

**A BILL**

**for**

**AN ACT TO REVISE THE LAW REGULATING THE CARRYING ON OF EXTERNAL INSURANCE BUSINESS FROM WITHIN THE BAHAMAS IN ORDER TO EXPAND THE EXISTING REGULATORY FRAMEWORK AND TO GIVE EFFECT TO MATTERS RELATING THERETO.**

**Enacted by the Parliament of The Bahamas**

**PART I**

**PRELIMINARY**

- Short title.           1.           This Act may be cited as the External Insurance Act, 2002.
- Interpre-           2.    (1) In this Act -  
tation.           "actuary" means -
- (a) a person who is qualified as an actuary and is a member in good standing of an association of actuaries or other similar body approved by the Commission; or
  - (b) a person who is for the time being authorised by the Commission under section 46 to be appointed as an actuary;
- "affiliated company" means a company which -
- (a) stands in relation to another body corporate as a parent or subsidiary company of that body corporate; or
  - (b) together with that body corporate stands in such relationship to another body corporate; or
  - (c) is, in relation to another body corporate, a member of the same group of companies by virtue of common ownership or control
- "auditor" means a member of the Bahamas Institute of Chartered Accountants who holds a practising certificate from that Institute, or a person who

for the time being is authorised by the Commission under section 46 to be appointed as an auditor for the purposes of this Act;

"commission" means the Insurance Commission of The Bahamas established under section 4 of the Insurance Act, 2002;

"external insurer" means a body corporate incorporated in The Bahamas, or registered in The Bahamas under the Foreign Companies Act, and which carries on only external insurance business;

"external insurance business" means -

(a) insurance business of which not less than a substantial amount of the value of the risks underwritten are risks of an affiliated company, provided that insurance business that is long term business shall constitute captive insurance business without regard to the amount of value of the risks underwritten which are risks of an affiliated company; or

(b) any other insurance business not referred to in paragraph (a) as may be approved by the Commission as captive insurance business with regard to a particular insurer on the advice of the Superintendent;

"financial year" means the period not exceeding 53 weeks at the end of which the balance of the licensee's accounts is struck or, if not balance is struck, or if a period in excess of 53 weeks is employed, then a calendar year;

"general insurance business" includes insurance business of all or any of the following classes;

- (a) property insurance;
- (b) accident and sickness insurance;
- (c) employers' liability insurance;
- (d) motor vehicles insurance;
- (e) marine, aviation and transit insurance;
- (f) general liability;
- (g) product liability;
- (h) professional liability;

- (i) financial insurance;
- (j) public liability insurance;
- (k) workmen's compensation insurance;

"holding company" has the meaning ascribed to it by section 40;

"insurance business" means the business of effecting and carrying out contracts of insurance-

- (i) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed, or
- (ii) to pay to a person a sum of money or other thing of value upon the happening of an insurable event,

and providing re-insurance;

"long-term insurance business" means insurance business Involving the making of contracts of insurance -

- (a) on human life or contracts to pay annuities on human life;
- (b) 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 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 or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; or
- (c) whether affected 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 would fall within paragraphs (a) or (b);

"Mutual company" means a company whose capital is owned by the policyholders of that company;

"management services" includes the provision of accounting, administrative, brokerage and underwriting services, and the processing of claims for external insurance business;

"Parent company" means a body corporate that directly or indirectly owns, controls or holds with power to vote more than fifty per centum of the outstanding voting shares or other securities of another body corporate;

"Policy holder" means the person with whom an insurer has effected a contract of insurance;

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

"registered" and its cognate expressions are references to registration effected under this Act;

"resident representative" means the licensee's management company or such individual as the Commission approves for the purpose of managing the business of the licensee;

"restricted external insurer" means an external insurer that only underwrites the risks of:

- i) its members, their members, subsidiaries and affiliates;
- ii) reinsureds, not being its members, their members, subsidiaries and affiliates, who acknowledge in writing that they know and accept that the external insurer is a restricted external insurer.

"superintendent" means the Superintendent of Insurance;

"Underwriting manager" means a company incorporated in The Bahamas which, operating in or from within The Bahamas as manager or consultant (but not as a bona fide employee) provides underwriting and insurance expertise for one or more captive insurers.

