



BERMUDA

INSURANCE ACT 1978

1978 : 39

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[preamble and words of enactment omitted]

PART I

Interpretation

1 (1) In this Act, unless the context otherwise requires—

“actuary” means a person qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, or a person recognized by the Authority as an actuary;

“approved auditor” means an auditor approved by the Authority under section 16(3);

“association of underwriters” means an association of individual underwriters, organized according to the system known as Lloyd’s whereby each underwriting member of the association becomes liable for a separate and proportionate part of the sum secured by each policy subscribed to by that association; and, in relation to such an association as aforesaid, “recognized” means recognized by the Authority;

“auditor” means either—

- (a) a person entitled to practise as a public accountant in Bermuda; or
- (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or
- (c) a person recognized by the Authority as an auditor;

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- “Authority” means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;
- “available statutory capital and surplus” means an amount equal to the total statutory capital and surplus including any adjustments thereto made under section 6D or by or under Rules made under section 6A;
- “bank” means an institution licensed as a bank under the Banks and Deposit Companies Act 1999;
- “capital and solvency return” means such return relating to the insurer’s or insurance group’s risk management practices and to the information used by the insurer or insurance group to calculate its enhanced capital requirement as may be prescribed by or under Rules made under section 6A
- “Class 1”, “Class 2”, “Class 3”, “Class 3A”, “Class 3B”, “Class 4” and “Special Purpose Insurer” in relation to an insurer carrying on general business mean the class of the insurer’s registration under section 4;
- “Class A”, “Class B”, “Class C”, “Class D” and “Class E” in relation to an insurer carrying on long-term business, mean the class of the insurer’s registration under section 4; ”
- “code of conduct” means a code of conduct issued by the Authority pursuant to section 2BA;
- “the Court” means the Supreme Court;
- “designated insurer” means an insurer designated by the Authority under section 27B(5) in respect of an insurance group;
- “domestic business” means insurance business where, whether the contract of insurance is made in Bermuda or elsewhere, the subject-matter of the contract is either—
- (a) property that at the time of the making of the contract is in, or in transit to or from Bermuda; or
 - (b) the life, safety, fidelity or insurable interest of an individual who at the time of the making of the contract is ordinarily resident in Bermuda; or
 - (c) a risk of a company formed in Bermuda that is not an exempted company within the definition of that expression in section 127 of the Companies Act 1981 [*title 17 item 5*];
- “eligible capital” means the available statutory capital and surplus of an insurer or an insurance group that qualifies for inclusion in any assessment of the insurer’s or insurance group’s minimum margin of solvency or enhanced capital requirement;
- “enhanced capital requirement” means additional capital and surplus requirement imposed by or under Rules made under section 6A;
- “excepted long-term business” means either—

- (a) credit life business, that is to say, the business of effecting and carrying out contracts of insurance against risks of loss to persons arising from the nonpayment of debts due to such persons by reason of the death of debtors of theirs, being contracts that are—
 - (i) not contracts of domestic business; and
 - (ii) expressed to be in effect for a period of five years or less; and
 - (iii) not either automatically renewable or convertible into contracts of insurance of any other kind or for any different period; and
 - (iv) of a kind which the Authority, upon application made to it by the insurer for the purpose, has given its prior approval in writing for the insurer to effect and carry out; or
- (b) employee group business, that is to say, the business of effecting and carrying out contracts of insurance on the lives of employees of the insurer or of an affiliate (within the definition of “affiliate” in regulation 2 of the Insurance Accounts Regulations 1980 [*title 17 item 49(a)*]) of the insurer, being contracts that are—
 - (i) not contracts of domestic business; and
 - (ii) expressed to be in effect for a period of five years or less; and
 - (iii) not either automatically renewable or convertible into contracts of insurance of any other kind or for any different period; and
 - (iv) made on a group insurance basis; and
 - (v) of a kind which the Authority, upon application made to it by the insurer for the purpose, has given its prior approval in writing for the insurer to effect and carry out;

“financial year”, in relation to an insurer or insurance group, means the period not exceeding fifty-three weeks at the end of which the balance of the insurer’s or insurance group’s accounts is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then calendar year;

“functions” includes powers and duties;

“general business” means, subject to subsection (4), insurance business that is not long-term business or special purpose business;

“group” means a group of companies—

- (a) that consist of a participating company, its subsidiaries and any entities in which the participating company or its subsidiaries hold a participation; or
- (b) that is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those companies;

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- “insolvent” means, in relation to an insurer at any relevant date, that if proceedings had been taken for the winding up of the insurer the Court could, in accordance with sections 161 and 162 of the Companies Act 1981 [*title 17 item 5*], hold or have held that the insurer was at that date unable to pay its debts;
- “inspector” means a person appointed as an inspector under section 30;
- “Insurance Advisory Committee” means the Insurance Advisory Committee mentioned in section 2C;
- “insurance agent” means a person who with the authority of an insurer acts on its behalf in relation to any or all of the following matters, that is to say, the initiation and receipt of proposals, the issue of policies and the collection of premiums, being proposals, policies and premiums relating to insurance business;
- “insurance broker” means a person who arranges or places insurance business with insurers on behalf of prospective or existing policy-holders;
- “insurance business” means the business of effecting and carrying out contracts—
- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
 - (b) to pay a sum of money or render money’s worth upon the happening of an event,
- and includes re-insurance business;
- “insurance group” means a group that conducts, exclusively or mainly, insurance business;
- “insurance manager” means a person who, not being an employee of any insurer, holds himself out as a manager in relation to one or more insurers, whether or not the functions performed by him as such go beyond the keeping of insurance business accounts and records;
- “insurance salesman” means a person who otherwise than as an employee solicits applications for, or negotiates, insurance business on behalf of an insurer or an insurance broker or agent;
- “insurer” means a person carrying on insurance business;
- “long-term business” means, subject to subsection (4), insurance business of any of the following kinds, namely,—
- (a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;
 - (b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated or dying in consequence of disease or disease of a specified class, being contracts that

are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned, but does not include excepted long-term business;

- (c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the persons insured in the future, not being contracts such as fall within either paragraph (a) or (b),

but does not include excepted long-term business or special purpose business;

“long-term insurer” *[Repealed by 2010 : 60 s. 2.]*

“loss reserve specialist” means a person approved by the Authority under section 8B(3) as an insurer’s loss reserve specialist;

“minimum criteria” means the minimum criteria for registration set out in the Schedule;

“minimum liquidity ratio” means the ratio prescribed by regulation 11 of the Insurance Returns and Solvency Regulations 1980;

“minimum margin of solvency” in relation to a particular class of business means the prescribed minimum amount by which the value of the assets of the insurer must exceed the value of its liabilities;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;

“non-resident insurance undertaking” means an insurer carrying on domestic business under a permit granted under section 3 of the Non-Resident Insurance Undertakings Act 1967;

“parent company” has the meaning given in section 1B;

“participating company” means a company that is a parent company, or a company that holds a participation in another company, or a company that is linked to a related company in such a manner as may be prescribed in regulations;

“participation” means the holding, directly or indirectly, of 20% or more of the voting rights or capital of a company;

“prescribed” means prescribed by regulations;

“prudential standards” means such standards of prudence as would, in the opinion of the Authority, ensure that the obligations of the insurer or insurance group in relation to the security of its policyholders are established at an appropriate level;

“to register” means to register under this Act;

- “Register” means the Register for which provision is made in section 13(1);
- “registered person” means a person registered under either section 4 or section 10;
- “regulations” means regulations made under section 53;
- “related company”, in relation to another company, means a subsidiary company of that other company, or a company in which the other company holds a participation, or a company that is linked to the other company in such a manner as may be prescribed in regulations;
- “solvency margin” means, in relation to an insurer carrying on general business, the margin prescribed by regulation 10 of the Insurance Returns and Solvency Regulations 1980, and in relation to an insurer carrying on long-term business, the margin prescribed by regulation 12 of those Regulations;
- “special purpose business” means insurance business under which an insurer fully funds its liabilities to the persons insured through—
- (a) the proceeds of any one or more of the following—
 - (i) a debt issuance where the repayment rights of the providers of such debt are subordinated to the rights of the person insured; or
 - (ii) some other financing mechanism approved by the Authority;
 - (b) cash; and
 - (c) time deposits;
- “Special Purpose Insurer” means an insurer that carries on special purpose business;
- “statutory financial return” means the return provided for in section 18;
- “statutory financial statements” means the accounts provided for in section 15;
- “subsidiary company” has the meaning given in section 1B, and “subsidiary” has a corresponding meaning;”;
- “total statutory capital” in relation to an insurer or insurance group, means the total statutory capital of the insurer or insurance group as calculated in accordance with the Insurance Accounts Regulations 1980;
- “total statutory capital and surplus” in relation to an insurer or insurance group, means the total statutory capital and surplus of the insurer or insurance group as calculated in accordance with the Insurance Accounts Regulations 1980;
- (2) *[spent on repeal of the Companies (Winding Up) Act 1977]*
 - (3) In this Act—
 - (a) any reference to carrying on business from within Bermuda includes reference to carrying on business outside Bermuda from a principal place of business within Bermuda;

- (b) unless the context otherwise requires, any reference to carrying on the business of effecting and carrying out contracts of any kind includes reference to carrying on one aspect, or some aspects, only of that business;
 - (c) every company or body, being a company or body formed in Bermuda with power to carry on insurance business, shall, if carrying on insurance business anywhere, be deemed to be carrying on insurance business in or from within Bermuda for the purposes of section 3(1).
- (4) The limitations upon the meaning of “general business” and “long-term business” as defined in subsection (1) shall, in relation to any insurer, not operate to disentitle that insurer—
- (a) if authorized to carry on general business, from carrying on long-term business; or
 - (b) if authorized to carry on long-term business, from carrying on general business,
- being—
- (aa) in the case set forth in paragraph (a), long-term business as to which the Authority has given a direction under section 56 on the ground that it is satisfied that that long-term business either is or will be only incidental to the insurer’s general business, or is or will be of such a limited extent that the insurer ought not to be treated in all respects as a composite within the definition of “composite” in regulation 2 of the Insurance Accounts Regulations 1980 [title 17 item 49(a)]; or
 - (bb) in the case set forth in paragraph (b), general business as to which the Authority has given a corresponding direction *mutatis mutandis*.
- (5) In this Act, any reference to a “designated insurer” shall be construed as a reference to the designated insurer in relation to group supervision under this Act and in respect of the insurance group of which it is a member.

[NB References to “Minister” and “Registrar” replaced throughout Act by references to “Supervisor” by 2001:27 s.3 & Sch and s.4 effective 1 October 2001; references to “Supervisor” replaced throughout by references to “Authority”, and consequential appropriate grammatical changes made, by 2001:33 s.5

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effective 1 January 2002. These amendments are not individually noted in each place in which they occur.]

[section 1 amended by 1995:20 effective 29 April 1995; in subsection (1), "bank" substituted by BR81/1999 effective 1 January 2000; "Registrar" deleted, "Supervisor" inserted, by 2001:27 s.5 effective 1 October 2001; "Supervisor" deleted, "Authority" inserted, by 2001:33 s.3 effective 1 January 2002; "approved auditor" inserted, and "loss reserve specialist" substituted, by 2004:29 s.3 effective 10 December 2004; "Insurance Advisory Committee" amended, "minimum criteria", "parent company", "registered person" and "subsidiary company" inserted, by 2006:28 s.3 effective 24 July 2006; "code of conduct" inserted by 2006:42 s.3 effective 29 December 2006; "Class 1", "Class 2", "Class 3", "Class 3A", "Class 3B", "Class 4" and "Special Purpose Insurer", "general business" and "longterm business" amended, "special purpose business" and "Special Purpose Insurer" inserted by 2008:34 s.3 effective 30 July 2008; "available statutory capital and surplus", "capital and solvency return", "enhanced capital requirement" and "prudential standards" inserted by 2008:34 s.3 effective 31 December 2008; "capital and solvency return", "financial year", "prudential standards", "total statutory capital", "total statutory capital and surplus" amended, "designated insurer", "group", "insurance group", "participating company", "participation", "related company", subsection 5 inserted by 2010 : 22 s. 3 effective 29 March 2010; subsection (1) "available statutory capital and surplus", "capital and solvency return", "enhanced capital requirement" amended, "Class A", "Class B", "Class C", "Class D" and "Class E", "eligible capital", and "minimum margin of solvency" inserted, and "long-term insurer" deleted by 2010 : 60 s. 2 effective 31 December 2010; Section 1 subsection (1) "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011]

Meaning of "director", "controller", "chief executive", "officer", "senior executive", "associate"

1A (1) In this Act, "director", "controller", "chief executive", "officer", "senior executive", and "associate" shall be construed in accordance with the provisions of this section.

(2) "Director", in relation to a registered person, includes any person who occupies the position of director, by whatever name called.

(3) "Controller", in relation to a registered person, means—

- (a) a managing director of the registered person or of another company of which it is a subsidiary company;
- (b) a chief executive of the registered person or of another company of which it is a subsidiary;
- (c) a person who satisfies the requirements of this paragraph; or
- (d) a person in accordance with whose directions or instructions the directors of the registered person or of another company of which it is a subsidiary or persons who are controllers of the registered person by virtue of paragraph (c) (or any of them) are accustomed to act.

(4) A person satisfies the requirements of subsection (3)(c) in relation to a registered person if, either alone or with any associate or associates—

- (a) he holds 10 per cent or more of the shares carrying rights to vote at any general meeting of the registered person or another company of which it is a subsidiary company;

- (b) he is entitled to exercise, or control the exercise of 10 per cent or more of the voting power at any general meeting of the registered person or another company of which it is such a subsidiary; or
- (c) he is able to exercise a significant influence over the management of the registered person or another company of which it is such a subsidiary by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the registered person or, as the case may be, the other company concerned.

(5) A person who is a controller of a registered person by virtue of subsection (3) (c) is in this Act referred to as a “shareholder controller” of the registered person; and in this Act—

- (a) a “10 per cent shareholder controller” means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (b) a “20 per cent shareholder controller” means a shareholder controller in whose case that percentage is 20 or more but less than 33;
- (c) a “33 per cent shareholder controller” means a shareholder controller in whose case that percentage is 33 or more but less than 50;
- (d) a “50 per cent shareholder controller” means a shareholder controller in whose case that percentage is 50 or more;

(6) In subsection (5), “the relevant paragraph” in relation to a shareholder controller means whichever of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(7) “Chief executive”, in relation to a registered person, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the registered person.

(8) “Officer”, in relation to a registered person, includes a director, secretary, chief executive or senior executive of the registered person by whatever name called.

(9) “Senior executive”, in relation to a registered person, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the registered person—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the registered person.

(10) “Associate” in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means—

- (a) if that person is an individual—
 - (i) the spouse, child, step-child or parent of that person;
 - (ii) the trustees of any settlement under which that person has a life interest in possession;
 - (iii) any company of which that person is a director;
 - (iv) any person who is an employee or partner of that person;
- (b) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary of that company ;
 - (iii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power at any general meeting in relation to it, that other person.

(11) For the purposes of subsection (10), “settlement” includes any disposition or arrangement under which property is held in trust.

[section 1A inserted by 2001:27 s.6 effective 1 October 2001; repealed by 2001:33 s.4 effective 1 January 2002; new section 1A inserted by 2006:28 s.4 effective 24 July 2006]

Meaning of parent and subsidiary company

1B (1) The expressions “parent company” and “subsidiary company” in this Act shall be construed as follows.

(2) A company is a parent company in relation to another company (a subsidiary company) if—

- (a) it has a majority of the shareholders’ or members’ voting rights in the other company;
- (b) it has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the other company and is at the same time a shareholder or member of that company;
- (c) it has the right to exercise a dominant influence over the other company of which it is a shareholder or member, pursuant to a contract entered into with that company or to a provision in that company’s memorandum or articles of association, where the law governing that company permits it to be party to such contracts or provisions; or
- (d) it is a shareholder or member of the other company, and—
 - (i) a majority of the members of the administrative, management or supervisory bodies of the other company have been appointed solely as

a result of the exercise by it of its voting right as a shareholder or member of the other company, or

- (ii) it controls alone, pursuant to an agreement with other shareholders or members of the other company, a majority of shareholders' or members' voting rights in that company.

(2A) A subsidiary company of a parent company includes any company that is a subsidiary of that subsidiary company and any company over which, in the opinion of the Authority, the parent company exercises a dominant influence.

(3) For the purposes of subsection (2) a company shall be treated as a member of another company—

- (a) if any of its subsidiary companies is a member of that company; or
- (b) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiary companies.

(4) In subsections (2)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares, to vote at general meetings of the company on all, or substantially all, matters.

(5) In subsection (2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(6) A company shall be treated as having the right to appoint to a directorship if—

- (a) a person's appointment to it follows necessarily from his appointment as director of the company; or
- (b) the directorship is held by the company itself.

