

CAYMAN ISLANDS



Supplement No. 1 published with Gazette No. 19
dated 13 September, 2010.

**A BILL FOR A LAW TO REVISE THE REGULATION OF THE
INSURANCE INDUSTRY IN THE CAYMAN ISLANDS; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE INSURANCE BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

This Bill makes provision for the regulation of the insurance industry in the Cayman Islands.

Part 1 contains the preliminary provisions.

Clause 1 provides the short title and commencement.

Clause 2 contains the definitions.

Part 2 provides for the licensing of persons carrying on insurance business, reinsurance business or acting as insurance agents, insurance brokers or insurance managers.

Clause 3 prohibits a person from carrying on insurance business, reinsurance business or acting as an insurance agent, unless the person holds a valid licence issued for that purpose.

Clause 4 makes provision for the procedure for making an application for a licence, the categories of licences, the grant of a licence and conditions of a licence.

Clause 5 makes provision for an insurance contract, transaction, obligation or instrument not to be rendered void or unenforceable merely because it was entered into in connection with insurance business carried on by an unlicensed person.

Clause 6 requires a class B or class C insurer to appoint an insurance manager in the Islands and to maintain full and proper records of its business activities at the insurance manager's place of business or some other location approved by the Authority unless it maintains permanently a place of business approved by the Authority.

Clause 7 requires a licensee to pay a prescribed annual fee in respect of each category of licence held. A surcharge of one-twelfth of the annual fee becomes payable for every month or part of the month that the annual fee is not paid.

Part 3 makes provision for the obligations of licensees.

Clause 8 provides for a licensee to have continuing obligations including maintenance of a margin of solvency, adequate arrangements for management of risks and maintenance of prescribed capital requirements.

Clause 9 makes provision for an insurer to submit to the Authority, by way of annual return, its audited financial statements, actuarial evaluation, certification of solvency, business plan and information contained in its licence application, except as otherwise approved by the Authority or subject to being in an exempt category.

Clause 10 makes provision for an insurance broker or an insurance manager to submit to the Authority, by way of annual return, financial statements, confirmation of information in the application for the licence, its business plan and any changes, and evidence of adequate indemnity insurance.

Clause 11 makes provision for insurance agents to submit to the Authority, by way of annual return, confirmation in writing that the insurance agent is acting for no more than two insurers and the names of those insurers, evidence of the existence of a power of attorney, agency agreement or guarantee or professional indemnity insurance and confirmation of information set out in the insurance agent's application for its licence.

Clause 12 prohibits the issuing or transferring of shares by a licensee where the shares total more than ten per cent of the issued share capital or the total voting rights of the licensee, except with the approval of the Authority.

Clause 13 requires an insurance broker or an insurance manager to carry professional indemnity insurance, except as otherwise approved by the Authority.

Clause 14 requires an insurance agent to provide evidence of a power of attorney, agency agreement or guarantee to the satisfaction of the Authority.

Clause 15 provides for an external insurer to maintain trust funds in respect of its general and long term business, except as otherwise approved by the Authority.

Clause 16 requires a class D insurer carrying on both long term and general business to keep separate accounts in respect of its long term business. Clause 16 also requires an insurer that issues linked policies to keep a separate account in respect of its linked policies.

Clause 17 provides for a class A, class B or class D insurer to establish separate accounts in respect of contracts to pay annuities on human life and contracts of insurance on human life.

Clause 18 gives the Authority the discretion to grant dispensations to insurance brokers to place contracts of domestic business with unlicensed insurers.

Clause 19 regulates agreements between insurance brokers and insurers.

Clause 20 imposes on the auditor the duty to give the Authority notice of information or its suspicions in relation to a licensee. Clause 20 also provides for the approval of an auditor by the Authority.

Clause 21 makes provision for insurance managers to manage insurance business only for fit and proper insurers.

Part 4 provides for the powers and duties of the Authority.

Clause 22 makes provision for the duties of the Authority to include the maintenance of a general review of insurance business in the Islands and the determination of applications for licences and approval of auditors.

Clause 23 empowers the Authority to give directions to a licensee to cease or refrain from committing an act or pursuing a course of conduct or a practice which is unsafe or unsound and to perform remedial acts.

Clause 24 provides for the powers of the Authority which include the powers to suspend or revoke a licence, impose conditions on a licensee and appoint a receiver or person to take control of a licensee's affairs.

Clause 25 makes provision for the avoidance of confusion of names by giving the Authority power to revoke a licence in such cases.

Clause 26 permits the Authority to apply to the Grand Court for an order for the preservation of the books or papers of a licensee where the Authority exercises its powers under clause 24.

Clause 27 gives the Authority the discretion to attend the winding up proceedings of a licensee.

Clause 28 provides for a licensee to apply to the Authority to approve the surrender of its licence where the licensee is voluntarily wound up and is solvent and can pay its creditors or where it has ceased to carry on the business in respect of which its licence was granted and its liabilities have been extinguished.

Part 5 contains miscellaneous provisions.

Clause 29 provides for the manner in which benefits of an insurance policy should inure.

Clause 30 makes provision for the discharge of liability on the payment of proceeds made to a policy holder or beneficiary by the insurer in accordance with the Law and the contract of insurance.

Clause 31 provides for the requirement for approval by the Authority of a transfer of portfolio from one insurer to the next.

Clause 32 provides for every contract of domestic business to be subject to the jurisdiction of the Islands.

Clause 33 provides for arbitration in cases of dispute or difference in relation to a contract of domestic insurance.

Clause 34 provides for appeals against any decision of the Authority under this Law to lie to the Grand Court.

Clause 35 provides for the applicability of certain laws such as the Immigration Law (2009 Revision), the Local Companies (Control) Law (2007 Revision), the Trade and Business Licensing Law (2007 Revision) and the Friendly Societies Law (1998 Revision).

Clause 36 restricts the use of words such as “insurance” “indemnity” or “guarantee” in the description or title under which a person carries on business in or from within the Islands unless the person is a licensee or has the approval of the Authority.

Clause 37 prohibits a licensee, an applicant for a licence or a director or officer of a licensee or of an applicant from knowingly or wilfully supplying false or misleading information to the Authority.

Clause 38 prohibits misleading representations relating to insurance business.

Clause 39 provides for the liability of directors or other officers concerned in the management of a body corporate where the body corporate commits an offence.

Clause 40 provides the Governor in Cabinet with the power to make Regulations.

Clause 41 repeals the Insurance Law (2008 Revision).

Clause 42 and the Schedule make provision for savings, transitional and consequential matters.