"unrestricted external insurer" means an external insurer that is not a restricted external insurer.

"Variable insurance business" means insurance business, under a policy or contract, in respect of which the benefits payable to the policy holder under the policy are to be determined wholly or partly;

- (a) according to the investment experience of a separate account or accounts maintained

by the licensee in respect of that policy or class of policy,

(b) by reference to the value of or income from property of any description allocated in the general accounts of the licensee in respect of that policy or class of policy whether specified in that policy or,

(c) by reference to fluctuations in or in an index of, the value of property of any description, whether specified in the policy, and includes variable life insurance business and variable annuity business.

(2) For the purposes of this Act, the following are residents of The Bahamas -

(a) an individual ordinarily resident in The Bahamas;

(b) any incorporated or other body incorporated, formed or organised in The Bahamas;

(i) the majority of the shares or other ownership of which is beneficially held by persons resident in The Bahamas; or

(ii) the shares or other ownership of which is beneficially held by persons resident outside The Bahamas, and such incorporated or other body is a licensee, the business of which is managed and controlled in The Bahamas;

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

(3) Where an individual referred to in section 2(2) (a) is ordinarily resident in The Bahamas only by reason of a working relationship with a company licensed or registered under this Act, the individual may, notwithstanding

any enactment, hold shares in that company.

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

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

(b) every licensee shall be deemed to be managed and controlled in The Bahamas.

(5) For the purposes of this Act a reference -

(a) to a "parent company" shall include a reference to any partnership or individual holding such voting shares as is mentioned in the definition of that expression;

(b) in the expression "external insurance business" to a substantial amount is to such amount of the value underwritten as may be prescribed.

(6) An auditor shall not be considered to be an independent auditor for the purposes of this Act if he is an employee or an officer of the respective registered insurer or owns any financial interest in the business of that insurer.

Exemption of registered external insurer from Insurance Act.

3. An external insurer registered under this Act shall not in respect of external insurance business carried on by him be subject to any of the provisions of the Insurance Act.

**PART II**

**LICENSING OF EXTERNAL INSURANCE COMPANIES**

Licensing requirements.

4. (1) No person may engage in external insurance business from within The Bahamas, without a licence issued under this Act, and on payment of the relevant fee as prescribed.

(2) No licence may be issued under this Act to a

person other than a body corporate that satisfies the following requirements -

- (a) it is incorporated under the Companies Act as a company limited by shares or as a mutual insurance company;
- (b) its objects and activities are the transaction of external insurance business;
- (c) its beneficial shareholders are not persons resident within The Bahamas;
- (d) its articles of incorporation are acceptable to the Commission;
- (e) its paid-up capital or, in the case of a mutual insurance company approved by the Commission, its contributed reserves, accord with the requirements of section 20; and
- (f) its articles of incorporation provide that upon the liquidation of the body corporate monies payable to shareholders are payable to or for the benefit of persons resident outside The Bahamas.

(3) Subsection (2) notwithstanding, the Commission may issue a licence to a body corporate incorporated outside of The Bahamas that satisfies the following requirements:

- (i) it is lawfully constituted in accordance with the laws of the country in which it is incorporated;
- (ii) it is duly authorized and licenced under the laws of the Country in which it is incorporated or any other country, to undertake insurance business and has undertaken insurance business in that country for a period satisfactory to the Superintendent of Insurance;
- (iii) the corporate instruments of the body corporate are acceptable to the superintendent of Insurance; and
- (iv) the capital of body corporate accords with the requirements of Section 20.

Participa-  
tion.

5. A licensee/may participate in the ownership of another licensee.

Application requirements. 6. Notwithstanding the Companies Act, no company may be incorporated under that Act for the purpose of engaging in external insurance business from within The Bahamas unless its incorporation has been approved by the Commission.

Contents of application. 7. (1) A company wishing to obtain a licence under this Act may apply to the Commission, giving particulars of the type of external insurance business it proposes to do from within The Bahamas and providing such other information as may be prescribed.