[section 1B inserted by 2006:28 s.4 effective 24 July 2006; subsection (2) amended, subsection (2A) inserted by 2010 : 22 s. 4 effective 29 March 2010]

PART IA

THE AUTHORITY

Functions and duties of the Authority

Functions of the Authority

2 (1) The Authority shall have the functions and powers conferred on it by this Act and the duty generally to supervise persons carrying on insurance business and persons carrying on business as insurance managers, brokers, agents or salesmen, for the purpose of protecting the interests of clients and potential clients of such persons.

(2) It shall also be the duty of the Authority to keep under review the operation of this Act and developments in the field of insurance which appear to it to be relevant to the performance of its functions, the exercise of its powers and the discharge of its duties.

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(3) The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

[section 2 amended by 2001:27 s.3, 7 & Sch effective 1 October 2001; by 2001:33 effective 1 January 2002; repealed and replaced by 2006:28 s.5 effective 24 July 2006]

Authority's statement of principles

2A (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in interpreting the minimum criteria;
- (b) in exercising its powers to register or cancel the registration of a registered person;
- (c) in exercising its power to grant or impose conditions on a registered person;
- (d) in exercising its power to obtain information, reports and to require production of documents;
- (e) in exercising its powers to make adjustments to an insurer's enhanced capital requirement and available statutory capital and surplus under section 6D;
- (f) in exercising its powers under section 32 or 32A to issue directions to a registered person; and
- (g) in exercising its discretion under section 27B to determine whether to be a group supervisor.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

[section 2A inserted by 2004:29 s.4 effective 10 December 2004; repealed and replaced by 2006:28 s.5 effective 24 July 2006; amended by 2008:34 s.4 effective 31 December 2008; subsection (1)(g) inserted by 2010 : 22 s. 5 effective 29 March 2010; subsection (1)(f) amended by 2010 : 60 s. 3 effective 31 December 2010]

Guidance

2B (1) The Authority may from time to time give guidance on the application of this Act and regulations made under it.

(2) The Authority may publish such guidance (which may be in the form of information and advice) in such manner as it thinks fit.

[section 2B inserted by 2006:28 s.5 effective 24 July 2006; subsection (1) substituted by 2006:42 s.4 effective 29 December 2006]

Codes of Conduct

2BA (1) The Authority may issue codes of conduct on the duties, requirements and standards to be complied with by registered persons and designated insurers, and the procedures (whether on client identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by such persons and designated insurers.

(2) Before issuing a code of conduct, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(3) Every registered person and designated insurer shall in the conduct of its business comply with the provisions of any code of conduct applicable to it issued by the Authority.

(4) A failure on the part of a registered person or designated insurer to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 4 of the minimum criteria.

[section 2BA inserted by 2006:42 s.5 effective 29 December 2006; section 2BA amended by 2010 : 22 s. 6 effective 29 March 2010]

Insurance Advisory Committee

2C (1) There shall continue to be a committee to be known as the Insurance Advisory Committee whose function shall be to advise the Authority on any matter relating to the development of the insurance industry in Bermuda which the Authority may refer to it.

(2) The Insurance Advisory Committee shall consist of such persons (not fewer than five in number) to be appointed by the Minister, as the Minister may think fit, but so that not fewer than three members of the Committee shall be persons appearing to the Minister to be knowledgeable about insurance business in Bermuda.

(3) The Minister shall appoint a person to be chairman of the Insurance Advisory Committee.

(4) The Insurance Advisory Committee may advise the Minister on any matter relating to the development and promotion of the insurance industry in Bermuda.

[section 2C inserted by 2006:28 s.5 effective 24 July 2006]

PART II

REGISTRATION

Insurers to be registered

3 (1) Subject to this Act, and notwithstanding anything in any other Act, no person shall carry on insurance business in or from within Bermuda unless he is registered by the Authority as an insurer under section 4.

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(2) Any person who contravenes subsection (1) commits an offence.

[section 3 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Registration as insurer

4 (1) Subject to sections 4A to 7 and 12, on an application made to the Authority by a body corporate and on payment of the relevant fee provided for by section 14, the Authority may register that body—

- (a) as a Class 1, Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer where it proposes to carry on general business;
- (b) as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on long-term business;
- (c) as a Class 1, Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer and as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on both general business and long-term business; or
- (d) as a Special Purpose Insurer.

(2) Registration of a body corporate as an insurer shall be subject to its complying with the terms of its registration and with such other conditions as the Authority may impose; and different conditions may be imposed in respect of different insurers or categories of insurer.

(3) The Authority may at any time, whether or not on an application made by an insurer, add to, vary or delete any conditions imposed under subsection (2).

(4) Before the Authority exercises its power under subsection (3) in relation to an insurer, who has not made an application under that subsection, the Authority shall give notice to the insurer and shall take into account any written representations made by the insurer within such period as may be specified in the notice.

(5) *[Repealed]*

(6) On application made to the Authority for that purpose by an insurer, the Authority may—

- (a) register a Class 1, Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer as a different class of insurer carrying on general business;
- (b) register an insurer carrying on long-term business as a Class 1, Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer where it proposes to carry on general business (either instead of, or in addition to, its registration as a Class A, Class B, Class C, Class D or Class E insurer); or
- (c) register an insurer carrying on general business as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on long-term business (either instead of, or in addition to, its registration as a Class 1, Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer).

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(7) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[section 4 substituted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (4) amended, and subsection (5) repealed, by 2004:29 s.5 effective 10 December 2004; subsection (1) and (6) amended by 2008:34 s.5 effective 30 July 2008; section 4 amended by 2010 : 60 s. 4 effective 31 December 2010]

Determination of class of registration for general business

4A (1) Subject to subsection (2), the Authority shall determine whether a body corporate proposing to carry on general business shall be registered as a Class 1, Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer in relation to its general business in accordance with sections 4B to 4E.

(2) But a body corporate may be registered as a particular class of insurer where it would not be so registrable under sections 4B to 4E if, after taking into account—

(a) the nature of the intended relationship between the body corporate and its intended policy-holders, the interests of those policy-holders and of the public generally, and

(b) the level of regulation which is applicable to the different classes of insurer, the Authority considers it appropriate, whether or not on an application made to it for that purpose by the body corporate.

(3) The Authority shall not under any circumstances determine under subsection (2) that a body corporate shall be registered as a Class 4 insurer if it does not satisfy the requirement of section 4E(1)(a).

(4) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[section 4A inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.6 effective 30 July 2008]

Class 1 insurer

4B A body corporate is registrable as a Class 1 insurer where that body corporate—

(a) is wholly owned by one person and intends to carry on insurance business consisting only of insuring the risks of that person; or

(b) is an affiliate of a group and intends to carry on insurance business consisting only of insuring the risks of any other affiliates of that group or of its own shareholders.

[section 4B inserted by 1995:20 effective 29 April 1995]

Class 2 insurer

4C (1) A body corporate is registrable as a Class 2 insurer where that body corporate is wholly owned by two or more unrelated persons and intends to carry on insurance

business not less than 80% of the net premiums written in respect of which will be written for the purpose of—

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons; or
- (b) insuring risks which, in the opinion of the Authority, arise out of the business or operations of those persons or any affiliates of any of those persons.

(2) A body corporate is registrable as a Class 2 insurer where that body corporate would be registrable as a Class 1 insurer but for the fact that—

- (a) not all of the business which it intends to carry on, but at least 80% of the net premiums written, will consist of the business described in paragraph (a) or (b) of section 4B; or
- (b) it intends to carry on insurance business not less than 80% of the net premiums written in respect of which will, in the opinion of the Authority, arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person.

[section 4C inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Class 3 insurer

4D A body corporate is registrable as a Class 3 insurer where that body corporate is not registrable as a Class 1, Class 2, Class 3A, Class 3B, Class 4 insurer or Special Purpose Insurer.

[section 4D inserted by 1995:20 effective 29 April 1995; amended by 2008:34 s.7 effective 30 July 2008]

Class 3A insurer

4DA (1) This section applies to a body corporate that intends to carry on insurance business in circumstances where --

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions;

represent unrelated business.

(2) A body corporate to which this section applies is registrable as a Class 3A insurer if its total net premiums written from unrelated business are less than \$50,000,000.

[section 4DA inserted by 2008:34 s.8 effective 30 July 2008]

Class 3B insurer

4DB (1) This section applies to a body corporate that intends to carry on insurance business in circumstances where --

- (a) 50% or more of the net premiums written; or

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(b) 50% or more of the loss and loss expense provisions;
represent unrelated business.

(2) A body corporate to which this section applies is registrable as a Class 3B insurer if its total net premiums written from unrelated business are \$50,000,000 or more.

[section 4DB inserted by 2008:34 s.8 effective 30 July 2008]

Class 4 insurer

4E (1) A body corporate is registrable as a Class 4 insurer where—

(a) it has at the time of its application for registration, or will have before it carries on insurance business, a total statutory capital and surplus of not less than \$100,000,000; and

(b) it intends to carry on insurance business including excess liability business or property catastrophe reinsurance business.

(2) Where a body corporate is registrable as a Class 4 insurer it shall not be so registered if it is also registrable as a Class 1 or Class 2 insurer.

[section 4E inserted by 1995:20 effective 29 April 1995]

Determination of class of registration for long-term business

4EA (1) Subject to subsection (2), the Authority shall determine whether a body corporate proposing to carry on long-term business shall be registered as a Class A, Class B, Class C, Class D or Class E insurer in relation to its long-term business in accordance with sections 4EB to 4EF.

(2) But a body corporate may be registered as a particular class of insurer where it would not be so registrable under sections 4EB to 4EF if, after taking into account—

(a) the nature of the intended relationship between the body corporate and its intended policyholders, the interests of those policyholders and of the public generally; and

(b) the level of regulation which is applicable to the different classes of insurers carrying on long-term business,

the Authority considers it appropriate, whether or not an application has been made to it for that purpose by the body corporate.

(3) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[Section 4EA inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class A insurer

4EB A body corporate is registrable as a Class A insurer where that body corporate—

(a) is wholly owned by one person and intends to carry on long-term business consisting only of insuring the risks of that person; or

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- (b) is an affiliate of a group and intends to carry on long-term business consisting only of insuring the risks of any other affiliates of that group or of its own shareholders.

[Section 4EB inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class B insurer

4EC (1) A body corporate is registrable as a Class B insurer where that body corporate is wholly owned by two or more unrelated persons and intends to carry on long-term business not less than 80% of the premiums and other considerations written in respect of which will be written for the purpose of—

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons; or
- (b) insuring risks which, in the opinion of the Authority, arise out of the business or operations of those persons or any affiliates of any of those persons.

(2) A body corporate is registrable as a Class B insurer where that body corporate would be registrable as a Class A insurer but for the fact that—

- (a) not all of the business which it intends to carry on, but at least 80% of the premiums and other considerations written, will consist of the long-term business described in paragraph (a) or (b) of section 4EB; or
- (b) it intends to carry on long-term business not less than 80% of the premiums and other considerations written in respect of which will, in the opinion of the Authority, arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person.

(3) In this section, “premiums and other considerations” shall be interpreted in accordance with the provisions of paragraph 19 of Part III of Schedule IV to the Insurance Accounts Regulations 1980.

[Section 4EC inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class C insurer

4ED A body corporate is registrable as a Class C insurer where that body corporate has total assets of less than \$250 million and is not registrable as a Class A or Class B insurer.

[Section 4ED inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class D insurer

4EE A body corporate is registrable as a Class D insurer where that body corporate has total assets of \$250 million or more, but less than \$500 million and is not registrable as a Class A or Class B insurer.

[Section 4EE inserted by 2010 : 60 s. 5 effective 31 December 2010]

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Class E insurer

4EF A body corporate is registrable as a Class E insurer where that body corporate has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer.

[Section 4EF inserted by 2010 : 60 s. 5 effective 31 December 2010]

Classes of insurer: interpretation

4F (1) In sections 4B to 4E and this section—

“affiliate” means a body forming part of a group;

“excess liability business” means the business of effecting and carrying out contracts of insurance insuring the risk of the persons insured in the event that any such person incurs liabilities to third parties in excess of a stated sum;

“insure” includes reinsure;

“loss and loss expense provisions” means amounts calculated in relation to a body corporate by the application of the principles set out in the Insurance Accounts Regulations 1980 for the calculation of those amounts in relation to an insurer;

“net premiums written” means amounts calculated in relation to a body corporate by the application of the principles set out in the Insurance Accounts Regulations 1980 for the calculation of those amounts in relation to an insurer;

“property catastrophe reinsurance business” means the business of effecting and carrying out contracts of reinsurance indemnifying (whether or not to a specified limit) an insurer as a result of an accumulation of losses arising from a single catastrophic event or series of events;

“segregated account” has the meaning given in section 2(1) of the Segregated Accounts Companies Act 2000;

“shareholder” includes a partner of a partnership and a member of any other body or association;

“total assets” in relation to Class C, Class D and Class E insurers means the total assets reported on an insurer’s balance sheet in the relevant year less the amount held in any segregated account of such insurer in respect of long term business;

“unrelated” means not forming part of the same group;

“unrelated business” means insurance business consisting of insuring risks of persons who are not shareholders in, or affiliates of, the insurer.

(2) In determining for the purposes of sections 4B and 4C whether a body corporate is wholly owned by a person, the Authority may have regard to the beneficial as well as the legal ownership of the body corporate.

[section 4F inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; "loss and loss expense provisions" and "unrelated business" inserted by 2008:34 s.9 effective 30 July 2008; "group" repealed by 2010 : 22 s. 7 effective 29 March 2010; subsection (1) "segregated account" and "total assets" inserted by 2010 : 60 s. 6 effective 31 December 2010]

Factors to be considered by Authority under section 4

5 (1) In considering whether to register a body as an insurer under section 4, the Authority, without prejudice to its power under section 12 to refuse registration, must be satisfied that—

- (a) the minimum criteria are fulfilled with respect to the body corporate;
- (b) the body has, or has available, adequate knowledge and expertise; and
- (c) the premises intended to be used in the business are adequate for the conduct of the business.

(2) In considering whether to register a body as a Special Purpose Insurer, the Authority shall, in addition to the matters set out in subsection (1), have regard to the following matters—

- (a) whether the insurer is solely insuring or reinsuring one or more risks or group of risks with one or more policyholders; and
- (b) the sophistication of the policyholders or the sophistication of the parties to a debt issuance or other funding mechanism.

[section 5 amended by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; and repealed and replaced by 2006:28 s.6 effective 24 July 2006; subsection (2) inserted by 2008:34 s.10 effective 30 July 2008]

Further registration requirements

6 (1) The Authority shall not register a body corporate as a Class 1, Class 2, Class 3 or Class 3A insurer, Special Purpose Insurer or Class A, Class B, Class C or Class D insurer under section 4 unless the Authority is satisfied that the body corporate meets the minimum margin of solvency.

(1A) Notwithstanding subsection (1), the Authority may register a body corporate as a Class A, Class B, Class C or Class D insurer if it is satisfied that the body corporate will meet its minimum margin of solvency on the date when the body corporate commences business as a Class A, Class B, Class C or Class D insurer. ;

(2) *[Repealed by 2010 : 60 s. 7.]*

(3) The amount of the liabilities of the long-term business of a body at any time shall, for the purposes of this section, be taken to be—

- (a) an amount equal to the total amount at that time standing to the credit of the fund or funds maintained by the body in respect of its long-term business; or
- (b) the amount of those liabilities at that time as determined in accordance with any applicable regulations,

whichever is the greater.

(4) The Authority shall not register a body corporate as a Class 3B, Class 4 or Class E insurer under section 4 unless it is satisfied that the amount of the available statutory capital and surplus of the body corporate on the date of registration meets—

- (a) its minimum margin of solvency; and
- (b) its enhanced capital requirement.

(5) Notwithstanding subsection (4), the Authority may register a body corporate as a Class 3B, Class 4 or Class E insurer if it is satisfied that the amount of the available statutory capital and surplus of the body corporate will meet the requirements of subsection (4)(a) and (b) on the date when the body corporate commences business as a Class 3B, Class 4 or, as the case may be, a Class E insurer.

[section 6 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; section 6 amended by 2010 : 60 s. 7 effective 31 December 2010]

Prudential standards

6A (1) The Authority may make Rules prescribing prudential standards in relation to—

- (a) enhanced capital requirement;
- (b) capital and solvency returns;
- (c) insurance reserves; and
- (d) eligible capital,

that must be complied with by registered insurers or designated insurers.

(2) The Authority may in such Rules prescribe standards that impose different requirements to be complied with—

- (a) by different classes of registered insurers or designated insurers;
- (b) in different situations; or
- (c) in respect of different activities.

(3) A Rule may provide for the Authority to exercise powers and discretion in relation to prudential standards, including power to approve, impose, adjust or exclude specific prudential standards in relation to the following—

- (a) a particular registered insurer or designated insurer; and
- (b) a specified class of registered insurers or designated insurers.

(3A) Prudential standards applying to registered insurers may contain requirements which take into account, in the case of a registered insurer that is a member of an insurance group, any activity of another member of the insurance group.

