

or claim under a contract or fidelity, surety or a guarantee bond issued by an insurer; or

(ii) investigates, adjusts or settles such loss or claim; or

(b) holds himself out as an adjuster, investigator, consultant or advisor with respect to the settlement of such losses or claims,

but does not include a person employed as an appraiser, loss adjuster, engineer or other expert solely for the purpose of giving expert advice or evidence or a person who acts as an adjustor of marine losses only;

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

"annuities on human life" does not include superannuation allowance and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons, being a fund which is registered under the Superannuation and Other Trust Funds (Validation) Act;

"association" means an association of underwriters registered pursuant to Part IV;

"association of underwriters" means an association of individual underwriters, organised according to the system known as Lloyd's whereby every underwriting member of a syndicate becomes liable for a separate part of the sum secured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured;

"auditor" means -

(a) a person who is a member of the Bahamas Institute of Chartered Accountants who holds a practicing certificate from that Institute; or

(b) a person recognised by the Commission as being suitably qualified to be appointed

as an auditor by reason of his knowledge and experience;

"beneficiary" means the person named in a life insurance policy to receive the insurance proceeds upon the death of the policyholder or upon the maturity of an endowment;

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

"carry on insurance business in The Bahamas" , and its derivatives, includes -

- (a) opening or maintaining a place of business or an office, or appointing or using a representative in The Bahamas, whether or not insurance business is being arranged in or from The Bahamas;
- (b) the use in The Bahamas of any business description or business title, in any language whatever, of the words "insurance", "assurance", "indemnity", "guarantee", "underwriting", "reinsurance", "surety", "casualty", or any of their derivatives, or any expression which connotes or is intended to connote insurance business;
- (c) the making in The Bahamas of any representation in any handbill, letter, letterhead, circular, advertisement, paper, notice, or in any manner whatsoever offering, either directly or indirectly, to arrange contracts of insurance; and
- (d) the assumption of the obligation of a company to cover risks or liabilities in any class of insurance business;

"Central Bank" means the Central Bank of The Bahamas established by section 3 of The Central Bank of The Bahamas Act;

"class of insurance business" means any class of insurance business specified in subsection (1) of

section 3;

"Commission" means the Insurance Commission of The Bahamas established under section 4;

"company" means an insurance company or association registered pursuant to Part III or Part IV;

"consultant" means an independent advisor who performs the same role in the market as a broker who specializes in some aspect of insurance;

"foreign company" means an insurance company incorporated or established outside The Bahamas;

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

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

"industrial policy" means a policy in respect of which the premiums are contracted to be paid at intervals of less than two months and are contracted to be received or are usually received by means of collectors, and includes -

(a) a policy that has at any time been such a policy; and

(b) a paid up policy, not being a policy expressed to be a non-industrial policy, granted in lieu of an industrial policy or of a policy referred to in paragraph (a);

"insurance agent" means any individual, firm or body corporate appointed by a registered insurer and not being an employee of the insurer, who or which solicits applications for insurance, collects money by way of premiums and acting in accordance with his agency agreement may bind the registered insurer for whom he acts in the issue of insurance cover;

"insurance broker" means any individual, firm or body corporate who or which acting with complete freedom as to their choice of undertaking and for commission or other compensation and not being an agent of the insurer, bring together, with a view to the insurance or reinsurance of risks, persons seeking

insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance, and where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim;

"insurance business" means -

- (a) the assumption of the obligations of a company in any class of insurance business;
- (b) the assumption of the business of insuring risk or liabilities;
- (c) the renewal and issuing of documents of renewal of existing insurances and liabilities;
- (d) the receiving of first, subsequent or renewal premiums including reinsurance;
- (e) reinsurance business; and
- (f) pensions business and other business directly connected to insurance business.

"insurance company" means a body corporate that carries on or proposes to carry on insurance business in The Bahamas;

"insurance intermediary" means any broker, salesperson, agent, sub-agent, adjuster, risk manager, consultant, loss assessor or surveyor;

"insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such a policy;

"insurer" means any -

- (a) company carrying on insurance business and, except where otherwise stated, includes all the members of an association of underwriters that is registered as an insurer;
- (b) medical service plans, hospital service plans, health maintenance organizations, pre-paid limited health care service plans, dental, optometry and other similar health service plans, being entities that are engaged in the business of insurance;

"intermediary" means any person who, or organization which, gives advice by way of directly offering, advertising or on a person-to-person basis in respect of an insurance product and

includes the promotion of such product or the facilitation of an agreement or contract between an insurer and a customer;

"life insurance business" means insurance in respect of which an insurer, by written contract, undertakes to pay insurance money -

- (a) on death;
- (b) on the happening of a specified event or contingency dependent on human life;
- (c) at a fixed or determinable future time or times; or
- (d) for a term dependent on human life, and without restricting the generality of the foregoing includes -

- (i) all types of health insurance, medical expense and disability income insurance,

- (ii) accidental death insurance,

- (iii) group insurance,

- (iv) an undertaking entered into by a company to provide a life or fixed term annuity or what would be an annuity except for the fact that the periodic payments may be unequal in amounts; and

- (v) the undertaking of liability or the granting of annuities referred to in paragraph (iv) that can be termed "variable life insurance business" or "variable annuity business" respectively;

"life insurance fund" means the fund to which the receipts of a company in respect of the life insurance business of the company are carried on and from which payments in respect of that business are made;

"life insurance policy" means an ordinary life insurance policy, an industrial life insurance policy or a sinking fund policy;

"life insurer" means a company carrying on life insurance business;

"local policy" means a policy issued in The Bahamas and

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

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

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

"loss adjuster" means a person appointed by the insurer to assess for the insurer the settlement of a claim under an insurance policy;

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

- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or the equipment of vessels or aircraft;
- (b) upon goods, merchandise or property of any description, whatever on board vessels or aircraft;
- (c) upon the freight of, or any other interest in or relating to, vessels or aircraft;
- (d) against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks;
- (e) against risks incidental to the construction, repair or docking of vessels, including third-party risks;
- (f) against transit risks, whether the transit is by sea, inland water, land or air, or partly one and partly another, including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance, but not including risks the

insurance of which is motor vehicle insurance business; or

- (g) against any other risks the insurance of which is customarily undertaken in conjunction with or as incidental to any business referred to in the foregoing paragraphs of this definition;

"Minister" means the Minister responsible for Insurance (excluding National Insurance);

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

"mutual company" means a company whose capital is owned by the policyholders of that company and includes a company which has agreed to purchase back or is in the process of purchasing back its share capital at a fixed price and is recognised by the Commission as a mutual company;

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

"policyholder" means the person who for the time being has the legal title to the policy, and includes any person to whom a policy is for the time being assigned;

"prescribed securities" means any securities or class of securities prescribed by the Commission in regulations made under section 230;

"principal office" means the office notified to the Commission in accordance with subsection (2) of section 52:

"principal representative" means the representative notified to the Commission in accordance with subsection (2) of section 52;

"property insurance business" means the issue of, or the undertaking of liability under policies of insurance against loss or damage to real or personal property of every kind and interests therein, from any hazard

or cause, or against loss consequential upon such loss or damage, not being risks the insurance of which is motor vehicle insurance business or marine, aviation and transit insurance business;

"registered insurance agent" means an insurance agent registered in accordance with Part-V;

"registered insurance broker " means an insurance broker registered in accordance with Part V;

"registered insurer" means an insurance registered in accordance with Part III or Part IV as the case may be;

"risk manager" means a person who deals with the identification and analysis of risks which may threaten the assets or earning capacity of an enterprise and takes measures to avoid and minimise loss;

"salesperson" means an individual employed by a company, an agent or a broker to solicit applications for insurance or to negotiate insurance on behalf of the company, the agent or the broker as the case may be;

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

"spouse" includes -

(a) a single woman who has cohabited, with a single man as if she were in law his wife, for a period of not less than seven years; or

(b) a single man who has cohabited with a single woman as if he were in law her husband, for a period of not less than seven years;

and the term "single woman" and "single man" includes widow or widower or a divorcee;

"statutory fund" means a fund that a company is required to maintain pursuant to section 41;

"sub-agent" means any person appointed by an agent with the authority of the company that is the agent's principal, and not being an employee of the agent, to solicit applications for insurance or to

negotiate insurance through that agent and includes a person appointed by a sub-agent and not being an employee of the sub-agent, to solicit applications for insurance or to negotiate insurance through the sub-agent;

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

"underwriting liabilities", in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the governing body of the association and approved -

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

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

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

"variable insurance business" means variable life insurance business, variable annuity business or any other insurance business that satisfied the criteria of being a policy under which benefits are payable to the policyholder in the manner specified in paragraphs (a) to (c) of the definitions "variable insurance business";

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

- (a) according to the investment experience of a separate account or accounts maintained by the insurer in respect of that policy or class of policy;
 - (b) by reference of the value of or income from property of any description allocated in the general accounts of the insurer in respect of that policy or class of policies whether or not it is specified in the policy; or
 - (c) by reference to fluctuations in or in an index of the value of property of any description whether or not it is specified in the policy;
- (2) For the purposes of this Act -
- (a) a person shall not be treated as carrying on insurance business in The Bahamas if the only reason for so treating the person is the fact that the risk covered by a policy of insurance issued by that person is situated in The Bahamas;
 - (b) any of the following activities effected in any manner by an unregistered insurer or any person with the actual or apparent authority of the insurer or on his behalf, shall be deemed to constitute the carrying on of insurance business in or from The Bahamas -
 - (i) making of or proposing to make as an insurer an insurance contract;
 - (ii) making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a business and not merely incidental to any other of the guarantor's or surety's legitimate business or activity;
 - (iii) taking or receiving an

- application for insurance;
- (iv) receiving or collecting of any premium, commission, membership fees, assessments, dues or other consideration for insurance or any part thereof;
- (v) issue or delivery in The Bahamas of contracts of insurance to persons resident in The Bahamas or authorised to do business in The Bahamas;
- (vi) solicitation, negotiation, procurement or effecting of insurance or renewals thereof;
- (vii) dissemination of information as to coverage or rates;
- (viii) forwarding or applications, delivery of policies or contracts;
- (ix) inspection of risks, fixing of rates or investigation or adjustment of claims or losses;
- (x) transaction of matters subsequent to or arising out of the effecting of the contract;
- (xi) representing or assisting a person or insurer in the transaction of risks with respect to properties, risks or exposures located or to be performed in The Bahamas;
- (xii) transaction of any class of insurance business specifically recognised as transacting an insurance business within the meaning of this Act;
- (xiii) offering of insurance or transacting of insurance business;
- (xiv) offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

(3) In determining whether a person is a fit and

proper person for the purpose of this Act, the Commission shall consider whether he is a person -

- (a) who, whether in The Bahamas or elsewhere-
 - (i) has not been convicted of an offence involving dishonesty; or
 - (ii) is not an undischarged bankrupt;
- (b) whose employment record does not give the Commission reasonable cause to believe that the person carried out any act involving dishonesty or any act involving impropriety in the handling of insurance business; or
- (c) who, in the Commission's opinion is a person of sound probity, is able to exercise competence, diligence and sound judgement in fulfilling his responsibilities in relation to insurance business and whose relationship with an insurance company will not threaten the interests of policyholders; and for the purposes of this paragraph, the Commission shall have regard to any evidence that he has -
 - (i) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper which reflect discredit to his method of conducting business;
 - (ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of insurance, investment or other financial services, or in the management of companies or due to bankruptcy.

(4) For the purposes of this Act, the following

persons shall be treated as being associated with a given person ("A") and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or has ceased to exist -

- (a) a holding company or subsidiary of A;
- (b) a subsidiary of a holding company of A;
- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitute a group;
- (g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person as aforesaid;
- (h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

(5) In subsection (4) "group" in relation to a company, means that company and -

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a), (b) or (c) of subsection (4).

Application
of Act.

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

- (a) general insurance business namely -
 - (i) accident insurance business,
 - (ii) liability insurance business,
 - (iii) marine, aviation and transport insurance business,
 - (iv) motor vehicle insurance business,
 - (v) pecuniary loss insurance business,
 - (vi) property insurance business;

- (b) long-term insurance business namely -
 - (i) industrial life insurance business,
 - (ii) ordinary life insurance business,
 - (iii) variable life insurance business,
 - (iv) sickness or health insurance business, including group health,
 - (v) pension fund management,
 - (vi) annuities;
 - (vii) variable annuity business;
- (c) all other classes of insurance not specified in this subsection.

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

(3) For the purposes of this Act, the reinsurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer, and all the provisions of this Act shall apply to the reinsurance save that a company or an association of underwriters carrying on the reinsurance shall not be required to make in respect of the reinsurance any deposit as required by section 43, 120, or 142.

(4) Part III shall not apply to associations of underwriters.

(5) This Act shall not apply to any organisation which is registered under the enactments relating to the National Insurance Board, to friendly societies, or to Trade Unions.

(6) This Act shall not apply to a person registered pursuant to the External Insurance Act to carry on external insurance business in The Bahamas, in respect of such business.

PART II

INSURANCE COMMISSION

Establish-

4. (1) There is hereby established for the purposes

ment of the
Insurance
Commission.

of this Act a body corporate to be known as the Insurance Commission of The Bahamas.

(2) The Commission shall be a body corporate having perpetual succession and a common seal, with power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(3) The Commission may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Commission of any document of whatsoever kind shall be made by delivering the document to, or sending it by registered post addressed to, the Superintendent at the office of the Commission.

First
Schedule.

(4) The First Schedule shall have effect with respect to the Commission, its members and staff.

Seal
of the
Commission.

5. (1) The seal of the Commission shall be kept in the custody of any officer of the Commission as the Commission may approve, and may be affixed to instruments pursuant to a resolution of the Commission and in the presence of the Superintendent or the Deputy Superintendent and one other officer.

(2) The seal of the Commission shall be authenticated by the signature of the Superintendent or Deputy Superintendent and one other officer, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of the Commission may be signified under the hand of the Superintendent or Deputy Superintendent.

Commission
may open
accounts.

6. The Commission may open accounts for, accept deposits from and collect moneys for or on account of the Government or any company or intermediary.

Property
Tax
Exemption.

7. The Commission shall be exempt from tax under the Real Property Tax Act.

Functions
and powers
of the
Commission.

8. (1) The functions of the Commission shall be -
(a) to supervise compliance with the provisions of this Act;
(b) to maintain surveillance over the insurance market;
(c) to promote and encourage sound and prudent insurance management and business practices;
(d) to advise the Minister responsible for insurance matters regarding the insurance

market;

- (e) to ensure that the provisions of the Financial Transactions Reporting Act, and other anti-money laundering legislation are being complied with; and
- (f) to do such other things as may be prescribed by this Act or any other written law.

(2) The Commission shall have power to do anything which is calculated to facilitate or is incidental or conducive to the proper discharge of its functions under subsection (1) and in particular shall have power to -

- (a) take any action the Commission deems necessary;
- (b) impose any condition, limitation or restriction on companies or intermediaries, their operations or their investments;
- (c) amend or revoke any registration, authorisation, permission, condition, restriction or limitation;
- (d) require that companies and intermediaries, or their directors, officers, employees, shareholders or policyholders, take or refrain from taking any action the Commission deems necessary;
- (e) require the filing of any document or information, and determine the form and content of any document;
- (f) require the production of any information, documentation or explanation from any company or intermediary, including the directors, officers, auditor, actuary and any former auditor or actuary employees, shareholders or policyholders of such company or intermediary;
- (g) require an appraisal of the real property of a company, the cost of which shall be borne by the company;
- (h) substitute the appraised value of an asset in place of the value stated by the company;
- (i) issue directives;
- (j) specify additional classes of insurance

business in which a company is authorised to engage;

- (k) treat insurance business of specified class as if it were insurance business of another unspecified class;
- (l) extend any period of time specified in the Act or the regulations;
- (m) exempt any person or class or persons, or any class or part of any class of insurance business from any provision of this Act or the regulations, subject to such terms and conditions, as may in the Commission's opinion be appropriate;
- (n) assist and cooperate with local and overseas regulatory authorities.

Minis-
terial
directions.

9. (1) The Commission shall report annually to the Minister on the operation and conduct of the Commission.

(2) The Commission shall advise the Minister on all matters relating to the conduct of insurance in The Bahamas and assist the Minister in the education of the public on insurance issues.

(3) The Commission shall furnish the Minister with any returns, accounts and other information as he may from time to time require with respect to the property and activities of the Commission and shall afford to him facilities for verifying the information in any manner and at such time as he may reasonably require.

Funds and
resources
of the
Commission.

10. The funds and resources of the Commission shall consist of -

- (a) any moneys as from time to time are provided by Parliament;
- (b) any moneys as from time to time may accrue to the Commission from its operations, including fees, fines and a percentage of the premium tax collected from registered insurers and associations;
- (c) any moneys as from time to time are borrowed by the Commission pursuant to section 11;
- (d) any moneys as from time to time are advanced to the Commission pursuant to section 12;
- (e) any moneys or other property as from time to time may in any manner be lawfully paid

to or vested in the Commission whether or not in respect of any matter incidental to its functions.

Borrowing
powers.

11. (1) Subject to this section, the Commission may borrow moneys required by it for meeting any of its obligations or discharging any of its functions and may in respect of any borrowing, issue debentures in such forms as the Commission may determine.

(2) Any borrowing of the Commission pursuant to subsection (1) shall be subject to the approval of the Minister of Finance as to the amount to be borrowed, the source of the borrowing and the terms on which the borrowing may be effected.

(3) An approval given for the purposes of this section may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

Advances
and
guarantee
of
borrowings.

12. (1) Subject to subsection (3), the Minister of Finance may at the request of the Commission make advances to the Commission for the purposes of enabling the Commission to defray expenditure properly chargeable to its capital account, including provisions of working capital.

(2) Subject to subsection (3), the Minister of Finance may at the request of the Commission guarantee, in any such manner and on any such conditions as it thinks fit, the repayment of the principal of, and the payment of interest and other charges on, any authorised borrowing of the Commission made under section 11.

(3) No guarantees shall be given under this section unless prior approval thereof has been signified by the House of Assembly in accordance with section 17 of the Financial Administration and Audit Act.

(4) Where any sum is paid pursuant to a guarantee given under this section, the Minister shall as soon as practicable after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereof is finally discharged, lay before the House of Assembly a statement relating to that sum.

(5) Any sums required by the Minister of Finance for making, advancing and discharging any guarantees under this section shall be charged on and issued out of the Consolidated Fund.

(6) In this section and in this Part "financial

year" means the period of twelve months beginning on July 1, in any year.