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

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

Examina- tion of applicants. 8. (1) Before giving approval for a licence, the Commission may require of the applicant such references and such other information and particulars as the Commission sees fit or as may be prescribed.

(2) On receipt of an application for a licence under this Act, the Commission may cause such investigation to be made of the applicant company, its owners, directors and senior officers, its financial circumstances and any associates of the applicant as the Commission considers necessary in the public interest.

Issue or refusal of licence. 9. (1) When the Commission is satisfied that it is proper to do so, it may issue or refuse a licence under this Act.

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

Type of Licence 10. (1) Subject to sections 4, 8, 9 and 12, on an application made by a body corporate and on payment of the relevant fee, the Commission may licence that body as either a Restricted or Unrestricted External Insurer.

(2) Upon approval of an application for a licence, the Commission shall effect the registration of the applicant in accordance with that approval in a register to be kept for that purpose and issue to the applicant a certificate in evidence of such registration.

(3) The register referred to in subsection (1) shall

contain, in respect of each registrant, such documents and other information as may be prescribed.

Conditions  
of licence.

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

(2) The Commission may attach such conditions to the issue of a licence relating to the real property investments and holdings of a licensee as the Commission thinks fit.

(3) It is a condition of a licence under this Act, and breach of which shall render the licence liable to revocation, that the licensee will not, without the prior approval in writing of the Commission -

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

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

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

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

insurance of reinsurance obligations of the licensee.

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

(8) In respect of a licensee engaged in variable insurance business, it shall be a condition of the licence that the licensee comply with sections 191 through 197 of the Insurance Act, as may be applicable.

(9) The Commission may at any time by regulation, add to, vary or delete any condition imposed under this section.

External  
insurer  
non-resident  
Status.  
see Ch. 330  
Misleading  
name.

12. No person shall be registered as an external insurer unless he submits with his application for registration a statement from the Central Bank of The Bahamas to the effect that he is regarded as a non-resident Company for the purposes of the Exchange Control Regulations Act.

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

Validity  
of licence.

14. A licence issued under this Act remains valid until revoked or suspended under this Act, subject to the payment of an annual prescribed fee.

Revocation  
or suspen-  
sion of  
licence.

15. (1)The Commission may revoke a licence if the licensee -

- (a) fails to comply with a condition of its licence;
- (b) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act; or
- (c) ceases to carry on business under its licence;
- (h) becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved.

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

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

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

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

(6) Notwithstanding anything contained in this section to the contrary, where the Commission having received a report upon a licensee, made pursuant to section 19, and is of the opinion that it is detrimental to the public interest that the insurer should continue to carry on business, it may direct that the license be cancelled.

Appeal on  
revocation

16. (1) A person who is aggrieved by the suspension or revocation of a licence by the Commission may within 30 days of the giving of the notice of revocation under section 14 appeal against that revocation to a Judge in chambers, whose decision thereon is final.

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

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

Investiga-  
tions by the  
Commission

17. Notwithstanding anything to the contrary in Section 3 the provisions of sections 70-75 and 77 of the Insurance Act shall, as they apply to an applicant for registration as an insurer or as an insurance intermediary under that Act, apply mutatis mutandis to an applicant for registration as an external insurer, resident representative, management companies, or underwriting manager, respectively.

Service of  
documents.

18. (1) Before engaging in external insurance business from within The Bahamas, a licensee shall deposit with the Commission a certificate setting out the address in The Bahamas of the licensee's registered office and the name and address of a person resident in The Bahamas acceptable to the Commission as a person on whom documents relating to the licensee are to be served.

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

(3) If the registered office cannot reasonably be found or is not open to business during normal working hours, the notice, instrument, document or legal process may be delivered or served by leaving it at of office of the Commission, which must publish that fact in the Official Gazette and in a daily newspaper published and circulated in The Bahamas.

Records of  
licensee.

19. When a licensee begins engaging in external insurance business it shall maintain in The Bahamas, in addition to its registered office and the person referred to in section 17(1), such registers of policies, claims registers, books and business records as the Commission requires.

Responsi-  
bilities of  
Superinten-  
dent

20. (1) The general administration of this Act shall be the responsibility of the Superintendent.