(4) A Rule may provide for summary offences in relation to the making of false or misleading statements or returns, and may provide for a penalty not exceeding \$50,000 for an offence.

(5) Subject to subsection (6), a Rule made under this section shall not come into operation—

- (a) in the case of the first Rules made after commencement of this section, until a period of not less than 120 days has elapsed from the date of publication of draft Rules pursuant to section 6B;
- (b) in the case of subsequent Rules, until a period of not less than 180 days has elapsed from the date of publication of draft Rules pursuant to section 6B.

(6) Notwithstanding subsection (5), a Rule made under this section may come into operation on such earlier date after it is made, as the Authority may determine, if the Authority considers that it is in the interests of policyholders for the Rule to come into operation at such time.

(7) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

[section 6A inserted by 2008:34 s.11 effective 31 December 2008; Section 6A amended by 2010 : 22 s. 8 effective 29 March 2010; Section 6A subsection (1) amended by 2010 : 60 s. 8 effective 31 December 2010; Section 6A amended by 2010 : 60 s. 9 effective 31 December 2010]

Consultation

6B (1) If the Authority proposes to make a Rule under section 6A, it must publish a draft of the Rule in the way appearing to it to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by—

- (a) an explanation of the purpose of the proposed Rule; and
- (b) a notice that representation about the proposals may be made to the Authority within a specified time being not less than 28 days from the date of publication.

(3) Before making the proposed Rule the Authority must have regard to any representations made to it in accordance with subsection (2).

[section 6B inserted by 2008:34 s.11 effective 31 December 2008; Section 6B amended by 2010 : 60 s. 9 effective 31 December 2010]

Authority may exempt insurers from standards

6C (1) The Authority, on the application of an insurer or the designated insurer, may exempt it from the requirement to comply with any prudential standard applicable to it by or under a Rule made under section 6A.

(2) In granting an exemption under this section, the Authority may impose such conditions on the exemption as it considers appropriate.

(3) The Authority shall not grant an exemption unless it is satisfied that it is appropriate to do so having regard to the obligations of the applicant insurer towards its policyholders or the obligations of the designated insurer or insurance group of which the designated insurer is a member towards their policyholders.

[section 6C inserted by 2008:34 s.11 effective 31 December 2008; Section 6C amended by 2010 : 22 s. 9 effective 29 March 2010; Section 6C amended by 2010 : 60 s. 9 effective 31 December 2010]

Authority may make adjustment to enhanced capital requirement and available statutory capital and surplus

6D (1) Without prejudice to its powers under this Act to give directions, the Authority may in the circumstances mentioned in subsection (6) make such adjustments to an insurer's or insurance group's enhanced capital requirement and available statutory capital and surplus as it considers appropriate, and such adjustments may require an increase in the amount of insurance reserves to the level of prudential standards prescribed under section 6A(1).

(2) Before making any adjustments, the Authority shall serve notice on the insurer or designated insurer of its intention to make adjustments giving its reasons therefor.

(3) An insurer or designated insurer served with a notice under subsection (2) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to make the proposed adjustments.

(4) The Authority shall notify an insurer or designated insurer of any adjustments that it has made.

(5) An adjustment made by the Authority under subsection (1) shall not have effect until a period of not less than 90 days (or such longer period as the Authority may determine) has elapsed from the date of its notification to the insurer or designated insurer.

(6) The circumstances referred to in subsection (1) are such circumstances as would cause the Authority to—

- (a) conclude that the risk profile of the insurer or insurance group deviates significantly from—
 - (i) the assumptions underlying the enhanced capital requirement applicable to it; or
 - (ii) the insurer's or the insurance group's assessment of its risk management policies and practices in calculating the enhanced capital requirement applicable to it; or

- (b) conclude that the system of governance of the insurer or insurance group deviates significantly from the standards applicable to it, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to, and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate time-frame.

(7) The Authority may on the application of an insurer or designated insurer make adjustments to the insurer's or insurance group's enhanced capital requirement or available statutory capital and surplus, and any adjustment so made shall take effect on such date as the Authority may determine.

[Section 6D inserted by 2008:34 s.11 effective 31 December 2008; Section 6D amended by 2010 : 22 s. 10 effective 29 March 2010]

Paid up share capital

7 (1) In relation to an insurer which has a share capital, the minimum amount paid up on the share capital where the insurer is registered—

- (a) as a Class 1, Class 2, Class 3, Class 3A or Class 3B insurer is \$120,000;
- (b) *[Repealed by 2010 : 60 s. 10.]*
- (c) *[Repealed by 2010 : 60 s. 10.]*
- (d) as a Class 4 insurer is \$1,000,000;
- (e) *[Repealed by 2010 : 60 s. 10.]*
- (f) as a Special Purpose Insurer is \$1;
- (g) as a Class A insurer is \$120,000;
- (h) as a Class B insurer is \$250,000;
- (i) as a class C, D and E insurer is \$500,000;
- (j) in two classes, is the aggregate amount of paid up share capital required for each class for which it is registered.

(2) Subject to subsection (3), the Authority shall not register under section 4 a body corporate which has a share capital unless it satisfies the requirements of subsection (1).

(3) The Authority may register a body corporate as a Class 4 insurer where it does not satisfy the requirement—

- (a) of paragraph (d) of subsection (1) if it has at least \$120,000 paid up share capital, or
- (b) of paragraph (e) of subsection (1) if it has at least \$370,000 paid up share capital,

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but such a body shall not carry on insurance business until it does satisfy the requirement of paragraph (d) or (e).

[section 7 substituted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.12 effective 30 July 2008; section 7 subsection (1) amended by 2010 : 60 s. 10 effective 31 December 2010]

Principal office and principal representative

8 (1) Every insurer shall maintain a principal office in Bermuda.

(1A) Every insurer shall appoint and maintain a principal representative in Bermuda who satisfies the requirements of subsection (1B).

(1B) The principal representative of an insurer shall be a person approved by the Authority as that insurer's principal representative.

(2) An insurer at the time of registration shall give notice in writing to the Authority—

- (a) of the location of its principal office; and
- (b) of the prescribed particulars of its principal representative, its insurance manager (if it has one), its approved auditor and any other prescribed person to be engaged or employed in, or in connection with, its business.

(3) If any information required by subsection (2) to be notified to the Authority is altered, the insurer shall give in writing to the Authority particulars of the alteration within fourteen days after the alteration is made.

(3A) Without a reason acceptable to the Authority—

- (a) an insurer shall not terminate the appointment of its principal representative; and
- (b) a principal representative shall not cease to act as such,

unless it or he gives thirty days notice in writing to the Authority of the intention to do so.

(4) An insurer shall maintain in its principal office an accurate list of all its insurance agents in Bermuda and, if required in writing at any time by the Authority so to do, shall provide it with a copy of that list.

(5) If an insurer fails to comply with any of subsections (1) to (3A), or with a requirement made of it under subsection (4), it commits an offence.

(6) If a principal representative wilfully fails to give to the Authority notice which he is required by subsection (3A) to give, he commits an offence.

[section 8 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (3) amended by 2004:29 s.6 effective 10 December 2004]

Principal representative to report certain events

8A (1) A principal representative shall forthwith notify the Authority, in such manner as it may direct,—

- (a) on his reaching a view that there is a likelihood of the insurer for which he acts becoming insolvent; or
- (b) on its coming to his knowledge, or his having reason to believe, that an event to which this section applies has occurred.

(1A) Within fourteen days of such notification, the principal representative shall furnish the Authority with a report in writing setting out all the particulars of the case that are available to him.

(2) As respects any principal representative, this section applies to the following events, being events in which the insurer for which he acts as principal representative is involved, that is to say—

- (a) failure by the insurer
 - (i) to comply substantially with a condition imposed upon the insurer by the Authority relating to a solvency margin or a liquidity or other ratio;
 - (ii) to comply in any respect with any other such condition not so relating;
- (b) an offence by the insurer against section 20(8) or section 21(5) or section 22(5);
- (c) failure by the insurer to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the insurer by the Authority in the exercise of its powers under section 56 or section 57A;
- (d) involvement of the insurer in any criminal proceedings whether in Bermuda or abroad;
- (e) the insurer's ceasing to carry on insurance business in or from within Bermuda;
- (f) a significant loss that is reasonably likely to cause the insurer to be unable to comply with the enhanced capital requirement applicable to it;
- (g) in relation to an insurer, a material change within the meaning of section 30JA(1) and (2);
- (h) in relation to a Class 3A insurer, where the limit on unrelated business imposed by section 4DA (2) is exceeded.

(2a) Within 45 days of notifying the Authority of an event referred to in subsection (2)(f), the principal representative shall furnish the Authority with a capital and solvency return reflecting an enhanced capital requirement prepared using post-loss data.;

(2b) Within 30 days of notifying the Authority of an event referred to in subsection (2)(g), the principal representative shall furnish the Authority with unaudited interim statutory financial statements in relation to such period as the Authority may require, together with a general business solvency certificate in respect of those statements.

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(3) A principal representative who fails to perform his duty under subsection (1) commits an offence.

[section 8A amended by 1998:8 effective 23 March 1998; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1) substituted, and (1A) inserted, by 2004:29 s.7 effective 10 December 2004; subsection (2) amended by 2008:34 s.13(a) effective 31 December 2008; subsections (2a) and (2b) inserted by 2008:34 s.13(b) effective 30 July 2008; section 8A subsection (2)(g) deleted and substituted by 2010 : 60 s. 11 effective 31 December 2010]

Appointment of approved loss reserve specialist

8B (1) Each Class 2, Class 3, Class 3A, Class 3B and Class 4 insurer, and when directed by the Authority a Class 1 insurer, shall appoint an individual approved by the Authority under subsection (3) as a person qualified to assess the adequacy of insurance loss reserves, as that insurer's loss reserve specialist.

(2) Before making any such appointment, an insurer shall submit particulars of such person to the Authority for approval.

(3) The Authority, on being satisfied that a person is fit and proper to hold such an appointment, shall approve his appointment as that insurer's loss reserve specialist.

(4) Subject to subsection (5), the Authority may revoke an approval of a loss reserve specialist in respect of any insurer, if it is satisfied that he is no longer a fit and proper person to hold the appointment.

(5) The Authority shall not revoke its approval unless it has first notified the loss reserve specialist and the insurer of its intention to do so.

(6) This section applies to a designated insurer and the actuary of an insurance group as it applies to insurers and loss reserve specialists, and as if reference to a loss reserve specialist were a reference to an actuary of an insurance group.

[section 8B inserted by 2004:29 s.8 effective 10 December 2004; amended by 2008:34 s.14 effective 30 July 2008; section 8B amended by 2010 : 60 s. 12 effective 31 December 2010]

Insurance managers and intermediaries to be registered

9 (1) Subject to this Act, and notwithstanding anything in any other Act, no person shall in or from within Bermuda carry on business as an insurance manager, broker, agent or salesman unless he is registered for the purpose by the Authority under section 10.

(2) Any person who contravenes subsection (1) commits an offence.

[section 9 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; subsection (1) amended by 2006:28 s.7 effective 24 July 2006]

The Authority may register insurance managers and intermediaries

10 (1) Subject to sections 11 and 12, the Authority may, on application being made to it for that purpose by any person, and on payment of the relevant fee provided for by section 14, register that person as an insurance manager, broker, agent or salesman, as the case may be, subject to that person complying with such conditions as the Authority may see fit to impose.

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(2) Every application under subsection (1) for registration shall be made to the Authority and shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[section 10 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Factors to be considered by Authority under section 10

11 In considering whether to register a person as an insurance manager, broker, agent or salesman, as the case may be, under section 10, the Authority, without prejudice to its power under section 12 to refuse registration, must be satisfied that—

- (a) the minimum criteria are fulfilled with respect to the applicant; and
- (b) the person has knowledge of the insurance business adequate to enable him to act in the capacity in which he has applied for registration.

[section 11 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; repealed and substituted by 2006:28 s.8 effective 24 July 2006]

Power of Authority in relation to registration

12 In deciding whether to register a person under section 4 or 10 the Authority shall act as it thinks fit in the public interest, and, if of opinion that it is not in the public interest that registration should be granted, it shall refuse to grant it.

[section 12 amended by 2001:27 s.3 & Sch effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

Registration

13 (1) Where the Authority determines to register any person under section 4 or 10, it shall cause the prescribed particulars relating to that person to be entered in a register to be maintained by it for the purpose (in this Act referred to as “the Register”).

(2) A person’s registration shall remain in force until it is cancelled.

(3) Where a person is registered as aforesaid, the Authority shall issue to him a certificate of registration, in which shall be specified—

- (a) the name and business address of the person registered;
- (b) the date of registration; and
- (c) any conditions imposed under section 4 or 10.

(4) A certificate issued under this section shall be accepted in all courts as prima facie evidence of the fact that the person named therein is registered, and of the particulars set forth in the certificate.

(5) A copy of every certificate of registration shall be kept by the Authority in its office and shall be open to inspection by the public.

[section 13 amended by 2001:27 s.4, 8 effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

Fees

14 (1) Fees shall be prescribed under the Bermuda Monetary Authority Act 1969 in respect of—

- (a) the making of any application for registration under section 4(1) or 10;
- (ab) the making of any application under any of the following provisions—
 - (i) sections 4(3) and (6), 4A(2), 17(4), 18C(2), 31B(3), 31C and 56 of this Act;
 - (ii) regulation 11(4) of the Insurance Returns and Solvency Regulations 1980;
 - (iii) the instructions for line 14 in Part I of Schedule III to the Insurance Accounts Regulations 1980;
 - (iv) notification of new or increased shareholder control under s.30D; and
 - (v) application for cancellation of registration under s.41(1)(a);
- (b) the registration of any person;
- (c) the issue of any certificate;
- (d) the inspection of the Register;
- (e) the furnishing by the Authority of any document or copy; and
- (f) application for approval of internal model made under the provisions of Rules made under section 6A.

(2) In addition to the fees for which subsection (1) provides, there shall, subject to subsection (3), be payable by a registered insurer or insurance manager, broker, agent or salesman before the 31 March in every year following the year in which it or he was registered an annual fee of such amount as shall be prescribed under the Bermuda Monetary Authority Act 1969:

Provided that—

- (a) an annual fee shall not be payable by a company whose winding up is in progress in winding up proceedings in Bermuda, except where—
 - (i) the fee, being due for payment, was not paid; and
 - (ii) the time allowed by this subsection for its payment had expired, before those proceedings were commenced; and
- (b) if an annual fee that a company is excused by paragraph (a) of this proviso from paying has in fact been paid, the liquidator may recover it from the Authority.

(3) Where a registered person fails to pay a prescribed fee, as provided in subsection (1) or (2), it shall pay in addition to such fee a late penalty fee of an amount equal

to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.

(3A) The Authority may recover any fee and any penalty fee as a civil debt owing to it in any court of competent jurisdiction.

(4) The registration fee payable by a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall be remitted—

(a) by 50% where an insurer is registered after 31 August in any year;

(b) by 75% where an insurer is registered after 30th November in any year.

(5) The Authority, if satisfied that in the particular circumstances of an insurer, the payment of the annual fee in whole or in part would be detrimental to its business, may—

(a) defer payment of all or part of the annual fee otherwise due, to such date in the future as it considers appropriate, or

(b) remit all part or part of the annual fee otherwise due,

on such terms and conditions as it considers appropriate.

(6) The Authority, having regard to the nature and scale of operations of an insurer and the complexity of its business may direct that the annual fee that is otherwise due and payable by or under subsection (2) be reduced by such amount as the Authority considers appropriate in relation to that insurer.

(7) The Authority shall serve notice in writing on the insurer directing that the fee otherwise payable by or under subsection (2) be payable at the reduced rate specified in the direction and the year when it is to take effect.

(8) The Authority may at any time revoke a direction given under subsection (6), where it is satisfied that there has been a material change in the nature and scale of operations of an insurer or in the complexity of its business.

(9) The Authority shall serve notice in writing on the insurer concerned notifying it of its decision to revoke the direction given under subsection (6) and the year from which the full fee becomes payable.

[section 14 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsections (2) and (3) amended, and subsection (4) inserted, by 2002:29 s.3 effective 14 October 2002; subsections (1) and (2) amended, and (4) deleted, by 2002:39 s.7 & Sch effective 30 December 2002; subsections (1), (2), and (3) amended, and subsections (4) and (5) inserted by 2008:46 s.9 effective 1 January 2009; section 14 amended by 2010 : 60 s. 13 effective 31 December 2010; section 14 subsection (3) repealed and replaced by 2010 : 58 s. 2 effective 1 January 2011; section 14 subsections (6 -- 9) inserted by 2010 : 58 s. 3 effective 1 January 2011]

PART III
REGULATION OF INSURERS GENERALLY

Statutory financial statements

15 (1) An insurer shall prepare accounts (in this Act referred to as “statutory financial statements”) in respect of its insurance business for each financial year.