THE INSURANCE BILL, 2010

ARRANGEMENT OF CLAUSES

PART 1 - PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2 - LICENSING

3. Requirement for licence
4. Licences
5. Validity of transactions by unlicensed persons
6. Requirement for an insurance manager
7. Licence renewal fees

PART 3 - OBLIGATIONS OF LICENSEES

8. Continuing obligations
9. Returns required of insurer
10. Returns required of insurance broker and insurance manager
11. Returns required of insurance agent
12. Shares not to be issued or transferred without Authority's approval
13. Insurance broker or insurance manager to carry professional indemnity insurance
14. Power of attorney, agency agreement, guarantee or indemnity insurance
15. Trust funds
16. Separate accounts for long term and general business
17. Further provisions relating to long term business accounts
18. Dispensations to broke business from unlicensed insurers
19. Regulation of agreements between insurance brokers and insurers
20. Duties of auditor
21. Insurance managers

PART 4 - POWERS AND DUTIES OF THE AUTHORITY

22. Duties of the Authority
23. Directions by the Authority
24. Powers of the Authority
25. Avoidance of confusion of names
26. Preservation of assets, etc.
27. Authority may attend winding up proceedings

28. Surrender of licence

PART 5 - MISCELLANEOUS

29. How benefits of insurance policies should inure
 30. Effect of payment of proceeds
 31. Portfolio transfer
 32. Jurisdiction relating to domestic business
 33. Arbitration
 34. Appeals
 35. Application, etc.
 36. Use of the word “insurance”, etc.
 37. False or misleading information
 38. Misleading representations
 39. Liabilities of directors etc., where the offence is committed by a corporation
 40. Regulations
 41. Repeal
 42. Savings, transitional and consequential provisions
- SCHEDULE - Savings, transitional, consequential provisions

CAYMAN ISLANDS

**A BILL FOR A LAW TO REVISE THE REGULATION OF THE
INSURANCE INDUSTRY IN THE CAYMAN ISLANDS; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Insurance Law, 2010.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet.

2. (1) In this Law -

Interpretation

“actuary” means a person who has 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, and who is a current member in good standing of one of the above professional associations or a person in good standing with some other actuarial qualification who is recognised by the Authority as such for the purpose of this Law;

“auditor” means a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants in England and Wales, Ireland and Scotland, or the Canadian Institute of Chartered Accountants or the American

Institute of Certified Public Accountants, and who is a current member of good standing of one of the institutes referred to or a person of good standing with some other accountancy qualification who is recognised by the Authority as such for the purpose of this Law;

(2008 Revision)

“Authority” means the Cayman Islands Monetary Authority established under section 5 of the Monetary Authority Law (2008 Revision) and includes any employee of the Authority acting under the Authority’s authorisation;

“binding authority” means an instrument whereby an insurer authorises an insurance broker to solicit for a specific class of business on its behalf, having laid down terms and conditions, observance of which fully authorises the insurance broker to effect contracts of insurance between the insurer and the applicant for insurance;

“beneficiary” means a person who is designated by the policy holder under a contract of insurance as a person to whom the whole or part of the proceeds are payable on the maturity or surrender of the contract of insurance or the happening of an event;

“class A insurer” means a holder of a valid class A insurer licence referred to in section 4(3)(a);

“class B insurer” means a holder of a valid class B insurer licence referred to in section 4(3)(b);

“class B (i) insurer” means a holder of a valid class B insurer licence referred to in section 4(3)(b)(i);

“class B (ii) insurer” means a holder of a valid class B insurer licence referred to in section 4(3)(b)(ii);

“class B (iii) insurer” means a holder of a valid class B insurer licence referred to in section 4(3)(b)(iii);

“class C insurer” means a holder of a valid class C insurer licence referred to in section 4(3)(c);

“class D insurer” means a holder of a valid class D insurer licence referred to in section 4(3)(d);

“contract” includes a policy;

“court” means the Grand Court or a court of summary jurisdiction;

“domestic business” means insurance business where the contract is in respect of the life, safety, fidelity or insurable interest, other than in respect of property, of a person who at the time of effecting the contract is ordinarily resident in the Islands, or property that at the time of effecting the contract is in the Islands or, in the case of a vehicle, vessel or aircraft, or other movable property is ordinarily based in the Islands;

“external insurer” means a class A insurer who is not a local insurer and whose principal or registered office is in a jurisdiction outside the Islands where the legislation for the regulation and supervision of insurers is acceptable to the Authority;

“financial year” means an annual period in respect of which financial statements are prepared;

“general business” means insurance business other than long term business;

“general insurer” means an insurer carrying on general business;

“insurance agent” means a holder of a valid insurance agent licence referred to in section 4(3)(e);

“insurance broker” means a holder of a valid insurance broker licence referred to in section 4(3)(f);

“insurance business” means the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or indirectly, and includes running-off business including the settlement of claims;

“insurance group” means a group that includes an insurer’s subsidiaries, holding company, companies related to the insurer through common ownership or control or which have a majority of common senior management or directors;

“insurance manager” means a holder of a valid insurance manager licence referred to in section 4(3)(g);

“insurer” means a person who is -

- (a) licensed under section 4(3)(a), (b), (c) or (d) to carry on insurance business; or

- (b) an association of individual underwriters including Lloyd's of London and other associations of underwriters recognised by the Authority for the purposes of section 18 or 31;

“licence” means a licence granted under this Law;

“licensee” means the holder of a valid licence granted under section 4;

“linked policies” means contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description, whether or not specified in the contracts, or fluctuations in, or an index of, the value of property of any description, whether or not so specified;

“local insurer” means a class A insurer, incorporated in and having its place of business in the Islands;

“long term insurer” means an insurer carrying on long term business;

“long term business” means insurance business involving the making of contracts of insurance -

- (a) on human life or contracts to pay annuities on human life, including linked policies, but excluding contracts for credit life insurance and term life insurance other than convertible and renewable term life contracts;
- (b) against risks of the persons insured -
 - (i) sustaining injury as the result of an accident or of an accident of a specified class;
 - (ii) dying as the result of an accident or of an accident of a specified class; or
 - (iii) becoming incapacitated in consequence of disease or diseases 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 expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
- (c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraph (a) or (b);

“margin of solvency” means the excess of the value of prescribed assets over prescribed liabilities;

“policyholder” means the person with whom an insurer has effected a contract of insurance;

“proceeds” means monies, benefits in kind and cash values payable under a contract of insurance or reinsurance and includes any assets acquired with the same;

“reinsurance business” means the business of accepting risks by effecting or carrying one or more contracts of reinsurance whether directly or indirectly, and includes running-off business including the settlement of claims;

“related business” in the context of section 4(3)(b) means business which will originate from the insurer’s members or the members of any group with which it is related through common ownership or a common risk management plan, or as determined by the Authority;

“Regulations” means Regulations made under this Law; and

“repealed Law” means the Insurance Law (2008 Revision).

(2008 Revision)

(2) For the purposes of this Law -

- (a) in determining whether a person is a fit and proper person, the Authority shall have regard to all circumstances, including that person’s -
 - (i) honesty, integrity and reputation;
 - (ii) competence and capability; and
 - (iii) financial soundness; and
- (b) in determining whether a person (‘A’) controls another person (‘B’), the Authority shall have regard to whether one or more of the following are met -
 - (i) ‘A’, either directly or indirectly, holds ten per cent or more of the issued share capital in ‘B’;
 - (ii) ‘A’ is entitled either directly or indirectly to exercise or control the exercise of ten per cent or more of the total voting rights in ‘B’;
 - (iii) ‘A’ has the power to appoint or remove directors of ‘B’;
 - (iv) ‘A’ is the most senior officer responsible for the operations of ‘B’; and

- (v) 'A' is a person on whose instructions or directions the directors of 'B' either directly or indirectly are accustomed to act.