Repayment of interest. 13. (1) The Commission shall make to the Minister of Finance at such times and in such manner as the Minister of Finance may direct, payments on any amount as may be so directed in or towards repayment of any sums issued in fulfilment of any guarantee given under section 12 and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister of Finance may direct, and different rates of interest may be directed as respects different periods.

(2) The Minister of Finance shall lay before the House of Assembly a statement of any payment due from the Commission under subsection (1) that is not duly paid to him as required thereunder.

Surplus funds. 14. Any moneys standing to the credit of the Commission and not required for any current purpose (in this section referred to as "surplus funds") may from time to time either be carried to any reserve fund established under section 15 or be invested by the Commission in approved securities and the Commission may from time to time sell any or all of such securities.

Reserve fund. 15. (1) The Commission shall establish a reserve fund.
(2) The Commission may determine the management of the fund, the sum to be carried from time to time to the credit of the fund and the application of the fund.

(3) No part of the reserve fund shall be applied otherwise than for the purposes of the Commission.

Balancing of revenue account and surplus revenue. 16. (1) The Commission shall discharge its functions to ensure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue accounts and its funds under sections 14 and 15 taking one year with another.

(2) Any excess of the revenue of the Commission for any financial year over the sum properly chargeable to its revenue account and its funds under sections 14 and 15 for that year shall be applied by the Commission for the purposes of the Commission.

Accounts and audit. 17. (1) The Commission shall keep proper accounts of all transactions and shall prepare in respect of each financial year a statement of accounts in an approved format.

(2) Such accounts shall be audited annually by an auditor appointed by the Commission.

Annual 18. (1) The Commission shall, as soon as practicable

report.

after the expiration of each financial year and in any event not later than June 30 in any year submit to the Minister a report containing -

- (a) an account of its transactions throughout the preceding financial year;
- (b) a statement of the accounts of the Commission audited in accordance with section 17.

(2) The Minister shall cause a copy of the report together with a copy of the audited financial statements and the auditor's report to be laid on the table of both Houses of Parliament.

Commission
to maintain
registers.

19. (1) The Commission shall cause to be maintained -

- (a) separate registers of -
 - (i) companies,
 - (ii) intermediaries; and
 - (iii) associations;
- (b) such other registers as may be required to be maintained pursuant to this Act or the regulations.

(2) The registers referred to in subsection (1) shall contain, in respect of each registrant -

- (a) the constitutive documents;
- (b) the address of the principal office, and, where applicable, the address of the principal representative;
- (c) a copy of the certificate of registration;

- (d) a copy of the most recent balance sheet or other financial statement determined by the Commission;

- (e) the names and addresses of the officers;
- (f) the companies and intermediaries with which business is conducted in The Bahamas,

and such other information and documentation as may be directed by the Commission.

(3) Any person may, upon payment of such fee as may be prescribed or established by the Commission, inspect during normal business hours any register at the office of the Commission and may make a copy of any document in such register.

Commission
may act as
arbitrator.

20. (1) Where, in relation to a policy, any dispute or difference carries between an insurer and a policyholder, the Commission may with the consent of the parties involved, act as arbitrator of the dispute or difference.

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

Immunity
and actions
by the
Commission.

21. (1) No liability should be incurred by and no suit, action or proceeding shall lie against the Commission, or any person acting under its authority for anything done or omitted to be done bona fide for the purpose of executing any of the provisions of this Act or the regulations in the performance or intended or supposed performance of their duties under this Act or under any other enactment that imposes duties upon them.

(2) The Commission may bring actions and institute proceedings in its name of office for the enforcement of any of the provisions of this Act or the regulations or for the recovery of fees and any other sum payable under this Act or regulations.

(3) The Commission shall not be required to prosecute, defend or take part in any proceedings outside the jurisdiction of any court in The Bahamas unless it is indemnified by or on behalf of the person who wishes it to act against any judgement, order or costs that may be awarded against it by deed guarantee or deposit as the Commission may require.

PART III

REGULATION OF INSURANCE COMPANIES

Registration

Only bodies
corporate
may carry
on insurance
business.

22. Subject to this Act -

(a) no person other than a body corporate may carry on insurance business in The Bahamas;

(b) no company may be registered to carry on both long-term and general insurance business at the same time.

Requirements
to carry on
insurance

23. (1) Subject to section 25, a company shall not carry on in The Bahamas insurance business of any of the classes specified in subsection (1) of section 3 unless -

business.

- (a) the Commission is satisfied that the articles of the company restrict it to the carrying on of insurance business solely;
- (b) it is registered by the Commission under this Act in respect of that class of insurance business;
- (c) it has made the deposit required by section 39 in respect thereof; and
- (d) in the case of a foreign company, or any company incorporated outside The Bahamas it has filed with the Commission the names and addresses of one or more persons resident in The Bahamas and authorised to accept on behalf of the company service of process in any legal proceedings.

(2) Any person who contravenes section 22 or this section is guilty of an offence and is liable on summary conviction -

- (a) in the case of an individual, to a fine not exceeding one hundred thousand dollars or to imprisonment for two years or to both and, in the case of a continuing offence, to a further penalty of one thousand five hundred dollars for each day on which the offence is continued after the conviction thereof; and
- (b) in the case of a person who is not an individual, to a fine not exceeding five hundred thousand dollars and, in the case of a continuing offence, to a further penalty of seven thousand dollars for each day on which the offence is continued after conviction thereof.

Sale of insurance products.

24. (1) No company may sell or otherwise distribute any insurance products in The Bahamas other than through a registered agent or broker.

(2) Any company that contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Share capital and deposit required

25. (1) Subject to subsections (2) and (4), no company shall be registered to carry on any class of insurance business in The Bahamas, unless it has paid-up capital and surplus of the prescribed amount.

(2) No foreign company may be registered to carry

for
regis-
tration.

on long-term or general insurance business in The Bahamas unless, in addition to complying with subsection (1), it has deposited with the Commission the deposits required under section 39.

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

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

(5) Subsection (1) shall not apply to a company registered pursuant to the repealed Insurance Act immediately prior to the coming into force of this Act, but shall apply in accordance with section 250 of this Act.

Companies
carrying on
insurance
business
before the
commence-
ment of
this Act.

26. (1) Every company carrying on insurance business in The Bahamas immediately before the commencement of this Act shall, within two years increase its paid-up share capital, or in the case of a mutual company increase its uncommitted reserves, to the prescribed amount.

(2) A company which immediately before the commencement of this Act is registered to carry on insurance business may, in accordance with section 27, apply for registration to the Commission which shall, if satisfied that the conditions for registration specified in section 28 have been met, register the company within three months after the receipt of the application.

Application
for regis-
tration.

27. (1) An application for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and by such documents as may be prescribed or as may be required by this Act.

(2) The Commission may, upon receipt of an application under this section, request the applicant to furnish such additional information as it may consider to be relevant in relation to the application and the applicant shall comply with the request.

Conditions
for regis-
tration.

28. (1) Where the Commission, after appropriate enquiry or by the production of documentary evidence or both, is satisfied in respect of the applicant that -

(a) the requirements of sections 21, 25 and 27, in so far as they are applicable, have been complied with;

(b) the applicant is solvent under the provisions of section 80;

(c) the applicant is likely to be able to

comply with such of the provisions of this Act as would be applicable to it;

- (d) the name of the applicant is not identical with or does not so closely resemble the name of a company already registered under this Act as to be likely to confuse or deceive;
- (e) the applicant has made adequate arrangements for re-insurance of the class of insurance it intends to carry on or that there is no justification for making those arrangements;
- (f) the Commission is satisfied that the beneficial owners are fit and proper persons to hold an insurance licence in The Bahamas;
- (g) the Commission is satisfied that the person holding the office of Managing Director, Chief Executive Officer or Principal Representative of the applicant is a fit and proper person to hold that office;
- (h) a business plan is submitted in accordance with the regulations;
- (i) where the applicant is carrying on long-term or general insurance business, a statutory fund is established with the amount of assets as the Commission may prescribe;
- (j) being a foreign company -
 - (i) it is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least five years before the date of the application; and
 - (ii) it has appointed some person resident in The Bahamas to be its principal representative in The Bahamas and has informed the Commission in writing of the name and address of that

person,

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

(2) Where the Commission is not satisfied, in relation to all or any of the classes of insurance business in respect of which the application is made, as to one or more of the conditions set out in subsection (1) of section 25, it shall notify the applicant in writing that -

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

giving its reasons for so doing and shall notify it of its rights of appeal to the Commission for reconsideration and under section 234.

Certificate
of regis-
tration.

29. The Commission shall furnish to every company registered under this Act a certificate in the prescribed form that the company has been so registered, and the certificate shall state the class or classes of insurance business for which it is registered and shall be prima facie evidence that the company specified in the certificate has been so registered.

Notifica-
tion of
change in
particulars.

30. (1) Where, after the registration of any company under this Act any **material** change takes place in the particulars specified in the application of the company for registration or in the particulars of the information or documents required to accompany the application, the company shall, within thirty days of the change, notify the Commission in writing of the change.

(2) No company registered under this Act may alter its Memorandum or Articles of Association without the prior consent in writing of the Commission.

(3) Notwithstanding the provisions of the Memorandum and Articles of Association of the company, and of the Companies Act, notice in writing shall be given to the Commission of any meeting at least fourteen days prior to the meeting at which it is proposed to effect any alteration of the company's Memorandum or Articles of Association, together with a copy of the proposed resolution.

(4) No company registered under this Act shall in any way effect a change in its beneficial ownership without

the prior approval of the Commission.

(5) Upon any occurrence of the matters mentioned in this section the Commission shall have the authority to review the company's license and may revoke it or impose conditions upon it after conducting a regulatory hearing therefor pursuant to the powers contained in sections 33 and 34.

Restriction
on re-
insurance
with
affiliate.

31. Without prior approval of the Commission -
(a) no registered insurer shall cause itself to be reinsured in respect of risks; and
(b) no registered foreign insurer shall cause itself to be reinsured in respect of risks in The Bahamas,
by an affiliate of the registered insurer that is not itself a registered insurer.

Restrictions
may be
imposed by
regulations.

32. Additional restrictions may be imposed by regulations or by directive of the Commission on the extent to which -
(a) a registered insurer may cause itself to be reinsured against risks; and
(b) a registered foreign insurer may cause itself to be reinsured against risks in The Bahamas.

Suspension
of regis-
tration.

33. (1) Subject to subsection (2), the Commission may suspend the registration of a company in respect of all or any of the classes of business in relation to which it is registered, if it is satisfied that the company is in breach of any provision of this Act in circumstances where the breach would constitute a ground for cancellation as specified in section 31.

(2) Before taking action under subsection (1) the Commission shall notify the company concerned of its intention to suspend the company's registration giving reasons therefor and requiring the company to take such action as is specified in the notice to remedy the breach within the time so specified.

(3) Where a company fails to comply with a notice under subsection (2), the Commission may -

- (a) extend the period specified in the notice under subsection (2); and
- (b) if the breach is not remedied within that extended period, cancel the company's registration in accordance with section 34.

Grounds for

34. (1) Subject to subsection (3) and section 36, the

cancellation of registration.

Commission may, for any of the reasons specified in subsection (2), notify in writing a company that it proposes to cancel the company's registration, giving reasons for so doing, and notifying the company of its rights of appeal to the Commission for reconsideration and under section 234.

(2) The reasons referred to in subsection (1), are that -

- (a) the company's registration was procured as a result of misleading or false representation or in consequence of incorrect information, whether the representation was made or information was supplied wilfully or otherwise;
- (b) the company is insolvent in terms of section 80;
- (c) the company's insurance business or any class thereof is not being conducted in accordance with sound insurance principles and practice;
- (d) any of the company's reinsurance arrangements are not satisfactory;
- (e) the company has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by it;
- (f) the company has contravened any provision of this Act or of any regulations, or any condition, direction or requirement imposed under this Act by the Commission, or has been an accessory to the contravention thereof by any other person; or
- (g) a final judgment has been obtained against the company in a court in The Bahamas and remains unsatisfied for more than one month.

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

Implement-

35. Where a company has been notified under

tation of
proposal to
refuse to
register or
to cancel
registra-
tion.

Summary
cancel-
lation of
registra-
tion.

Effect of
cancel-
lation of
registra-
tion.

subsection (2) of section 28 or under subsection (1) of section 34 of its right to request the Commission to reconsider and the company having made a request the result of the review is the confirmation, with or without variation, of the Commission's proposal, then, subject to any such variation, the Commission shall give effect to the proposal and notify the company in writing accordingly.

36. The Commission may at any time cancel the registration under this Act of a company where -

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

37. (1) Notwithstanding section 23, upon the cancellation of the registration of a company -

- (a) it shall be lawful for the company to continue to carry on business relating to policies issued before the date on which it is notified of the cancellation, hereinafter in this section referred to as "the date of notification" and it shall continue to carry on such business unless the Commission is satisfied that the company has made suitable arrangements for its obligations under those policies to be met;
- (b) it shall not be lawful for the company, after the date of notification, to issue any new policy or to enter into any new contract in relation to which registration under this Act is required.

(2) Nothing in paragraph (a) of subsection (1) shall be taken as authorising the renewal, after the date of notification, of any policy issued before that date; and where any such policy is renewed after that date the company shall be regarded as having issued a new policy in contravention of paragraph (b) of subsection (1).

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction -

- (a) in the case of a failure to comply with paragraph (a) of subsection (1), to the penalties provided for in section 245; and
- (b) in the case of a contravention of paragraph (b) of subsection (1), to the penalties provided for in subsection (2) of section 23.

Application
of section
34 where
registra-
tion refused.

38. The provisions of section 37 shall apply with the necessary modification in relation to a company that was carrying on insurance business in The Bahamas immediately before the commencement of this Act and whose registration is refused as they apply to an insurance company whose registration has been cancelled under section 37.

Display and
surrender of
registra-
tion
certificate.

39. (1) Every company registered under this Part shall prominently display its registration certificate at its principal place of business in The Bahamas, in an area to which the public has access; and a copy of the certificate certified by the Commission shall be similarly displayed at each of its branches in The Bahamas.

(2) On the notification to a company that its registration has been cancelled under section 33, the company shall forthwith surrender the registration certificate and every copy of the certificate to the Commission.

(3) Every person who, without lawful excuse, fails to comply with this section, or who displays a registration certificate or any copy of the certificate that is not currently valid, is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars.

Registered
company may
be pro-
hibited
from writing
new business.

40. (1) Where, after consideration of the report of an Inspector appointed by the Commission under section 76 to investigate the affairs or any part of the affairs of a company or after other appropriate enquiry, the Commission is satisfied that it is in the interest of the policyholders or prospective policyholders to do so, the Commission may by notice in writing prohibit a company from writing new policies in any class of insurance business in respect of which the company is registered.

(2) The Commission shall in any notification under subsection (1) state the reasons for its decision and inform the company of its rights of appeal to the Commission for reconsideration and under section 235.

Contracts

41. (1) No person shall, except in the case of

with non-registered companies.

reinsurance, place or cause to be placed with a company not registered under this Act, insurance in respect of -

- (a) property situated in The Bahamas; or
- (b) liabilities arising in The Bahamas.

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

(3) For the avoidance of doubt, it is hereby declared that the Commission, by granting permission under subsection (2), does not assume any liability towards the applicant in relation to the insurance contract concerned or its replacement.

Duty of company to furnish Commission with form of application, form of policy or form of endorsement.

42. (1) Every company registered under this Act to carry on any class of insurance business shall, at least two months prior to the date of the issue of a new form of policy or of the use of a standard form of endorsement or of a form of application for a policy, furnish the Commission with a copy of the standard form of policy or of the standard form of endorsement or of the form of application.

(2) The Commission may prohibit a company from issuing or using a new form of policy, a standard form of endorsement or a form of application for a policy the issue of which, in its opinion, is fraudulent, unjust or not in the public interest.

(3) A company which continues to issue or use a form of policy, a standard form of endorsement or a form of application for a policy the issue or use of which is prohibited by the Commission under subsection (2) is guilty of an offence.

(4) Approval of the Commission may be deemed sixty days after filing if no response is received. However, where approval is deemed to have been given, it may be rescinded for cause.

Deposits by Insurance Companies

Amount and form of deposit by all

43. (1) A company may not be registered under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Commission the prescribed deposit.

companies.

(2) The Commission may, for the purposes of this section, allow the required deposits to be lodged with a licensed Bahamian financial institution to the order of or on behalf of the Commission.

(3) Any deposit made under this section may be in the form of a combination of cash and other assets, the nature, manner and value of which shall be prescribed by regulations.

Further provisions relating to deposits Second Schedule.

44. The Second Schedule shall have effect in relation to deposits made with the Commission pursuant to this Part.

Statutory Funds

Establishment of statutory funds.

45. (1) Every company registered under this Act to carry on long-term or general insurance business shall establish and maintain a statutory fund in respect of each such class of business.

(2) The statutory fund shall be established at the date -

(a) on which the company commences the carrying on of any class of business referred to in subsection (1); or

(b) of the commencement of its financial year next after the commencement of this Act,

whichever is the later date.

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

(a) in a financial institution approved by the Commission; and

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

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

(5) Every foreign company carrying on general insurance business in The Bahamas shall place in trust in The Bahamas assets equal to its liabilities and reserves less the

amount deposited on account of the business pursuant to section 43(1) with respect to its policyholders in The Bahamas as established by the revenue account of the company as at the end of its last financial year.

(6) Assets required to be placed in trust pursuant to subsections (4) and (5) shall be so placed not more than two months after the end of the financial year to which the balance sheet or the revenue account, as the case may be, of the company relates.

(7) For the purposes of computing the liability referred to in subsections(4) and (5), no account shall be taken of the liability of the company to its shareholders.

Restric-
tion on use
of assets
representing
statutory
funds.

46. (1) Subject to subsections (2) and (3), the assets representing each statutory fund of a company shall not be applied directly or indirectly to any class of business other than that in respect of which the fund was established and is being maintained.

(2) Where the value of the assets mentioned in subsection (1) is shown on an actuarial investigation made under this Act to exceed the amount of the liabilities attributable to any class of insurance business referred to in section 41, the restriction imposed by subsection (1) shall not, subject to section 194, apply to so much of those assets as represents the excess.

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

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

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

(6) No company carrying on long-term insurance business or general insurance business and no company of which any such company is a subsidiary shall declare a dividend at any time when the value of the assets representing a fund established and maintained by the company as determined in such manner as may be prescribed, is less than the amount of the liabilities attributable to that business.