(2) Statutory financial statements shall be in such form (being a form calculated to enable comparison to be made between the insurer’s business for the financial year in respect of which the statements are prepared and the insurer’s business for the financial year immediately preceding that year), and shall contain such information, as may be prescribed.

(3) The information required to be included in statutory financial statements pursuant to subsection (2) shall be information calculated to fulfil (in addition to any other purposes for which regulations may be made) the following purposes—

- (a) to give as early warning as possible to any person examining the said statements (whether by way of notice of the observance or non-observance by the insurer of any margin of solvency, or in any other way) of any financial or operational difficulties into which the insurer’s business has fallen or might appear likely to fall;
- (b) to provide the basis on which the Authority or any other authority may in good time take action under this Act or any other statutory provision to exercise any statutory power available to it for the safeguarding of any element of the public interest involved in or affected by the insurer’s business.

(4) The statutory financial statements of an insurer shall be audited annually by the insurer’s approved auditor.

[section 15 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (4) inserted by 2004:29 s.9 effective 10 December 2004]

Appointment and approval of auditors

16 (1) Every insurer shall appoint an auditor approved by the Authority under subsection (3), to audit its statutory financial statements.

(1A) A designated insurer shall ensure that the group of which it is a member appoints an auditor approved by the Authority under this section to audit the financial statements of the group.

(1B) Subsections (2) to (6) and (8) apply to a designated insurer and the auditor of the insurance group as they apply to an insurer and its auditor.

(2) Before making any such appointment, an insurer shall submit particulars of such person to the Authority for approval.

(3) The Authority, on being satisfied that a person is fit and proper to hold such an appointment, shall approve his appointment as that insurer’s auditor.

(4) Subject to subsection (5), the Authority may revoke an approval of an auditor in respect of any insurer, if it is satisfied that he is no longer a fit and proper person to hold the appointment.

(5) The Authority shall not revoke its approval unless it has first notified the auditor and the insurer of its intention to do so.

(6) No person having an interest in any insurer otherwise than as an insured, and no officer, servant or agent of any insurer, shall be eligible for appointment as an approved auditor for that insurer; and any person appointed as an approved auditor to any insurer who subsequently acquires such interest or becomes an officer, servant or agent of that insurer shall cease to be an approved auditor.

(7) If an insurer fails to appoint an approved auditor as required by subsection (1), or at any time fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor for the insurer and shall fix the remuneration to be paid by that insurer, if not sooner agreed by the insurer and the auditor, within fourteen days.

(8) An insurer shall forthwith give written notice to the Authority if it—

- (a) proposes to remove an approved auditor before the expiration of his term of office; or
- (b) proposes to replace an approved auditor at the expiration of the term of his office with a different auditor.

[section 16 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; and repealed and replaced by 2004:29 s.10 effective 10 December 2004; section 16 subsection (1A) and (1B) inserted by 2010 : 60 s. 14 effective 31 December 2010]

Auditor to communicate certain matters to Authority

16A (1) An approved auditor of an insurer shall forthwith give written notice to the Authority if—

- (a) he resigns before the expiration of his term of office;
- (b) he becomes aware that he will be replaced as the approved auditor of the insurer;
- (c) he intends not to seek to be re-appointed;
- (d) he decides to include a material modification of his report on the insurer's statutory financial statements and in particular, a material qualification or a denial of his opinion, or the statement of an adverse opinion; or
- (e) he becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the insurer, of the Authority's functions under this Act.

(1A) Without prejudice to section 53, the Minister may make regulations, subject to the affirmative resolution procedure, prescribing the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act.

(2) Where a notice has been given pursuant to subsection (1)(d), the auditor shall as soon as practicable thereafter furnish the Authority with a copy of his report.

(3) No duty to which an auditor of an insurer may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(4) Subsection (3) applies to any matter of which an approved auditor of an insurer becomes aware in his capacity as auditor and which relates to the business or affairs of the insurer or any affiliate of that insurer.

(5) In this section "affiliate" has the meaning given in section 4F(1).

(6) This section applies to an approved auditor of an insurance group as it applies to an approved auditor of an insurer.

[section 16A inserted by 2004:29 s.11 effective 10 December 2004; section 16A amended by 2010 : 22 s. 11 effective 29 March 2010; section 16A subsection (6) inserted by 2010 : 60 s. 15 effective 31 December 2010]

Keeping and filing of statutory financial statements

17 (1) Every insurer shall have a copy of its statutory financial statements (together with the notes to those statements and the auditor's report thereon) available at its principal office on or before its filing date, and shall produce them to the Authority if so directed by it on or before a date specified in the direction.

(2) Every insurer shall keep the statutory financial statements, notes and auditor's report at its principal office for the period of five years beginning with its filing date.

(3) Every insurer shall file a copy of its statutory financial statements (together with the notes to those statements and the auditor's report thereon) with the Authority on or before its filing date.

(4) In this section and sections 18 and 18A, "filing date" in relation to an insurer means—

- (a) in the case of a Class 1 or Class 2 insurer (which is not also a Class C, Class D or Class E insurer), or a Class A or Class B insurer, six months after the end of the financial year to which the statements relate (or such longer period, not exceeding nine months, as the Authority may allow in the case of that insurer on an application made to it for that purpose); and
- (b) in the case of a Class 3, Class 3A, Class 3B, Special Purpose Insurer, or Class 4 insurer or a Class C, Class D or Class E insurer, four months after the end of the financial year to which the statements relate (or such longer

period, not exceeding seven months, as the Authority may allow in the case of that insurer on an application made to it for that purpose).

[section 17 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (3) amended by 2004:29 s.12 effective 10 December 2004; subsection (3) and (4)(b) amended by 2008:34 s.15 effective 30 July 2008; section 17 subsection (4) amended by 2010 : 60 s. 16 effective 31 December 2010]

Class 4 insurers: additional financial statements prepared in accordance with GAAP 17A (1) Every Class 3B or Class 4 insurer shall, in addition to preparing statutory financial statements under section 15, prepare financial statements as required by this section ("additional GAAP financial statements") in respect of its insurance business for each financial year.

(2) Such financial statements shall be prepared in accordance with any one of the following standards or principles—

- (a) International Financial Reporting Standards ('IFRS');
- (b) generally accepted accounting principles ('GAAP') that apply in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAP as the Authority may recognise.

(3) Section 16 applies to the appointment and approval of an auditor of additional GAAP financial statements as it applies to an approved auditor.

(4) Section 16A applies to an auditor of additional GAAP financial statements as it applies to an approved auditor.

(5) Every Class 3B or Class 4 insurer shall file with the Authority a copy of the audited financial statements prepared under this section (together with the notes to those statements and the auditor's report thereon) within a period of four months from the end of the financial year to which the financial statements relate or such longer period not exceeding seven months as the Authority may determine on the application of the insurer.

(6) The Authority shall cause to be published in such manner as it considers appropriate a copy of every audited financial statement filed with it under subsection (5) together with the notes to those statements and the auditor's report.

(7) Except at the instance of—

- (a) the Class 3B or Class 4 insurer who engaged the auditor to perform the audit of the financial statements; or
- (b) any other person expressly authorised by the auditor to rely on their work;

no action shall lie against an auditor in respect of any financial statements filed with the Authority and made available for inspection or otherwise published pursuant to this section.

[section 17A inserted by 2008:34 s.16 effective 31 December 2008; section 17A amended by 2010 : 60 s. 17 effective 31 December 2010]

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Insurer to make financial returns

18 (1) Every insurer shall at the time of filing its statutory financial statements under section 17, also file with the Authority a statutory financial return.

(2) A statutory financial return shall be in the prescribed form, and different forms of return may be prescribed for different categories of insurer.

[section 18 substituted by 1995:20 effective 29 April 1995; subsection (1) substituted by 2004:29 s.13 effective 10 December 2004]

Failure to file statutory statements or returns

18A (1) Where an insurer fails to comply—

- (a) with a duty imposed on it under section 17(1), 17(3), 17A(5) or 18(1); or
- (b) with a requirement to file a capital and solvency return imposed by or under Rules made under section 6A;

it shall be guilty of an offence and liable on summary conviction to a fine calculated in accordance with subsection (2).

(2) For each week or part of a week during which an insurer is guilty of an offence by virtue of subsection (1) it shall be liable to a maximum fine—

- (a) of \$500, in the case of a Class 1 or a Class 2, Class A or Class B insurer;
- (b) of \$1000, in the case of a Class 3, Class 3A or Class 3B insurer, or Special Purpose Insurer, Class C, Class D or Class E insurer; or
- (c) of \$5000, in the case of a Class 4 insurer;

and the fine applicable to an insurer falling within more than one paragraph shall be the higher fine.

(3) If the Authority is satisfied that an insurer is guilty of an offence under subsection (1), it may, with the consent of the insurer, accept from the insurer a sum not exceeding its maximum liability for that offence, and no proceedings shall be brought for that offence.

(4) Any sum accepted from an insurer under subsection (3) shall be paid into the Consolidated Fund.

(5) The Authority shall appoint an inspector to investigate the affairs of a Class 3B or Class 4 insurer under section 30, if the insurer fails within three months of its filing date to file—

- (a) statutory financial statements required by section 17(3);
- (b) additional GAAP financial statements required by section 17A(5);
- (c) statutory financial returns required by section 18; or

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- (d) capital and solvency returns required by or under Rules made under section 6A.

[section 18A inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.17 (a) effective 30 July 2008; subsection (1) and (5) repealed and substituted by 2008:34 s.17 (b) effective 31 December 2008; Section 18A amended by 2010 : 60 s. 18 effective 31 December 2010]

Opinion of loss reserve specialist

18B (1) This section applies in relation to a Class 2, Class 3, Class 3A, Class 3B, or Class 4 insurer.

(2) The statutory financial return required by section 18 shall include the opinion of a loss reserve specialist in respect of the insurer's loss and loss expense provisions—

- (a) annually, in the case of a Class 3, Class 3A, Class 3B, or Class 4 insurer; or
- (b) every third year, in the case of a Class 2 insurer, beginning with the return relating to the financial year following the insurer's registration as a Class 2 insurer.

(3) The requirements of paragraph (f) of the instructions in Part II of Schedule III to the Insurance Accounts Regulations 1980 relating to line 17 of the statutory balance sheet shall not apply in relation to any financial year for which an insurer is required by this section to include the opinion of a loss reserve specialist in the statutory financial return.

[section 18B inserted by 1995:20 effective 29 April 1995; amended by 2008:34 s.18 effective 30 July 2008]

Requirement to keep records in Bermuda

18C (1) The Authority may direct insurers to keep in Bermuda proper records of account with respect to—

- (a) all sums of money received and expended by the insurer and the matters in respect of which the receipt and expenditure takes place;
- (b) all premiums and claims relating to the insurer; and
- (c) the assets, liabilities and equity of the insurer;

and any such directions may make different provision in relation to Class 1, Class 2, Class 3, Class 3A, Class 3B, Class 4, Special Purpose Insurers, Class A, Class B, Class C, Class D and Class E insurers.

(2) Without prejudice to section 83 of the Companies Act 1981 (keeping of books of account), on an application made to it for that purpose, the Authority may direct that an

insurer be exempt from such of the requirements of subsection (1) as may be specified in the direction.

[section 18C inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; Section 18C subsection (1) amended by 2010 : 60 s. 19 effective 31 December 2010]

Segregation of insurance accounts and business

19 An insurer which carries on any business other than insurance business shall keep separate accounts in respect of its insurance business, and shall segregate the assets and liabilities of its insurance business from those of its other business,

Minister may require Bermuda investment

20 (1) The Minister acting on the advice of the Authority may by order made under this section require that every insurer, or every insurer of a class specified in the order, being a non-resident insurance undertaking, must maintain invested in Bermuda during the currency of the order approved assets of a value fixed in the order (in this section referred to as “investment asset value”).

(2) An order under this section may fix—

- (a) an investment asset value of not more than 60% of the value of the domestic liabilities of insurers, being liabilities outstanding on account of long-term business;
- (b) an investment asset value of not more than 40% of the premium income of insurers, being premium income arising on account of general business that is domestic business,

and such an order may either fix an investment asset value under paragraph (a) alone or paragraph (b) alone, or may fix investment asset values so as to be in force concurrently under both those paragraphs.

(3) Such an order as aforesaid may contain such transitional provision (including provision reducing temporarily a percentage otherwise fixed by the order) as the Minister may deem necessary to enable insurers affected by the order, or any class of such insurers, to re-organize investments held by them immediately before the coming into force of the order with a view to meeting the requirements of the order.

(4) Where an approved asset is a security on which a value was placed by the approved auditor in the course of the latest audit of the statutory financial statements of the insurer, that value shall, in any dispute as to the value of the security, be deemed conclusively to be the true value of the security.

(5) The Minister may include provision in such an order as aforesaid that for the purposes of the order domestic liabilities shall not include any part of such liabilities which is re-insured.

(6) For the purposes of this section—

- (a) (i) an “approved asset” is an asset approved by the Minister;

- (ii) “premium income”, in relation to an insurer, means the net amount, after deduction of any premiums paid by the insurer for re-insurance, of the premiums received by the insurer;
- (iii) a “domestic liability” is a liability arising in respect of domestic business; and
- (b) references to “premium income” and “domestic liabilities”, in relation to an insurer affected by an order, are respectively references to premium income and domestic liabilities as shown in the statutory financial statements of the insurer in respect of the financial year next preceding the date of the making of the order;
- (c) subject to any applicable regulations, in computing the amount of any liabilities all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(7) Any order made under this section shall be subject to the affirmative resolution procedure.

(8) An insurer which at any time fails to comply with an order that is in force under this section and applies to it commits an offence.

[section 20 amended by 2001:27 s.9 effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

Maintenance of assets in Bermuda

21 (1) The Minister may by order made under this section require that every insurer, or every insurer of a class specified in the order, being a non-resident insurance undertaking, must maintain in Bermuda approved assets of the insurer of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities.

(2) Such an order as aforesaid may contain provision that assets of a specified class or description shall or shall not be treated as assets maintained in Bermuda.

(3) Section 20(4), (5) and (as respects the interpretation or treatment of approved assets, liabilities and domestic liabilities) (6) shall apply mutatis mutandis in relation to an order made under this section as those subsections apply in relation to an order made under section 20.

(4) Any order made under this section shall be subject to the affirmative resolution procedure.

(5) An insurer which fails at any time to comply with an order that is in force under this section and applies to the insurer commits an offence.

Custody of assets

22 (1) The Authority may impose a requirement on any insurer affected by an order under section 21 that the whole or a specified proportion of the insurer’s assets affected by

such an order shall be held by a person approved by the Authority for the purposes of the requirement as trustee of the insurer.

(2) Assets of an insurer held by a person as trustee for an insurer shall be taken to be held by him in compliance with a requirement imposed under this section if, and only if they are assets in whose case the insurer has given him written notice that they are to be held by him in compliance with such a requirement, or they are assets into which assets in whose case the insurer has given him a written notice as aforesaid have, by any transaction or series of transactions, been transposed by him on the instructions of the insurer.

(3) No asset held by a person as trustee of an insurer in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Authority.

(4) If a mortgage or charge is created by an insurer at a time when there is in force a requirement imposed on the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee of the insurer in compliance with the requirement, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

(5) An insurer which fails to comply with a requirement properly imposed upon it under this section commits an offence.

[section 22 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

PART IV

INSURERS CARRYING ON LONG-TERM BUSINESS

Insurers to which this Part applies

23 This Part shall apply to insurers carrying on long-term business.

Insurer carrying on long-term business to maintain separate accounts

24 (1) An insurer to which this Part applies shall keep its accounts in respect of its long-term business separate from any accounts kept in respect of any other business.

(2) All receipts of such an insurer's long-term business shall be carried to, and form part of, a special fund with an appropriate name, in this Act referred to as a "long-term business fund".

(3) Such an insurer shall maintain books of account and other records such that—

- (a) the assets in its long-term business fund; and
- (b) the liabilities of its long-term business,

can be readily identified at any time.

(4) No payment from such an insurer's long-term business fund shall be made directly or indirectly for any purpose other than a purpose of the insurer's long-term

business, notwithstanding any arrangement for its subsequent repayment out of receipts of business other than the long-term business, except in so far as such payment can be made out of any surplus certified by the insurer's approved actuary to be available for distribution otherwise than to policy-holders.

(5) No insurer to which this Part applies shall declare or pay a dividend to any person other than a policy-holder unless the value of the assets of its long-term business fund, as certified by the insurer's approved actuary, exceeds the extent (as to certified) of the liabilities of the insurer's long-term business; and the amount of any such dividend shall not exceed the aggregate of—

- (a) that excess; and
- (b) any other funds properly available for the payment of dividend, being funds arising out of business of the insurer other than long-term business.

(6) This section shall not apply in relation to an insurer which, immediately before 1 January 1980—

- (a) either—
 - (i) was an exempted company within the definition in section 1 of the Exempted Companies Act 1950; or
 - (ii) had a permit under section 69 of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*] or under section 3 of the Non-Resident Insurance Undertakings Act 1967 [*title 5 item 17*]; and
- (b) was carrying on both long-term and general business in or from within Bermuda.