PART 2 - LICENSING

Requirement for licence

- 3. (1) Subject to subsection (3), a person shall not carry on -
 - (a) insurance business;
 - (b) reinsurance business; or
 - (c) business as an insurance agent, insurance broker, or insurance manager,

unless that person holds a valid licence issued for that purpose under this Law.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

(3) For the purposes of this Law, a person shall not be considered to be carrying on insurance business solely by reason of the fact that the person effects or carries out a contract of reinsurance with an insurer in the Islands, unless the person's principal place of business is in the Islands.

Licences

- 4. (1) A person desiring to carry on -
 - (a) insurance business;
 - (b) reinsurance business; or
 - (c) business as an insurance agent, insurance broker or insurance manager,

in or from within the Islands shall make an application in writing to the Authority for the grant of a licence under one or more of the categories set out in subsection (3).

(2) An application under subsection (1) shall contain the information prescribed and shall be accompanied by -

- (a) a business plan containing the details prescribed; and
- (b) the prescribed application fee,

and the Authority, if satisfied pursuant to subsection (5), may approve the application and business plan and grant a licence, subject to such conditions as determined by the Authority for the proper operation and supervision of the licensee.

(3) Subject to subsection (4), the categories of licences which may be granted by the Authority are -

- (a) class A insurer licence, for carrying on of domestic insurance business by a local insurer or external insurer, or limited reinsurance business as approved by the Authority;
- (b) class B insurer licence, for the carrying on of insurance business other than domestic business in respect of which -
 - (i) at least ninety-five per cent of the net premiums written will originate from the insurer's related business;
 - (ii) over fifty per cent of the net premiums written will originate from the insurer's related business; or
 - (iii) fifty per cent or less of the net premiums written will originate from the insurer's related business;
- (c) class C insurer licence, for the carrying on of insurance business involving the provision of reinsurance arrangements in respect of which the insurance obligations of the class C insurer are limited in recourse to and collateralised by the class C insurer's funding sources or the proceeds of such funding sources which include the issuance of bonds or other instruments, contracts for differences and such other funding mechanisms approved by the Authority;
- (d) class D insurer licence, for the carrying on of reinsurance business and such other business as may be approved in respect of any individual licence by the Authority;
- (e) insurance agent licence for the soliciting of domestic business on behalf of not more than one general insurer and one long term insurer;
- (f) insurance broker licence for arranging or procuring, directly or through representatives, insurance or reinsurance contracts or the continuance of such contracts on behalf of existing or prospective policyholders; and
- (g) insurance manager licence for providing insurance expertise to or for class B insurers or class C insurers.

(4) A licensee shall be subject to the following conditions -

- (a) an insurance broker shall not hold any other licence under this Law except an insurance manager licence;
- (b) an insurer that is not a class D insurer and not a class B insurer incorporated as a segregated portfolio company under Part XIV of the Companies Law (2010 Revision) must be separately licensed for long term business and for general business; (2010 Revision)

- (c) only a person incorporated under the Companies Law (2010 Revision) and that has a minimum of two directors may be licensed as an insurance broker, insurance manager, a class A insurer that is a local insurer or a class D insurer;
 - (d) an insurance manager who also carries on business as either an insurance broker or an insurance agent is required to be separately licensed in respect of each such activity;
 - (e) an insurance agent who acts on behalf of more than one long term and one general insurer is to be taken for the purposes of this Law to be acting as an insurance broker;
 - (f) only a person incorporated as an exempted company under the Companies Law (2010 Revision) and that has at least two directors may be licensed as a class B insurer or a class C insurer;
 - (g) a class B insurer may carry on domestic business where such business forms less than five per cent of net premiums written or where the Authority has otherwise granted prior approval which may be reviewed by the Authority at such intervals as the Authority considers appropriate; and
 - (h) an employee of an insurer does not require an insurance agent licence to solicit of domestic business on behalf of the insurer.
- (5) The Authority shall not grant a licence unless it is satisfied that -
- (a) the business to which the application relates would be carried on by persons who are fit and proper persons to be directors, managers or officers in their respective positions;
 - (b) the applicant will be able to comply with the requirements of this Law and the Regulations and with the Money Laundering Regulations (2009 Revision);
 - (c) it will not be against the public interest;
 - (d) the applicant has personnel with the necessary skills, knowledge and experience and such facilities and such books and records as the Authority considers appropriate, having regard to the nature and scale of the business;
 - (e) the structure of the applicant's insurance group, if any, will not hinder effective supervision; and
 - (f) the applicant's capital complies with the prescribed level.
- (6) A licensee who is an insurance broker, an insurance manager, a class A insurer or a class D insurer shall have a place of business in the Islands.
- (7) The Authority shall cause notice of each licence granted under this section to be published in the Gazette.

(2009 Revision)

5. An insurance contract, transaction, obligation or instrument entered into by any person, whether before or after the commencement of this Law, shall not be rendered void or unenforceable merely because it is entered into in connection with insurance business carried on by a person in contravention of section 3(1). Validity of transactions by unlicensed persons

6. A class B insurer or a class C insurer, unless it maintains permanently a place of business approved by the Authority, shall appoint an insurance manager in the Islands and maintain, at the insurance manager's place of business or at another location approved by the Authority, full and proper records of the business activities of the class B insurer or class C insurer, sufficient to - Requirement for an insurance manager

- (a) explain the transactions of the class B insurer or class C insurer;
- (b) disclose, with reasonable accuracy, at any time the state of the affairs of the class B insurer or class C insurer; and
- (c) enable the class B insurer or class C insurer to prepare annual financial statements.

7. (1) A licensee shall on or before every 15th day of January after the first grant of the licence, pay the prescribed annual fee in respect of each category of licence held. Licence renewal fees

(2) A licensee who fails to pay the prescribed annual fee by the date specified in subsection (1) shall, unless the Authority waives the same, pay to the general revenue of the Islands, a surcharge not exceeding one-twelfth of the prescribed annual fee for every month or part of a month that the prescribed annual fee is not paid.

(3) If the prescribed annual fee referred to in subsection (1) is not paid, the unpaid prescribed annual fee may be sued for by the Authority by action as a civil debt and the Authority may require, and the court may order, the payment of any surcharge accrued under subsection (2) in respect of the late payment of the prescribed annual fee.