(2) It shall be the duty of the Superintendent-

- (A) to maintain a general review of external insurers and external insurance business in The Bahamas;
- (B) of his own motion or when so required by the Commission, to examine the affairs or business of any person carrying on external insurance business in or from within The Bahamas for the purpose of satisfying himself that the provisions of this Act are being complied with and that such person is in a sound financial position, and is carrying on his business in a satisfactory manner, and to report to the Commission the results of such examination;
- (C) to examine and report on the annual returns of the registered external insurers delivered to the Commission pursuant to section 22;
- (D) to examine and make recommendations to the Commission with respect to applications for registration.

(3) In the performance of his functions under this Act, the Superintendent may upon reasonable written notice-

- (A) have access to such books, records, vouchers, documents, policies, contracts, cash and securities of any registered external insurer;
- (B) call upon the manager of any registered external insurer for such information or explanation as the Superintendent may reasonably require for the purpose of enabling him to perform his functions under this Act:

Provided that the Superintendent shall have access to the insurance account of a policy-holder or to any information, matter or thing to or concerning the insurance of any policy-holder only with the consent of that policy-holder.

(4) Any person who fails to comply with any requirement lawfully made pursuant to subsection (3) shall be guilty of an offence.

### PART III

#### FINANCIAL OBLIGATIONS

Capital  
require-  
ments.

21. (1) A licence shall not be issued to a unrestricted external Insurer which is a joint stock or mutual insurance company unless the fully paid-up capital or contributed reserve fund is not less than-

- (a) \$200,000 where the company proposes to carry on long-term business;
- (b) \$100,000 where the company proposes to carry on general business; or
- (c) \$300,000 where the company proposes to carry on both long-term business and general business.

(2) A licence may be issued to a Restricted External Insurer which is a joint stock or mutual insurance company when that company has a minimum paid-up capital or contributed reserve fund, as may be approved by the Commission.

(3) Notwithstanding subsection (1), a licence may be issued to a company that satisfies the requirement of section 4, when that company has paid-up capital or

contributed reserves of such amount that is less than the minimum specified in subsection (1) as the Commission approves, and the company certifies to the satisfaction of the Commission that it does not propose to begin engaging in external insurance business immediately after the issue of the licence.

(4) When a company that has been licensed under subsection (2) proposes to begin, and in any case not later than 7 days after beginning to engage in external insurance business, it shall so notify the Commission, and shall certify to its satisfaction that it has minimum paid-up capital or contributed reserves in compliance with the requirements of subsection (1).

(5) Paid-up capital or contributed reserves may be in the form of cash or of valid and irrevocable letters of credit drawn on or confirmed by a financial institution licensed under the Banks & Trust Companies Act, and representing a stated capital account of not less than \$250,000 or such other amount as the Commission approves.

Additional  
financial  
requirements  
of licensed  
external  
insurers.

22. (a) In respect of all external insurance business, the Commission may prescribe that a registered external insurer shall maintain in cash, short-term securities, or other easily realisable investments, funds adequate for prompt payment of claims save that, notwithstanding such prescription, the amount so required at any material time of an external insurer shall not exceed forty per centum of the annual total net premiums payable to the insurer.

(b) In respect of external insurers registered under this Act, other than as a Restricted External Insurance, the Commission may prescribe that a registered external insurer shall not make investments of a specified class without the prior written approval of the Commission.

Financial  
statements.

23. (1) Not later than four months after the close of the financial year of a licensee or such longer period as the Commission allows, the licensee shall submit to the Commission, one copy of its audited financial statements in a form that complies with generally accepted accounting principles together with such other related information as may be prescribed.

(2) The financial statements referred to in subsection (1) shall be audited by an independent auditor with offices in The Bahamas and approved by the Commission.

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

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

(5) A licensee shall submit to the Commission, together with the documents required by this section, the certificate of an auditor stating whether in his opinion, the licensee has complied with the solvency criteria prescribed by section 30 at the balance sheet date and with such other requirements as may be prescribed.

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

(7) A licensee that is a body corporate incorporated abroad, shall within four months of the end of its financial year furnish to the Commission a certificate issue by the insurance authority in that place to the effect that the insurer is complying with all the applicable insurance supervisory requirements of that authority.