Transfer of long-term business

25 (1) Any scheme under which the whole or any part of the long-term business of any insurer to which this Part applies (in this section referred to as the "transferor") is to be transferred to another insurer (in this section referred to as the "transferee") shall be void unless it is made in accordance with this section and the Court has sanctioned the scheme thereunder.

(2) Either the transferor or the transferee may apply to the Court, by petition, for an order sanctioning the scheme, and the Court shall have power to make such an order subject to this section.

(3) The Court shall not entertain such a petition unless the petition is accompanied by a report on the scheme prepared by an approved actuary and the Court is satisfied that sufficient notice of the scheme has been served on each policy-holder affected and been published in the Gazette, and also that copies of the petition and the report have been served on the Authority.

(4) On any petition under this section—

- (a) any person who alleges that he would be adversely affected by the carrying out of the scheme; and

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(b) the Authority,

shall be entitled to be heard.

((5) and
(6)) *[subsections (5) and (6) deleted by 1985:1]*

(7) Subsections (1) to (4) shall not have effect in relation to the transfer of long-term business that is re-insurance business.

[section 25 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Appointment of actuary by insurer carrying on long-term business

26 (1) An insurer shall not carry on long-term business at any time if it does not have an approved actuary (in this Act referred to as the “insurer’s approved actuary”) at that time.

(2) In subsection (1) “approved actuary”, in relation to an insurer, means an actuary approved by the Authority as that insurer’s approved actuary.

[section 26 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Actuarial certificates of long-term business liabilities

27 (1) An insurer to which this Part applies shall include in the insurer’s statutory financial return called for by section 18 a certificate prepared by the insurer’s approved actuary in the prescribed form as to the amount of the insurer’s liabilities outstanding on account of its long-term business.

(2) Notwithstanding subsection (1) the Authority may in writing at any time direct an insurer to which this Part applies to cause to be produced to the Authority a valuation of the insurer’s liabilities outstanding at the date specified in the direction on account of its long-term business, together with a certificate prepared by the insurer’s approved actuary in the prescribed form relating thereto; and the insurer shall comply with any such direction.

[section 27 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

PART IVA

GROUP SUPERVISION

[Part iva inserted by 2010 : 22 s. 12 effective 29 March 2010]

Interpretation

27A In this Part, unless the context otherwise requires—

“college of supervisors” means a structure for cooperation and coordination among supervisors of competent authorities;

“competent authority” means a national authority that is empowered by law to supervise insurers;

“equivalent jurisdiction” means a jurisdiction that has supervisory standards that the Authority determines to be equivalent to those established by or under this Act;

“group supervisor” in relation to an insurance group, means the Authority or, as the case may be, another competent authority that is the group supervisor for the insurance group.

[Section 27A inserted by 2010 : 22 s. 12 effective 29 March 2010]

Group Supervisor

27B (1) The Authority may, in respect of an insurance group, determine whether it is appropriate for it to be the group supervisor of that group.

(2) Before making such a determination the Authority shall take into account the matters set out in subsection (3).

(3) Those matters are—

- (a) whether the insurance group is headed by a specified insurer;
- (b) where the insurance group is not headed by a specified insurer, whether the insurance group is headed by a parent company which is incorporated in Bermuda; and
- (c) where the insurance group is headed by a parent company which is not incorporated in Bermuda, whether the Authority is satisfied that—
 - (i) the insurance group is directed and managed from Bermuda; or
 - (ii) the insurer in the insurance group with the largest balance sheet total is a specified insurer.

(4) The Authority shall give notice in writing to the relevant designated insurer of its intention to make such a determination and shall take into account any written representation made by the designated insurer within such period as it may specify in the notice.

(5) If the Authority makes a determination under subsection (1) in respect of an insurance group, it shall designate a specified insurer that is a member of the insurance group to be the designated insurer in respect of that insurance group for the purposes of this Act.

(6) The Authority shall notify the designated insurer for an insurance group and other competent authorities in writing that it is the group supervisor for that insurance group.

(7) The Authority shall establish and maintain a register containing the following particulars in respect of every insurance group of which it is the group supervisor—

- (a) the name and address of the designated insurer for the insurance group;
- (b) the name and address of every company that is a member of the insurance group falling within the scope of group supervision;

- (c) the name and address of the principal representative of the insurance group in Bermuda;
- (d) the name and address of other competent authorities supervising other companies that are members of the insurance group; and
- (e) the name and address of the insurance group auditors.

(8) The designated insurer for an insurance group shall immediately notify the Authority of any change of the particulars entered in the register in respect of that insurance group.

(9) For the purposes of this section, “specified insurer” means—

- (a) a class 3B or class 4 insurer; or
- (b) an insurer of another class of insurers designated by order of the Authority.

(10) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to orders made under subsection (9)(b).

(11) There shall be payable by a designated insurer such annual fee, as may be prescribed under the Bermuda Monetary Authority Act 1969, in respect of every insurance group registered under this section.

(12) The first annual fee shall be payable within 30 days of the registration of the insurance group.

(13) The annual fee for the subsequent years shall be payable on or before 31 March in every year following the year in which the insurance group was registered.

[Section 27B inserted by 2010 : 22 s. 12 effective 29 March 2010; Section 27B subsection (11 -- 13) inserted by 2010 : 58 s. 4 effective 1 January 2011]

Authority may exclude specified entities from group supervision

27C (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, exclude from group supervision any company that is a member of an insurance group if it is satisfied that—

- (a) the company is situated in a country or territory where there are legal impediments to cooperation and exchange of information;
- (b) the financial operations of the company have a negligible impact on insurance group operations; or
- (c) the inclusion of the company would be inappropriate with respect to the objectives of group supervision.

(2) The Authority shall notify the relevant designated insurer and competent authority in writing of any decision to exclude a company from the scope of group supervision.

[Section 27C inserted by 2010 : 22 s. 12 effective 29 March 2010]

Authority may include specified entities within group supervision

27CA (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, include within group supervision any company that is a member of the group but is not on the register maintained under section 27B(7) if it is satisfied that—

- (a) the financial operations of the company may have a material impact on the insurance group's operations; and
- (b) the inclusion of the company would be appropriate having regard to the objectives of group supervision.

(2) The Authority shall notify the relevant designated insurer and competent authority in writing of any decision to include a company within the scope of group supervision.

[Section 27CA inserted by 2010 : 60 s. 20 effective 31 December 2010]

Authority may withdraw as group supervisor

27D (1) The Authority may withdraw as group supervisor—

- (a) on its own initiative;
- (b) at the request of a competent authority from an equivalent jurisdiction; or
- (c) on the application of a designated insurer in respect of the insurance group of which it is a member.

(2) The Authority shall notify the relevant insurance group in writing of its intention to withdraw as group supervisor and shall take into account any written representation made by the insurance group within such period as it may specify in the notice.

(3) The Authority may withdraw as group supervisor if—

- (a) it considers that it would be appropriate to do so having regard to the structure of the insurance group and the relative importance of the insurance group's insurance business in different countries or territories;
- (b) it determines that there has been a material change in the structure or operations of the insurance group or an absence of cooperation by other competent authorities; or
- (c) for any other reason that prevents the Authority from effectively discharging its function as group supervisor for that insurance group.

(4) The Authority shall notify the designated insurer and the competent authority in writing of any decision made by it under this section.

[Section 27D inserted by 2010 : 22 s. 12 effective 29 March 2010]

Functions of Authority as group supervisor

27E The Authority as group supervisor shall have the following functions with regard to group supervision—

- (a) coordination of the gathering and dissemination of relevant or essential information for going concerns and emergency situations, including the dissemination of information which is of importance for the supervisory task of other competent authorities;
- (b) supervisory review and assessment of the financial situation of insurance groups;
- (c) assessment of compliance of insurance groups with the rules on solvency and of risk concentration and intra-group transactions as may be prescribed by or under this Act;
- (d) assessment of the system of governance of insurance groups, as may be prescribed by or under this Act, and whether the members of the administrative or management body of participating companies meet the requirements set out therein;
- (e) planning and coordination, through regular meetings held at least annually or by other appropriate means, of supervisory activities in going concerns as well as in emergency situations, in cooperation with the competent authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all companies that are part of insurance groups;
- (f) coordination of any enforcement action that may be taken against insurance groups or any of their members; and
- (g) planning and coordinating, as required, meetings of colleges of supervisors, to be chaired by the Authority where it acts as the group supervisor, to facilitate the exercise of the functions set out in paragraphs (a) to (f) of this section.

[Section 27E inserted by 2010 : 22 s. 12 effective 29 March 2010]

Authority to make Rules

27F (1) The Authority may for the purposes of group supervision make rules applying to designated insurers which take into account, in their case, any activity of the insurance group of which they are members or of other members of the insurance group.

(2) Without prejudice to the generality of subsection (1), such rules may make provision for—

- (a) the assessment of the financial situation of the insurance group;
- (b) the solvency position of the insurance group;
- (c) intra-group transactions and risk concentration;
- (d) the system of governance and risk management of the insurance group; and
- (e) supervisory reporting and disclosures in respect of the insurance group.

(3) The Authority in such rules may in relation to group financial statements require that they be prepared in the English language and that the currency of any amount shown therein be converted to a currency specified by the Authority as at a specified date.

(4) Sections 6A (4), (5), (6) and (7) shall apply to Rules made under this section as they apply to Rules made under that section.

(5) Section 6B applies to proposals to make Rules under this section as it applies to proposals to make Rules under section 6A.

(6) Section 6C shall apply to provisions of any Rules made under this section as it applies to prudential standards prescribed by Rules made under section 6A.

[Section 27F inserted by 2010 : 22 s. 12 effective 29 March 2010; Section 27F amended by 2010 : 60 s. 21 effective 31 December 2010]

PART V

INSURANCE MANAGERS, BROKERS, AGENTS AND SALESMEN

Insurance managers to maintain lists of insurers for which they act

28 An insurance manager shall maintain an accurate list of all insurers for which he acts as insurance manager, and shall, if required in writing at any time by the Authority so to do, provide the Authority with a copy of that list.

[section 28 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Insurance broker, agent or salesman deemed agent of insurer in certain cases

29 In relation to any contract of insurance to which an insurer is a party and in respect of which an insurance broker, agent or salesman having apparent authority to act for the insurer in that respect in fact receives a premium under the contract—

- (a) the broker, agent or salesman shall be deemed to be the agent of the insurer; and
- (b) the insurer shall be deemed to have received the premium,

notwithstanding anything to the contrary in the contract.

PART VI

Power to obtain information and reports

29A (1) The Authority may by notice in writing served on a registered person or designated insurer—

- (a) require the registered person or designated insurer to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require with respect to matters that are likely to

be material to the performance, in relation to the registered person or, as the case may be, the relevant insurance group, of its functions under this Act;

- (b) require the registered person or designated insurer to provide the Authority with copies of published and unpublished reports in respect of the registered person or, as the case may be, the relevant insurance group, as specified in the notice, containing information on, or on any aspect of, any matter about which the Authority has required or could require the registered person or designated insurer to provide information under paragraph (a).

(2) The Authority may in respect of a registered person or designated insurer appoint a person to prepare a report on, or on any aspect of, any matter about which the Authority has required or could require the registered person or designated insurer to provide information under subsection (1)(a).

(3) In making such an appointment the Authority shall ensure that the appointed person has relevant and appropriate experience having regard to the nature and scope of the business being carried out by the registered person or, as the case may be, the relevant insurance group.

(4) The person appointed to make a report under subsection (2) shall immediately give written notice to the Authority of any fact or matter of which he becomes aware which indicates to him—

- (a) that any term or condition of registration of the registered person is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the registered person; and
- (b) that the matters are likely to be material to the performance, in relation to the registered person or, as the case may be, the designated insurer or the relevant insurance group, of the Authority's functions under this Act.

(5) In this section and in sections 29B and 29C, "relevant insurance group" means the insurance group of which the designated insurer referred to in those sections is a member.

[section 29A inserted by 2002:29 s.4 effective 14 October 2002; subsection (5) repealed by 2006:28 s.9 effective 24 July 2006; Section 29A repealed and replaced by 2010 : 22 s. 13 effective 29 March 2010]

Power to require production of documents

29B (1) The Authority may—

- (a) by notice in writing served on a registered person or designated insurer require such person to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the Authority, on producing evidence of his authority, to require any such registered person or

designated insurer to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify;

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a registered person or designated insurer, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a registered person or designated insurer or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that registered person or designated insurer or other person, or any other person who is a present or past director, other officer or principal representative of, the registered person or designated insurer in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the clients of a registered person or relevant insurance group to do so, it may also exercise the powers conferred by section 29A and this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that registered person or designated insurer;
- (b) a subsidiary company of a parent company of that registered person or designated insurer;
- (c) a parent company of a subsidiary company of that registered person or designated insurer; or
- (d) a company in the case of which a shareholder controller of that registered person or designated insurer, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

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(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(7) *[Repealed by 2010 : 22 s. 14]*

[section 29B inserted by 2002:29 s.4 effective 14 October 2002; subsection (7) substituted by 2006:28 s.10 effective 24 July 2006; Section 29B amended by 2010 : 22 s. 14 effective 29 March 2010]

Communication with Authority

29C (1) No duty to which a person appointed to make a report under section 29A(2) may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to a person appointed to make a report under section 29A(2) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

- (a) relates to the business or affairs of the registered person or relevant insurance group in relation to which his report is made or any associated company of that registered person or insurance group;
- (b) if by virtue of section 29B(4) the report relates to an associated company of a registered person or designated insurer, to the business or affairs of that company.

(3) In this section “associated company”, in relation to a registered person, means any such company as is mentioned in section 29B(4).

[section 29C inserted by 2002:29 s.4 effective 14 October 2002; subsection (2) amended by 2010 : 22 s. 15 effective 29 March 2010]

Meaning of related company

29D *[Repealed by 2010 : 22 s. 16]*

[Section 29D repealed by 2010 : 22 s. 16 effective 29 March 2010]

29E *[section 29E inserted by 2002:29 s.4 effective 14 October 2002; and repealed by 2006:28 s.11 effective 24 July 2006]*

29F *[section 29F inserted by 2002:29 s.4 effective 14 October 2002; and repealed by 2006:28 s.11 effective 24 July 2006]*

POWERS

Investigation of affairs of an insurer

30 (1) The Authority may appoint any person appearing to it to be a suitably qualified person as an inspector to investigate the affairs, or any part of the affairs, of an insurer if

it is satisfied that such an investigation is required in the interest of the policy-holders or of persons who may become policy-holders.

(2) It shall be the duty of any insurer in relation to whose affairs an inspector has been appointed under subsection (1) (in this section called an “insurer under investigation”), and of any past or present officer, employee or insurance manager of such an insurer, to produce to the inspector on request all books, records and documents relating to the insurer under investigation which are in its or his custody or control and otherwise to give to the inspector all assistance in connection with the investigation which it or he is reasonably able to give.

(3) An inspector may—

- (a) examine on oath any past or present officer, employee, or insurance manager of the insurer under investigation in relation to its business, and may administer an oath accordingly;
- (b) if he thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, make application to the Court, and the Court may, if it thinks fit, order that person to attend and be examined on oath before the Court on any matter relevant to the investigation.

(4) The inspector may from time to time report to the Authority on the progress of the investigation and shall, on completion of the investigation, furnish the Authority, and the insurer under investigation, with a copy of his report.

(5) Unless the Authority otherwise directs, the insurer under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

[section 30 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1) amended, and (4) and (5) inserted, by 2004:29 s.14 effective 10 December 2004]

Investigation of suspected contravention

30A (1) Where the Authority has reasonable grounds for suspecting that a person has contravened section 3 or 9, the Authority or any duly authorised officer, servant or agent of the Authority may by notice in writing require that person or any other person—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of investigating the suspected contravention;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Authority for that purpose;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing, if required, evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for 6 months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

[section 30A inserted by 2006:28 s.12 effective 24 July 2006]

Powers of entry

30B (1) A magistrate may issue a warrant under this section if satisfied on information on oath laid by an officer of the Authority or laid under the Authority's authority that there are reasonable grounds for suspecting that a person is guilty of such a contravention as is mentioned in section 30A and—

- (a) that that person has failed to comply with a notice served on him under that section;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in

relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

- (c) to take copies of or extracts from any such documents; and
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 30A.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 30A, until the conclusion of those proceedings.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both;
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for two years or to both.

[section 30B inserted by 2006:28 s.12 effective 24 July 2006]

Obstruction of investigations

30C (1) A person who knows or suspects that an investigation is being or is likely to be carried out—

- (a) into a suspected contravention of section 3 or section 9; or
- (b) under section 30.

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for two years or to both;

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- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for five years or to both.

[section 30C inserted by 2006:28 s.12 effective 24 July 2006]

Notification by shareholder controllers of new or increased control – private companies

30D (1) This section applies to a shareholder or a prospective shareholder of an insurer whose shares or the shares of its parent company, if any, are not traded on any stock exchange.