PART 3 - OBLIGATIONS OF LICENSEES

8. (1) A licensee - Continuing obligations

- (a) shall carry on insurance business only in accordance with the information given in its approved licence application and business plan and shall seek the prior written approval of the Authority for any change to the approved business plan or in the information supplied in the application;
- (b) shall not, without the prior written approval of the Authority -

- (i) open outside the Islands a subsidiary, branch, agency or representative office or change its name; or
 - (ii) where it is an insurer, other than an external insurer, conducting insurance business other than long term business, amalgamate with any one or more insurers or, other than in the normal course of business, transfer its insurance operations or any part thereof, or accept transfer of the insurance operations or any part thereof from another insurer; and
- (c) that is required to have a place of business in the Islands shall maintain in the Islands such resources, including staff and facilities, books and records as the Authority may consider appropriate, having regard to the nature and scale of the business.

(2) An insurer shall -

- (a) maintain a margin of solvency in accordance with the prescribed solvency requirements;
- (b) maintain adequate arrangements for the management of risks, including the reinsurance thereof where appropriate;
- (c) maintain capital in accordance with the prescribed capital requirements;
- (d) authorize at least one person resident in the Islands and approved by the Authority to accept on its behalf service of process in any legal proceedings and any notices required to be served on it;
- (e) where it is a member of an insurance group, inform the Authority of any activity or transaction undertaken or proposed by another member of the group that could reasonably be expected to have a material effect on the insurer;
- (f) where it is an external insurer, be responsible for all contracts of domestic business issued by any branch or subsidiary and also for all acts, omissions and liabilities of such branch or subsidiary activity; and
- (g) maintain an effective system of governance as approved by the Authority.

(3) An insurance agent, insurance broker or an insurance manager shall establish and maintain a separate account for the brokerage, agency and management account separate from the accounts maintained for each insurer.

(4) A class B insurer that is established as a segregated portfolio company under Part XIV of the Companies Law (2010 Revision) shall, in respect of each segregated portfolio -

(2010 Revision)

- (a) maintain the prescribed margin of solvency;

- (b) unless waived by the Authority, comply with section 9(1)(a) and (c); and
- (c) cause each submission under paragraph (b) to be prepared using the same financial year end.

9. (1) An insurer shall, except as otherwise approved by the Authority in writing and subject to subsection (3), submit to the Authority by way of annual return, within six months of the end of its financial year - Returns required of insurer

- (a) audited financial statements prepared in accordance with internationally recognised accounting standards by an independent auditor approved by the Authority, together with a copy of any prescribed management letter issued by the auditor;
- (b) an actuarial valuation of its assets and liabilities including loss and loss expense provisions, certified by an actuary approved by the Authority;
- (c) certification of solvency prepared by a person approved by the Authority in accordance with the prescribed requirements;
- (d) written confirmation that the information set out in the application for the licence, as modified by any subsequent changes approved by the Authority, remains correct; and
- (e) such other information as may be prescribed.

(2) A class A insurer shall, except as otherwise approved in writing by the Authority, submit in the return under subsection (1), a list of insurance agents and insurance brokers who have the class A insurer's authority to solicit domestic business on its behalf, and confirmation that the class A insurer is satisfied that the agents are fit and proper persons and have complied with the applicable requirements under this Law.

(3) The following exemptions apply to the requirements of subsection (1)

- (a) a class C insurer or a class B insurer that does not write long term business is not required to make submissions under subsection (1)(b) or (c); and
- (b) the Authority may in writing exempt other classes of insurer from the requirement under subsection (1)(b) where it considers it appropriate, based on the nature, scale or scope of the insurance business involved.

(4) The audited financial statements and actuarial valuation referred to in subsection (1)(a) and (b) shall disclose the standards applied and -

- (a) a class A insurer or class D insurer shall publish its audited financial statements at a time no later than the time that it submits them to the Authority; and
- (b) a class B(iii) insurer shall make its audited financial statements available to insured persons, third party beneficiaries, and such other persons as may be prescribed, on request.

Returns required of insurance broker and insurance manager

10. (1) Except as otherwise approved by the Authority in writing, an insurance broker or an insurance manager shall submit to the Authority by way of annual return, within six months of the end of its financial year -

- (a) financial statements prepared in accordance with internationally recognised accounting standards;
- (b) written confirmation that the information set out in the licence application, as modified by any subsequent changes approved by the Authority, remains correct;
- (c) evidence of adequate professional indemnity insurance as required under section 13; and
- (d) such other information as may be prescribed.

(2) In addition to the submissions required under subsection (1), except as otherwise approved in writing by the Authority -

- (a) an insurance broker shall in respect of domestic business submit a list of all insurers for whom the insurance broker is authorised to act, commissions received from each insurer and the premium income received on behalf of and remitted to each such insurer during the financial year; and
- (b) an insurance manager shall submit a list of all insurers for whom the insurance manager acts.

Returns required of insurance agent

11. Except as otherwise approved by the Authority, in writing, an insurance agent shall submit to the Authority by way of annual return within six months of the end of the calendar year, in respect of his domestic business -

- (a) confirmation in writing that the insurance agent is acting for no more than two insurers and the names of those insurers;
- (b) evidence of the existence of a power of attorney, agency agreement or guarantee or professional indemnity insurance as required under section 14; and
- (c) confirmation in writing that the information set out in the insurance agent's application for the licence, as modified by any subsequent changes approved by the Authority, remains correct.

Shares not to be issued or transferred without Authority's approval

12. (1) Shares totalling more than ten per cent of the authorised share capital of a company that is a licensee under this Law shall not be issued, and issued

shares totalling more than ten per cent of the issued share capital or total voting rights of a company that is a licensee under this Law shall not be transferred or disposed of in any manner, without the prior approval of the Authority.

(2) For the purposes of subsection (1), the licensee shall provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of assessing whether persons acquiring control or ownership of such shares or voting rights in the licensee are fit and proper persons to have such control or ownership.

(3) The Authority may exempt from subsection (1) a licensee whose shares or the shares of whose parent body, if any, are publicly traded on a stock exchange recognised by the Authority, and any such exemption -

- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Authority of -
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the licensee's issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's parent company;
- (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of assessing whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such terms and conditions as the Authority may consider necessary.

(4) In subsection (1), the reference to shares being transferred or disposed of includes the transfer or disposal of the legal interest in the shares and the transfer or disposal of any beneficial interest in the shares.

(5) For the avoidance of doubt and for the purpose of issuing or transferring of issued shares or voting rights in this section, the references to shares totalling more than ten per cent includes cumulative acquisition of shares or voting rights less than ten per cent which amount to more than ten per cent of the authorized share capital of a company.

Insurance broker or insurance manager to carry professional indemnity insurance

13. (1) Except as otherwise approved by the Authority, an insurance broker or insurance manager shall maintain in force, and comply with the conditions of cover of, professional indemnity insurance placed with an insurer licensed to carry on domestic business or an insurer accorded special dispensation under section 18.

(2) The professional indemnity insurance required under subsection (1) shall -

- (a) provide for an indemnity of not less than eight hundred and twenty thousand dollars for any one loss, or such other figure as may be specified by the Authority;
- (b) extend to include the activities conducted on behalf of the broker or insurance manager; and
- (c) be subject to review by the Authority.

(3) In the event that the professional indemnity insurance required under subsection (1) is invalidated, becomes voidable or is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Authority and shall forthwith cease to solicit further insurance business until such professional indemnity insurance has been reinstated or replaced.