Method of

47. (1) A trust referred to in subsections (4) and (5)

creating trusts.

of section 41 shall be created by a trust deed the contents and the trustees of which shall be approved by the Commission before the trust is created and the deed shall be in such form as may be prescribed.

(2) For the purposes of this section, the assets required to be placed in trust are to be held by a licensed Bahamian financial institution approved by the Commission.

(3) The assets required to be vested in trust shall be valued at an amount which shall not exceed the total of their book values less an investment valuation reserve in such amount as may be prescribed or on the directive of the Commission.

(4) Notwithstanding anything to the contrary contained in this Act the Commission may determine the value at which assets shall be accepted for the purposes of this Act.

Obligation to submit list of assets.

48. A trustee shall submit to the Commission in such form and at such times as may be prescribed, a list of the assets held in trust by him pursuant to section 47.

Company to furnish particulars of liabilities and assets with respect to fund.

49. A company shall, within three months after the date on which it established its statutory fund and thereafter within four months of the expiration of its financial year, furnish to the Commission a statement in the prescribed form showing -

- (a) particulars of the liabilities of the company in respect of which the fund is established, as at the date of the establishment of the fund; and
- (b) particulars of the assets comprising the fund.

Inaccurate or misleading particulars.

50. (1) Where it appears to the Commission that -
- (a) a statement furnished to it under section 49 is in any respect unsatisfactory, incomplete, inaccurate, misleading or otherwise fails to comply with the requirement of that section; or
 - (b) the value of the assets or of the assets included in a particular class as shown by the statement, is insufficient or excessive,

the Commission may, after considering any explanation made by or on behalf of the company, give to the company such directions in writing as it thinks necessary for the variation

of the statement or for an increase or decrease in the value of the assets.

(2) A company shall comply with any directions given to it by the Commission under subsection (1) within thirty days of receiving the same.

Company to
furnish
Commission
with infor-
mation.

51. The Commission may, for the purpose of exercising its powers under section 50 in respect of a company, request from that company such information as it considers necessary; and the company shall furnish the information within thirty days of the request.

Assets
shown in
statement
deemed to be
assets in
statutory
fund.

52. The assets shown as assets of a particular statutory fund in a statement furnished to the Commission pursuant to section 49 or in any variation of the statement shall be deemed to form part of the assets of that fund unless they more properly form part of the assets of some other statutory fund.

Investment
of assets
of statutory
fund.

53. (1) The assets of a statutory fund shall not be invested except in securities specified by regulations.

(2) Subject to any other requirement set out in this Act, the regulations, or any directive of the Commission, a registered insurer shall in respect of the assets which it has vested in trust, establish and adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply.

(3) The Commission may, by order published in the Gazette, amend the regulations.

Invest-
ments to
be made in
corporate
name.

54. (1) All investments and deposits of the funds of a company shall be made in the company's name and no director or officer of the company and no member of a committee that can exercise any authority over the investment or disposition of the funds of the company shall-

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

(b) be pecuniarily interested in any purchase, sale or loan made by or on behalf of the company, whether solely or jointly,

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

(2) Nothing in this section shall be construed as precluding a local company from making in the name of or transferring or assigning to another person or company the investments and deposits necessary to comply with the laws of any state or country where -

- (a) the local company transacts or is about to transact insurance business in that state or country; and
- (b) the laws of the state or country require that the investments and deposits be made in the name of or be transferred or assigned to any person or company other than the local company.

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

Prohibi-
tions
relating
to
acquisition
of shares
and loans.

55. (1) A local company shall not, directly or indirectly -
- (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;
 - (b) lend any of its funds to a related party i.e., the parent or an entity within the parent group, without the prior approval of the Commission;
 - (c) lend any of its funds to a director or an officer of the company or to a wife or a child of a director or an officer except on the security of the company's own policies or some other adequate security;
 - (d) lend any of its funds to a company if more than one-half of the shares of the company are owned by a director or an officer of the company or the wife or a child of a director or an officer, or by any combination of those persons;
 - (e) grant unsecured credit facilities to any person except for temporary cover in the case of general insurance where such cover does not exceed one hundred and eighty days or except in the case of advances to agents or to full-time employees against commissions or salaries to be earned;
 - (f) enter into any guarantee or provide any security in connection with a loan by any

other person to any such person or company as is mentioned in paragraph (b),(c) or (d).

(2) Notwithstanding subsection (1), the prohibition against lending does not extend to commercial arms' length issuance of performance bonds or mortgage indemnity insurance.

(3) A foreign company shall not directly or indirectly grant unsecured credit facilities to any person in The Bahamas except in the case of general insurance for temporary cover not exceeding one hundred and eighty days or of advances to agents or full-time employees against commissions or salaries to be earned.

(4) Any director of a company who knowingly contravenes paragraph (b) of subsection (1) is liable at the instance of an aggrieved party to make good any loss occasioned by the contravention.

Dividend
not to
impair
capital.

56. No dividend or return of capital shall be paid by any company without the prior consent in writing of the Commission and at any time while its assets are less than the amount required for solvency by section 80 nor shall any dividend be paid that would reduce its assets below the same amount or impair its capital.

Payment of
dividends.

57. No company shall directly or indirectly pay dividends or return on capital until all its capitalized expenditure (including preliminary expenses, organization expenses, share-selling commission and brokerage) not represented by tangible assets, have been completely written off.

**Administrative and accounting
requirements
for insurance companies**

Insurance
companies
to maintain
principal
office and
appoint
principal
representative.

58. (1) Every company registered under this Act shall maintain a principal office in The Bahamas and shall appoint with the consent of the Commission some person resident in The Bahamas and qualified in the class or classes of insurance business for which it is registered to be its principal representative in The Bahamas.

(2) Every company shall notify the Commission in writing of the address of its principal office and of the name and qualifications of its principal representative.

(3) Where a company changes the address in The Bahamas of its principal office or appoints a new principal

representative, it shall, within twenty-one days of the change or appointment, give written notice thereof to the Commission.

(4) The principal representative shall accept service of process on behalf of the company.

Maintenance
and separa-
tion of
funds.

59. (1) Subject to this Act, where a company -

(a) carries on insurance business of one only of the specified classes; or

(b) carries on insurance business of two or more of the specified classes, referred to in subsection (4);

the receipts and expenditure of such class of insurance business, or of each class of insurance business, as the case may be, shall be entered in a separate account and shall be carried to and form a separate insurance fund with an appropriate name.

(2) Nothing in this section shall require the investments of any fund to be kept separate from the investments of any other fund.

(3) Subject to this Act, a fund of any particular class -

(a) shall be absolutely the security of the policyholders of that class as though it belonged to a company carrying on no other business than insurance business of that class;

(b) shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class; and

(c) shall not be applied, directly or indirectly, for any purpose other than those of the class of business to which the fund is applicable.

(4) For the purposes of subsection (1), "specified classes" means the classes, of ordinary life insurance business, variable life insurance business, industrial insurance business, sickness and health and such other classes as may be prescribed.

Prepara-
tion of
annual
accounts,
etc.

60. (1) Subject to subsections (4) and (11), every company registered under this Act shall, at the end of each financial year, prepare in the prescribed form and manner -

(a) a general balance-sheet showing the financial position of all the insurance

business of the company at the close of that year;

- (b) except in the case of a mutual company, a profit and loss account in respect of all its insurance business in that year; and
- (c) separate revenue accounts for -
 - (i) life insurance business,
 - (ii) industrial life insurance business,
 - (iii) bond investment business,
 - (iv) such other class or classes of insurance business as may be prescribed;
- (d) an analysis of its long-term policies in force at the end of that year;
- (e) a certificate that the assets of its insurance business are in the aggregate at least of the value shown in the balance-sheet;
- (f) where the company carries on -
 - (i) life insurance business, a certificate that the value of the assets of the life insurance fund exceeds the liabilities,
 - (ii) general insurance business but not life insurance business, a certificate that the value of its assets exceeds the amount of its liabilities by such amount as the Commission determines,
- (g) such other documents and information relating to the accounts and balance-sheets referred to in this subsection as may be prescribed.

(2) Every company shall publish the balance-sheets referred to in paragraphs (a) and (b) of subsection (1) annually in the Gazette and in a daily newspaper within **four** months of the end of its financial year.

(3) Every account, balance-sheet, statement or other document required by subsection (1) to be prepared shall be furnished to the Commission within **four** months after the end of the period to which the account, balance-sheet,

statement or other document relates.

(4) All the documents referred to in subsection (1) shall be certified by an independent auditor and in the case of long-term business, by an actuary and shall relate to the worldwide business of the company; but the Commission may require in addition a statement showing in respect of the company's business in The Bahamas, the amounts of premiums and considerations for annuities received, claims paid and outstanding surrenders, including surrenders of bonuses, annuities paid, bonuses paid, commission and expenses of management.

(5) A foreign company shall submit annually a copy of the statutory returns it is required to file in the country in which its head office is situated within thirty days of its filing in such country.

(6) Where, in the opinion of the Commission, a document furnished by a company under this section is incorrect or incomplete in any respect or is not prepared in accordance with this Act, it may, by notice in writing, call upon the company to amend the document or to furnish a correct or complete document or, as the case may be, a document prepared in accordance with this Act.

(7) Where a company fails to comply with a notice referred to in subsection (6) to the satisfaction of the Commission, the Commission may itself either amend the document in question, giving the company particulars of the amendments, or reject the document.

(8) A document amended by the Commission or by a company under this section shall be treated as having been submitted to the Commission in its amended form.

(9) Where a document furnished by a company under this section has been rejected by the Commission under subsection (7), the company shall be treated as having failed to comply with this section in relation to that document unless and until it has furnished another document in accordance with the directions of the Commission.

(10) A company that is liable under a local life insurance policy shall, at the request of the policyholder, furnish the policyholder free of charge with a copy of the relevant revenue account, profit and loss account and balance-sheet prepared by the company under subsection (1) in respect of its last preceding financial year.

(11) The requirements of this section shall not apply in the case of a company that carries on only insurance

business of a class or classes declared exempt for the time being under section 243.

Group
accounts.

61. (1) Where two or more companies, which operate as separate entities that can be wound-up in accordance with the law under which they are incorporated, are associated together in a group, then, in addition to the separate accounts required by section 60, the Commission may require the parent company of the group to prepare, at the end of its financial year and in the prescribed form and manner -

- (a) a consolidated balance sheet showing at the close of that year the financial position as a group of the parent company and all its subsidiary companies;
- (b) a consolidated profit and loss account showing the profit or loss as a group of the parent company and all its subsidiary companies during that year; and
- (c) such other documents as may be prescribed.

(2) The balance-sheet and profit and loss account to which subsection (1) refers, shall bear a certificate by an auditor approved by the Commission as to whether in the opinion of the auditor it gives a true and fair view of the financial position as a group at the close of that year or, as the case may be, of the profit and loss as a group during that year, of the parent company and all its subsidiary companies.

Audit of
accounts of
companies.

62. (1) The accounts of every company shall be audited annually by an independent auditor who shall not be an employee or an officer of the company.

(2) The auditor of every company shall satisfy himself that the accounts of the company have been properly prepared in accordance with generally accepted accounting principles or in accordance with such other accounting principles acceptable to the Commission, and shall certify whether -

- (a) he has obtained adequate information from the books and records of the company;
- (b) the accounts of the company accord with the information given to him by the company for the purposes of the audit;
- (c) in the case of a company other than a mutual company, the balance-sheet and profit and loss account respectively of the company give a true and fair view of the company's financial position and

profit and loss; and

- (d) in the case of a mutual company, the balance-sheet and funds give a true and fair view of the company's financial position.

Keeping of records by companies.

63. (1) All companies shall keep within The Bahamas and shall make available to the Commission on request -

- (a) a record of all local policies issued by the company showing the company's rights and obligations thereunder;
- (b) a record of the aggregate amount of the premiums received on all local policies issued by the company;
- (c) an accurate record of all premiums paid on reinsurance; and
- (d) such other books, records, receipt and vouchers as are necessary to allow the company to prepare for transmission to the Commission a statement of the insurance business carried on by it in The Bahamas.

(2) The Commission may examine, during ordinary office hours the books and records of the company, and the company must cause such books and records to be readily available for examination and facilitate the examination.

Periodical actuarial investigations.

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

(2) Every company that carries on long-term business shall, whenever its financial position is reviewed with a view to a distribution of surplus or in compliance with subsection (1), prepare and furnish to the Commission in the prescribed form within four months of the end of the financial year a copy of the report of the actuary by whom the review was made and a statement of its long-term business at that date.

(3) Subsections (7) and (10) of section 54 shall, with such modifications as may be necessary, apply in relation to a copy of the report or statement of an actuary to which subsection (2) refers, as they apply in relation to a document required to be prepared by section 60.

(4) In the case of a mutual company that carries on

life insurance business or industrial life insurance business and whose profits are allocated to members wholly or mainly by annual abatements of premium, the company shall, where the copy of the report required by this section is not made annually, include with the copies of each report furnished to the Commission under this section, particulars as to the rates of abatement of premium applicable to different classes of insurance offered during the period between the current review and the preceding review.

Power of
Commission
to request
informa-
tion and
appraisal.

65. The Commission may -

- (a) require a director, manager, principal representative, auditor or actuary to provide within such time as it may specify, such information as it deems necessary to determine the ability of the company to meet its obligations in respect of policies issued by it; and
- (b) request an appraisal of the real property of a company the cost of which shall be met by the company and may substitute the appraised value if it is substantially less.

Transfer or
acquisition.

66. (1) Any company, whether or not it has ceased to issue new policies of insurance or assume fresh liabilities in The Bahamas, that desires to have the whole or any part of its insurance business transferred to, acquired by or amalgamated with, the insurance business of another company, shall, before the transfer, acquisition or amalgamation, obtain the approval of the Commission in writing.

(2) The Commission may approve any transfer, acquisition or amalgamation either unconditionally or subject to such conditions as it specifies in writing.

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

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

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

Procedure
in respect
of transfer,
acqui-
sitions and
amalgama-
tions.

67. (1) Subject to section 66, the chairman and at least three directors of each company desiring the transfer, acquisition or amalgamation of an insurance business shall, in seeking the approval of the Commission in pursuance of that section, make application to the Commission in the form of a joint petition -

- (a) stating the nature of the transfer, acquisition or amalgamation, in this section and sections 68 and 69 referred to as the Scheme;
- (b) providing relevant board resolutions authenticating the validity of the proposed transactions;
- (c) giving details of the facts contained in any deed or agreement under which the Scheme is proposed to be effected;
- (d) submitting copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary; and
- (e) submitting such number of copies of an audited account of the assets and liabilities of the companies affected by the Scheme as the Commission approves.

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

- (a) notice of an intention to make the application shall be published by the company in the Gazette and in a newspaper published in The Bahamas and approved by the Commission, stating the date on or after which the application will be made; the date being at least thirty days after the publication of the notice;
- (b) a copy of the notice together with -
 - (i) a statement of the nature and terms of the agreement under which the Scheme is proposed to be effected;
 - (ii) a summary of the material facts embodied in the agreement; and
 - (iii) a copy each of the actuarial and other reports upon which

the agreement is founded,
including a report by an
independent actuary,

shall, by personal service or registered
mail, be served by the company on the
shareholders, members and policyholders in
The Bahamas of the companies concerned in
such time that delivery of the mail may be
effected at least thirty days before the
date mentioned in the notice as being the
date on or after which the application
will be made; but the Commission may
dispense with the service or alter the
time periods specified above if it is
satisfied that the circumstances so
warrant; and

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

- (3) Where, in pursuance of an agreement between -
 - (a) an insurer, in this section and section 68
referred to as "the continuing insurer";
and
 - (b) another insurer, in this section referred
to as "the retiring insurer",

in anticipation of the retiring insurer ceasing to do business
in The Bahamas, the continuing insurer assumes liability under
contracts of insurance specified in the agreement issued by

the retiring insurer, and the retiring insurer does in fact cease to do business in The Bahamas, an insured person may enforce any rights accruing to him under any of those contracts as if the contracts had been issued by the continuing insurer.

Application
by persons
affected by
Scheme.

68. (1) Any person who is likely to be affected by a proposed Scheme may, within thirty days of service upon him under subsection (2)(b) of section 67 make an application to the Commission in respect of any matter related to the Scheme.

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

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

(3) The following persons are entitled, either in person or by their legal representatives, to be heard at the hearing of an application made under this section -

- (a) the person making the application;
- (b) every company interested in the application; and
- (c) any person who, in the opinion of the Commission, is likely to be affected,

and the Commission may hear such evidence as it deems necessary.

(4) The Commission shall not approve a Scheme where-

- (a) the provisions of section 67 are not complied with;
- (b) subject to paragraph (c), a number of policyholders representing not less than one-tenth of the total amount assured in any one portfolio in the Scheme dissents from the Scheme;
- (c) in the case of a group policy, a number of policyholders representing not less than one quarter of the total group in any one portfolio to which the Scheme relates and not less than one quarter of the insured, dissents from the Scheme; or

- (d) it is not satisfied that -
 - (i) the continuing insurer is incorporated in The Bahamas, or
 - (ii) the acquisition, amalgamation or transfer is in the public interest.

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

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

(6) All expenses incurred by the Commission in obtaining any report on the Scheme, including the report of any actuary, shall be defrayed by the companies concerned and any moneys due as a result of those expenses may be recovered by the Commission from those companies as a debt due to the Crown notwithstanding that the amount sought to be recovered exceeds the normal monetary limit on the jurisdiction of the Magistrates' courts.

(7) For the purposes of subsection (4), "group policy" means a policy of insurance, not being a policy that operates in favour of a family or a group of creditors, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person.

Effect of
decisions of
Commission
and appeals.

69. (1) Subject to subsection (3), a Scheme, after being sanctioned by the Commission, is binding on the companies affected by it, and on all shareholders, members and policyholders and has effect notwithstanding -

- (a) anything contained in any policy or in any instrument constituting the companies; or
- (b) anything contained in any rules or bye-laws of the companies,

and the directors of those companies shall cause a copy of the Scheme as approved to be filed with the Registrar of Companies.

(2) The company to which insurance business is transferred under a Scheme, the company acquiring such

insurance business or the company carrying on the amalgamated insurance business, as the case may be, shall, not later than thirty days after the date of the implementation of the Scheme, lodge with the Commission -

- (a) a certified copy of the agreement or deed under which the Scheme was effected; and
- (b) a declaration made before a Notary Public by the chairman, managing director or principal officer of the company -
 - (i) setting out every payment made or to be made to any person on account of the Scheme, and
 - (ii) containing a statement to the effect that no other payments beyond those so set out have been or are to be made in money, policies, bonds, valuable securities, property of any description or any other valuable consideration within the knowledge of any parties to the Scheme.