(8) This section does not apply to a licensee described in section 20(3) while it is not engaged in external insurance business.

(9) A licensee that fails to comply with a demand referred to in subsection (5) is guilty of an offence and is liable on summary conviction to a fine of at least \$50,000.00

Segregation  
of funds.

24. (1) Every licensee carrying on long term business may establish any number of separate accounts in respect of the respective premiums paid to it to provide insurance coverage consistent with the licensee's external insurance business and the increment of value resulting from the reinvestment of same.

(2) Such respective premiums and increments in value referred to in subsection (1) shall be kept separate one from the other and independent of all other funds of the licensee.

(3) Notwithstanding any other enactment to the

contrary, premiums referred to in subsection (1) are not chargeable with any liability arising from any other business of the licensee or arising from any activity carried out by the licensee in relation to any other separate account.

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

(5) Notwithstanding any law to the contrary, where any person shall die leaving a policy of insurance issued on his life by a registered external insurer, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of any creditor of the insured, his estate, and of any beneficiary under the policy, or of the owner or estate of the owner.

(6) Notwithstanding any law to the contrary, where any person shall acquire an annuity contract issued by a registered external insurer of which he or any other person is the annuitant or beneficiary and he or a trust settled by him is the owner, the said annuity contract and the proceeds thereof including periodic or non-periodic payments or any refund or death benefit shall inure exclusively to the benefit of the person for whose use and benefit such contract, proceeds, payments or refund or death benefit is designated under the contract and all the foregoing shall be exempt from the claims of any creditor of the owner, annuitant or beneficiary of the annuity contract or any creditor of the estate of the owner, annuitant or any beneficiary.

(7) Notwithstanding any law to the contrary, unless the insurance policy or annuity contract was effected for the benefit of such creditor, the cash surrender value of life insurance policies and the proceeds of annuity contracts issued by a registered external insurer shall not be liable to attachment, garnishment or legal process in favour of any creditor of the insured, his estate, and of any beneficiary under the policy or of the benefit of any trust which is the owner of a life insurance policy or an annuity contract issued by a registered external insurer.

(8) Life insurance policies and annuity contracts issued by a registered external insurer, by their terms subject to cancellation or redemption by the owner thereof,

shall not be subject to cancellation or redemption during any period during which the owner is acting under duress imposed by any lawful authority or otherwise other than lawful authority in the Bahamas.

(9) When a policy of insurance or an annuity contract whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favour of some person other than himself, or if a policy of life insurance or annuity contract is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance or annuity contract or executors or administrators of such insured or the person so effecting such insurance or annuity contract, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such insurance or annuity contract whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy or annuity contract is made payable to the person whose life is insured or the measuring life under annuity contract, if the beneficiary or assignee shall predecease such person; and the company issuing the policy or annuity contract shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms.

#### **PART IV**

##### **WINDING-UP OF LICENSEES**

- Definition                    25. In this part, "licensee" includes a former licensee whose licence to engage in external insurance business has been revoked by the Commission.
- Petition                      26. (1) A judge may order the compulsory winding-up of for compulsory winding-up.                    this Part -
- (a) on the petition of the Commission;
  - (b) in the case of a licensee engaged in long-term insurance business, on the petition of the policy holders with an aggregate sum insured of \$500,000;
  - (c) in the case of a licensee engaged in general insurance business, on the

petition of the policy holders whose volume of annual premium is \$100,000;

- (d) in the case of a licensee engaged in both long-term and general insurance business, on the petition of the policyholders who qualify under either paragraph (b) or (c) above.

(2) No petition for the compulsory winding-up of a licensee may be presented without leave of the Supreme Court, which must be satisfied that a prima facie case has been established -

- (a) on the petition of the Commission, of the licensee being unable to pay its debts; and
- (b) on the petition of a policyholder, of the licensee failing to pay a substantial claim that is uncontested or awarded by a court.

(3) The Commission shall be a party to any winding-up proceedings under this Part and shall be given such information as it may require concerning the affairs of the licensee.

Petition by Commission.