Power of attorney, agency agreement, guarantee or indemnity insurance

14. (1) An insurance agent shall provide evidence satisfactory to the Authority of a power of attorney, agency agreement or guarantee satisfactory to the Authority, between the insurance agent and the insurer for whom the insurance agent acts.

(2) A power of attorney, agency agreement or guarantee provided under subsection (1) shall extend to include activities conducted on behalf of the insurer by the insurance agent.

(3) In the event that a power of attorney, agency agreement or guarantee provided under subsection (1) is withdrawn or determined, the insurance agent shall forthwith notify the Authority and shall forthwith cease to solicit further insurance business until the power of attorney, agency agreement or guarantee has been reinstated.

(4) An insurance agent may, as an alternative to meeting the requirement laid down in subsection (1), maintain in force professional indemnity insurance in accordance with the requirements and for the amount specified in section 13.

15. (1) Except as otherwise approved by the Authority, an external insurer that carries out domestic business shall, at all times, place and maintain upon trust, with a person approved by the Authority, in a segregated account at a bank in the Islands which holds an “A” licence issued under the Banks and Trust Companies Law (2009 Revision), funds as approved by the Authority in respect of its -

Trust funds

(2009 Revision)

- (a) general business; and
- (b) long term business.

(2) Trust funds placed and maintained under subsection (1) shall be held under a trust deed approved by the Authority, which shall provide that -

- (a) the funds are exclusively to be used to discharge the external insurer’s obligations to policyholders, and for no other purpose; and
- (b) the funds are not to be made the subject of any charge, security interest, mortgage, trust, assignment, lien or other dealing,

and except with the written consent of the Authority, any distribution, dealing or undertaking entered into in contravention of paragraphs (a) or (b) shall be void.

(3) An external insurer shall -

- (a) provide, within two months of the end of its financial year, a report to the Authority in the prescribed form confirming the placement or maintenance of the funds approved by the Authority under subsection (1); and
- (b) if the funds held in trust under subsection (1) fall below the prescribed level, notify the Authority of the fact within seven working days, together with its proposed remedial actions, for the approval of the Authority.

16. (1) A class D insurer carrying on both long term business and general business shall keep separate accounts in respect of its long term business.

Separate accounts for long term and general business

(2) All receipts of funds in respect of the class D insurer’s long term business shall be placed in a separate long term business account, and payments from that account shall not be made directly or indirectly for any purpose other than those of the class D insurer’s long term business attributable to that account, except insofar as the payments can be made out of any surplus disclosed on an actuarial valuation and certified by an actuary approved by the Authority to be distributable otherwise than to policyholders.

(3) An insurer that issues linked policies shall keep a separate account in respect of its linked policies and shall maintain sufficient records to identify the assets and liabilities of that account.

(4) A licensee that issues linked policies shall establish and maintain one or more funds consisting of assets that are segregated from the other assets of the licensee and that are specified as the assets on the market value of which the liabilities of the licensee in respect of those linked policies or amounts depend.

Further provisions relating to long term business accounts

17. A class A insurer, class B insurer or class D insurer carrying on long term business may establish any number of separate accounts in respect of contracts to pay annuities on human life and contracts of insurance on human life, the assets relating to which shall be kept segregated one from the other and independent of all other assets of the insurer, and -

- (a) separate accounts shall not be chargeable with any liability arising from any other business, including other types of long term business, of the insurer and no liabilities shall be satisfied out of the assets standing to the credit of the relevant separate account apart from those liabilities arising from the contract for which the separate account was established or liabilities relating specifically to the operation of the separate account;
- (b) subject to paragraph (a), the assets of a separate account shall include all premiums paid with respect to the contract for which the separate account was established and all interest, earnings and assets derived from the premiums; and
- (c) any claim of the insurer under a contract of reinsurance taken out by the insurer in respect of a contract for which a separate account has been established shall be deemed to be an asset of the relevant separate account to the extent only that the insurer fails to meet its obligations under the relevant contract and upon payment of any amount due under the contract of reinsurance shall be immediately credited to the relevant separate account, whether the insurer is solvent or not.

Dispensations to broke business from unlicensed insurers

18. (1) The Authority may grant a special dispensation to an insurance broker to place a contract of domestic business with one or more insurers that are not licensed under this Law where -

- (a) the insurers have not been refused a licence under this Law; and
- (b) the Authority is satisfied that -
 - (i) the insurers are fit and proper;
 - (ii) the proposed volume of domestic business to be placed with the insurers is inadequate to support the payment of licence

fees for a class A insurer licence, or that some other good and sufficient reason exists; and

- (iii) there is an evident need on the part of the insurance broker, in terms of additional capacity or policy coverage, or otherwise, that the business be so placed.

(2) A dispensation under subsection (1) shall be subject to review at such intervals as the Authority may specify.

(3) The insurers in respect of whom a dispensation under subsection (1) has been granted shall nominate at least one person resident in the Islands and approved by the Authority who is authorised to accept on its behalf service of process in any legal proceedings and any notices to be served.

(4) An insurance broker who has not been granted a special dispensation under subsection (1) shall be personally liable to the insured on all contracts of insurance placed with insurers not licensed under this Law, in the same manner as if the insurance broker were the insurer.

19. (1) Subject to subsection (2), an insurance broker shall not enter into a binding authority with an insurer other than a class D insurer.

Regulation of agreements between insurance brokers and insurers

(2) The Authority may grant a dispensation for a fixed period to an insurance broker, despite the duty of the insurance broker to act for the prospective insured, to enter into a binding authority with an insurer if it is satisfied that the insurance broker needs, in terms of additional capacity, policy coverage, cost savings or otherwise, the binding authority to be permitted.

(3) An application for a dispensation shall be in writing and shall be accompanied by such additional information as the Authority may require.

(4) A dispensation granted under this section shall be subject to any conditions that the Authority sees fit, including restrictions to lines of business, specific contracts, types of client and requirements for disclosure and review at such intervals as the Authority may specify.

(5) An unlicensed insurer with whom a broker can place insurance business pursuant to a dispensation granted under this section shall not by virtue of that fact be regarded as carrying on insurance business in or from within the Cayman Islands.

20. (1) If an auditor, in the course of carrying out an audit of the accounts of a licensee under this Law, obtains information or suspects that the licensee is -

Duties of auditor

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its policyholders or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business otherwise than in compliance with -
 - (i) this Law or the Regulations;
 - (ii) the Monetary Authority Law (2008 Revision);
 - (iii) the Money Laundering Regulations (2009 Revision); or
 - (iv) a condition of the licence,

(2008 Revision)

(2009 Revision)

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of suspicion, his reason for that suspicion.

(2) Without prejudice to subsection (8), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may disqualify him from being an auditor of a licensee, but the Authority may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with subsection (1).

(3) A licensee shall not appoint as an auditor a person disqualified under subsection (2).

(4) Where the Authority has granted approval of an auditor under this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a licensee or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.

(5) When a licensee changes its auditor, the Authority may require the former auditor to explain the reasons for the change.