(3) An appeal from a decision of the Commission either approving or disapproving a Scheme lies to a Judge in Chambers and shall be made within fifteen days of that decision.

**Corporate governance, appointment of
Auditors and Actuaries; Establishment of Committees**

Regulations for auditors and actuaries. 70. The Commission shall prescribe regulations for the appointment and responsibilities of auditors and actuaries, and the establishment of audit and conduct review Committees.

Investigations by the Commission

On-site inspections. 71. The Commission shall conduct an annual on-site inspection of each registered insurer or association. However, the Commission may decide on more or less frequent inspections.

Commission may demand 72. (1) The Commission may demand from any company information relating to any matter in connection with its

Information. insurance business.

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

(3) The Commission shall, for the purpose of carrying out the provisions of this Act, satisfy itself that the provisions of the Financial Transactions Reporting Act are being complied with.

Power
to make
investi-
gations.

73. (1) Where it appears to the Commission that -

- (a) a company is, or is likely to become, unable to meet its obligations;
- (b) a company has failed to comply with any of the provisions of this Act, the regulations, or any directives of the Commission;
- (c) a company has not, within a period of one month as from the date on which the Commission demanded from the company in writing any information which the Commission was entitled under this Act to demand, furnish that information duly and satisfactorily; or
- (d) any information in the possession of the Commission warrants an investigation into the whole or any part of any class of the insurance business of the company,

the Commission may serve on the company a notice in writing calling upon it to show cause within such period, not less than thirty days from the date of the notice as is specified in the notice, why it should not, on the grounds so specified, investigate the whole or any part of the business of the company or appoint a person, in this Part referred to as the Inspector, to make such an investigation and report to the Commission the results of the investigation.

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

(3) In connection with any investigation, the Commission shall have the power and authority to engage such professional or other expert as may, in its opinion, be necessary or desirable and the costs incurred in connection with obtaining such expert shall be borne by the company that is under investigation.

Power to
obtain
information.

74. (1) In making an investigation under this Part, the Commission or the Inspector may -

- (a) require the company to produce any securities, books, accounts, documents or statistics of the company for inspection and to allow for the making of such extracts from them as are considered necessary;
- (b) examine on oath in relation to the company's business, any person who is, or has at any time been, a director, auditor, officer, agent, servant or shareholder of the company or the holder of a policy issued by the company or the personal representative of the holder; and
- (c) for the purpose of paragraph (b), administer oaths.

(2) A person specified in paragraph (b) of subsection (1) shall produce to the Commission or the Inspector on request any securities, books, accounts, documents or statistics of the company which are available to the person and shall give to the Commission or the Inspector, on request, any information in his possession relating to the business of the company.

(3) A person specified in paragraph (b) of subsection (1) shall not refuse to be sworn or to give information on examination on oath, and shall not, in reply to a request made under subsection (2), give any false information.

Entry and
search of
premises.

75. (1) Where a magistrate is satisfied on information on oath laid by the Commission or by any person authorised by the Commission for the purpose, that there are reasonable grounds for suspecting that there are on any premises any securities, books, accounts, documents or statistics, production of which has been required by virtue of section 77 and which have not been produced in compliance with that requirement, the magistrate may issue a warrant authorising any member of the Police Force, together with any other persons named in the warrant -

- (a) to enter the premises specified in the information using such force as is reasonably necessary for the purpose;
- (b) to search the premises and seize and remove any securities, books, accounts,

documents or statistics appearing to be the securities, books, accounts, documents or statistics required by the Commission; or

- (c) to take, in relation to any securities, books, accounts, documents or statistics so appearing, any other steps that may appear necessary for preserving them and preventing interference with them.

(2) A warrant issued under this section shall continue in force until the expiration of the period of one month after the date on which it is issued.

(3) Any securities, books, accounts, documents or statistics that have been seized under this section may be retained for a period of three months or, if within that period criminal proceedings have been brought in respect of the seizure, until the conclusion of those proceedings.

Confiden-
tiality.

76. (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or advisor 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 a company or intermediary; or
- (d) the affairs of a customer, client or policyholder of a company or intermediary,

that it or he has acquired in the course of it or 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 a company or intermediary or of a customer, client or policyholder of a company or intermediary, with the consent of the company,

intermediary, 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 company, or intermediary, or of any customer, client or policyholder of the company or intermediary, 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 Commission of his duties; or
- (g) in any legal proceedings in connection with -
 - (i) the winding-up or dissolution of a company or intermediary, or
 - (ii) the appointment or duties of a receiver of a company or intermediary.

(3) Subject to subsection (6), the Commission 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 its power under subsection (3), the Commission 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 Commission may decline to exercise its powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

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

- (a) the Commission has satisfied itself 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 Commission has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and
- (c) the Commission 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 Commission is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission 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 which request shall be entertained by such Magistrate, the Commission 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.

(8) The Commission may provide information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law to any other regulatory authority in The Bahamas where it considers such information may be relevant to the functions of such other regulatory authority.

(9) In this section "overseas regulatory authority" means an authority which, in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission.

Action
after
completion
of investi-
gation.

77. (1) After an investigation under this Part in respect of any company has been completed, the Commission -

(a) shall transmit to the company a summary of the conclusions arrived at by it as a result of the investigation; and

(b) may, without affecting any other powers conferred by this Part, issue such directions in writing to the company, in respect of any or all classes of insurance business, as it thinks necessary or proper to deal with the situation disclosed in those conclusions, including, without prejudice to the generality of the foregoing, directions prohibiting or regulating the issue of new policies, the renewal of existing policies or the entering into any new contracts; but in the case of a foreign company no such directions shall apply to the issue or renewal of policies or the entering of contracts in the course of its business outside The Bahamas.

(2) No direction issued to a company under this section shall remain in force for more than twelve months, but

nothing in this subsection shall prevent the Commission from issuing any further directions to the company.

Judicial management and winding-up

Winding-up.

78. (1) The court may order the winding-up in accordance with the Companies Act of a company, and that Act shall apply accordingly, subject to this section and sections 82 to 96 and to the modification that the company may be ordered to be wound-up on the petition of ten or more policyholders owning policies of an aggregate sum assured of not less than one hundred thousand dollars or on the petition of the Commission.

(2) A petition referred to under subsection (1) shall not be presented except by leave of the court, and leave shall not be granted until a prima facie case has been established to the satisfaction of the court and where the petition is presented by a person other than the Commission until security for costs for such amount as the court may think reasonable has been given.

(3) The Commission shall be a party to any proceedings under the Companies Act relating to the winding-up of a company and the liquidator in such a winding-up shall give the Commission such information as it may require about the affairs of the company.

(4) Reference in this section to a company shall extend also to a company that has ceased to be registered but remains under any liability in respect of local policies.

Petition for
judicial
management
or winding-
up.

79. (1) Where the Commission, by reason of the conclusion arrived at by it as a result of an investigation under section 73 in respect of any company, is of the opinion that it is necessary or proper to do so, it may, with the leave of the court, present a petition -

(a) for the winding-up by the court, in accordance with the Companies Act of an insurance company on the ground that -

(i) the company has contravened section 23,

(ii) in the case of a company that was carrying on insurance business in The Bahamas before the commencement of this Act and whose registration under

- this Act has been refused, it is in the interests of the policyholders that the company be wound-up,
- (iii) in the case of a company whose registration under this Act has been cancelled, it is in the interest of the policyholders that the company be wound-up,
 - (iv) any officer of the company or its holding company refuses to comply with any requirements made under subsection (1)(a) of section 74 or refuses to answer any question put to him under subsection (1)(b) of section 74,
 - (v) the results of an investigation made under section 73 in respect of the company are such that it is in the interest of the policyholders that the company be wound-up, or
 - (vi) that the company is insolvent;
- (b) for an order that the company or any part of the insurance business of the company be placed under judicial management on the ground that -
- (i) the company is in financial difficulties,
 - (ii) the insurance business of the company is not being conducted in accordance with sound insurance principles and practice,
 - (iii) the assets of the company are not sufficient to give adequate protection to its policyholders and creditors,
 - (iv) it is otherwise in the interest of the policyholders that such an order be made,
 - (v) assets appearing on the records of the company are not

(vi) satisfactorily accounted for, the capital or value of the assets vested in trust by the company has reached a level or are eroding in a manner that may detrimentally affect its policyholders or creditors;

and the court may make an order accordingly.

(2) An insurance company may, in respect of the company, after giving the Commission one month's notice in writing of its intention to do so, petition the court for any order specified in subsection (1).

(3) Both the company and the Commission shall be entitled to be heard on any petition presented to the court under this section.

(4) Where a petition is presented under this section for an order in respect of any company, all actions and the execution of all writs, summonses and other processes against it shall, by virtue of this section, be stayed and shall not be proceeded with without the leave of the court being first obtained or unless the court otherwise directs.

(5) Notwithstanding anything contained in this Act, where a company that is registered in a jurisdiction outside The Bahamas -

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

(b) has a subsidiary in The Bahamas, the Commission, upon learning of the winding-up, shall investigate whether any policyholders of the subsidiary are likely to suffer loss as a result of the winding-up and may institute proceedings for the protection of those policyholders; and the court may grant such relief to the policyholders as it thinks fit, whether or not the relief granted was the relief prayed for by the Commission.

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

Margin of solvency.

80. (1) Subject to this section and section 201 an insurance company shall, for the purposes of the Companies Act be deemed to be unable to pay its debts if at any time the value of its admissible assets does not exceed its liabilities by such amount as the Commission may prescribe, having regard to the types of risks to which the company may be subjected.

- (2) For the purposes of this section -
- (a) subject to paragraph (b) in computing the amount of the liabilities of a company, all contingent and prospective liabilities shall be taken into account, but not liabilities in respect of share capital;
 - (b) in computing the assets and liabilities of a company carrying on variable insurance business, there shall not be included in such computation the assets of any one or more separate accounts maintained by the company in respect of its variable insurance business, or the liabilities chargeable against such accounts, in respect of such business;
 - (c) the premium income of a company in respect of its general business in any financial year shall be taken to be the net amount, after deduction of any premiums paid by the company for re-insurance, of the premiums received by that company in that year in respect of all insurance business of a class specified in subsection (1) of section 3 other than long-term business.

Judicial
management.

81. (1) Where an order for the judicial management of a company or of part of the business of a company is made after the hearing of a petition under section 78, the provisions of this section and of sections 82 to 85 shall apply.

(2) The court shall appoint a judicial manager who shall receive such remuneration as the court directs, and the court may at any time cancel the appointment and appoint some other person as judicial manager.

(3) The court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the company in such order of priority in relation to any existing charge on that property as it thinks fit.

(4) The management of the company, or of such part of the business of the company as the order of the court directs, shall, on a date specified in the order, vest in the judicial manager appointed by the court to the exclusion of any person vested with any such management immediately before

that date; but the judicial manager shall not issue any new policy or renew any existing policy or enter into any new contract except with the leave of the court.

(5) The court shall issue directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case.

(6) The judicial manager shall act under the control of the court and may apply to the court at any time for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

(7) The judicial manager shall give the Commission such information as the Commission requires and shall report to the Commission whenever he intends to apply to the court for instructions and shall, at the same time, furnish to the Commission particulars of the application.

(8) The Commission shall be entitled to be heard on any application referred to under subsection (7) and may itself make application to the court with reference to the conduct of the judicial management.

Cancellation of judicial management order.

82. Where at any time, on the application of the judicial manager or of any person appearing to the court to have an interest in the matter, it appears to the court -

(a) that the purpose of the order for the judicial management of the company or of part of the business of the company has been fulfilled; or

(b) that for any reason it is undesirable that the order should remain in force,

the court may cancel the order and on cancellation the judicial manager shall be divested of the management which shall again vest in the board of directors or other governing body of the company.

Report by judicial manager.

83. (1) The judicial manager shall conduct the management of the company with the greatest economy compatible with efficiency and shall, as soon as practicable, file with the court a report stating which of the following courses is in the circumstances, in his opinion, most advantageous to the general interest of the policyholders of the company and seeking an order accordingly -

(a) the transfer of all or any part of the insurance business of the company to some other company in pursuance of a scheme prepared by the judicial manager and

annexed to the report;

- (b) the carrying on of its business by the company either unconditionally or subject to such conditions as the judicial manager may suggest;
- (c) the winding-up of the company; or
- (d) such other course as he considers advisable.

(2) The judicial manager shall forthwith, after filing the report, furnish a copy of the report to the Supervisor.

(3) The report or a copy of the report shall be open for inspection by any person during official hours, at the registry of the court in which the report is filed or at such place as the Commission determines.

Decision of
court on
report of
judicial
manager.

84. (1) The court shall on the hearing of an application made under section 82 -

- (a) after hearing the Commission, the judicial manager and any other person who in the opinion of the court is entitled to be heard; and
- (b) after considering the report of the judicial manager,

make an order giving effect to the course whether similar or not to any of the courses mentioned in subsection (1) of section 83 that it considers in the circumstances to be most advantageous to the interests of the policyholders of the company.

(2) The order of the court shall be binding on all persons and shall have effect notwithstanding anything in the instruments constituting the company or in the articles of association or other rules of the company or in any contract.

Indemnity.

85. The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the discharge or in connection with the discharge, of the functions conferred on the judicial manager under this Part.

Subsidiary
companies.

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

company", then, if the principal company is being wound-up by or under the supervision of the court, the court -

- (a) shall, subject to this section, order the subsidiary company to be wound-up in conjunction with the principal company;
- (b) may by the same or any subsequent order appoint the same person to be liquidator for the two companies; and
- (c) may make provision for such other matters as may seem to the court necessary, with a view to the companies being wound-up as if they were one company.

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

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

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

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

(6) Where a company is a principal company in relation to another company, and is a subsidiary company in relation to some other company, or where there are several companies that are subsidiary companies in relation to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

(7) Notwithstanding anything contained in this Act, where a company that is registered in a jurisdiction outside The Bahamas -

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

(b) has a subsidiary in The Bahamas, the Commission, upon learning of the winding-up, shall investigate whether any policyholders of the subsidiary are likely to suffer loss as a result of the winding-up and may institute proceedings for the protection of those policyholders.

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

(9) Costs awarded the Commission by the court under subsection (8) may be recovered either against the subsidiary or the company that is being wound-up.

Supplemental provisions as to winding-up.

87. In any proceedings upon a petition to wind-up a company presented by the Commission under section 78, evidence that the company was insolvent at any time before such proceedings, shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.

Ascertainment of value of liability under policies.

88. (1) Where a company is being wound-up by or subject to the supervision of the court or voluntarily, the value of a policy of any class or of a liability under such a policy required to be valued in the winding-up shall be estimated in the manner applicable to policies and liabilities of that class provided for by such rules as may be prescribed, and the liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by the company, shall -

(a) ascertain the value of the liability of the company to each person in accordance with the rules or in such other manner or upon such other basis as the court may approve; and

(b) give notice of that value to the persons in such manner as the court may direct.

(2) Any person to whom notice is given pursuant to subsection (1)(b) shall be bound by the value ascertained in accordance with that subsection unless he gives notice of his intention to dispute the value in the manner and within a time to be specified by an order of the court or by rules of court.

Reduction of contracts as alternative to winding-up. 89. In the case of a company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the court thinks just, in place of making a winding-up order.

Application of deposits. 90. Upon the winding-up of a company, all moneys and securities for the time being held as a deposit in respect of that company under section 43 or 44 shall be delivered to the liquidator and shall be applied by him, in the first instance, in the discharge of the liabilities of the company in respect of local policies.

Rules. 91. Rules may be made under section 76 of the Supreme Court Act for the purpose of carrying into effect the provisions of this Act relating to the winding-up of companies and to judicial managers.

Guaranteed companies. 92. (1) Where, on the application of a company carrying on general business, the Commission is satisfied that it is guaranteed by another company satisfying the requirements of a guarantor set out in subsection (2), the Commission may by order direct that, subject to such conditions as may be specified in the order, section 81 shall not apply to the first-mentioned company.

(2) A guarantor shall be required for the purposes of this section to be either -

(a) a company which satisfies such of the requirements of section 25 as are applicable thereto and the value of whose assets exceeds the amount of its liabilities by the amount required by section 80; or

(b) a member of an association of underwriters to whom this Part does not apply by virtue of subsection (4) of section 3; or

(c) a company that, being itself guaranteed by another company, is the subject of an order under this section,

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

(3) Any order made under this section may be revoked by the Commission -

(a) if it ceases to be satisfied of the

matters on the ground of which the order was made; or

- (b) if it is satisfied that any condition in the order has not been complied with.

Priority of distribution of assets.

93. Where the court makes a winding-up order in respect of a company, the priority of distribution of the assets of the company shall be in accordance with the Companies Act except that the policyholders of the company shall, after the cost and expenses of the winding-up, have a first priority on the assets of the company and shall rank above all unsecured creditors.

Voluntary Liquidation

Insolvent company.

94. No company which is insolvent within the meaning of this Act, the regulations or any directive of the Commission may elect to go into voluntary liquidation without obtaining the prior consent of the Commission.

Application for voluntary liquidation.

95. A company which has no property and no liabilities, or which has, to the satisfaction of the Commission, made adequate provision for the discharge of all of its liabilities, may, if authorized by a resolution of the shareholders, or, where the company has no shareholders, by a resolution of the board of directors, apply to the Commission for approval to liquidate its assets.

Company to publish notice of intention.

96. Prior to the submission of the application referred to in section 95, the company shall -

- (a) cause to be effected the relevant resolution of shareholders authorizing the voluntary liquidation and where the company has issued more than one class of shares by special resolution, each shareholder shall be entitled to vote;
- (b) cause to be Gazetted, published in a newspaper of general circulation in The Bahamas, and broadcast over any electronic media in The Bahamas, a notice of the intention to make the application, which notice shall be approved by the Commission and shall state the date on or after which the application is to be made, such date to be not less than thirty days after the publication of the notice; and

- (c) serve on or send to each shareholder and policyholder of the registered insurer, a copy of the notice, by personal service or by registered post,

at least forty clear days prior to the date stated in the notice as being the date on or after which the application is to be made, provided that the Commission may dispense with such publication or service or alter the time periods specified in this section where it is satisfied that the circumstances so warrant.

No further action until application made.

97. Notwithstanding anything to the contrary contained in any other Act, no action directed towards the voluntary liquidation and dissolution of a company shall be taken by the registered insurer, other than as provided in sections 99 and 100, until an application made by the company pursuant to section 99 has been approved by the Commission.