27. If the Commission is of the opinion that it is necessary or proper to do so it may with the leave of the Supreme Court present a petition -

- (a) for winding-up by the Court of a licensee on the ground that the licensee is unable to pay its debts;
- (b) for an order that the licensee or any part of the insurance business of the licensee be placed under judicial management in accordance with sections 81 to 85 of the Insurance Act, on the ground that it is in the public interest to do so,

and the Court may order accordingly.

Petition by licensee.

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

(2) Both the licensee and the Commission are

entitled to be heard on any petition presented to the Court under this section.

Stay of  
legal  
process.

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

Rights and  
interests  
of policy  
holder

30. The rights and interests of a policy holder in the assets of a separate account maintained under a variable life insurance or variable annuity policy issued by a licensee shall not be liable to be applied or made available in payment of the debts of any court, and no creditor of the policy holder may attach any rights or interests in the policy or claim payment thereof, except where

- (a) the purchase of the policy or acquiring, conveying, transferring settling the assets used to purchase the policy was made with the intent to willfully defeat an obligation owed by the policy holder to the creditor; or
- (b) proceedings in bankruptcy have been commenced by or against the policy holder in a court of competent jurisdiction at the date of purchase of the policy or within three months of the date of purchase of the policy.

Margin of  
solvency.

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

- (a) at any time in its first financial year, the value of its assets does not exceed the amount of its liabilities by \$250,000;
- (b) at any time after the expiration of the first financial year, the value of its assets does not exceed its liabilities -
  - (i) by \$250,000, where the premium income of the licensee in the preceding financial year did not exceed \$1,500,000,
  - (ii) by 1/5 of the premium income for the preceding financial year, where the premium income exceed \$1,500,000 but did not

- exceed \$10,000,000,
- (iii) by the aggregate of \$2,000,000 and 1/10 of the amount by which the premium income in the preceding financial year exceeded \$10,000,000, where the premium income for that year exceeded \$10,000,000.

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

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

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

(5) For the purposes of this section -

(a) "assets" include -

- (i) cash,
- (ii) bonds, debentures, fixed deposits, and equities listed on a recognized stock exchange,
- (iii) mortgage loans on real estate,
- (iv) net investment income due and accrued,
- (v) premiums receivable,
- (vi) reinsurance balances receivable,
- (vii) funds held by ceding reinsurers,
- (viii) accounts receivable (except from a person with whom the external insurer is associated, unless approved by the Commission),
- (ix) irrevocable letters of credit drawn or confirmed by a bank

licensed under the Banks & Trust Companies Act; and

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

Resident representative.

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

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

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

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

(b) no resident representative may cease to act as such unless the licensee or the resident representative gives 30 days' written notice to the Commission of the intention to do so.

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

Resident representative to report certain events.

33. (1) It is the duty of the resident representative within 14 days of -

(a) becoming aware that there is a likelihood of the licensee for which such representative acts being unable to pay its debts; or

(b) becoming aware or having reason to believe that an event to which this section applies has occurred,

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

(2) In relation to a resident representative, this

section applies to the following events -

- (a) failure by the licensee -
  - (i) to comply with the solvency criteria prescribed by section 30,
  - (ii) to comply with any other requirements of this Act,
- (b) the licensee's ceasing to carry on business under its licence.

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

Notice to resident representative.

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

Evidence.

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

**PART V**

**MANAGEMENT COMPANIES AND ANCILLARY PERSONAL**

Management services.

36. Notwithstanding any other enactment, no person other than a management company may offer or provide management services to a licensee engaged in external insurance business from within The Bahamas.

Management companies.

- 37. A management company is a body corporate, that satisfies the following requirements -
  - (a) its main object and activity are the provisions of management services to licensees under this Act, other than banking business;
  - (b) it is registered with the Commission in compliance with section 37.

Registration of management

38. (1) A company that is desirous of registering as a management company under this Act may apply to the Commission, in such form and manner as may be prescribed, to be so

companies. registered setting out the management services that it proposes to offer to a licensee under this Act, and providing a copy of its articles of incorporation and such other information as may be prescribed.