(2) No person to whom this section applies shall become a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of the insurer unless—

- (a) he has served on the Authority a notice in writing stating that he intends to become such a controller of the insurer; and
- (b) either the Authority has, before the end of the period of forty-five days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the insurer, or that period has elapsed without the Authority having served him under section 30F with a written notice of objection to his becoming such a controller of the insurer.

(3) A notice under subsection (2)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (3) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (2)(b).

[section 30D inserted by 2006:28 s.12 effective 24 July 2006; section 30D amended by 2010 : 22 s. 17 effective 29 March 2010; section 30D repealed and replaced by 2010 : 60 s. 22 effective 31 December 2010]

Notification by shareholder controllers of new or increased control - public companies

30E (1) This section applies to a shareholder of an insurer whose shares or the shares of its parent company, if any, are traded on any stock exchange recognized by the Authority for this purpose.

(2) Not later than forty-five days after a person to whom this section applies becomes a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of the insurer, that person shall serve on the Authority a notice in writing stating that he has become such a controller.

[Section 30E repealed by 2010 : 22 s. 18 effective 29 March 2010; Section 30E inserted by 2010 : 60 s. 23 effective 31 December 2010]

Objection to new or increased control

30F (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 30D unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the insurer;
- (b) that the interests of clients or potential clients of the insurer would not be threatened by that person becoming a controller of that description of the insurer; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the insurer as a controller of the description in question the minimum criteria would continue to be fulfilled in the case of the insurer or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 44A.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 30D in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 30D(2)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until twenty-eight days after the end of the period within which representations can be made under subsection (3).

[section 30F inserted by 2006:28 s.12 effective 24 July 2006]

Contraventions by controller

30G (1) Subject to subsection (2), any person who contravenes section 30D by—

- (a) failing to give the notice required by subsection (2)(a) of that section; or
- (b) knowingly becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (2)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 30F(2);

shall be guilty of an offence.

(2) For the purposes of subsection 1(b), a person knowingly becomes a controller of any description if he knows of the acts or circumstances by virtue of which he became a controller of the relevant description.

(3) *[Repealed by 2010 : 22 s. 19]*

(4) A person who becomes a controller without knowing of the acts or circumstances by virtue of which he became a controller of the relevant description shall not be guilty of an offence unless he subsequently becomes aware of the fact that he has become such a controller and he fails to give the Authority written notice of the fact that he has become such a controller within thirty days of becoming aware of the fact.

(5) Any person who—

- (a) before the end of the period mentioned in section 30D (2)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 30F(2);
- (b) contravenes section 30D by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him;

shall be guilty of an offence.

(5A) Any person who contravenes section 30E by failing to give the notice required by subsection (2) of that section shall be guilty of an offence.

(6) A person guilty of an offence under subsection (1) or (5A) shall be liable on summary conviction to a fine of \$25,000.

- (7) A person guilty of an offence under subsection (5) shall be liable—
- (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to an additional fine of \$500 for each day on which the offence has continued;
 - (b) on conviction on indictment to a fine of \$100,000 or imprisonment for 2 years or to both.

[section 30G inserted by 2006:28 s.12 effective 24 July 2006; Section 30G subsection (3) repealed by 2010 : 22 s. 19 effective 29 March 2010; Section 30G amended by 2010 : 60 s. 24 effective 31 December 2010]

Objection to existing controller

30H (1) Where it appears to the Authority that a person who is a controller of any description of a registered person is not or is no longer a fit and proper person to be such a controller of the registered person it may serve him with a written notice of objection to his being such a controller of the registered person.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by section 44A.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Any person who continues to be a controller of any description after being served under this section with a notice of objection to his being a controller of that description shall be guilty of an offence.

(7) A person guilty of an offence under subsection (6) shall be liable—

- (a) on summary conviction to a fine of \$25,000, and to an additional fine of \$500 for each day on which the offence has continued;

- (b) on conviction on indictment to a fine of \$100,000 or imprisonment for 2 years or to both.

[section 30H inserted by 2006:28 s.12 effective 24 July 2006]

Restriction on and sale of shares

- 30I (1) The powers conferred by this section shall be exercisable where a person—
- (a) has contravened section 30F by becoming a shareholder controller after being served with a notice of objection to his becoming a shareholder controller;
 - (b) having become a controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
 - (c) continues to be a controller of any description after being served under section 30H with notice of objection to his being a controller of that description.
- (2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—
- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
 - (b) no voting rights shall be exercisable in respect of the shares;
 - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
 - (d) except in liquidation, no payment shall be made of any sums due from the registered person on the shares, whether in respect of capital or otherwise.
- (3) The Court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.
- (4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 30F or 30H—
- (a) until the end of the period within which an appeal can be brought against the notice of objection;
 - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subsection (3) the Court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons

beneficially interested in them; and any such person may apply to the Court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the registered person of which the person in question is a shareholder controller which are held by him or any associate of his and were not so held immediately before he became such a controller of the registered person; and
- (b) where the person in question became a shareholder controller as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that registered person.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the registered person or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

[Section 30I inserted by 2006:28 s.12 effective 24 July 2006; Section 30I amended by 2010 : 22 s. 20 effective 29 March 2010]

Notification by registered persons and designated insurers of change of controller and officer

30J (1) Subject to subsection (4), an insurer shall serve on the Authority a notice in writing of the fact that any person has become or ceased to be a controller of that insurer.

(2) Subject to subsection (4), an insurer and a designated insurer in respect of the parent company of the insurance group, shall serve on the Authority a notice in writing of the fact that any person has become or ceased to be an officer of that insurer or of the parent company of the group as the case may be.

(3) A notice under subsection (1) or (2) shall be served before the end of a period of forty-five days beginning with the day on which the insurer or designated insurer as the case may be, becomes aware of the relevant facts.

(4) A Class 1 and Class 2 insurer, Special Purpose Insurer, Class A and Class B insurer shall, at the time of filing the annual financial statements under section 17, file with the Authority the following—

- (a) a list of every person who has become or has ceased to be a shareholder controller or director of the insurer; and
- (b) where no registered insurance manager has been appointed to manage the affairs of the insurer, a list of every person who has become or has ceased to be an officer of that insurer,

during the financial year to which the financial statements relate, specifying the dates when such person has become a shareholder controller, director or other officer and the dates when they have ceased to be such shareholder controller, director or other officer.

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(5) Registered insurance managers, brokers and agents shall, on or before 31 March in each year, file with the Authority a list of every person who has become or has ceased to be an officer or shareholder controller of that person during the previous calendar year, specifying the dates when such person has become a shareholder controller or officer and the dates when such person has ceased to be such controller or officer.

(6) Subject to subsection (8), a person that fails to give the notice required by subsection (1) or (2) or fails to file a list as required by subsections (4) and (5) within the time specified therein, is guilty of an offence and liable on summary conviction to a fine of \$50,000.

(7) For the purposes of this section “officer” in relation to an insurer or the parent company of the insurance group means a director, chief executive or senior executive performing duties of underwriting, actuarial, risk management, compliance, internal audit, finance or investment matters; and in relation to insurance managers, brokers and agents, means a director or chief executive.

(8) A designated insurer that is guilty of an offence under subsection (6) shall neither be subject to criminal proceedings nor liable to the penalties specified therein but shall be subject to directions under section 32A.

[section 30J inserted by 2006:28 s.12 effective 24 July 2006; section 30J subsection (1) amended by 2010 : 22 s. 21 effective 29 March 2010; section 30J repealed and replaced by 2010 : 60 s. 25 effective 31 December 2010]

Material change

30JA (1) For the purposes of section 30JB the following changes are material—

- (a) acquisition or transfer of insurance business being part of a scheme falling within section 25 of this Act or section 99 of the Companies Act 1981;
- (b) amalgamation with or acquisition of another firm;
- (c) engaging in non-insurance business and activities related thereto, where such business or related activity is not ancillary to the insurance business of the insurer; and
- (d) engaging in unrelated business that is retail business.

(2) In subsection (1) (d)—

“unrelated business” has the meaning given in section 4F

“retail business” means the business of selling insurance products that are designed for and bought by an individual.

[Section 30JA inserted by 2010 : 60 s. 26 effective 31 December 2010]

Notification of material change

30JB (1) No insurer shall effect a material change within the meaning of section 30JA(1) unless the requirements of subsection (4) have been satisfied.

(2) Subject to subsection (3) no designated insurer shall permit another member of the group to give effect to a material change within the meaning of section 30JA(1)(b), (c), and (d) unless the requirements of subsection (4) have been satisfied.

(3) A designated insurer shall not be required to comply with subsection (2) if—

- (a) that member of the group is regulated by a competent authority in an equivalent jurisdiction within the meaning of section 27A; and
- (b) the designated insurer has within ninety days of the event of a material change, notified the Authority in writing of the material change by that member.

(4) The requirements referred to in subsections (1) and (2) are that the insurer or designated insurer as the case may be—

- (a) has served on the Authority a notice in writing stating that the insurer, or in the case of a designated insurer, a member of the group, intends to effect such a material change; and
- (b) either the Authority has, before the end of the period of fourteen days beginning with the date of service of that notice, notified it in writing that there is no objection to its effecting the material change or that period has elapsed without the Authority having served it with a written notice of objection to the material change.

(5) A notice under subsection (4)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require it to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(6) Where additional information or documents are required from any person by a notice under subsection (5), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (4)(b).

[Section 30JB inserted by 2010 : 60 s. 26 effective 31 December 2010]

Objection to material change

30JC (1) The Authority shall serve a notice of objection under this section on a person who has given notice under section 30JB unless it is satisfied—

- (a) that the interests of policyholders and potential policyholders of the insurer or the insurance group, as the case may be, would not in any manner be threatened by the material change; and
- (b) without prejudice to paragraph (a) that, having regard to the material change the requirements of this Act would continue to be complied with or, if any of those requirements are not complied with, that the insurer or insurance group concerned is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 44A.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information, which would be prejudicial to a third party.

[Section 30JC inserted by 2010 : 60 s. 26 effective 31 December 2010]

Contraventions by insurer

30JD (1) A person that contravenes section 30JB by failing to give the notice required by subsection (4)(a) of that section shall be guilty of an offence.

(2) A person that, before the end of the period mentioned in section 30JB (4)(b), effects a material change to which that subsection applies after being served with a preliminary notice under section 30JC(2), shall be guilty of an offence.

(3) A person who contravenes section 30JC(1) by effecting a material change or, in the case of a designated insurer, permitting another member of the group to effect a material change after being served with a notice of objection to such a material change, shall be guilty of an offence.

(4) Subject to subsection (5), a person guilty of an offence under this section is liable—

- (a) on summary conviction to a fine of \$50,000;
- (b) on conviction on indictment to a fine of \$100,000.”

(5) A designated insurer that is guilty of an offence under this section shall neither be subject to criminal proceedings nor liable to the penalties specified in subsection (4), but shall be subject to directions under section 32A.

[Section 30JD inserted by 2010 : 60 s. 26 effective 31 December 2010]

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31 *[section 31 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; and repealed by 2002:29 s.5 effective 14 October 2002]*

Failure to meet solvency requirements

31A (1) A Class 3, Class 3A, Class 3B or Class 4 insurer or Special Purpose Insurer or a Class C, Class D, Class E insurer which at any time fails to meet its minimum margin of solvency shall within 30 days after becoming aware of that failure, or having reason to believe that such a failure has occurred, file with the Authority a written report containing particulars—

- (a) of the circumstances leading to the failure, and
- (b) of the manner and time within which the insurer intends to rectify the failure;

and, notwithstanding anything to the contrary in any other enactment, shall not declare or pay any dividends until the failure is rectified.

(2) *[Repealed]*

[section 31A inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1) amended by 2008:34 s.19(a) effective 30 July 2008; subsection (2) repealed by 2008:34 s.19(b) effective 31 December 2008; Section 31A subsection (1) amended by 2010 : 60 s. 27 effective 31 December 2010]

Failure to comply with enhanced capital requirement

31AA (1) An insurer that fails to comply with the enhanced capital requirement applicable to it shall—

- (a) within 14 days of becoming aware of that failure, or of having reason to believe that such a failure has occurred, file with the Authority a written report containing particulars—
 - (i) of the circumstances leading to the failure; and
 - (ii) of the manner and time within which the insurer intends to rectify the failure; and
- (b) within 45 days of becoming aware of that failure, or of having reason to believe that such a failure has occurred, furnish the Authority with—
 - (i) unaudited interim statutory financial statements covering such period as the Authority may require;
 - (ii) the opinion of a loss reserve specialist in relation to lines 17 and 18 of those statements;
 - (iii) a general business solvency certificate in respect of those statements; and
 - (iv) a capital and solvency return reflecting an enhanced capital requirement prepared using post failure data.

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(2) Notwithstanding anything to the contrary in any other enactment, an insurer to whom subsection (1) applies shall not declare or pay any dividends until the failure is rectified.

[section 31AA inserted by 2008:34 s.20 effective 31 December 2008]

Class 3A: exceeding net premiums written limitation

31AB Where a Class 3A insurer exceeds the net premiums written limitation imposed on that class by section 4DA(2), the insurer shall, notwithstanding such excess, be entitled to carry on insurance business in that class if—

- (a) its principal representative notifies the Authority of an event mentioned in section 8A(2)(h); and
- (b) the insurer makes application under section 56 for a direction that section 4DA(2) would continue to apply to it notwithstanding the excess; and
- (c) the Authority does not require the insurer to be classified as a Class 3B insurer.

[section 31AB inserted by 2008:34 s.21 effective 30 July 2008]

Restrictions as to payment of dividends

31B (1) A Class 3B insurer and a Class 4 insurer shall not in any financial year pay dividends which would exceed 25% of its total statutory capital and surplus, as shown on its statutory balance sheet in relation to the previous financial year, unless at least 7 days before payment of those dividends it files with the Authority an affidavit signed—

- (a) by at least two directors of the insurer (one of whom must be a director resident in Bermuda if the insurer has a director so resident), and
- (b) by the insurer's principal representative in Bermuda,

which states that in the opinion of those signing, declaration of those dividends has not caused the insurer to fail to meet its relevant margins.

(2) A copy of every affidavit filed under subsection (1) shall be kept by the Authority in its office and shall be open to inspection by the public.

(3) An insurer shall not declare or pay any dividends during any financial year if it would cause the insurer to fail to meet its relevant margins.

(4) An insurer which fails to meet its relevant margins on the last day of any financial year shall not, without the approval of the Authority, declare or pay any dividends during the next financial year.

(5) In this section and section 31C, "the relevant margins" means—

- (a) in relation to an insurer, its solvency margin, and

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- (b) in relation to an insurer carrying on general business, its minimum liquidity ratio.

[section 31B inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.22 effective 30 July 2008]

Restrictions as to reduction of capital

31C (1) A Class 3B, Class E or Class 4 insurer, before reducing by 15% or more its total statutory capital, as set out in its previous year's financial statements, shall apply to the Authority for its approval.

- (2) An application by an insurer under subsection (1) shall consist of—

- (a) an affidavit signed—

- (i) by at least two directors of the insurer (one of whom must be a director resident in Bermuda if the insurer has a director so resident), and

- (ii) by the insurer's principal representative in Bermuda,

- which states that in the opinion of those signing, the proposed reduction of capital will not cause the insurer to fail to meet its relevant margins; and

- (b) such other information as the Authority may require.

(3) A copy of every affidavit filed under subsection (1) relating to an application which the Authority has approved shall be kept by the Authority in its office and shall be open to inspection by the public.

(4) A Class 1, Class 2, Class 3, Class 3A, Class A, Class B, Class C or Class D insurer before reducing by 15% or more its total statutory capital, as set out in its previous year's financial statements, shall apply to the Authority for its approval and shall provide such information as it may require.

[section 31C inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:46 s.9 effective 1 January 2009; section 31C amended by 2010 : 60 s. 28 effective 31 December 2010]

Powers of intervention

32 (1) If it appears to the Authority that—

- (a) the business of a registered person which is an insurer is being so conducted that there is a significant risk of the registered person becoming insolvent;

- (b) a registered person is in breach of a provision of this Act or of regulations, or with a condition imposed on its registration;

- (c) the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of a registered person;

- (d) a person has become a controller of any description of a registered person which is an insurer in contravention of section 30D or has become or

remains such a controller after being served with notice of objection pursuant to section 30F or 30H; or

- (e) a registered insurer is in breach of the enhanced capital requirement applicable to it

the Authority may give the registered person such directions as appear to it to be desirable for safeguarding the interests of clients and potential clients of the registered person, and, without prejudice to the generality of the foregoing, may in particular give any of the directions mentioned in subsection (2).