Representation by shareholders and policyholders.

98. (1) Any shareholder or policyholder who may be affected by any voluntary liquidation may, at any time prior to the date on which the application is to be made, by written notice to the Commission, indicate his wish to make representations to the Commission in respect of any matter relating to the proposed voluntary liquidation.

(2) The Commission shall, upon receiving any such request to make representations, fix a date on which it will hear the representations and shall -

- (a) inform the company and the person wishing to make representations in writing of the date of the hearing; and
- (b) not less than fourteen days before the hearing, Gazette, and publish in a newspaper of general circulation in The Bahamas, a notice of the date of the hearing.

(3) The following persons are entitled, either in person or by counsel and attorney, to be heard at the hearing of any representations made under this section -

- (a) the persons wishing to make representations;
- (b) the company; and
- (c) any person who, in the opinion of the Commission, is likely to be affected by the voluntary liquidation.

Commission's

99. (1) The Commission may make such determination

approval or refusal in respect of voluntary liquidation.

with respect to the application for approval as it may deem appropriate, and whether or not any objections have been received or a hearing held, provided that it shall not grant its approval where -

- (a) the provisions of section 96 have not been complied with;
- (b) it is not satisfied that -
 - (i) the company has in accordance with the regulations-
 - (A) transferred or made satisfactory arrangements to transfer all or substantially all of its policies,
 - (B) reinsured or made satisfactory arrangements to cause itself to be reinsured against all or substantially all of the risks undertaken by it, or
 - (C) otherwise made adequate provision for the discharge of all of its liabilities;
 - (ii) the voluntary liquidation and dissolution is in the policyholders' interest or in the public interest,
 - (iii) the circumstances warrant the voluntary liquidation and dissolution of the company; or
- (c) the court has made an order pursuant to subsection (1) of section 81.

(2) Upon the Commission's determination of an application made pursuant to section 95, it shall forthwith serve upon the company and upon every person who made representations in connection with the application, by personal service or registered post, a notice of determination, including, where the application is refused, the reasons for such refusal.

(3) Where the Commission refuses the application, it shall notify the company of its right of appeal pursuant to section 234.

Company to

100.

Where the Commission has approved an

publish
notice of
approval.

application made pursuant to section 95, the company shall, within fourteen days of receipt of the notice of approval, Gazette, and publish in a newspaper of general circulation in The Bahamas, notification of the approval.

Effect of
approval.

101. Where the Commission has approved an application made pursuant to section 95, the company shall commence voluntary liquidation in accordance with this Act and with the Companies Act and shall in accordance with this Act, transfer its remaining policies or cause itself to be reinsured against the remaining risks undertaken by it.

Dissolution
of company.

102. (1) Where the Commission has approved an application pursuant to section 95 with respect to a company, and the company has complied with section 101 -

(a) the Commission shall recommend to the Registrar of Companies that the company be dissolved; and

(b) the company shall, forthwith, apply to the Registrar of Companies to be dissolved.

(2) Upon the company being dissolved pursuant to subsection (1) a representative of the company shall, not later than ten days after the date of dissolution, notify the Commission of such dissolution.

Voluntary
liquidation
may be
stayed.

103. All proceedings taken pursuant to section 95 to voluntarily liquidate and dissolve a company shall be stayed if the company is at any time found to be insolvent within the meaning of this Act, the regulations or any directive of the Commission.

Expenses
to be paid
by company.

104. All expenses incurred by the Commission in connection with any proposal for voluntary liquidation, including the report of any actuary, shall be paid by the company.

Application
to court.

105. (1) The Commission may at any time during the voluntary liquidation of a company apply to the court for an order for the continuance of the voluntary liquidation subject to the supervision of the court in accordance with the Companies Act and this Act.

(2) Where a person other than the Commission makes an application pursuant to subsection (1), the person shall give the Commission notice of the application and the Commission may appear and be heard in person or by counsel and attorney at the hearing of the application.

Liquidator
to provide
information.

106. A liquidator appointed in connection with the voluntary winding up of a company shall provide the Commission with such information relating to the business and affairs of

the company as the Commission may require.

Duties of
liquidator.

107. A liquidator shall, in addition to his duties under the Companies Act -

(a) forthwith after appointment, give notice thereof to the Commission and to each claimant and creditor of the company known to the liquidator; and

(b) in accordance with the provisions of this Act relating to the transfer of business, transfer the remaining policies of the company, or cause the company to be reinsured against the remaining risks undertaken by it.

Notice of
dissolution.

108. Upon the company being dissolved, the liquidator shall, not later than ten days after the date of dissolution notify the Commission of such dissolution.

Unclaimed
money on
winding-up.

109. (1) Where the business of a company is being wound-up, the liquidator or the company shall pay to the Commission on demand, and, in any event, before the final winding up of that business, any amount that is payable by the liquidator or the company to any person entitled thereto to whom payment thereof has not, for any reason, been made.

(2) Where a liquidator makes a payment to the Commission pursuant to subsection (1), the liquidator or the company shall also forward to the Commission all records and registers in the possession of the liquidator or company that relate to the entitlement of that person.

(3) The Commission shall transfer to the Central Bank all amounts paid to it pursuant to subsection (1).

(4) Payment by a liquidator or a company to the Commission pursuant to subsection (1) shall discharge the liquidator and the company in respect of which the payment is made from all liability for the amount so paid, and transfer by the Commission to the Central Bank pursuant to subsection (3) shall discharge the Commission from all liability for the amount so paid.

(5) Where the Commission is informed of the appearance of the legitimate claimant to any unclaimed proceeds, the Commission if satisfied as to the identity of the claimant and the validity of the claim shall direct that such claim be paid to the claimant by the Central Bank.

(6) All moneys transferred to the Central Bank pursuant to subsection (3), and which remain unclaimed for ten or more years, shall be transferred to the Public Treasury

bona vacantia.

Custody of records after dissolution.

110. A person who has been granted custody of the records and registers of a dissolved company shall keep them available for production for six years following the date of the dissolution of the company or until the expiration of such shorter period as may be ordered by the court when it orders the dissolution.

PART IV

ASSOCIATIONS OF UNDERWRITERS

Associations of underwriters to be registered. Application for registration by association of underwriters.

111. (1) No association of underwriters may carry on insurance business in The Bahamas unless it is registered in accordance with this Part.

(2) A member of an association may, after the date of registration, carry on its Bahamian insurance business other than long-term insurance business.

112. An application by an association of underwriters for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of the payment of the prescribed fee and by the following documents and information -

- (a) a copy of its statute or deed of the association;
- (b) the names and addresses of persons in The Bahamas who as brokers or agents place insurance business with the applicant; and
- (c) in the case of an applicant constituted outside The Bahamas -
 - (i) a certificate signed by the appropriate public authority in the country in which it is constituted stating that the applicant has been established for at least five years, that the legislation of such country provides for the regulation of association of underwriters and that it is operating in accordance with that legislation; and
 - (ii) the names and addresses of one or more persons resident in The

Bahamas who are authorised to accept, on behalf of the members of the **association**, service of process in any legal proceedings,

and by such further information as the Commission may require.

Conditions
for regis-
tration.

113. (1) Where the Commission, after appropriate enquiry or by the production of documentary evidence, or both, is satisfied in respect of the applicant that -

- (a) the relevant requirements of this Part have been complied with;
- (b) the applicant is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
- (c) being an applicant constituted outside The Bahamas -
 - (i) it has made or caused to be made with the Commission the deposit required by subsection (1) of section 119; and
 - (ii) there are one or more persons resident in The Bahamas who are authorised to accept on behalf of the applicant, service of process in any legal proceedings, being persons authorised for that purpose by the applicant;
- (d) the persons who manage the applicant are of good character and are otherwise fit and proper persons to manage the applicant; and
- (e) the staff the applicant employs, in relation to any class of insurance business in respect of which the application is made, is sufficiently competent and knowledgeable to carry on that business in an efficient manner,

the Commission shall, either unconditionally or subject to such conditions as it may specify, register the applicant and notify it accordingly.

(2) Where the Commission is not satisfied, in respect of the applicant, as to one or more of the conditions set out in subsection (1), it shall notify the applicant in

writing that it proposes to refuse to register it, giving its reasons for so doing; and shall notify it of its right of appeal under section 235.

Suspension
of
registration.

114. (1) Subject to subsection (2), the Commission may suspend the registration of an association in respect of all or any of the classes of business in relation to which it is registered, if it is satisfied that the association is in breach of any provision of this Act in circumstances where the breach would constitute a ground for cancellation as specified in section 116.

(2) Before taking action under subsection(1) the Commission shall notify the association concerned of its intention to suspend the association's registration giving reasons therefor and requiring the association to take such action as specified in the notice to remedy the breach within the time so specified.

(3) Where an association fails to comply with a notice under subsection (2), the Commission may -

(a) extend the period specified in the notice under subsection (2);

(b) if the breach is not remedied within that extended period, cancel the association's registration in accordance with section 116 .

Documents
and infor-
mation
relating to
insurance
business
to be
furnished
to the
Commission.

115. An association shall within four months of the end of each financial year furnish to the Commission -

(a) in the case of an association constituted outside The Bahamas -

(i) a certified copy of such returns relating to the insurance business of the members during the preceding year as are required to be made to the responsible Minister or other public authority in the country in which the association is constituted,

(ii) a certificate, signed by the Chairman or other presiding officer of the association and by or on behalf of the responsible Minister or other public authority, stating whether the association has

complied with the requirements of the legislation for the regulation of associations of underwriters in the country in which it is constituted,

(iii) the latest annual list of members and the names of its Committee or other governing body, and

(iv) a statement of receipt and expenditure by its members in The Bahamas during the preceding year;

(b) in the case of an association constituted in The Bahamas, such documents and information as the Commission may require.

Grounds
for cancel-
lation of
regis-
tration.

116. (1) Subject to subsection (2), the Commission may notify in writing an association that it proposes to cancel its registration, giving its reasons for so doing and notifying the association of its right of appeal under section 235 where the Commission -

(a) is satisfied that such registration was procured as a result of any misleading or false representation or in consequence of any incorrect information whether the representation was made or information was supplied, wilfully or otherwise;

(b) is not satisfied that the insurance business of its members is being conducted in accordance with sound insurance principles;

(c) is satisfied that the association has contravened any of the provisions of this Act or of any regulations or any condition, direction or requirement imposed under this Act by the Commission;

(d) is satisfied that the association has been guilty of unreasonable **delay** in the payment or settlement of any claim arising under any policy issued in The Bahamas by it or on its behalf; or

(e) is satisfied that -

(i) the persons who manage the association are not of good

character or are not fit and proper persons to manage the association, or

- (ii) the employees of the association are not sufficiently competent and knowledgeable to carry on the business in an efficient manner.

(2) Notwithstanding subsection (1), the Commission may at anytime cancel the registration under this Part of an association -

- (a) where it is satisfied that the members of the association have not commenced business within one year of registration or have ceased to carry on business within The Bahamas; or
- (b) at the request of the association.

Implemen-
tation of
proposal
to refuse
to register
or to cancel
registra-
tion.

117. Where an association has been notified under subsection (2) of section 116 or subsection (1) of section 118 of its right of appeal and the association having made the appeal the result of the appeal is the confirmation, with or without variation, of the Commission's proposal, then subject to any such variation, the Commission shall give effect to its proposal and notify the association accordingly.

Association
may be
prohibited
from writing
new business.

118. (1) The Commission may prohibit an association from writing new policies in any class of insurance business where it is satisfied that it is in the interest of the policyholders or prospective policyholders to do so.

(2) The Commission shall notify the association in writing of a decision taken under subsection (1) and shall state the reasons for the decision.

Policies
issued
before re-
jection of
application
for or can-
cellation
of regis-
tration.

119. An association of underwriters -
(a) whose application for registration is rejected; or
(b) whose registration is cancelled in accordance with this Part,
shall, in respect of long-term business continue to carry on only business relating to policies issued by it before the date on which it was notified of the rejection or cancellation unless the Commission is satisfied that it has made suitable arrangements for its obligations under these policies to be met.

Deposits
by associa-
tions of
under-
writers.

120. (1) Subject to this section, an association of underwriters which is constituted outside The Bahamas may not be registered under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Commission in cash or prescribed securities or partly in cash and partly in prescribed securities an amount equal to one million dollars.

Second
Schedule.

(2) The Second Schedule shall have effect in relation to deposits made with the Commission pursuant to this section.

PART V

REGISTRATION OF INSURANCE INTERMEDIARIES

Registra-
tion of
insurance
interme-
diaries.

121.(1) Subject to this Act, no person other than a body corporate may be registered under this Part to act as an insurance intermediary.

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

(3) This section shall not, for a period of six months after the commencement of this Act or such further period as the Commission may by order direct, apply to a person who was immediately before such commencement carrying on in The Bahamas business as an adjustor, loss assessor, risk manager, consultant or surveyor.

(4) Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for eighteen months or to both and in the case of a continuing offence to a further penalty of five hundred dollars for each day on which the offence is continued after the conviction.

Applica-
tion for
regis-
tration.

122. (1) An application for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and by such documents as may be prescribed.

(2) Where an application for registration as an agent or broker is made under subsection (1) of section 121, the Commission may request of the applicant security by way of

a bond or such other security as may be prescribed.

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

General
restric-
tions
regarding
registra-
tion.

123. (1) No person may be registered under this Part to carry on business as an insurance intermediary if the person is -

- (a) under the age of eighteen years in the case of a salesperson;
- (b) under the age of twenty-one years in the case of a broker, agent, sub-agent, adjustor, loss assessor or surveyor;
- (c) an undischarged bankrupt unless the person has been granted leave to carry on such business by the court that adjudged that person bankrupt;
- (d) a person who has been found by a court to be of unsound mind or is certified to be suffering from a mental disorder within the meaning of the Mental Health Act; or
- (e) a person convicted of an offence involving fraud or dishonesty.

(2) No person may be registered under this Part as an agent of an insurance company unless that company is registered under Part III or exempted from registration thereunder.

(3) No person may be registered under this Part as a sub-agent of another person unless that other person is registered under this Part as an agent or sub-agent or exempted from registration thereunder.

(4) No person may be registered under this Part as a salesperson unless the company, agent or sub-agent by whom he is so employed is registered under Part III or under this Part, or is exempted from registration thereunder, as the case may be.

(5) No company and no person carrying on business as an insurer, an agent or a sub-agent shall be registered as a broker and no company or person carrying on business as a broker shall be registered as a salesperson, an agent or sub-agent.

(6) No company and no person carrying on business as an adjustor, a loss assessor, consultant, or surveyor shall

be registered as a salesperson, an agent, a sub-agent or a broker.

(7) No company and no person shall be registered as an agent or broker unless there exists in respect of that company or person such minimum capital and/or insurance coverage as the Commission may prescribe.

Foreign
insurance
intermediary.

124. (1) A person who is not a Bahamian within the meaning of section 2 of the Companies Act and who is not a full-time employee of a company or intermediary may not be registered pursuant to this Part to carry on business as an intermediary except as a Non-Resident Insurance Intermediary.

(2) A Non-Resident Insurance Intermediary -

- (a) may not solicit business in The Bahamas except through a registered insurance intermediary;
- (b) must maintain an agreement with a registered insurance intermediary, the terms of which must be approved by the Commission; and
- (c) may not otherwise operate or establish a presence in The Bahamas independent of or to the exclusion of the registered insurance intermediary with whom he has executed the agreement.

Conditions
for regis-
tration.

125. (1) Where the Commission is satisfied in respect of the applicant -

- (a) that the requirements of section 122 have been complied with;
- (b) that section 123 does not apply;
- (c) that the applicant is sufficiently competent and knowledgeable to carry on business as an intermediary in respect of any class or classes of insurance;
- (d) in the case of a person who was, before the commencement of this Act, carrying on business in The Bahamas as an intermediary, that he conducted such business in a sound and proper manner;
- (e) that where the applicant is an individual-
 - (i) the applicant is a person of good character and is otherwise a fit and proper person to be an intermediary and that each of the persons, if any, with

whom he is associated, whether as a partner or otherwise in his business as an intermediary, is a fit and proper person, and

(ii) having regard to the knowledge and competence of the applicant and such staff as the applicant may employ, the applicant is, in relation to any class or classes of insurance business in respect of which the application is made, capable of carrying on business efficiently as an intermediary;

(f) where the applicant is a body of persons whether incorporated or not, that -

(i) each of the persons managing or controlling the body or, each of the partners, as the case may be, is a fit and proper person, and

(ii) having regard to the knowledge and competence of the persons managing the body or of the partners and such other staff as the body may employ, it is, in relation to any class or classes of insurance business in respect of which the application is made, capable of carrying on business efficiently as an intermediary; and

(g) where the applicant is then required by regulations to pass any examination, that he has passed the examination,

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

(2) Where the Commission is not satisfied, in

relation to all or any of the classes of insurance business in respect of which the application is made, as to one or more of the conditions set out in subsection (1), it shall notify the applicant in writing that it proposes to refuse to register the applicant or, that it proposes to refuse to register the applicant in respect of one or more of the classes of insurance business applied for, giving it reasons for so doing, and notifying him of his rights of appeal to the Commission for reconsideration and under section 235.

(3) Nothing in this section shall be interpreted to permit -

- (a) an agent, to be registered in respect of
 - (i) general insurance business for more than five insurance companies at a time,
 - (ii) long-term insurance business for more than one insurance company at a time;
- (b) a sub-agent or salesperson to be registered in respect of general insurance business or long term insurance business for more than one agent or broker at any given time.

Suspension
of
registration.

126. (1) Subject to subsection (2), the Commission may suspend the registration of an intermediary in all or any of the classes of business in relation to which it is registered, if it is satisfied that the intermediary is in breach of any provision of this Act in circumstance where the breach would constitute a ground for cancellation as specified in section 128.

(2) Before taking action under subsection (1) the Commission shall notify the intermediary concerned of its intention to suspend the intermediary's registration giving reasons therefor and requiring the intermediary to take such action as is specified in the notice to remedy the breach within the time so specified.

(3) Where an intermediary fails to comply with a notice under subsection (2), the Commission may -

- (a) extend the period specified in the notice under subsection (2); and
- (b) if the breach is not remedied within that extended period, cancel the intermediary's registration in accordance with section 128.

Certificate
of regis-
tration.