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

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

- (a) the ability of the company to provide the proposed management services;
- (b) the net value of the assets of the company; and
- (c) the character and reputation of the company, its owners, and its senior officers.

(4) When the Commission is satisfied that a company is registrable under this section, it shall, upon payment of the prescribed fee, but subject to subsection (5), issue to the company a certificate of registration containing the name and business address of the company and the date of its registration as a management company.

(5) Where in considering the registration of a company, the Commission is of opinion that there are circumstances requiring that the company's registration should be subject to conditions, it may attach any of those conditions to the registration as are specified in the certificate as the circumstances require.

(6) Subject to the payment of the annual prescribed fee, a certificate of registration remains valid until revoked or suspended by the Commission.

(7) The Commission may suspend or revoke the registration of a management company in such circumstances as are prescribed by paragraphs (a), (b) and (c) of section 14(1); and sections 14 and 16 apply with such adaptations as are necessary to the certificate of registration as they apply to a licence under this Act.

(8) The provisions of subsection (1) and (2) of section 11 shall, as they apply to an external insurer, apply mutatis mutandis to a management company.

39. (1) A registered management company shall use its best efforts to provide underwriting or similar services only to or for licenced external insurers of good reputation.

(2) If a management company has knowledge or information regarding the lack of good reputation or solvency of any licensed external insurer which he manages or for whom he provides similar services, he shall forthwith report the same to the Commission.

(3) A management company shall not by reason of registration under this Act be prohibited from providing underwriting and other management services from within The Bahamas to persons elsewhere who carry on there business in the nature of external insurance.

List of  
insurers to  
be supplied  
by Management  
Company.

40. (1) A registered management company shall, subject to any prescription made under subsection (2), within four months of the end of its financial year furnish to the Commission a list of all external insurers for whom the management company provides services.

(2) The Commission may prescribe the form and nature and extent of the particulars required of the returns to be made by a management company under this section.

## PART VI

### HOLDING COMPANIES AND RELATED MATTERS

Definition  
of holding  
company.

41. For the purposes of this Act, a holding company is a body corporate that satisfies the following requirements -

- (a) it is incorporated under the Companies Act and its sole object is to own shares in a company whose objects and activities are the transaction of external insurance business from within The Bahamas;
- (b) it is registered with the Commission in compliance with section 42.

Registra-  
tion of  
holding  
companies.

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

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

(3) In considering the application, the Commission shall -

- (a) ensure that the sole object of the

holding company is to own shares in a company whose objects and activities are the transaction of external insurance business from within The Bahamas;

(b) take into account the character and reputation of the company and its owners.

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

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

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

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

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

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

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

and sections 14 and 16 apply, with such adaptations as are necessary, to the certificate of registration as they apply to a licence under this Act.

## PART VII

### MISCELLANEOUS

Registration                      43.                      Subject to section 3, nothing in this Act

not shall be construed as prohibiting any person registered under  
prohibitive. Part V and VI from carrying on other insurance business to  
which this Act does not apply.

Restriction 44. (1) After the expiration of six months from the  
on use of commencement of this Act, any person who without the approval  
under words of the Commission or not being associated with registered  
associated this Act -

with (A) uses or continues to use the words  
insurance "underwriter", "insurance", "indemnity",  
business "casualty", or any other word which  
represents or conveys the impression that  
such person carries on external insurance  
business in or from within The Bahamas; or

(B) uses makes or continues to make any  
representation in any billhead, letter,  
letterhead, circular, paper, notice,  
advertisement or in any manner whatsoever that  
he is carrying on external insurance business;

Shall be guilty of an offence.

Exemptions. 45. Notwithstanding the provisions of any other  
Act, every external insurer registered under this Act shall be  
exempt from the payment of any tax, fee, duty or impost other  
than those in force at the commencement of, or payable in  
respect of registration under, this Act, for a period of  
fifteen years from the date of the first such registration of  
the insurer.