(2) Those directions are—

- (a) not to effect further contracts of insurance, or any contract of insurance of a specified description;
- (b) to limit the aggregate of the premiums to be written by it during a specified period beginning not earlier than 28 days after the direction is given;
- (c) not to vary any contract of insurance in force when the direction is given, if the effect of the variation would be to increase the liabilities of the insurer;
- (d) not to make any investment of a specified class;
- (e) before the expiration of a specified period (or such longer period as the Authority may allow) to realise any existing investment of a specified class;
- (f) not to declare or pay any dividends or any other distributions, or to restrict the making of such payments to such extent as the Authority thinks fit;
- (g) not to enter into any specified transaction with any specified person or persons of a specified class;
- (h) to provide such written particulars relating to the financial circumstances of the insurer as the Authority thinks fit;
- (i) to obtain the opinion of a loss reserve specialist with respect to general business, or an actuarial opinion with respect to long-term business, and to submit it to the Authority within a specified time; and
- (j) to remove a controller or officer;

and in this subsection “specified” means specified in the direction.

(3) In addition, if it appears to the Authority that the business of an insurer is being so conducted that there is a significant risk of the insurer becoming insolvent it may, if it considers it appropriate, direct the insurer to maintain in, or transfer to and keep in the custody of, a specified bank, assets of the insurer of such value and description as are specified in the direction.

(4) Without restricting the generality of subsections (1) and (3), the Authority may in particular proceed under those subsections where—

- (a) an insurer has failed to meet a solvency margin or a minimum liquidity ratio which it is required by this Act or regulations to meet;

- (b) an event specified in regulation 7(3) of the Insurance Returns and Solvency Regulations 1980 occurs in relation to the audit of an insurer and the approved auditor qualifies his report accordingly, expresses an adverse opinion or denies an opinion under regulation 7(2) of those Regulations;
- (c) the auditor's report submitted as part of an insurer's statutory financial return indicates that there is a significant doubt as to the insurer's ability to continue as a going concern;
- (d) an insurer fails to retain an auditor or principal representative, or fails to retain a loss reserve specialist or actuary where required to retain one under this Act or regulations;
- (e) the insurer's total statutory capital and surplus has diminished to an extent which the Authority considers unacceptable having regard to the particular circumstances of the insurer.

(5) The Authority shall not give a direction by virtue of subsection (1)(b) if the breach in question—

- (a) is being investigated by an inspector by virtue of section 18A(5), or
- (b) requires a report to be filed under section 31A,

until the Authority has considered a preliminary report of the inspector or (as the case may be) the report filed under section 31A.

(6) No assets kept in the custody of a bank pursuant to a direction under subsection (3) shall, so long as the direction is in force, be removed from the bank except with the prior consent of the Authority in writing.

(7) Where the Authority gives the registered person notice of its intention to give a direction under subsection (1), it shall take into account any representations made by the registered person within such period as may be specified in the notice before giving such a direction.

(8) The powers which the Authority may exercise under this section in certain circumstances in relation to a registered person do not restrict the exercise of any other powers in relation to the same insurer on the basis of the same circumstances, nor do they restrict any other consequences provided for under any enactment in respect of that registered person on the basis of those circumstances.

(9) Any registered person who fails to comply with a direction given under subsection (1), and any person who causes such a direction to be contravened, commits an offence.

[section 32 substituted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsections (1), (2), (7)-(9) amended by 2006:28 s.13 effective 24 July 2006; subsection (1) amended by 2008:34 s.23 effective 31 December 2008]

Contraventions by designated insurer

32A (1) If it appears to the Authority that a designated insurer is in breach of any provision of this Act or regulations or rules applicable to it, the Authority may give the

designated insurer such directions as appear to the Authority to be desirable for safeguarding the interests of policyholders and potential policyholders of the insurance group.

(2) Without prejudice to the generality of subsection (1) the Authority may, in particular, give any of the directions specified in paragraphs (a) to (h) and (j) of section 32(2).

[Section 32A inserted by 2010 : 60 s. 29 effective 31 December 2010]

PART VII
INSOLVENCY AND WINDING UP

Margin of solvency for general business

33 (1) An insurer, being a company that may be wound up under the Companies Act 1981, carrying on general business shall be deemed for the purposes of section 161 of the Companies Act 1981 (winding up of company by the court) to be unable to pay its debts if at any time the value of its assets does not exceed the amount of its liabilities and the provisions of this Act as to winding up shall have effect accordingly.

(2) For the purposes of this section in computing the amount of liabilities of an insurer, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(3) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsections (4) and (5), be determined in accordance with any applicable regulations making provision as to the taking into, or leaving out of, account of assets or liabilities for any purpose.

(4) In the case of an insurer which carries on long-term business as well as general business, the amount of the liabilities of its long-term business at any time shall, for the purposes of this section, be taken to be—

- (a) an amount equal to the total amount at that time standing to the credit of the insurer's long-term business fund; or
- (b) the amount of those liabilities at any time as determined in accordance with any applicable regulations,

whichever is the greater.

(5) Regulations may require that, in every statutory financial return prepared by an insurer carrying on general business, there shall be included a certificate as to solvency (to be called a "solvency certificate")—

- (a) in such form and signed by such persons as may be prescribed by the regulations; and
- (b) containing such a statement with respect to the assets and liabilities of the insurer as may be so prescribed,

and if any such insurer fails to comply with the regulations so made the value of its assets shall, in any proceedings under this section for the winding up of the insurer, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount required by subsection (1).

(6) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 36 or otherwise.

[section 33 amended by 1995:20 effective 29 April 1995]

Winding up of insurers under Companies Act 1981

34 The Court may order the winding up, in accordance with the Companies Act 1981, of an insurer, being a company which may be wound up under that Act, and that Act shall apply accordingly subject to the modification that the insurer may be ordered to be wound up on the petition of ten or more policyholders owning policies of an aggregate value of not less than \$50,000:

Provided that such a petition 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.

Winding up on petition of Authority

35 (1) The Authority may present a petition for the winding up, in accordance with the Companies Act 1981, of an insurer, being a company which may be wound up under that Act, on the ground—

- (a) that the insurer is unable to pay its debts within the meaning of sections 161 and 162 of the Companies Act 1981; or
- (b) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Act; or
- (c) that the insurer has failed to satisfy the obligation imposed upon it by section 15 as to the preparation of accounts or to produce or file statutory financial statements in accordance with section 17, and that the Authority is unable to ascertain its financial position.

(2) In any proceedings on a petition to wind up an insurer presented by the Authority under subsection (1), evidence that the insurer was insolvent—

- (a) at the close of the period to which the statutory financial statements last prepared under section 15 relate; or
- (b) at any date specified in a direction under section 27(2),

shall be evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

(3) If, in the case of an insurer, being a company which may be wound up under the Companies Act 1981, it appears to the Authority that it is expedient in the public

interest that the insurer should be wound up, it may, unless the insurer is already being wound up by the Court, present a petition for it to be so wound up if the Court thinks it just and equitable for it to be so wound up.

(4) Where a petition for the winding up of an insurer is presented by a person other than the Authority, a copy of the petition shall be served on the Authority, and it shall be entitled to be heard on the petition.

[section 35 amended by 1995:20 effective 29 April 1995; by 2001:27 s.3, 10 & Sch effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

Winding up of insurers carrying on long-term business

36 (1) An insurer which carries on long-term business shall not be wound up voluntarily.

(2) Subject to subsection (3) and to rules made by virtue of section 40, in any winding up of an insurer which immediately before the winding up was carrying on or entitled to carry on long-term business—

- (a) the assets in the insurer's long-term business fund shall be available only for meeting the liabilities of the insurer attributable to its long-term business;
- (b) other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other business.

(3) Where the value of the assets mentioned in either paragraph of subsection (2) exceeds the amount of the liabilities mentioned in that paragraph the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.

(4) In relation to the assets falling within either paragraph of subsection (2) the creditors mentioned in section 176(1) and (2) of the Companies Act 1981 shall be only those who are creditors in respect of liabilities falling within that paragraph; and any general meeting of creditors summoned for the purposes of that section shall accordingly be separate general meetings of the creditors in respect of the liabilities falling within each paragraph.

(5) Where under section 247(1) of the Companies Act 1981 (power of court to assess damages against delinquent officers) the Court orders any money or property to be repaid or restored to an insurer or any sum to be contributed to its assets then, if and so far as the wrongful act which is the reason for the making of the order related to assets belonging to an insurer's long-term business fund, the Court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund, and this Act shall have effect accordingly.

Continuation of long-term business of insurer in liquidation

37 (1) This section shall have effect in relation to the winding up of an insurer, being an insurer carrying on long-term business.

(2) The liquidator shall, unless the Court otherwise orders, carry on the long-term business of the insurer with a view to its being transferred as a going concern to another

insurer, whether an existing insurer or an insurer formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made, but shall not effect any new contracts of insurance.

(3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to its long-term business require the appointment of a special manager of the insurer's long-term business, he may apply to the Court, and the Court may on such application appoint a special manager of that business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(4) Section 190(2) and (3) of the Companies Act 1981 (special manager to give security and receive remuneration) shall apply to a special manager appointed under subsection (3) of this section as they apply to a special manager appointed under that section.

(5) The Court may, if it thinks fit and subject to such provisions (if any) as it may determine, reduce the amounts of the contracts made by the insurer in the course of carrying on its long-term business.

(6) The Court may, on the application of a liquidator, a special manager appointed under subsection (3) or the Authority, appoint an independent actuary to investigate the long-term business of the insurer and to report to the liquidator, the special manager or the Authority, as the case may be, on the desirability or otherwise of that business being conducted and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

(7) Notwithstanding section 175(1) of the Companies Act 1981 (which requires the liquidator to obtain the sanction of the Court or committee of inspection for the bringing of legal proceedings in the name of and on behalf of the company) the liquidator may without any such sanction make an application in the name of and on behalf of the insurer under section 25.

[section 37 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Subsidiary insurers

38 (1) Where the insurance business or any part of the insurance business of an insurer has been transferred to an insurer under an arrangement in pursuance of which the first mentioned insurer (in this section called the subsidiary insurer) or the creditors thereof has or have claims against the insurer to which the transfer was made (in this section called the principal insurer), then, if the principal insurer is being wound up by or under the supervision of the Court, the Court shall, subject to this section, order the subsidiary insurer to be wound up in conjunction with the principal insurer, and may by the same or any subsequent order appoint the same person to be liquidator for the two insurers, and make provision for such other matters as may seem to the Court necessary, with a view to the insurers being wound up as if they were one insurer.

(2) The commencement of the winding up of the principal insurer shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary insurer.

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

(4) Where any insurer alleged to be subsidiary is not in process of being wound up at the same time as the principal insurer to which it is subsidiary, the Court shall not direct the subsidiary insurer to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the insurer against it being wound up, the Court is of the opinion that the insurer is subsidiary to the principal insurer, and that the winding up of the insurer in conjunction with the principal insurer is just and equitable.

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

(6) Where an insurer stands in the relation of a principal insurer to one insurer, and the relation of a subsidiary insurer to some other insurer, or where there are several insurers standing in the relation of subsidiary insurers to one principal insurer, the Court may deal with any number of such insurers together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

Reduction of contracts as alternative to winding up

39 (1) In the case of an insurer 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 insurer on such terms and subject to such conditions as the Court thinks just instead of making a winding up order.

Winding up rules

40 (1) The Minister acting on the advice of the Authority may make rules under this section for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up and generally for carrying into effect this Act in respect to the winding up of insurers.

(2) Without prejudice to the generality of subsection (1), rules made under this section may make provision for all or any of the following matters—

- (a) the identification of the assets and liabilities falling within either paragraph of section 36(2);
- (b) the apportionment between the assets falling within paragraphs (a) and (b) of section 36(2) of the costs, charges or expenses of the winding up or any debts of the insurer having priority under section 236 of the Companies Act 1981;

- (c) the determination of the amount of liabilities of any description falling within either paragraph of section 36(2) for the purpose of establishing whether or not there is any such excess in respect of that paragraph as is mentioned in section 36(3);
- (d) the application of assets within subsection (2)(a) for meeting the liabilities within that paragraph;
- (e) the application of assets representing any such excess as is mentioned in section 36(3).

(3) Rules made under this section shall be subject to the negative resolution procedure.

[section 40 amended by 2001:27 s.11 effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

PART VIII

CANCELLATION OF REGISTRATION

Cancellation of registration of insurers

41 (1) The Authority may, subject to this Part, by order cancel the registration of an insurer—

- (a) at the request of the insurer; or
- (b) upon any one or more of the following grounds—
 - (i) that false, misleading or inaccurate information has been supplied by the insurer or on its behalf for the purpose of any provision of this Act or the regulations;
 - (ii) that two years have elapsed since the registration of the insurer, and the insurer has not commenced to carry on business;
 - (iii) that the insurer has ceased to carry on business;
 - (iv) that the insurer has persistently failed to pay fees due under section 14;
 - (v) that the insurer has not complied with a condition attached to its registration or with a requirement made of it under this Act or the regulations;
 - (vi) that the insurer has been convicted of an offence against a provision of this Act or the regulations;
 - (vii) that, in the opinion of the Authority, the insurer has not been carrying on business in accordance with sound insurance principles;
 - (viii) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the insurer.

(2) Before it cancels the registration of an insurer under subsection (1)(b), the Authority shall give the insurer notice in writing of the ground on which it proposes to cancel the registration, and shall afford the insurer an opportunity to make objection in writing within the period of thirty days after receipt of the notice; and the Authority shall take into consideration any such objection and, if it decides to cancel the registration, cause the order of cancellation to be served on the insurer together with a notice giving particulars of the rights conferred by section 44A.

(3) The cancellation of the registration of an insurer shall take effect on the expiration of the period of twenty-one days beginning on the date of service of the order upon the insurer, or on such later date as may be specified in the order, but subject to the right of the insurer to appeal to an appeal tribunal under section 44A.

(4) In this section “to carry on business” means to carry on insurance business in or from within Bermuda.

[section 41 amended by 2001:27 s.3, 4 & Sch effective 1 October 2001; by 2001:33 s.5 and 7 effective 1 January 2002; subsection (1)(b)(viii) inserted, and subsections (2) and (3) amended, by 2006:28 s.14 effective 24 July 2006]

Cancellation of registration of insurance managers, etc

42 (1) The Authority may, subject to this Part, by order cancel the registration of an insurance manager, broker, agent or salesman—

- (a) at the request of the manager, broker, agent or salesman in question; or
- (b) upon any one or more of the following grounds—
 - (i) that false, misleading or inaccurate information has been supplied by him on his behalf for the purposes of any provision of this Act or the regulations;
 - (ii) that two years have elapsed since his registration, and he has not commenced to carry on business;
 - (iii) that he has ceased to carry on business;
 - (iv) that he has persistently failed to pay fees due under section 14;
 - (v) that he has not complied with a condition attached to his registration or with a requirement made of him under this Act or the regulations;
 - (vi) that he has been convicted of an offence against a provision of this Act or the regulations;
 - (vii) that he has been convicted by a court (whether in Bermuda or elsewhere) of an offence involving fraud or dishonesty;
 - (viii) that, in the opinion of the Authority, he has not been carrying on business in accordance with sound insurance principles;
 - (ix) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of any such persons.

(2) The provisions of subsections (2) and (3) of section 41 shall apply in relation to the cancellation under this section of a registration as those provisions apply in relation to a cancellation under that section.

(3) In this section, “to carry on business” means to carry on business in or from within Bermuda as an insurance manager, broker, agent or salesman, as the case may be.

[section 42 amended by 2001:27 s.3, 4 & Sch effective 1 October 2001; by 2001:33 s.5 effective 1 January 2002; subsection (1)(b)(ix) inserted, and subsection (3) substituted, by 2006:28 s.15 effective 24 July 2006]

43 *[section 43 amended by 2001:27 s.3,4 & Sch effective 1 October 2001; by 2001:33 s.5 effective 1 January 2002; and repealed by 2006:28 s.16 effective 24 July 2006]*

Cancellation of registration to be gazetted

44 The Authority shall publish in the Gazette notice of any cancellation of a registration under this Act.

[section 44 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

PART VIII APPEAL TRIBUNALS

Rights of appeal

44A (1) A registered person which is aggrieved by a decision of the Authority—

- (a) cancelling its registration under section 41 or 42;
- (b) directing it to remove a controller or officer under section 32(2)(j); or
- (c) making an adjustment to an insurer’s enhanced capital requirement and available statutory capital and surplus made under section 6D;

may appeal against the decision to a tribunal constituted in accordance with section 44B.

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) is that it appears to the Authority that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled in the case of any person; or
- (b) the Authority directs the removal of a person as a controller or officer of a registered person under section 32 (2)(j);

the controller or officer to whom the ground relates or in respect of whom the direction is made may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the direction for his removal.

(3) Any person on whom notice of objection is served under section 30F or 30H or 30JC may appeal to a tribunal constituted as aforesaid against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he

has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 30G(1), (4) or (5).

(4) The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.

(5) The cancellation of a registered person's registration pursuant to a decision against which there is a right of appeal under this section shall not have effect—

(a) until the end of the period within which the appeal can be brought; or

(b) if such an appeal is brought, until it is determined or withdrawn.