127. The Commission shall furnish to every person registered under this Part a certificate in the prescribed form that the person has been registered as a broker, salesperson, agent, sub-agent, adjustor, risk manager, consultant, loss assessor or surveyor as the case may be, and the certificate shall -

- (a) state the class or classes of insurance business in respect of which the person is so registered;
- (b) state any conditions subject to which the person has been so registered; and
- (c) in the case of the registration of a person as an agent or sub-agent, specify the company or person for whom such first-mentioned person has been registered as an agent or, as the case may be, a sub-agent,

and the certificate shall be prima facie evidence that the person stated therein as having been registered has been so registered.

Grounds
for cancel-
lation of
regis-
tration
subject
to right
of appeal.

128. (1) Subject to section 130, the Commission may, for any of the reasons mentioned in subsection (2), notify in writing an intermediary that it proposes to cancel the intermediary's registration, giving its reasons for so doing, and notifying the intermediary of his rights of appeal to the Commission for reconsideration and under section 235.

(2) The reasons referred to in subsection (1) are that -

- (a) the registration was procured as a result of misleading or false representation or in consequence of incorrect information, whether the representation or information was made or supplied wilfully or otherwise;
- (b) the intermediary -
 - (i) has become disqualified for such registration by virtue of any of the provisions of section 125,
 - (ii) is carrying on business otherwise than in accordance with sound insurance principles and practice,
 - (iii) has been guilty of unreasonable delay in the payment or

- settlement of any claim arising under any policy issued by or through him or it,
- (iv) has not, within a period of one month from a date on which the Commission demanded from him or it in writing any information which it was entitled under this Act to demand from him or it, furnished that information duly and satisfactorily,
 - (v) has been guilty of a fraudulent or dishonest practice,
 - (vi) in the case of an individual, has demonstrated that he is not a fit and proper person, or in the case of a body, not all the persons managing or controlling the body or not all the partners are fit and proper persons;
 - (vii) has demonstrated that he or it is not sufficiently competent and knowledgeable to carry on business in the class or classes of insurance in respect of which he or it was registered or that he or it is otherwise not a fit and proper person or body to carry on such business, or
 - (viii) has contravened any of the provisions of this Act or any condition, direction or requirement imposed under this Act by the Commission or has been an accessory to the contravention thereof by any other person.

(3) Where the Commission has notified any intermediary that it proposes to cancel the registration of such intermediary, and of its right to appeal, it may give the intermediary up to sixty days to process such appeal before taking further action.

(4) Notwithstanding subsection (3), where the Commission has notified any intermediary that it proposes to cancel the registration of such intermediary, and where it deems such action to be in the public interest, it may suspend the registration immediately pending the outcome of any appeal and shall notify that intermediary of the suspension.

Implement-
ation of
proposal
to refuse
to register
or to
cancel
registra-
tion.

129. Where any intermediary has been notified under subsection (2) of section 125 or under subsection (1) of section 128 of his right to request the Commission to reconsider its decision and the result of the review is the confirmation, with or without variation, of the proposal of the Commission, then, subject to any variation, the Commission shall give effect to the proposal and notify the intermediary in writing accordingly.

Summary
cancel-
lation of
regis-
tration.

130. The Commission may at any time cancel the registration of an intermediary under this Part -

- (a) where it is satisfied that the intermediary has not carried on business in The Bahamas as an intermediary within a year of registration or has not carried on business in The Bahamas for a period of more than a year; or
- (b) in the case of an agent or sub-agent intermediary, that the registration under this Act of the company or person for whom the first-mentioned person was registered as an agent or sub-agent has been cancelled or that the agency or sub-agency has been terminated; or
- (c) if the person so requests.

Informa-
tion to be
supplied
to
Commission.

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

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

and his new employer.

(3) The Commission may demand in writing from any person registered under this Part or from his employer or principal any information relating to any matter in connection with that intermediary.

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

Produc-
tion of
certifi-
cate of
regis-
tration.

132. (1) An intermediary shall, if requested to do so by the Commission or by any person authorised by the Commission or by any person with whom the first-mentioned person is dealing in the course of his business as an intermediary, produce his certificate of registration for inspection.

(2) Every person who fails to comply with subsection (1) is guilty of an offence.

Miscellaneous provisions relating to insurance intermediaries

Agency.

133. A registered agent, sub-agent, broker or salesperson shall, for the purpose of receiving a premium for a contract of insurance on behalf of a registered insurer with whom the registered agent, sub-agent, broker or salesperson has an agency agreement, be deemed to be the agent of the insurer and notwithstanding any conditions or stipulations to the contrary, the insurer shall be deemed to have received any premium received by the agent, sub-agent, broker or salesperson.

Fraudulent
represen-
tation.

134. (1) An agent, a sub-agent, a broker or a salesperson who knowingly procures by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy is guilty of an offence.

(2) An agent, a sub-agent, a broker or a salesperson who causes an insured to discontinue any policy of insurance without being satisfied on reasonable grounds that the discontinuance is to be for the benefit of the insured is guilty of an offence.

Liability
for unlawful
contracts.

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

Advertisement.

136. No agent, sub-agent, broker or salesperson or other shall orally make any statement or issue, or permit to be issued, any advertisement, statement, circular, descriptive booklet or other document or make or permit to be made a statement by means of any broadcasting or other medium which misleads or tends to mislead the public.

Failure to pay over premiums received on behalf of insurer, an offence.

137. (1) Where an agent, sub-agent, broker or salesperson acts in negotiating or renewing or continuing a contract of insurance with an insurer, and receives any money or substitute for money as a premium for the contract from the insured, he is deemed to hold such premium in trust for the insurer.

(2) If the agent, sub-agent, broker or salesperson fails to pay the premium he receives pursuant to subsection (1) over to the insurer on demand, less his commission and any other deductions to which, by written consent of the insurer, he is entitled, his failure shall be deemed prima facie evidence that he is guilty of breach of trust.

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

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

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

Grant of rebates prohibited.

139. (1) No insurer, and no officer, employee or agent of an insurer, and no broker or salesperson shall directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in The Bahamas.

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

Bona fide salaried employees.

140. Nothing in sections 138 and 139 shall affect any payment by way of dividend, bonus, profit or savings that is provided for by a policy, or shall be construed so as to

prevent an insurer compensating a bona fide salaried employee of its head or branch office or a spouse or child thereof, in respect of insurance issued by the employing insurer upon the life or property of the person or so as to require that the person be licensed as an agent under this Part to effect the insurance.

Returns
from
companies.

141. (1) Every insurer shall make a return to the Commission in such form and at such time as the Commission requires showing -

- (a) all persons, partnerships and companies duly authorised as its agents or salesmen in The Bahamas; and
- (b) of persons, partnerships or companies to whom it has, within such period as the form of return requires, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in The Bahamas or negotiating the continuance or renewal thereof, or for attempting to do so.

(2) Any person who is registered under this Act as an agent, a sub-agent or a **intermediary** shall **where applicable** make an annual return to the Commission in such form as may be prescribed showing -

- (a) all insurance companies on behalf of which it is authorized to transact insurance business;
- (b) a comprehensive record of policies negotiated or **payments** and commissions received, directly, from each company for negotiating and placing policies on lives, properties or interests in The Bahamas, or negotiating the continuance or renewal thereof, or for attempting to do so;
- (c) all persons it authorises as its sub-agents, sale representatives or administrative staff in The Bahamas; and
- (d) all persons and entities to whom it has paid or allowed or agreed to pay, directly or indirectly, commission for placing or negotiating insurance on lives, properties or interests in The Bahamas, or negotiating the continuance or renewal

thereof, or for attempting to do so.

Keeping of records and making of deposits by registered brokers and agents.

142. (1) Every agent or broker registered in accordance with this Part shall -

- (a) keep within The Bahamas and shall make available to the Commission on request -
 - (i) a record of all local policies issued by him on behalf of each company or registered association,
 - (ii) a record of the aggregate amount of the premiums received on the policies,
 - (iii) a copy of the audited financial statements, and
 - (iv) an analysis of premiums payable to insurers by the number of days outstanding;
 - (v) such other books, vouchers, receipts, and documents as are necessary for the purpose of verifying information provided to the Commission pursuant to the Act.

(b) deposit with the Commission such amount as is set out in the regulations at the times prescribed.

(2) A deposit referred to in subsection (1), may be in cash or securities of the amounts set out in the regulations and may be wholly or partly in cash or such securities.

Second Schedule. (3) The provisions relating to deposits in the Second Schedule shall have effect in respect of deposits made pursuant to this section.

(4) The Commission may at any time examine the records of a registered insurance intermediary, and the registered intermediary, shall facilitate the examination and shall cause such information and produce such records as are in his possession to be made available for examination.

PART VI

LONG-TERM INSURANCE BUSINESS

Issue of policies

Annuities.

143. No registered insurer shall issue annuities unless it is licensed to engage in long-term insurance business.

Rates of premium.

144. (1) A company shall not issue any policy unless the rate of premium chargeable under the policy is a rate that has been approved by an actuary as suitable for the class of policy to which that policy belongs.

(2) The Commission may at any time require the company to obtain, and to furnish it with a report by an actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the company and, if the actuary considers that the rate is not suitable, a report as to the rate of premium that the actuary approves as suitable in respect of that class of policy.

(3) Where any requirement is made under subsection (2) in respect of the rate of premium chargeable under any class of policy, the company shall not issue any policy of that class until the company has, in accordance with the requirement, obtained the approval of the actuary for the rate of premium.

(4) An actuary in approving a rate or premium in respect of any class of policy under this section shall have regard to -

- (a) the maximum rate of commission proposed to be paid to any person in respect of that class of policy; and
- (b) the maximum rate of reduction of premium to be allowed to any person in respect of that class of policy.

Minimum surrender.

145. A company shall not issue a long-term insurance policy unless there is incorporated in that policy a table indicating the minimum cash surrender value of that policy or contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy.

Commissions and reductions of premium.

146. Where a rate of premium is approved by an actuary in respect of any class of policy, the company shall not, except with the approval of an actuary, pay or allow in respect of any policy of that class, a commission or reduction of premium at a rate greater than -

- (a) the maximum rate of commission or reduction of premium to which the first-mentioned actuary had regard when approving the rate of premium; or
- (b) the maximum rate of commission or

reduction of premium payable by the company, immediately before the commencement of this Act, in respect of policies of that class, if any, issued at the rate of premium so approved,

whichever is the greater.

Form of
proposal.

147. Subject to section 42, a form of proposal shall be framed so as to require a proposer for a life policy to specify the place and date of birth of the person whose life is proposed to be insured; and it shall be the duty of the person making the proposal to supply those particulars to the best of his knowledge and belief.

Notice by
company in
respect
of long-
term
policies.

148. (1) Subject to subsection (3) of section 150, a company shall not enter into a contract for the purpose of carrying on long-term insurance business unless the company -
(a) at the time of the contract is entered into; or
(b) not later than seven days after the contract is entered into,
serves on the other party to the contract a notice containing the information specified in subsection (2).

- (2) A notice referred to in subsection (1) -
(a) shall specify the nature and type of the policy; and
(b) shall have annexed thereto a form of notice of cancellation for use by the other party to the contract.

(3) A company which contravenes this section is guilty of an offence but the contravention shall not invalidate the contract.

Insurer
to deliver
policy.

149. (1) Where a person has entered into a contract of insurance, the registered insurer shall serve the policy on the policyholder personally, or send it to the policyholder's last known postal or home address within thirty days of the entering into of the contract, or within such longer period of time as the Commission may deem appropriate.

(2) A registered insurer carrying on life insurance business shall provide to each policyholder a statement of policy transactions including total premiums paid, deposits made, cash surrender value, paid-up policy and applicable interest rates annually, or at such other periods not to exceed three years.

(3) Where a registered insurer sends an insurance policy by post, unless the contrary is proved, the policy

shall be deemed to have been delivered to the person on the date fourteen clear days after the date of posting.

(4) Premiums paid prior to the issuance of the contract of long term insurance and received as such by the registered insurer shall render the contract voidable at the instance of the policyholder.

(5) A registered insurer who contravenes subsection (1) without just cause is guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollar.

Clients
rights of
cancel-
lation.

150. (1) A person who has entered into a contract of insurance with a company may serve notice of cancellation on the company -

(a) not later than the tenth day from the date on which he receives a notice referred to in section 148; or

(b) not later than the tenth day from the date on which he first became aware that the contract was entered into,

whichever is the later.

(2) Subsection (1) shall not apply where a company ought to have served a notice under subsection (1) of section 149 and failed to do so but does so before the cancellation of the contract.

(3) A life assurance policy may be cancelled by the registered insurer in the event of non-payment of any renewal premiums due but only after notice in writing specifying the default and the intention of the insurer to cancel the policy has been given to the insured by personal service or registered post:

Provided that a life assurance policy shall not be cancelled by reason only of the non-payment of a premium unless at least twenty-eight days has elapsed since the premium became due.

(4) Any policy of insurance may be cancelled by the mutual consent in writing of the insurer and the insured made prior to the date of intended cancellation.

(5) A notice of cancellation need not be in the form attached to the notice required to be served under subsection (1) of section 149 and it is sufficient if the notice of cancellation indicated a desire to withdraw from the contract.

(6) Service of a notice of cancellation operates -

(a) as a rescission of the contract, if it is

served after the contract has been entered into; and

(b) as a withdrawal of offer in any other case.

(7) Where a contract has been rescinded or an offer has been withdrawn as a result of the service of a notice of cancellation, any moneys paid by way of premium or otherwise, whether to the company or to any person acting on behalf of the company for the purpose of receiving the moneys shall be refunded to the policyholder forthwith and are recoverable from the company as a debt in civil proceedings.

(8) Where no notice of termination has been delivered to the registered insurer within ten day as required under subsection (1), the insurer shall be entitled to retain or claim a portion of the premium on a prorata basis with respect to the period of time for which the policy was in force.

Period
of grace.

151. (1) Where a premium of long-term insurance business other than the initial premium is not paid at the time it is due, the premium may be paid within a period of grace of -

(a) twenty-eight days from the day on which the premium is due, or

(b) the number of days, if any, specified in the contract for payment of an overdue premium, whichever is the longer.

(2) Where the happening of the event upon which the policy proceeds becomes payable occurs during the period of grace and before the overdue premium is paid the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding the prime rate plus one per centum per annum, and the balance, if any, of the current year's premium, may be deducted from the policy proceeds.

Dividends.

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

Notice
regarding
proof
of age.

153. Where a company issues a life policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured has already been admitted by it, issue on or with the

policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.

Procedure
where
company
declines
to accept
proof.

154. (1) Where a company declines to accept the proof of age tendered in respect of a policy, whether issued before or after the commencement of this Act, the policyholder may apply to a Judge in chambers by summons for an order directing the company to accept the proof tendered.

(2) On an application under subsection (1), the Judge in chambers may make such order in relation to the application as he thinks just.

(3) Every order under this section shall be binding on the company and shall be complied with on the part of the company.

Misstate-
ment of age,
and non-
avoidance
of policy.

155. (1) A policy is not avoided by reason only of a misstatement of the age of a the person whose life is insured.

(2) Where the true age as shown by the proof is greater than that on which the policy is based, the company may vary the sum insured by the policy, and any bonuses allotted to the policy, so that as varied, they bear the same proportion to the sum insured by the policy, and any bonuses allotted to the policy before variation, as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the policy was based, the company shall either -

(a) vary the sum insured by, and any bonuses allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by the policy, and any bonuses, allotted to the policy before variation, as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or

(b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay

the policyholder the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(4) A policy shall not be avoided by reason only of any incorrect statement, other than a statement as to the age of the person whose life is insured, made in any proposal or other document on the faith of which the policy was issued or reinstated by the company unless the statement -

- (a) was fraudulently made; or
- (b) being a statement material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the person whose life is insured, whichever is the earlier.

Provisions relating to state of health of insured.

156. Nothing in any term or condition of a life policy issued after the commencement of this Act or in the law relating to insurance shall operate to exempt a company from liability under the policy or to reduce the liability of the company under the policy on the ground of any matter relating to the state of health of the person whose life is insured, other than the ground of the proposer's having, when making the proposal or thereafter and before the making of the contract, either -

- (a) made an untrue statement of his knowledge and belief as regards the matter; or
- (b) failed to disclose to the company something known or believed by him as regards that matter.

Minors.

157. (1) A minor who has attained the age of sixteen years may -

- (a) effect a policy upon his own life or upon another life in which he has an insurable interest; or
 - (b) take an assignment of a policy,
- and, subject to subsection (2), is as competent in all respects to have and exercise the powers and privileges and accept the obligations and responsibilities of a policyholder in relation to a policy of which he is the holder as he would be if he were of full age.

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

Group Life Insurance

Policy of
group
insurance.

158. Where a contract of insurance is entered into for the provision of group insurance, the company shall -
- (a) set out in the policy the following particulars -
 - (i) the name or sufficient description of the insured,
 - (ii) the method of determining the persons whose lives are insured,
 - (iii) the beneficiaries under the policy,
 - (iv) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable,
 - (v) the period of grace, if any, within which the premium may be paid,
 - (vi) whether the policy provides for participation in the distribution of surplus or profits that may be declared by the company;
 - (b) issue to the insured and to each group life insured, a certificate or other document, in which the following particulars are set out -
 - (i) the name of the company and the identification number or other means of identifying the policy,
 - (ii) the amount or the method of determining the amount, of insurance on the group life

insured and on any person whose life is insured under the policy,

- (iii) the circumstances in which the insurance terminates and the rights, upon such termination, of the group life insured or of any person whose life is insured under the policy.

Power of group life insured to sue company.

159. A person insured under a group life policy may, in his own name enforce a right given him under the policy, subject to any defence available to the insurer against him or against the insured.

Designation of beneficiaries

Designation of beneficiaries.

160. (1) The provisions of this section and sections 161 to 172, subject to anything to the contrary contained in those sections, apply in respect of policies taken out after the commencement of this Act.

(2) A policyholder may at the time the policy is taken out or at any time thereafter by declaration in writing, designate his personal representative or a named person to be the beneficiary under his policy and may subject to section 160 alter or revoke the designation by declaration in writing.

(3) A designation in favour of "heirs", "next of kin", "estate" or similar designation shall be deemed to be a designation of the personal representative of the policyholder.

Irrevocable designation.

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

(a) the policyholder subject to section 172 may not during the lifetime of the named beneficiary, alter or revoke the designation without the consent of the beneficiary; and

(b) the moneys payable under the policy are not subject to the control of the policyholder or the creditors of the

policyholder and do not form part of his estate.

(2) Notwithstanding paragraph (a) of subsection (1), the consent of the beneficiary is not required where the beneficiary under a policy of insurance is, as the case may be -

(a) a former spouse and the marriage ended in divorce or the common law union has come to an end; or

(b) a child who has reached the legal age of maturity.