(6) A person carrying out or charged with the carrying out of any duty, obligation or function under this section shall not incur civil liability to any other person for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission concerned was in bad faith.

(7) A reference in this section to an auditor carrying out an audit of the accounts of a licensee includes a reference to an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.

(8) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a licensee an obligation to do anything that the auditor would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.

(9) A person who contravenes subsection (1) commits an offence and liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

21. (1) An insurance manager shall use his best endeavours to manage insurance business only for fit and proper insurers. Insurance managers

(2) If the insurance manager, in respect of any insurer for or with whom the insurance manager is managing insurance business -

- (a) has concerns regarding the fitness and probity of the insurer;
- (b) obtains information or suspects that the insurer is unable or likely to become unable to meet its obligations as they fall due;
- (c) obtains information or suspects that the insurer is carrying on or attempting to carry on business in a fraudulent or criminal manner;
- (d) obtains information that the insurer is involved in any criminal proceedings, whether in the Islands or abroad;
- (e) obtains information about a material change in the nature of the insurer's business that has not been reported to the Authority;
- (f) in relation to a class B(i) insurer or class B(ii), obtains information that the limit on unrelated business is exceeded; or
- (g) obtains information or suspects that the insurer is carrying on or attempting to carry on business otherwise than in compliance with -
 - (i) this Law or the Regulations;
 - (ii) the Monetary Authority Law (2008 Revision); (2008 Revision)
 - (iii) the Money Laundering Regulations (2009 Revision); or (2009 Revision)
 - (iv) a condition of its licence,

the insurance manager shall report the same forthwith to the Authority.

(3) A person carrying out or charged with the carrying out of any duty, obligation or function under this section shall not be liable in damages for anything done or omitted in the discharge or purported discharge of that duty, obligation or function under this section unless it is shown that the act or omission was in bad faith.

(4) If either party to an agreement relating to representation between an insurer and an insurance manager intends to terminate the agreement, the party shall give sixty days written notice of the proposed termination to the Authority unless the Authority waives the requirement in writing.

PART 4 - POWERS AND DUTIES OF THE AUTHORITY

Duties of the Authority

22. (1) It is the duty of the Authority -

- (a) to maintain a general review of insurance business in the Islands;
- (b) from time to time to examine by way of scrutiny of regular returns, on-site inspections or auditors' reports, or in such other manner as the Authority may determine, the affairs or business of any licensee or other person carrying on, or who has at any time carried on, insurance business, for the purpose of a general review under paragraph (a) or for the purpose of satisfying itself that this Law or any regulations made under this Law or the Proceeds of Crime Law, 2008 are being complied with and that the licensee is carrying on business in a fit and proper manner;
- (c) to examine the annual returns submitted to the Authority under sections 9, 10 and 11; and
- (d) to examine and make determinations with respect to -
 - (i) applications for licences under section 4;
 - (ii) applications for approval of the use of words or representations which require approval under section 36(1);
 - (iii) proposals for the revocation of licences under section 25;
 - (iv) changes under section 8(1)(a);
 - (v) cases of suspected insolvency;
 - (vi) the exercise of powers under section 23 or 24; and
 - (vii) applications for approval of auditors.

Law 10 of 2008

(2) In the performance of its functions under this Law, the Authority is entitled at all reasonable times -

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee; and

- (b) to request any information, matter or thing from any person who it has reasonable grounds to believe is carrying on insurance business in contravention of section 3(1),

as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law.

(3) The Authority may take all necessary action to ensure the proper and just implementation of this Law, and may authorize in writing any other person to assist it in the performance of its functions.

(4) For the purpose of performing its duties under subsection (1)(b), the Authority may in writing authorize any person, at the expense of the licensee, to examine the affairs or business of any licensee or other person carrying on insurance business and to report to the Authority the results of the examination.

(5) Where the Authority considers it necessary for the proper supervision of a licensee, the provisions of subsections (1)(b) and (2) may be applied to activities or transactions of any member of the licensee's insurance group.

23. (1) Where the Authority is of the opinion that a licensee -

Directions by the Authority

- (a) is committing, or about to commit, an act that is an unsafe or unsound practice in conducting the business of the licensee; or
- (b) is pursuing or about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of the licensee,

the Authority may direct the licensee, in relation to a policy, a line of business or the entire business of the licensee, to cease or refrain from committing the act or pursuing the course of conduct and to perform such acts as in the opinion of the Authority are necessary to remedy or ameliorate the situation.

(2) A person, who without reasonable cause, fails to comply with a direction given by the Authority under subsection (1) commits an offence and is liable-

- (a) on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both; and
- (b) on conviction on indictment to a fine of five hundred thousand dollars or to imprisonment for a term of ten years or to both,

and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

(3) The provisions of this section may be applied to a segregated portfolio within a segregated portfolio company that is licensed under this Law.

Powers of the Authority

24. (1) The Authority may immediately do any of the things provided in subsection (2), where the Authority is of the opinion that -

- (a) a licensee is or appears likely to become unable to meet its obligations as they fall due;
- (b) a licensee is carrying on business in a manner detrimental to the public interest or to the interest of its creditors or policy holders;
- (c) the activities of any member of the licensee's insurance group are detrimental to the interest of the licensee's creditors or policy holders;
- (d) a licensee has contravened this Law or the Money Laundering Regulations (2009 Revision);
- (e) a licensee has failed to comply with a condition of its licence or with section 8(2);
- (f) the direction and management of a licensee's business has not been conducted in a fit and proper manner;
- (g) a person holding a position as a director, manager or officer of a licensee's business is not a fit and proper person to hold the respective position; or
- (h) a person holding or acquiring control or ownership of a licensee is not a fit and proper person to have such control or ownership.

(2009 Revision)

(2) Where subsection (1) applies, the Authority may do any of the following -

- (a) require the licensee immediately to take steps to rectify the matter;
- (b) suspend the licence of the licensee pending a full enquiry into the licensee's affairs made under section 22(1)(b);
- (c) revoke the licence;
- (d) impose conditions with respect to decisions made by the licensee including the suspension of voting rights or nullification of votes cast;
- (e) impose conditions, or further conditions, upon the licence and amend or revoke any such condition;
- (f) require the substitution or removal of any director, manager or officer of the licensee;
- (g) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs;
- (h) at the expense of the licensee, appoint a receiver or person to assume control of the licensee's affairs who shall have all the

powers necessary to administer the affairs of the licensee including power to terminate the insurance business of the licensee; and

- (i) require such action to be taken by the licensee as the Authority considers necessary.

(3) Notwithstanding section 34(1), a licensee may, within seven days of the decision, apply to the Authority for a reconsideration of its decision to revoke a licence under subsection (2)(c).

(4) A person appointed in respect of a licensee under subsection (2)(g) or (h) shall -

- (a) when requested to do so by the Authority, supply the Authority with such information in respect of the licensee as is specified by the Authority;
- (b) within three months of his appointment, or within such other period as the Authority may specify, prepare and supply to the Authority a report on the affairs of the licensee making, where appropriate, recommendations in respect of the licensee; and
- (c) if his appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Authority such other information, reports and recommendations as the Authority specifies.