[section 44A inserted by 2006:28 s.17 effective 24 July 2006; subsection (1) amended by 2008:34 s.24 effective 31 December 2008; section 44A subsection (3) amended by 2010 : 22 s. 22 effective 29 March 2010; section 44A subsection (3) amended by 2010 : 60 s. 30 effective 31 December 2010]

Constitution of tribunal

44B (1) A tribunal shall consist of a chairman, or, in his absence, a deputy chairman, and two other members.

(2) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(3) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(4) The Minister shall appoint a panel of not less than nine persons with experience of insurance business to serve as members of appeal tribunals.

[section 44B inserted by 2006:28 s.17 effective 24 July 2006]

Determination of appeals

44C (1) Where an appeal is brought under the provisions of this Act the chairman or as the case may be the deputy chairman shall nominate two other members from the panel of members, who together with him shall constitute the tribunal which shall determine the appeal.

(2) On an appeal under sections 44A(1) and (2) the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(3) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that where the decision was to cancel a registration the tribunal may direct the Authority to impose conditions or issue directions instead.

(4) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise

directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

[section 44C inserted by 2006:28 s.17 effective 24 July 2006]

Costs, procedure and evidence

44D (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by a registered person and by a person who is to be a controller or officer of a registered person, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
- (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
- (i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both;
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.

[section 44D inserted by 2006:28 s.17 effective 24 July 2006]

Further appeals on a point of law

44E (1) A registered person or other person who has appealed to a tribunal may appeal to the Court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of the Court of Appeal.

[section 44E inserted by 2006:28 s.17 effective 24 July 2006]

PART IX
SUPPLEMENTARY

Prohibition of loans to directors, etc

45 (1) Subject to subsection (2), an insurer which carries on domestic business shall not, directly or indirectly, without the previous consent of the Authority in writing—

- (a) make any loan to any director or officer of the insurer, or to the spouse or child of any such director or officer; or
- (b) guarantee, or provide any security in connection with, a loan by any other person to a person referred to in paragraph (a).

(2) Nothing in subsection (1) shall operate to prohibit the making of a loan—

- (a) to a person referred to in subsection (1)(a) where the amount of the loan is within the surrender value of a life policy issued to him by the insurer; or
- (b) secured by a first mortgage, where the amount of the loan does not exceed three quarters of the market value of the property mortgaged.

(3) An insurer which contravenes this section commits an offence.

[section 45 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1)(a) amended by 2004:29 s.15 effective 10 December 2004]

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Effect on business transactions of infringement of Act

46 No business transaction shall be void or voidable by reason only that at the relevant time any party to the transaction is in breach of any provision of this Act.

Acting on behalf of unregistered insurer

47 (1) Subject to subsection (2), any person who solicits another person, or causes him to enter into, or make application to enter into, a contract of domestic business with a person who is not a registered insurer commits an offence.

(2) Subsection (1) shall not apply in relation to—

- (a) any contract arranged by any person authorized in that behalf by the Authority in accordance with any conditions imposed by the Authority; or
- (b) any contract of re-insurance.

[section 47 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Personal liability of intermediaries in certain cases

48 (1) Any insurance broker or agent who arranges a policy of domestic business with a person who is not a registered insurer shall be personally liable on the policy as if he were the insurer.

(2) For the purposes of subsection (1) a member of a recognized association of underwriters shall be deemed to be a registered insurer.

Control of advertisements

49 An insurer or an insurance broker or agent shall not publish any advertisement which misleads, or directly or by implication is likely to mislead or deceive, any prospective policy-holder with respect to an insurer's assets or financial standing, or in any other material respect.

Issue of false documents etc

50 (1) Any person who, for any purposes of this Act, issues any document which is false or misleading in a material respect, and any person who takes part in the preparation or issue of such a document, or who signs such a document, commits an offence unless he proves—

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document and took every reasonable precaution to ensure its accuracy; and
- (b) in any other case, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

PART X
MISCELLANEOUS

Service on insurers

51 (1) Any notice, instrument or other document, and any legal process, to be delivered to, or served on, an insurer for the purposes of this Act may be delivered or served by leaving it at the principal office of the insurer.

(2) If the said office cannot reasonably be found, any such notice, instrument, document or process may be delivered or served by leaving it at the office of the Authority and publishing notice of the fact in the Gazette.

(3) Delivery or service pursuant to subsection (2) shall be deemed to be delivery to, or service on, an insurer.

[section 51 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Powers exercisable to assist foreign regulatory authorities

51A *[Repealed]*

[section 51A inserted by 2001:27 s.12 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; repealed by 2008:3 s. 10(2) effective 25 March 2008]

51B *[Repealed]*

[section 51B inserted by 2001:27 s.12 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; repealed by 2008:3 s. 10(2) effective 25 March 2008]

51C *[Repealed]*

[section 51C inserted by 2001:27 s.12 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; repealed by 2008:3 s. 10(2) effective 25 March 2008]

51D *[Repealed]*

[section 51D inserted by 2001:27 s.12 effective 1 October 2001; repealed by 2008:3 s. 10(2) effective 25 March 2008]

Restriction on disclosure of information

Restricted information

52 (1) Except as provided by sections 52A, 52B and 52C—

- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
- (b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

[section 52 repealed and replaced by 2001:27 s.13 effective 1 October 2001]

Disclosure for facilitating the discharge of functions of the Authority

52A (1) Section 52 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge its functions under this Act.

(2) Without prejudice to the generality of subsection (1), section 52 does not preclude the disclosure of information by the Authority to the auditor of the registered person if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge its functions or would otherwise be in the interests of the policy-holders.

[section 52A inserted by 2001:27 s.13 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002]

Disclosure for facilitating the discharge of functions by other authorities

52B (1) Section 52 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting the Minister or other authority to discharge his regulatory functions.

(2) Section 52 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosure to an authority other than the foreign regulatory authority which has requested the information pursuant to section 30A of the Bermuda Monetary Authority Act 1969 ("the 1969 Act"), of information obtained pursuant to the exercise of powers under section 30B of the 1969 Act unless the Authority has taken into account the matters specified in section 30A (5) of that Act.

(4) Subsection (2) does not apply in relation to disclosure to an authority unless the Authority is satisfied that the authority is subject to restriction on further disclosure at least equivalent to those imposed by sections 52, 52A and this section.

- (5) Section 52 does not preclude the disclosure of information—
- (a) for the purpose of enabling or assisting an inspector appointed under section 30 to carry out an investigation;
 - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
 - (c) in connection with any other proceedings arising out of this Act.

(6) Section 52 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 30 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by that section is exercisable.

(7) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

[section 52B inserted by 2001:27 s.13 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; amended by 2008:3 s. 10(2) effective 25 March 2008]

Information supplied to the Authority by relevant overseas authority

52C (1) Section 52 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 52 or—

- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or
- (b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section—

“relevant functions” in relation to the Authority means its functions under this Act;

“relevant supervisory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

[section 52C inserted by 2001:27 s.13 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; subsection (2) amended by 2002:29 s.6 effective 14 October 2002]

Regulations by Minister

53 (1) The Minister acting on the advice of the Authority may make regulations—

- (a) dividing insurance business into classes for the purposes of any provision of this Act;
- (b) exempting any class of insurance business from any provision of this Act;

- (c) exempting any person or class of persons from any provision of this Act;
- (d) determining the value of assets or the amount of liabilities for the purposes of any provision of this Act;
- (e) without prejudice to paragraph (d), providing that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent;
- (f) prescribing the information to be contained in any statement or report required by any provision of this Act to be provided, and the manner of presentation of such information;
- (g) prescribing the information to be contained in any register under this Act which is to be made available for inspection by members of the public;
- (h) prescribing the number of copies and the manner of certification of any document required to be furnished under any provision of this Act;
- (i) prescribing anything permitted or required by this Act to be prescribed;
- (j) creating offences and prescribing penalties (including imprisonment) for breach of such offences.

(2) Regulations prescribing the information to be contained in any statutory financial statement or any statutory financial return may provide for enabling the information to be given in a note on, or a statement or report annexed to, the statement or return; or may require there to be given in such a note, statement or report as aforesaid such information in addition to that given in the statement or return as may be prescribed.

(3) Regulations may, as respects such matters stated in any statutory financial statement or any statutory financial return or in statements or reports annexed thereto as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the statutory financial statement or statutory financial return certificates of such matters as may be prescribed.

(4) If a form is prescribed for any statutory financial statement or as that in which information authorized or required to be given in a statement or report annexed to any statutory financial statement is to be given, or for a certificate to be so annexed, the statutory financial statement shall be prepared, the information shall be given or, as the case may be, the certificate shall be framed, in that form.

(4A) Regulations prescribing the information to be contained in any statutory financial statement or statutory financial return may apply retroactively for a period of up to 90 days before their coming into operation.

(5) In this section "Act" includes any regulations.

(6) Regulations made under this section shall be subject to the affirmative resolution procedure.

[section 53 amended by 2001:27 s.14 effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002; Section 53 subsection (4A) inserted by 2010 : 11 s. 2 effective 25 March 2010]

Specific offences

54 (1) Any person who fails to comply with any duty or prohibition imposed upon him by any provision to which this section applies commits an offence.

(2) This section applies to sections 16, 16A, 17(2), 24(4), 27(2), 28, 29A, 29B, 30(2), 31A, 31AA, 31B, 31C, 43(5) and 49.

[section 54 subsection (2) substituted by 2004:29 s.16 effective 10 December 2004; amended by 2008:34 s.25 effective 31 December 2008; Section 54 subsection (2) amended by 2010 : 22 s. 23 effective 29 March 2010]

General provisions relating to offences

55 (1) Any person committing an offence against this Act or any regulation for which no penalty is specifically provided may be proceeded against either summarily or on indictment:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$5,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 3 years or a fine of \$15,000 or both such imprisonment and fine.

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

[section 55 amended by 1995:20 effective 29 April 1995]

The Authority may modify accounting provisions in certain cases

56 (1) The Authority may, on the application, or with the consent, of any insurer, direct that all or any of the provisions to which this section applies shall not apply to that insurer or shall apply to it subject to such modifications as may be specified in the direction.

(2) A direction under this section may be subject to conditions.

(3) A direction under this section may be made with retroactive effect.

(4) A direction under this section may be revoked at any time by the Authority; and the Authority may also vary any such direction at any time, provided the variation has been applied for, or is consented to, by the insurer affected by the variation.

(5) The provisions to which this section applies are—

(a) the limitations upon the carrying on of general business or, as the case may be, long-term business specified in section 1(4);

(b) the provisions of sections 4 to 4F, 6, 15 to 18, 18B and 33; and

(c) the provisions of any regulations—

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- (i) relating to the limitations referred to in paragraph (a); or
- (ii) made for the purposes of any of the provisions specified in paragraph (b).

(6) A direction given under this section is not a statutory instrument having legislative effect.

[section 56 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (5)(b) amended by 2002:29 s.7 effective 14 October 2002]

Application

- 57 (1) Insurance business of any of the following kinds—
- (a) insurance business carried on by a friendly society registered under the Friendly Societies Act 1868 or by a trade union registered under the Trade Union Act 1965, being business in which risks of members of the friendly society or trade union, as the case may be, are insured;
 - (b) insurance business carried on by the Health Insurance Committee pursuant to the Health Insurance Act 1970;
 - (c) the health insurance scheme conducted pursuant to the Government Employees (Health Insurance) Act 1986;
 - (d) housing loan insurance carried on by the Bermuda Housing Corporation under the Bermuda Housing Loan Insurance Act 1984,

shall be deemed not to be insurance business within the meaning of this Act.

- (2) Apart from—
- (a) section 48; and
 - (b) any provision dealt with in subsection (3) of this section,

nothing in this Act or any regulation shall apply in relation to any member of a recognized association of underwriters.

- (3) In relation to a member of a recognized association of underwriters—
- (a) section 3 shall not apply in relation to any member of a recognized association of underwriters who is registered in accordance with paragraph (b) below and carries on his business in accordance with the requirements of that paragraph and with any conditions attached to his registration;
 - (b) sections 9 to 14 and any regulations made for the purposes of those sections shall apply in relation to a member of a recognized association of underwriters as respects the carrying on of insurance business by him in or from within Bermuda as those provisions apply in relation to an insurance manager, broker, agent or salesman acting as such;

- (c) sections 42 to 44 shall apply in relation to a member of a recognized association of underwriters in the same manner as those sections apply in relation to an insurance manager, broker, agent or salesman;
- (d) section 54 shall apply as respects the proviso to section 43(5);
- (e) section 55 shall apply;
- (f) section 1 shall apply to the extent necessary for the interpretation of any other section that applies.

[section 57 subsection (1)(b) substituted by 2006:28 s.18 effective 24 July 2006; subsection (1)(b) amended by 2009:49 s.14 effective 15 December 2009]

Designated investment contracts

57A (1) For the purposes of this section—

“contract” includes investment or security, and any reference to “parties” in relation to an investment or security shall be taken to be a reference to its issuers and investors; and

“designated investment contract” means—

- (a) any contract (including, but not limited to, any option contract, futures contract, swap contract, derivative contract, contract for differences or security) the purpose of which is to secure a profit or avoid a loss—
 - (i) by reference to fluctuations in the value or price of property of any description, or in an index, or other factor, specified for that purpose in the contract, or
 - (ii) based on the happening of a particular event specified for that purpose in the contract; and
- (b) in relation to which the Authority has given a direction under subsection (2).

(2) The Authority may direct in writing that a contract falling within paragraph (a) of the definition of designated investment contract in subsection (1), which was submitted to him in draft together with—

- (a) the fee of \$1000, or such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969, and
- (b) such other documents as the Authority may require,

is a designated investment contract for the purposes of this section.

(3) A direction under this section—

- (a) may be made with retroactive effect;
- (b) may be subject to conditions which may be varied at any time, provided—

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- (i) that the variation has been applied for, or is consented to by the parties to the contract in question; and
 - (ii) that those parties undertake to notify such other persons as the Authority considers may be affected by the variation;
 - (c) is not a statutory instrument having legislative effect.
- (4) Being a party to a designated investment contract shall not constitute carrying on insurance business, and a designated investment contract shall not constitute a contract of insurance, for any purposes.
- (5) For the avoidance of doubt, a designated investment contract shall not constitute a bet for the purposes of the Betting Act 1975.
- (6) The Minister may by order amend the definition of designated investment contract in subsection (1), if, after consulting the Authority, he considers it necessary to do so; and any such order shall be subject to the negative resolution procedure.

[section 57A inserted by 1998:8 effective 23 March 1998; subsection (6) amended by 2001:27 s.15 effective 1 October 2001; subsection (6) amended by 2001:33 s.5 effective 1 January 2002; subsection (2)(a) amended by 2002:39 s.7 & Sch effective 30 December 2002]

Transitional

58 *[omitted]*

Amendment of Act No. 43 of 1971

59 *[omitted]*

Commencement

60 *[omitted]*

SCHEDULE

(sections 5, 11)

MINIMUM CRITERIA FOR REGISTRATION

1 (1) Every person who is, or is to be, a controller or officer of a registered person is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential clients of the registered person are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

BUSINESS TO BE DIRECTED BY AT LEAST TWO INDIVIDUALS

2 If a body corporate, at least two individuals shall effectively direct the business of the registered person.

COMPOSITION OF BOARD OF DIRECTORS

3 If a body corporate, the directors shall include such number (if any) of directors without executive responsibility for the management of its business as the registered person considers appropriate having regard to the circumstances of the registered person and the nature and scale of its operations.

BUSINESS TO BE CONDUCTED IN PRUDENT MANNER

4 (1) The registered person conducts, or, in the case of a registered person which is not yet carrying on business, will conduct its business in a prudent manner.

(2) In determining whether a registered person is conducting its business in a prudent manner, the Authority shall take into account any failure by the registered person to comply with the provisions of this Act any other provisions of law and code of conduct.

(2A) A registered person that is an insurer shall not be regarded as conducting its business in a prudent manner unless it maintains, or as the case may be, will maintain sufficient capital to enable it to meet its insurance obligations given the size, business mix, complexity and risk-profile of its business.

(3) A registered person shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(4) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the registered person to be prudently managed and the registered person to comply with the duties imposed on it by or under this Act or other provision of law; and in determining whether those systems are adequate the Authority shall have regard to the nature and scale of its operations and the functions and responsibilities in respect of them of any such directors of the registered person as are mentioned in paragraph 3.

(5) Subparagraphs (2) to (4) are without prejudice to the generality of subparagraph (1).

CONSOLIDATED SUPERVISION

5 The position of the registered person within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

INTEGRITY AND SKILL

6 The business of the registered person is or, in the case of a registered person which is not yet carrying on business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

[Schedule inserted by 2006:28 s.19 effective 24 July 2006; para 4(2) amended by 2006:42 s.6 effective 29 December 2006; para 4(2A) inserted by 2008:34 s.26 effective 31 December 2008]

[This Act was brought into operation on 1 January 1980]

[Assent Date: 7 July 1978]

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2001 : 27
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