(3) Where the insured purports to designate a beneficiary irrevocably in a declaration that has not been filed with the company as required by subsection (1) or in a will, the designation has the same effect as if the insured had not purported to make the designation irrevocable.

(4) An irrevocable designation may be made by a policyholder only in favour of a spouse or a child.

(5) A designation by a policyholder shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and signed by the policyholder and there is sufficient evidence that it was explained to the policyholder that the designation was irrevocable.

Designation
in wills.
Trusts for
benefi-
ciaries.

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

163. (1) A policyholder may, in writing, appoint by contract or by declaration a trustee for a beneficiary under the policy and may alter or revoke the appointment by declaration in writing.

(2) The contract or declaration referred to under subsection (1) must be filed with the company.

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

Beneficiary
predeceasing
policyholder.

164. (1) Where under section 158, by a declaration filed with the company, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy predeceases the policyholder and no provision is made in the declaration for the disposition of moneys payable under the policy in the event of the beneficiary predeceasing the policyholder then, without limiting or affecting the application of section 159, the moneys payable under the

policy shall vest in the following persons in the following order -

- (a) in the surviving beneficiary, if any;
- (b) in the surviving beneficiaries in equal shares, if there is more than one surviving beneficiary; or
- (c) in the policyholder or policyholders personal representatives, if there are no surviving beneficiaries.

(2) Where two or more beneficiaries are designated otherwise than alternatively by a policyholder, and no provision is made as to the quantum of their respective shares of the moneys payable under the policy, then, they are entitled to the moneys in equal shares.

Simultaneous
deaths.

165. Unless a declaration otherwise provides, where the policyholder and a beneficiary die in circumstances that render uncertain the order of the deaths, in the absence of proof to the contrary, it shall be presumed that the beneficiary predeceased the policyholder.

Enforce-
ment by
beneficiary
or trustee.

166. A beneficiary may enforce for his own benefit and a trustee appointed pursuant to section 163 may, in accordance with the terms of the contract or declaration, as the case may be, enforce payment of moneys payable under a policy even though there is no privity of contract, but the company may invoke against the beneficiary or trustee any defence available against the policyholder or the policyholder's personal representative.

Designated
beneficiary.

167. (1) Where a beneficiary other than a personal representative has been designated by a policyholder, the money payable under the policy from the time of the happening of the event upon which the insurance money becomes payable, does not form part of the estate of the insured and is not subject to claims of the creditors of the insured.

(2) While a designation in favour of a spouse or child of a policyholder or any of them is in effect, the rights and interests of the policyholder in the insurance money and in the contract are exempt from execution or seizure.

(3) For the purposes of subsection (2) "child" has the meaning assigned to it by section 171.

Assignment
of policy.

168. (1) Where a beneficiary is not designated irrevocably, the policyholder may assign, exercise rights under or in respect of, surrender or otherwise deal with the policy as provided in the policy or in this Part or as may be

agreed upon with the company.

(2) Where a beneficiary is designated irrevocably, the policyholder may not assign the policy, use the policy as a security, surrender it or otherwise deal with it without the consent in writing of the designated beneficiary.

Entitlement
to dividends.

169. (1) Notwithstanding the designation of a beneficiary irrevocably, the policyholder is entitled, while living, to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

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

Effect of
assignment
on benefi-
ciaries.

170. (1) An assignee of a policy who gives notice in writing of the assignment to the head office of the company or to its agent has priority of interest as against -

(a) any assignee other than one who gave notice earlier in like manner; and

(b) a beneficiary other than one designated irrevocably under section 161 prior to the time the assignee gave notice to the company of the assignment in the manner prescribed in this section.

(2) Where a policy is assigned as security, the rights of a beneficiary under the policy are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Where a policy is assigned absolutely, the assignee has all the rights and interests given to the policyholder by the policy and by this Part and shall be deemed to be the policyholder.

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

Insurable
interest.

171. (1) For the purpose of this Act, but without restricting the meaning of the expression "insurable interest", an insurable interest shall be deemed to be had by -

(a) a parent of a child under eighteen years of age, or a person in loco parentis of such a child, in the life of the child;

(b) a spouse, in the life of his or her spouse;

(c) any person, in the life of another upon

whom he is wholly or in part dependent for support or education;

- (d) a company or other person, in the life of an officer or employee thereof;
- (e) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person; and
- (f) any trustee, nominee or custodian acting on behalf of, for the direct or indirect benefit of, or at the direction of a person identified as having an insurable interest in the life of another person in subsection (1) shall be deemed to have an insurable interest in the life of such other person.

(2) This section shall apply to policies whether effected before or after the commencement of this Act.

(3) For the purposes of this section, the expression "child", in relation to any person, includes -

- (a) an adopted child;
- (b) a step-child; or
- (c) any other child, living with that person and wholly or mainly maintained by that person.

(4) Subject to subsections (1), (2) and (3), the rights and interests of a policyholder in the assets of a separate account maintained under a variable life insurance or variable annuity policy issued by a company registered under this Act, shall not be liable to be applied or made available in payment of the debts of such policyholder, by any judgement, order or process of any court, and no creditor of such policyholder may attach any right or interest therein or claim payment thereof, except where -

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

purchase of the policy.

Protection of policies

Interest
of insured
protected
in certain
cases.

172. (1) The property and interest of any person in a policy effected, whether before or after the commencement of this Act, upon the life of that person shall not be liable to be applied or made available in payment of the debts of that person by any judgment, order or process of any court.

(2) In the event of a person who has effected a policy on his own life dying after the commencement of this Act, the moneys payable upon the death of that person under or in respect of the policy shall not be liable to be applied or made available in payment of his debts by any judgment, order or process of any court or by retainer by an executor or administrator or in any other manner whatsoever, except by virtue of -

(a) a contract or charge made by the person whose life is insured; or

(b) an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

Paid-up policies, surrender values and non-forfeiture

Paid-up
policies.

173. (1) A policyholder who desires to discontinue further premium payments on a policy shall, where the policy has a cash surrender value or contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy, on application to the company, be entitled to receive instead of that policy, a paid up policy.

(2) The paid up policy shall be payable upon the happening of the contingency on which the amount insured under the original policy would have been payable.

Surrender
of policies.

174. Notwithstanding the terms of a particular policy, where the policy has a cash surrender value or contains provisions enabling the exercise of certain options

in lieu of forfeiture of the policy, the owner of that policy shall, on application to the company be entitled to surrender the policy and to receive not less than the cash surrender value of the policy or non-forfeiture value, as the case may be, less the amount of any debt owing to the company under, or secured by the policy.

Relaxation
of obli-
gations
as to
surrender
values.

175. Where the Commission is of the opinion that the payment in cash of surrender values as required by section 174 would be prejudicial to the financial stability of the company or to the interests of the policyholders of that company, it may, on application by the company, suspend or vary for such period and subject to such conditions as the Commission thinks fit, the obligation of the company to pay those surrender values.

Non-
forfeiture
of ordinary
policies
in certain
cases of
non-payment
of premiums.

176. (1) An ordinary policy shall not be forfeited by reason only of the non-payment of any premium, in this section referred to as the overdue premium, where -

(a) the policy contains provisions enabling the exercise of certain options in lieu of the forfeiture of the policy; and

(b) the surrender value of the policy, calculated as at the day immediately preceding that on which the overdue premium falls due, exceeds the sum of the amount of the debts owing to the company under, or secured by, the policy and the amount of the overdue premium.

(2) The company may, until payment of the overdue premium, charge simple interest on the overdue premium at prime rate until such overdue premiums are paid.

(3) The overdue premium and any interest charged on it under this section and unpaid shall for the purposes of this Act, be deemed to be a debt owing to the company under the policy.

(4) Without affecting the generality of the foregoing provisions of this section, an ordinary policy that contains provisions enabling the exercise of certain options in lieu of forfeiture of the policy shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due -

(a) the company liable under the policy serves a notice on the policyholder stating -

(i) the amount due or payable to the company at the date of the

notice in respect of the policy,

(ii) that the policy will be forfeited at the end of twenty-eight days after the date of the notice if a sufficient sum is not paid to the company in the meantime; and

(b) a period of at least thirty days has passed after the service of the notice.

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

Non-
forfeiture
of indus-
trial
policies
in certain
cases of
non-payment
of premiums.

177. (1) An industrial policy on which not less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium unless the premium has remained unpaid for not less than four weeks after it became due.

(2) An industrial policy on which not less than one year's but less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than eight weeks after it became due.

(3) An industrial policy on which not less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than twelve weeks after it became due.

(4) In the event of an industrial policy on which not less than three years' premiums have been paid being forfeited by reason of the non-payment of any premium, the company shall, without requiring any application from the policyholder, grant a paid up policy for an amount not less than that specified in the table included in the policy.

(5) The paid up policy shall be payable upon the happening of the contingency upon the happening of which the amount insured under the original policy would have been payable.

(6) The company shall notify the policyholder in writing of the fact that the paid up policy has been granted and shall specify the amount of the policy and the contingency upon which the policy is payable.

(7) An industrial policy shall not be forfeited by reason only of the non-payment of any premium where the non-

payment was due to non-collection by the company without just cause.

Treatment
of debts
on grant
of paid up
policies.

178. Where under any provision of this Part a policyholder is entitled to receive, or a company required to grant, a paid up policy and there is any debt owing to the company under or secured by the policy, the company may elect -

- (a) to treat the debt so owing as a debt secured by the paid up policy, and thereupon the paid up policy shall be a security for the debt so owing; or
- (b) in the ascertainment of the amount of the paid up policy, to reduce the amount by taking into account, upon a basis approved by the Commission, the debt so owing to the company, and thereupon the debt shall cease to be owing to the company.

Payment of policy moneys

Place of
payment of
policy
proceeds.

179. (1) Unless otherwise agreed by the registered insurer and the policyholder, all policy proceeds payable in respect of a policy shall be payable at the principal office of the registered insurer.

(2) Where a registered insurer receives sufficient evidence from a claimant of -

- (a) the happening of an event upon which policy proceeds become payable;
- (b) the age of the person whose life is insured, where such information is relevant;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, where such information is relevant,

it shall, within thirty days after receiving such evidence, pay the policy proceeds to the person entitled thereto.

(3) Where the registered insurer does not pay the policy proceeds as required by subsection (1), in addition to any other sanctions pursuant to this Act, the policy proceeds payable shall bear simple interest at Bahamian prime rate from the date on which they were payable until the date which they are paid.

Payment
without
probate or
adminis-
tration in
certain
cases.

180. (1) A company by which any moneys are payable under one or more policies to the personal representative of a deceased person may, without requiring the production of probate or letters of administration, pay out of the moneys any amount including any bonuses added to the policy or policies not exceeding six thousand dollars to any person who satisfies the company that he is entitled to -

- (a) receive the property of the deceased person;
- (b) obtain probate of the will of the deceased person; or
- (c) take out letters of administration of the estate of the deceased person.

(2) A company which makes a payment pursuant to subsection (1) shall be discharged from all further liability in respect of the moneys so paid.

(3) All persons to whom moneys are paid under subsection (1) shall apply those moneys in due course of administration and, if the company thinks fit, it may require those persons to give sufficient security by bond or otherwise that the moneys so paid will be so applied.

Death of
holder of
policy not
being life
insured.

181. (1) Subject to this section, where a policyholder, not being the person whose life is insured by the policy, predeceases the person whose life is so insured, and a person satisfies the company that issued the policy that -

- (a) he is entitled under the will or on the intestacy of the deceased policyholder, to the benefit of the policy; or
- (b) he is entitled to obtain probate of the will, or to take out letters of administration of the estate of the deceased policyholder,

the company may, without requiring the production of any probate or letters of administration, endorse on the policy a declaration that the person has so satisfied the company and is the holder of the policy, and thereupon that person becomes, subject to subsection (2), the holder of the policy.

(2) Subsection (1) shall not confer on a person declared to be the holder of a policy any beneficial interest in the policy that he would not otherwise have had.

(3) This section shall apply in relation to a policy referred to in subsection (1) whether the deceased holder dies before or after the commencement of this section.

(4) This section does not apply in relation to -

- (a) a policy the surrender value of which, at the date of the death of the deceased holder, exceeds or exceeded two thousand dollars; or
- (b) a policy which is one of two or more policies held by the deceased holder and issued by the same company if the aggregate of the surrender values of those policies at the death of the deceased holder exceeds or exceeded two thousand dollars.

(5) For the purposes of subsection (4), the surrender value of a policy is the amount, including any amount in respect of bonus additions that would be paid by the company issuing the policy upon its surrender.

Company
not bound
to see to
application
of moneys.

182. Nothing contained in this Part shall be construed as requiring a company to see to the application of any moneys paid under section 180 by the company in respect of any policy.

Unclaimed
moneys.

183. (1) A company shall, not later than six months after the coming into force of this Act and six months after the end of each financial year thereafter, deliver to the Commission a statement of all unclaimed moneys outstanding for more than one year as at that date.

(2) The statement shall set forth, in respect of each policy to which it refers, the name of the policyholder and beneficiary if known, their last known addresses, details of the attempts made to locate the policyholder or beneficiary, the amount due and the date on which the amount became due.

(3) The company shall pay to the Commission at the time of the delivery of the statement, the total amount of unclaimed moneys shown in the statement, less any amounts the company has paid between the financial year and the date on which the statement is delivered, to the person to whom those amounts were due; and the company shall furnish particulars of the amounts in writing with the statement.

(4) Prior to the payment of moneys to the Commission, the company shall publish in a newspaper of general circulation in The Bahamas a list of the names and addresses of the policyholders whose claims remain uncollected.

(5) Where a company, after paying to the Commission

an amount in respect of a policy pursuant to this section satisfies the Commission that the amount so paid exceeds the amount that would have been payable under the policy to the policy-owner, the Commission shall refund to the company the amount of the excess.

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

Further provisions relating to unclaimed moneys.

184. (1) All unclaimed moneys paid to the Commission under section 183 shall be paid by the Commission to the Central Bank to the credit of a special account, and on the written authorization of the Commission there shall be paid from and charged to that account such sums as are necessary to give effect to any claim thereafter established to the satisfaction of the Commission.

(2) Notwithstanding anything to the contrary contained in a contract of insurance, no amount transferred to the Central Bank pursuant to subsection (1) or any other section, shall bear interest.

(3) Where, after unclaimed moneys have been paid to the Commission by a company pursuant to section 182 the Commission is informed of the appearance of the legitimate claimant to any such unclaimed moneys, the Commission, if satisfied as to the identity of the claimant and the validity of the claim, shall direct that such claim be paid to the claimant by the Central Bank.

(4) All moneys transferred to the Central Bank pursuant to subsection (1), and which remain unclaimed for more than five years, shall be transferred into the insurance pool established under section 204.

(5) A company that fails to comply with any provision of section 183 or of this section is guilty of an offence.

(6) For the purposes of section 183 and of this section, the expression "unclaimed moneys" means all sums of money that became or become legally payable by a company in respect of policies but in respect of which the time within which proceedings may be taken for their recovery has expired, and includes sums of money payable on the maturity of an endowment policy or endowment insurance policy that are not claimed within seven years after the maturity date of the policy.

**Provisions relating to Industrial Life
Insurance Business**

Objection of policies. 185. (1) Where, within twenty-eight days after a company delivers an industrial policy -

(a) to the policyholder; or

(b) at the residence of the policyholder, to some other person who resides there and is apparently not less than sixteen years of age and by whom any premium in respect of the policy is paid on behalf of the policyholder,

the policyholder returns the policy to the company with an objection in writing to any term or condition of the policy, the company shall immediately refund any premium that has been paid in respect of the policy, and the policy shall be cancelled.

(2) Where an industrial policy is sent by post by a company to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to the person at the time at which it would reach him in the ordinary course of post.

(3) For the purposes of this section, a policy shall be deemed to have been returned to a company with an objection if the policy and the writing specifying the objection are posted for transmission to the company by registered letter.

Return of industrial policies and premium receipt books after inspection. 186. Where at any time a company that carries on industrial life insurance business or any person authorised by that company, takes possession of an industrial policy or premium receipt book or other document issued in connection with the policy, a receipt for the policy, book or document shall be given to the person from whom it was received, and the policy, book or document shall be returned to that person on demand at any time after the expiration of twenty-eight days, unless -

(a) it is required for the purposes of evidence in legal proceedings;

(b) the policy has been terminated by reason of the satisfaction of all claims capable of arising under it; or

(c) in the case of a policy, the company is entitled to retain the policy as security for money owing to the company by the

policyholder.

Falsi-
fication.

187. Any person who wilfully makes, or orders or allows to be made any entry or erasure in, or omits any entry, or orders or allows any entry to be omitted from, a collecting book or premium receipt book, with intent to falsify the book, or to evade any of the provisions of this Act, is guilty of an offence.

Avoidance
of policy
by reasons
of parti-
culars in
proposal
filled in
by agent or
servant of
company.

188. (1) Where any agent or servant of a company writes or fills in or has before the commencement of this Act, written or filled in any particulars in a proposal for an industrial policy with the company, then, notwithstanding any agreement to the contrary between the proposer and the company, any policy issued in pursuance of the proposal shall not be avoided by reason only of any incorrect or untrue statement contained in any such particulars so written or filled in unless the incorrect or untrue statement was in fact made by the proposer to the agent or servant for the purposes of the proposal.

(2) The burden of proving that any such statement referred to under subsection (1) was so made shall lie upon the company.

(3) Nothing in this section shall be deemed to allow the avoidance of any policy for any reason or in any circumstances for or in which the policy could not have been avoided apart from this section.

Particulars
to be set
out in
policies.

189. An industrial policy issued by a company shall contain an endorsement in distinctive type setting out -

- (a) whether the policy is or is not a participating policy; and
- (b) a short statement in a form approved by the Commission as to -
 - (i) the right of the policyholder to be granted a paid up policy,
 - (ii) the right of the policyholder to surrender his policy and to receive in cash the surrender value of the policy; and
 - (iii) the forfeiture of the policy.

Issue of
premium
receipt
books.

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

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

- (i) issue one premium-receipt book in respect of two or more policies if held by the same policyholder or by two or more policyholders who are members of the same household; or
- (ii) add the endorsements and entries required by this section in respect of any policy to the premium receipt book issued in respect of any earlier policy held by the same policyholder or by a member of the same household.

(3) A company shall not issue or permit to be used one premium receipt book in respect of two or more policies held by different policyholders not being members of the same household.

(4) Where a premium receipt book issued to a policyholder by a company complies with the provisions of this section or it is amended to comply with those provisions and is returned to the policyholder, it shall be deemed to be a premium receipt book issued in accordance with this section.