(5) On receipt of a report under subsection (4), the Authority may -

- (a) revoke the appointment of the person appointed under subsection (2)(g) or (h);
- (b) extend the period of his appointment;
- (c) subject to such conditions as the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority;
- (d) revoke the licence; or
- (e) apply to the Grand Court for an order that the licensee be forthwith wound up by that Court in which case the provisions of the Companies Law (2010 Revision) relating to the winding up of a company by that Court shall apply.

(2010 Revision)

(6) The Authority may revoke a licence if the licensee -

- (a) has ceased to carry on insurance business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(7) Where the Authority suspends a licence under subsection (2)(b) or revokes a licence under subsection (2)(c), subsection (5)(d) or subsection (6), the

Authority shall cause notice of the suspension or revocation to be published in the Gazette, and may also cause the notice to be published, whether within the Islands or elsewhere, in such newspaper or other publication as the Authority may consider necessary in the circumstances.

(8) The provisions of this section may be applied to a segregated portfolio within a segregated portfolio company that is licensed under this Law.

Avoidance of confusion of names

25. The Authority may revoke the licence of a licensee who carries on insurance business or acts as an insurance agent, an insurance broker or an insurance manager under a name which -

- (a) is identical with that of any other person, company, firm or business whether within the Islands or not, or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated falsely to suggest the patronage of or connection with some person of authority whether within the Islands or not;
- (c) is calculated falsely to suggest that the person has a special status in relation to or derived from the Government of the Islands, or has the official backing of or acts on behalf of the Government of the Islands or of any department or official thereof or is recognised in the Islands as a local insurer, insurance agent, insurance broker or insurance manager; or
- (d) is calculated falsely to suggest that the licensee is carrying on insurance business in a different category from that in respect of which he is licensed.

Preservation of assets, etc.

26. (1) In any case where the Authority has exercised its powers under section 24, the Authority may apply *ex parte* to the Grand Court for an order that the assets, books or papers of the licensee be preserved, not moved or otherwise disposed of and the Grand Court may, if it is satisfied that the assets, books or papers are liable to be moved, destroyed or otherwise disposed of, make an order that they shall be preserved, and not be moved or otherwise disposed of until a further order of that Court.

(2) Where an order has been made by the Grand Court under subsection (1), the licensee may apply to the Grand Court at any time for the discharge of the order and the Grand Court may thereupon discharge, vary or confirm the order.

Authority may attend winding up proceedings

27. (1) Where a petition for the winding up of a licensee or a person who has at any time been a licensee is presented by a person other than the Authority the petitioner shall serve the Authority with a copy of the petition and the Authority

may appear at the hearing of the petition and the provisions of subsections (2) and (3) shall apply.

(2) A document which relates to a petition for winding-up and which is required to be sent to any person specified in subsection (1), or to any of his respective creditors, shall also be sent to the Authority.

(3) A person appointed for the purpose by the Authority may -

- (a) attend a meeting of creditors of a person specified in subsection (1);
- (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
- (c) make representations as to any matter for decision at any such meeting.

28. A licensee may apply to the Authority to surrender its licence if it -

Surrender of licence

- (a) has ceased to carry on the business in respect of which the licence was granted and its liability has been extinguished to the satisfaction of the Authority; or
- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all its creditors,

and the Authority may, where an application is made, approve the surrender and cancel the licence and publish the cancellation in the Gazette.

PART 5 - MISCELLANEOUS

29. (1) Subject to subsection (2), all proceeds paid or payable to a policy holder or a beneficiary under a contract of insurance in respect of long term business issued by any insurer shall inure exclusively for the benefit of the policy holder or the beneficiary in accordance with the terms of the contract of insurance and -

How benefits of insurance policies should inure

- (a) shall be protected from the claim of any creditor in bankruptcy, insolvency, administration or similar proceedings relating to any person, whether that person is the policy holder or a beneficiary or whether the claim arose before or after payment under the contract of insurance, unless the contract of insurance was effected for the benefit of the creditor; and
- (b) shall not be subject to or be otherwise available to meet the claim of any creditor of a person, whether that person is the policy holder or a beneficiary or whether the claim arose before or after

payment under the contract of insurance, unless the contract of insurance was effected for the benefit of the creditor.

(1996 Revision) (2) Where premiums are paid by any person to an insurer with intent to defraud a creditor, nothing contained in the Fraudulent Dispositions Law (1996 Revision) shall operate to set aside a payment made under this section and any creditor of the person shall be entitled only to receive out of the proceeds a sum equal to the premiums so paid, together with such interest as the court may order, for the period between payment of the premium and the date of the payment.

(3) For the purposes of the application of the Fraudulent Dispositions Law (1996 Revision) to subsection (2) -

- (a) the premium or premiums paid under subsection (2) shall be deemed to be dispositions at undervalue;
- (b) the six-year limitation period in section 4(3) of that Law shall apply to the claim of the creditor but the enforcement of any judgment resulting from the claim shall be permitted against the proceeds outside of any limitation period; and
- (c) at no time shall the creditor have any right of action or claim against the insurer.

(4) This section applies notwithstanding that -

- (a) the policy holder reserves a power to nominate or remove one or more other beneficiaries; or
- (b) the policy holder or the estate of the policy holder is an actual or contingent beneficiary under the contract of insurance.

(1996 Revision) (5) For the purposes of subsection (2), creditor means creditor as defined in section 2 of the Fraudulent Dispositions Law (1996 Revision).

Effect of payment of proceeds

30. Any payment of proceeds made to a policy holder or beneficiary by the insurer in accordance with this Law and the contract of insurance shall discharge the insurer from any further liability under the relevant contract of insurance and the insurer shall not thereafter be responsible for, or be required to see to, the application of the payment.

Portfolio transfer

31. (1) A transfer or amalgamation of the whole, or any part, of the long term business of any insurer to another insurer shall only be effected in accordance with the approval of the Authority.

(2) An application for approval under subsection (1) shall be accompanied by -

- (a) a statement as to the solvency of the transferee;

- (b) a certified copy of the agreement under which the transfer is to be effected;
- (c) a report on the terms of the proposed transfer, prepared by a competent professional person approved by the Authority; and
- (d) satisfactory proof that sufficient notice of the proposed transfer has been served on each policyholder affected and that the notice has been published in local media at least thirty days before the application to the Authority is made.

(3) The Authority may approve the proposed transfer as presented or subject to such terms and conditions as it sees fit, having regard to the rights and interests of all policyholders affected by the transfer and all the circumstances of the case.

(4) The Authority may impose conditions on applicants under this section and in particular -

- (a) for the transfer from the transferor to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the transferor concerned;
- (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
- (c) for the transfer of property or liabilities whether or not the transferor concerned otherwise has the capacity to effect the transfer in question;
- (d) in relation to property held by the transferor as trustee;
- (e) in relation to future or contingent rights or liabilities of the transferor; and
- (f) for securing the effective transfer to the transferee of any property or liabilities, that is the subject of the transfer, situated in or governed by the law of any jurisdiction outside of the Islands.