Power to 46. The Commission after consultation -

authorise (a) with the Superintendent and the Bahamas  
the appoint- Institute of Chartered Accountants, in  
ment of the case of an auditor; or

actuaries (b) with the Superintendent, in the case  
and auditors. of an actuary,

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

Regulations. 47. The Commission may make regulations giving  
effect to the purposes of this Act and in particular with  
respect to-

(a) the operation and conduct of management  
companies;

- (b) regulating the conduct and activities of insurance brokers and agents who provide services for licensees;
- (c) prescribing anything that is required by this Act to be prescribed;
- (d) exempting any person or class of persons or business or class of business from any provision of this Act.
- (e) constituting the breach of any provision of the Act or of any regulation to be an offence.

Confident-  
iality

48. (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to -

- (a) the affairs of the Commission;
- (b) any application made to the Commission;
- (c) the affairs of an external insurer or Management Company; or
- (d) the affairs of a customer, client or policy holder of an external insurer or Management Company,

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

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

- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
- (b) for the purpose of assisting the Commission to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
- (c) in respect of the affairs of an external insurer or Management Company or of a customer, client or policyholder of an external insurer or Management Company with the consent of the external insurer or Management Company, customer, client or policyholder, as the case may be,

- which consent has been voluntarily given;
- (d) where the information disclosed is or has been available to the public from any other source;
  - (e) where the information disclosed is in a manner that does not enable the identity of any external insurer or Management Company or of any customer, client or policyholder of the external insurer or Management Company to which the information relates to be ascertained;
  - (f) to a person with a view to the institution of, or for the purpose of -
    - (i) criminal proceedings,
    - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties,
    - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Registrar of his duties; or
  - (g) in any legal proceedings in connection with -
    - (i) the winding-up or dissolution of an external insurer or Management Company, or
    - (ii) the appointment or duties of a receiver of an external insurer or Management Company.

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

(4) In deciding whether or not to exercise his power under subsection (3), the Superintendent may take into account-

- (a) whether the inquiries relate to the

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

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

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

(6) Nothing in subsection (3) authorises a disclosure by the Superintendent unless -

- (a) the Superintendent has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (b) the Superintendent has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Superintendent; and
- (c) the Superintendent is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
- (d) the Superintendent is satisfied that information provided following the exercise of his power under subsection (3) will not be used in criminal proceedings against the person providing

the information.

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

Fees.

49. (1) Fees shall be as prescribed by the Commission in respect of -

- (a) the making of any application for licencing under the provisions of this Act;
- (b) the registration of any person;
- (c) the issue of any certificate;
- (d) the inspection of any Register;
- (e) the furnishing by Commission of any document or copy.

(2) In addition for the fees for which subsection (1) provides, there shall, subject to subsection (3), be payable by a registered external insurer or insurance manager, broker, or agent in every year following the year in which it or he was registered an annual registration fee of such amount as shall be prescribed.

(3) An unpaid annual fee may be sued for by the Commission by action as a civil debt and -

- (a) the Commission may (whether in such an action or not) require; and
- (b) where judgement is given for the Commission in any action, the court may order,

For late payment of the fee payment of a penalty in an amount equal to the amount of the fee.

Offences.

50. A person who -

- (a) does external insurance business from within The Bahamas during any period in which he does not hold a licence under

this Act;

- (b) offers or provides the services of a management company to a licensee or in relation to the transaction of external insurance business from within The Bahamas during any period when that person is not a management company within the meaning of this Act,

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

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

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

is guilty of an offence and liable on summary conviction to fine of not exceeding \$5,000 or imprisonment for 2 years or both.

52. (1) Any person who contravenes section 17(1) is guilty of an offence and liable on summary conviction to a fine of \$5,000 and to a fine of \$250 for every day or part thereof during which the offence continues.

False statements

53. Any person who for any purpose of this Act makes any representation in the truth of which he has no reasonable ground to believe (the onus of proof of his belief being upon him) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Offences generally.

54. (1) Any person guilty of an offence under this Act, including any regulations made hereunder, and for which no specific provision or penalty is otherwise provided in this Act or such regulations, shall, if the offender is an individual, be liable on summary conviction to a fine of two thousand dollars or to imprisonment for six months, or to both such fine and imprisonment, or if the offender is not an individual, to a fine of three thousand dollars.

(2) Where any offence under this Act or regulations is committed by a body corporate and 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 or employee of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.