assets in Barbados in ordinary shares;
  - (b) more than 25 per cent of the accepted value of its total assets in Barbados in real estate or leaseholds for the production of income; or  
*[2004-4]*
  - (c) in bonds, debentures or other evidences of indebtedness on which payment of principal or interest is in default.

**THIRD SCHEDULE***(Section 99)****BROKERS' DEPOSITS***

<i>Gross Annual Commission</i>	<i>Amount of Deposit</i>
Up to \$500 000	\$ 50 000
\$500 001 to \$1 000 000	\$100 000
\$1 000 001 to \$2 000 000	\$200 000
Over \$2 000 000	\$300 000



**FOURTH SCHEDULE***(Section 22A)****QUALIFYING INSURANCE COMPANIES: REQUIREMENTS WITH  
RESPECT TO INTERNATIONAL INSURANCE BUSINESS***

A qualifying insurance company shall comply with the following requirements with respect to its international insurance business

- (1) A qualifying insurance company must maintain a solvency level.
- (2) Unless the Supervisor otherwise determines, a qualifying insurance company shall not in respect of its general international insurance business be regarded as maintaining a solvency level 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 qualifying insurance company 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 that 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.
- (3) A qualifying insurance company shall not, in respect of its long-term international insurance business, be regarded as maintaining a solvency level if the value of its assets does not exceed its liabilities.

(4) In computing the liabilities of a qualifying insurance company for the purposes of this Schedule, all contingent and prospective liabilities, other than liabilities in respect of share capital or contributed reserves, are to be taken into account.

(5) For the purposes of this Schedule,

(a) “assets” includes

- (i) cash;
- (ii) fixed deposits;
- (iii) 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;
- (iv) loans by way of mortgages on real estate;
- (v) net investment income due and accrued;
- (vi) premiums receivable;
- (vii) re-insurance balances receivable;
- (viii) funds held by ceding re-insurers;
- (ix) accounts receivable (except from a person with whom the qualifying insurance company is associated, unless approved by the Supervisor);
- (x) irrevocable letters of credit drawn or confirmed by a bank licensed under the *Financial Institutions Act*, Cap. 324B or the *Offshore Banking Act*, Cap. 325;
- (xi) deferred acquisition costs;
- (xii) prepaid re-insurance costs;

(xiii) prepaid expenses approved by the Supervisor other than general and administrative expenses; and

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

(6) A qualifying insurance company must in respect of its international insurance business maintain such deposits and reserves as the Supervisor may require, taking into account such assets as are otherwise required to be maintained outside Barbados and such liabilities as are otherwise required to be provided for outside Barbados.

(7) In determining whether a qualifying insurance company is maintaining its solvency as required under this Act there shall not be included in the calculation the assets of any one or more separate accounts maintained by the qualifying insurance company in respect of its variable insurance business, or the liabilities chargeable against such accounts in respect of such business.

*[2001-25]*

*[1998-31; 2001-25]*