(5) In this section -

“liabilities” includes duties;

“property” includes property, rights and powers of any description;

“transferee” means the insurer to whom the long term business of the transferor is transferred; and

“transferor” means the insurers whose long term business is transferred under subsection (1).

Jurisdiction relating to domestic business

32. Every contract of domestic business shall be subject to the jurisdiction of the courts of the Islands, notwithstanding any provision to the contrary contained in the contract or in any agreement related to the contract.

Arbitration

33. Where there is no valid arbitration agreement in place and a dispute or difference arises out of or in connection with a contract of domestic insurance, the parties to the dispute or difference shall agree to the appointment of one arbitrator and if the parties are unable to agree the Authority shall appoint an arbitrator and the Arbitration Law (2001 Revision) shall apply with the necessary changes.

(2001 Revision)

Appeals

34. (1) An appeal shall lie to the Grand Court against any decision of the Authority other than a decision of the Authority to present a winding up petition or to apply for the appointment of a receiver or controller.

(2) An appeal under this section shall not operate as a stay of any decision appealed against.

(3) The Rules Committee of the Grand Court may make Rules of Procedure governing the conduct of appeals under this section.

Application, etc.

(2009 Revision)

35. (1) Nothing in this Law derogates from any provision of the Immigration Law (2009 Revision) relating to gainful occupation licences.

(2007 Revision)

(2007 Revision)

(2) A person who is licensed under this Law shall not be required to be licensed under the Local Companies (Control) Law (2007 Revision) or the Trade and Business Licensing Law (2007 Revision).

(3) This Law has no application to or effect upon -

- (a) governmental pension arrangements;
- (b) the validity of policies of insurance in existence at the date of coming into effect of this Law;
- (c) the Friendly Societies Law (1998 Revision); or
- (d) pecuniary loss insurance provided by banks licensed under the Banks and Trust Companies Law (2009 Revision).

(1998 Revision)

(2009 Revision)

Use of the word “insurance”, etc.

36. (1) Except with the approval of the Authority or where the person is a licensee, a person shall not -

- (a) use or continue to use, in English or in any other language, the words “insurance”, “assurance”, “indemnity”, “guarantee”, “underwriting”, “reinsurance”, “surety”, “casualty” or any other word which in the opinion of the Authority connotes insurance business or any of their derivatives in the description or title under which he carries on business in or from within the Islands; or
- (b) make or continue to make any representation in any billhead, letter, letterhead, circular, paper, notice or advertisement, or by any manner whatsoever, that he is carrying on insurance business.

(2) Before giving its approval under subsection (1), the Authority may require of any person such references and such information and particulars as may be prescribed.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

37. (1) A licensee, applicant for a licence, or any director or officer of a licensee or of an applicant shall not knowingly or wilfully supply false or misleading information to the Authority.

False or misleading information

(2) A licensee, applicant for a licence, or any director or officer of a licensee or of an applicant who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

38. (1) A person shall not knowingly make, issue or permit to be made or issued any representation about or description of his insurance business, by whatever form or method, that is misleading or likely to be misleading to the public.

Misleading representations

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

39. (1) Where an offence under this Law or the Regulations which has been committed 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 senior officer of the body corporate, or any person who was purporting to act in

Liability of directors etc., where the offence is committed by a corporation

such a capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Regulations

40. (1) The Governor in Cabinet may make regulations -

- (a) prescribing anything by this Law required to be prescribed;
- (b) exempting any person or class of persons or business or class of business from any provision of this Law;
- (c) prescribing forms to be used;
- (d) prescribing any returns to be made under this Law;
- (e) prescribing capital and solvency margins and ratios to be maintained by licensees under this Law;
- (f) prescribing any fees payable; and
- (g) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Law and its administration.

(2) Regulations made under this Law may -

- (a) make different provision in relation to different cases or circumstances;
- (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; or
- (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Governor in Cabinet to be necessary or expedient for the purposes of the regulations.

(3) Regulations made under this Law may create an offence punishable by a fine not exceeding ten thousand dollars.

Repeal
(2008 Revision)

41. The Insurance Law (2008 Revision) is repealed.

Savings, transitional and
consequential provisions
Schedule

42. (1) The Schedule, which contains specific savings, transitional and consequential provisions, shall have effect.

(2) Notwithstanding section 40, the Governor in Cabinet may make regulations to provide for such further savings, transitional and consequential provisions to have effect in connection with the coming into operation of any provision of this Law as are necessary or expedient.

(3) Regulations made under subsection (2) may be given retrospective operation to a day not earlier than the day this Law comes into force.

(4) Subsections (2) and (3) shall expire one year after they come into force.

(5) Regulations made under this section shall be subject to negative resolution.

SCHEDULE

(Section 42(1))

SAVINGS, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

1. Every application for a licence, dispensation, approval or other matter made under the repealed Law that has not been wholly dealt with by the Authority or other person or body to which it has been made when this Law comes into force shall be taken to be an application made under this Law, and this Law shall apply accordingly. Continuance of applications
2. Except as otherwise expressly provided in this Law every civil matter and proceeding commenced in any court under the repealed Law and pending or in progress immediately before this Law comes into force may be continued, completed and enforced under this Law. Continuance of civil proceedings pending or in progress
3. All proceedings in respect of offences committed against the repealed Law may be commenced or continued as if this Law had not come into force. Continuance of criminal proceedings
4. Subject to paragraph 5, every licence, dispensation, approval or direction made or granted under the repealed Law and in force immediately before this Law comes into force shall continue in force after this Law comes into force on the same conditions and with the same effect as if this Law had not come into force. Saving of licences, etc.
5. A licensee existing at the coming into force of this Law who is not in compliance with one or more of the conditions specified in section 4(4) as may be applicable to him shall so comply within eighteen months of the coming into force of this Law or such longer period as the Authority may for good cause shown permit and, if it is applicable, shall comply in the interim with section 8. Implementation of new conditions
6. A licensee existing at the coming into force of this Law who is not in compliance with sections 4(6) and 8(1)(c) shall so comply within eighteen months of the coming into force of this Law. Implementation of requirements relating to places of business

The Insurance Bill, 2010

- Implementation of insurance conditions 7. An insurance broker or insurance manager who is not fully compliant with the requirements contained in section 10 at the coming into force of this Law or who does not have a business plan approved by the Authority shall comply with those requirements within eighteen months of the coming into force of this Law.
- Saving forms in use 8. Every form issued or prescribed for use under the repealed Law is to be regarded as issued or approved for use under this Law until another form is issued or prescribed for use under this Law in place of that form.
- Periods of time 9. Where any period of time specified in the repealed Law is current at the coming into force of this Law, and there is a corresponding provision in this Law, this Law shall have effect as if that corresponding provision had been in force when that period began to run.

Passed by the Legislative Assembly the day of 2010.

Speaker.

Clerk of the Legislative Assembly.