(5) A premium receipt book issued by a company shall contain in respect of each policy to which it relates -

- (a) an endorsement in distinctive type of the particulars referred to in paragraphs (a) and (b) of section 189;
- (b) an entry made by the company of the following matters, namely -
 - (i) the full name and date of birth of the policyholders and, where the policy is issued in respect of the life of a person other than the policyholder, the surname and initials of that person;
 - (ii) the date and number of the policy;
 - (iii) the amount of the weekly or other periodical premium; and
- (c) a notice stating that proof of age may be required before payment of the sum insured.

Premium
receipt
book to

191. (1) Every payment in respect of premiums under an industrial policy made to an agent or servant of the company shall be recorded by the agent or servant in the premium

show date
to which
premiums
paid, etc.

receipt book so as clearly to indicate the date to which
premiums have been paid in respect of the policy or policies
to which the premium receipt book relates, and the record
shall -

(a) if it is the first entry on a page of the
premium receipt book, be signed by the
agent or servant with his usual signature;
and

(b) if it is not such an entry, be signed by
the agent or servant with his usual
signature or be initialed by him.

(2) Where a premium receipt book relates to more
than one policy and any payment for premiums on the policies
is made which is less than the aggregate of the weekly or
other periodical premiums in respect of all those policies,
the person making the payment shall be required by the agent
or servant of the company to whom the payment is made to state
the policy or policies in respect of which no payment or an
insufficient payment is made, and the agent or servant shall
clearly record in the premium receipt book the fact stated.

(3) Unless the amount of the deficiency is paid
before any further premiums are paid, the company shall cause
a separate premium receipt book in compliance with section 189
to be issued in respect of any policy in relation to which the
deficiency exists and shall cause the particulars and entry in
the first mentioned premium receipt book relating to any such
policy to be cancelled.

**Provisions relating to
Variable Insurance Business**

Grant of
approval.

192. (1) An insurer shall not carry on in The Bahamas
Variable insurance business unless the Commission is satisfied
that the general character, reputation and experience of the
management of the insurer and those persons or firms proposed
to supply consulting, investment, administrative or custodial
services to the insurer are such as to reasonably assure
competent operation of the variable life insurance business of
the insurer.

(2) An application for approval to carry on
variable insurance business under this section shall be made
to the Commission in the prescribed form and shall be
accompanied by evidence of payment of the prescribed fee and
by such documents as may be prescribed or required by this

Act.

(3) The Commission may, upon receipt of an application under this section, request the insurer to furnish such addition information as it may consider to be relevant in relation to the application and the insurer shall comply with the request.

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

(5) The Commission may attach such further conditions to the issue of approval under subsection (1) as are relevant to the nature and class of the variable insurance business that the insurer intends to carry on including not limited to -

(a) requiring the insurer to disclose to any applicant for a policy any one or more of the following -

(i) a statement of the investment policy of any separate account maintained in respect of such variable insurance policy including a description of the investment objectives intended for the separate account and the principal types of investments intended to be made, and any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted;

(ii) any restrictions or limitations on the manner in which the operations of such variable insurance policy are intended to be conducted;

(iii) a statement of the charges and expenses in respect of such variable insurance policy;

(iv) a summary of the method to be used in valuing assets in respect of which benefits under such variable insurance policy are to be

- determined; and
 - (v) illustrations of benefits payable under the variable insurance contract;
- (b) requiring that any material contract between an insurer and suppliers of consulting, investment, administration, sales, marketing, custodial or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the Commission with any information or reports in connection with the services which the Commission may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with this Act, and any other applicable law or regulation.
- (c) requiring the insurer to furnish in such manner and at such times or intervals as may be prescribed, such information relating to the value of benefit under the policies as may be prescribed, whether by sending notices to the policyholders or depositing statements with the Commission;
- (d) requiring that the variable insurance policy be in a specific form or contain such mandatory provisions as may be prescribed in any regulations;
- (e) requiring that the insurer maintain reserves in addition to any reserves which the insurer is required to maintain under the Act;
- (f) restricting the descriptions or property or indices of value of property by reference to which benefits under the policy will be determined in accordance with the regulations prescribed for such purpose; or
- (g) regulating the manner in which and frequency with which property of any description is to be valued, for the purpose of determining the benefits, and

the times at which reference is to be made for that purpose.

Revocation
of approval.

193. (1) The Commission may revoke any approval to carry on variable insurance business if the insurer fails to remedy a breach of any condition imposed in respect of such approval, within ninety days of its receipt of notice from the Commission, requiring the insurer to remedy such breach.

(2) Where the Commission proposes to revoke approval granted to an insurer under section 192 for a breach of any condition imposed in respect of the approval, it shall notify the insurer of its right under section 235 of the Act.

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

Submission
of reports,
annual
statements,
etc.

194. An insurer authorised to carry on variable insurance business in accordance with this Act, shall submit to the Commission, in addition to any other reports required under this Act, annual financial and actuarial statements of its variable insurance business including investment summaries in a form approved by the Commission, together with such additional information concerning its variable insurance operations or separate accounts as the Commission shall deem necessary.

Allocation
of assets
in respect
of separate
accounts.

195. (1) An insurer shall allocate to the separate account maintained in respect of any variable insurance policy, all premium income, reinsurance proceeds and other income, interest, gains, expenses and losses incurred or earned, in accordance with the terms of that policy.

(2) In respect of its variable life insurance business, the insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for these policies.

(3) Unless approved by the Commission in writing, in respect of its variable insurance business other than variable life insurance business, the insurer shall maintain in each separate account assets with a value at least equal to the reserves and other policy liabilities with respect to the separate account.

(4) Subject to any provision of any enactment or administrative condition to the contrary, investments in the

separate account shall be valued in the manner determined by the insurer's actuary.

Authority
to grant
financial
assistance
with assets
concerning
separate
account.

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

Charges
against
separate
account.

197. The insurer shall disclose in writing, prior to or contemporaneously with the delivery of the policy, all charges that may be made against the separate account, including the following -

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

Custody of
assets of
separate
account.

198. Where the insurer is not the custodian of the assets of the separate account, no person other than any one of the following may be appointed custodian of the assets of the separate account, or be authorised to handle or deal with the assets of the separate account, without the prior written approval of the Commission -

- (a) a bank or other financial institution licensed to operate in or from The Bahamas;
- (b) a financial institution authorised or licensed under the laws of any other jurisdiction, to act as custodian of the

assets of the separate account; or

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

Mutualisation

Conversion
into mutual
companies.

199. (1) Notwithstanding anything in its memorandum or other instruments of incorporation or in its articles or other rules or in this Act, a company incorporated in The Bahamas that has a share capital and that is registered under this Act to transact long-term insurance business, may, with the permission of the Commission, establish and implement a plan for the conversion of the company into a mutual company by the purchase of shares of the company or the conversion of the shares into debentures in accordance with such conditions as may be prescribed.

(2) A mutual company, whether or not converted as such under subsection (1), may convert into a company with a share capital where -

- (a) it has obtained the permission of not less than two thirds of its policyholders; and
(b) the scheme for the conversion has been approved by the Commission.

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

PART VII

GENERAL INSURANCE

Conditions

Applica-
tion of
this Part.

200. This section and sections 193, 194 and 195 apply to all companies registered under this Act to transact insurance business in respect of any class of such business other than long-term insurance business.

Computa-
tion of
reserves
liability.

201. Every company doing general business shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement of account, reserves computed on such basis as the Commission may prescribe.

Contra-
vention.

202. Where it appears to the Commission that the assets of any company fall below the requirements for solvency

by section 80 and after a reasonable time has been given to the company to be heard by it, the Commission shall -

- (a) cancel the registration of the company; or
- (b) upon such terms and conditions as the Commission deems proper, limit a time within which the company shall make good the deficiency, the company's registration being continued in the meantime, and upon the company's failure to make good the deficiency within the time so limited, the registration of the company shall be cancelled,

but where the company's assets are less than the total liabilities including the unearned premiums calculated as provided in section 201, or if the company has contravened the requirements of section 56, its certificate or registration shall be withdrawn.

Appropriation of profits towards surplus.

203. (1) Until the surplus of a company equates or exceeds the liability of the company in respect of outstanding unmatured policies required to be included in the annual statement in accordance with section 201, the company shall at the end of each year appropriate towards surplus at least twenty-five per cent of the profits of the company for the year last past.

(2) For the purposes of this section, the expression "surplus" means the excess of assets over the paid-up capital of the company and all the liabilities of the company including the liability in respect of outstanding unmatured policies required to be included in the annual statement in accordance with section 201.

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

Establishment of insurance pool.

204. (1) The Commission shall have power to establish an insurance pool and to require companies and intermediaries to contribute to the pool so established, for the collection, allocation and application, in accordance with regulations made under this Act, of monetary contributions from companies and intermediaries, for the purpose of covering prescribed risks, if after consultation with the Minister the Commission determines that -

- (a) it is in the public interest to do so; and

(b) a particular insurance cover is not readily available.

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

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

Self insurance.

205. (1) After the commencement of this Act, no company other than one carrying on insurance business shall insure itself under an insurance policy of the company unless it does so in a manner prescribed by regulations.

(2) Regulations made pursuant to subsection (1) shall specify -

(a) the categories of insurance to be permitted;

(b) the method to be used by the company for the insurance; and

(c) the manner in which funds obtained from the insurance may be invested.

Cancellation of policies.

206. (1) No local policy shall be liable to cancellation except in accordance with the provisions of this section.

(2) A policy other than a life assurance policy may be cancelled at any time at the request of the insured named therein, and the insurer shall, upon the surrendering of the policy, refund the excess of any premiums paid over and above the customary short-rate premium for the period when the policy has been in force.

(3) A policy other than a life assurance policy may be cancelled at any time by an insurer after giving to the insured named therein at least thirty days notice in writing of the proposed cancellation by personal service or by registered post and upon a refund to the insured of the excess of paid premium over and above the pro rata premium for the time the policy has been in force, which repayment shall accompany the notice.

(4) Any policy of insurance may be cancelled by the mutual consent in writing of the insurer and the insureds made prior to the date of intended cancellation.

Structured settlements.

207. (1) A court, in awarding judgment to a plaintiff in respect of a claim, liability for which is covered by a policy of insurance may, with the consent of both parties, instead of a lump sum, order specified payments with interest

to be made at such intervals and over such period not exceeding three years as the court may specify.

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

Third party rights.

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

(a) an owner or occupier; or

(b) an independent contractor,

against risk of injury to visitors or to workmen, as the case may be, a visitor or a workman who sustains injury on those premises is entitled to claim directly under a policy from the company with the consent of the owner, occupier or independent contractor, such consent not to be unreasonably withheld.

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

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

Motor Vehicle Insurance

Notice of expiration etc. of cover notes and policies.

209. Sections 10 and 16 of the Road Traffic Act applies to all companies offering motor vehicle insurance in respect of -

(a) the insurance and coverage of insurance policies; and

(b) the insurance of certificates of insurance; and

(c) the surrender and notice of loss of a certificate of insurance.

Issue of

210. A company carrying on motor vehicle insurance

policies. business shall issue a certificate of insurance as required by the Road Traffic Act on or before the expiration of the cover note or, where no cover note has been issued, within seven days of receipt of the first premium or part premium paid on behalf of the policy in respect of which that certificate is so required.

Motor vehicle liability. 211. A policy relating to the insurance of a motor vehicle and any and all hazards and liability arising in connection with its ownership and operation may limit the amount which may be claimed by any one person pursuant to the policy subject to a maximum liability of two and one half million dollars and the amount which may be claimed for any one event to a maximum liability of thirty million dollars.

PART VIII
MISCELLANEOUS

Quarterly returns from companies. 212. Every company shall within three weeks of the end of each quarter of the calender year, furnish to the Commission in the prescribed form, a return showing for that quarter, the amount of gross premium income and net premium income collected in that quarter, with respect to risks located in The Bahamas.

Anti-money laundering returns. 213. (1) Every company to which the Financial Transactions Reporting Act applies shall require its external auditor to submit a report during the course of the annual audit of financial statements on the adequacy of policies and procedures relating to money laundering pursuant to the Financial Transactions Reporting Act;

(2) a copy of the report must be forwarded to the Commission within four months of the end of the financial year.

Registers to be kept. 214. A company shall in accordance with section 215 keep a register of policies at its principal office in The Bahamas, and the register shall, at all times during the normal business hours of the company, be available for inspection by the Commission or by some person authorised in writing by it.

Registration of policies. 215. (1) Every policy in The Bahamas existing at the commencement of this Act shall at that date be deemed to be registered by the company in the register kept at its registry in The Bahamas.

(2) Every policy in The Bahamas issued by a company after the commencement of this Act shall immediately after

issue be registered by the company in the register kept at its registry in The Bahamas.

(3) Unless otherwise agreed by the company and the policyholder, all moneys payable in respect of a policy shall be payable at the registry at which it is for the time being registered.

Form of
Records.

216. Any record required or authorized by the Act to be prepared and maintained by a registered insurer or registered insurance intermediary -

(a) may be in a bound or loose-leaf form or a photographic film form; or

(b) may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable period or time.

Insurance
policy
documents
to be
issued
expedi-
tiously.

217. (1) Where a person has entered into a contract of insurance with a company, the company shall forward to that person the relevant insurance policy documents within thirty days of the entering into a contract or such other time as the Commission may consider reasonable.

(2) A company which contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for a term of six months.

Lost
policy.

218. (1) Where -

(a) the holder of a policy; or

(b) a person claiming the benefit of the provisions of section 180 or section 181 in respect of a policy,

claims that the policy, in this section referred to as the original policy, is lost or has been destroyed, the company liable under the original policy may, subject to this section, upon application by the holder or that person issue to the applicant a special policy in substitution for the original policy.

(2) Where an application under subsection (1) made by a person referred to in paragraph (b) of that subsection, the company shall not issue a special policy unless the company is satisfied that section 180 or 181 should be applied in favour of the applicant in relation to the policy.

(3) A special policy shall -

- (a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;
- (b) contain copies of every endorsement on the original policy registered by the company; and
- (c) state the reason for the issue of the special policy.

(4) The fact of the issue of a special policy and the reason for its issue shall be recorded by the company in the appropriate register of policies.

(5) A special policy is valid and available for all purposes for which the original policy in substitution for which it has been issued would have been valid and available and, after the issue of the special policy, the original policy in substitution for which it has been issued is void.

(6) Where the company fails to issue a special policy within six months after receipt of an application in writing from the policyholder, the court may, upon application by summons, and upon such evidence as to the loss or destruction of the original policy as the court deems sufficient, order the company, upon such terms and within such time as the court thinks fit, to issue a special policy.

(7) Where the holder of a special policy or a person claiming the benefit of the provisions of section 180 or 181 in respect of a special policy, claims that the special policy is lost or has been destroyed, this section shall apply as if the special policy were an original policy issued by the company.

Effect of
suicide or
capital
punishment
on policy.

219. A policy shall not be avoided merely on the ground that the person whose life is insured died by his own hand or act, sane or insane, or suffered capital punishment, if, upon the true construction of the policy, the company thereby agreed to pay the sum insured in the events that have happened.

Disclosure
of pro rata
condition
of average.

220. (1) Where a contract of insurance contains a provision with respect to pro rata condition of average, the condition shall be void and unenforceable unless, before the contract is entered into, the insurer informs the insured in writing, in a form satisfactory to the Commission, of the nature and effect of the condition.

(2) This section shall not apply in respect of a contract of insurance entered into before the coming into operation of this Act, but shall apply to any renewal of any

such contract.

Condition
as to war
risk void.

221. Any term or condition of a policy issued after the commencement of this Act which limits, to an amount less than the sum insured, the amount payable under the policy in the event of the death of the life insured occurring while on active military service or as a result of war, shall not have any force or effect, unless the person who effected the policy agreed in writing to the insertion in the policy of that term or condition.

Offences
by company
not to
invalidate
policies.

222. Failure on the part of a company to comply with any provision of this Act shall not in any way invalidate any policy issued by the company.

Juris-
diction
of local
courts.

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

Payment
of moneys
in local
currency.

224. (1) Where any policy is issued after the commencement of this Act in respect of which the premiums are payable or paid in The Bahamas the premiums shall be payable or paid, as the case may be, and any sums payable or paid upon the maturity of such policy shall be payable or paid, as the case may be, in Bahamian dollars or any other currency which is legal tender in The Bahamas and is acceptable to the payee.

(2) Notwithstanding subsection (1), where a policy is issued to a non-resident, the premiums and policy proceeds or claims may be payable in United States dollars or other currency with the prior approval of the Central Bank.

Power to
pay money
into court.

225. (1) Subject to rules of court, any company carrying on life insurance business may, after giving notice in writing to the Commission, pay into the court any moneys payable by the company under a contract of life insurance in respect of which in the opinion of the directors, no sufficient discharge can otherwise be obtained.

(2) The receipt or certificate of the Registrar or Deputy Registrar of the court shall be a sufficient discharge to the company for the moneys so paid into court and the moneys shall, subject to rules of court and any regulations made under this Act, be dealt with according to the order of the court.

Approval

226. (1) A person shall not publish in respect of any

required
for notice
offering
shares
for sub-
scription.

company or in respect of a company proposed to be formed after the commencement of this Act a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the company or proposed company, unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Commission.

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

Publica-
tion of
authorised,
subscribed
and paid-up
capital.

227. Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid-up.

Voting
by post.

228. (1) A company that does not have shareholders shall within one year after it is registered under this Act make arrangements for a system of voting either by way of proxy in accordance with section 79 of the Companies Act or by post in accordance with this section.

(2) Where the company intends to use a system of voting by post, it shall make arrangements for -

- (a) the establishment of a postal voters' roll in relation to voting in contested elections of directors of the company or on questions as to the alterations of the instruments, constituting the company or of the articles of association or other rules of the company;
- (b) the enrolment on the postal voters' roll of any member of the company entitled to vote in elections of the company or on the questions who applies to be so enrolled;
- (c) the voting by post in any election or on any such question by every member so enrolled; and
- (d) the making of inspections of the postal voters' roll and the taking of copies of, or extracts from, the roll, on and after the close of nominations and before the close of the voting in the election, by

any person nominated for election as a director of the company, and all regular votes of members given in pursuance of the arrangements shall be valid and effectual for all purposes.

(3) Where a member of a company enrolled on the postal voters' roll of the company fails to exercise his right to vote by post on three consecutive occasions on which he is entitled so to vote, the company may remove his name from the roll, but the member shall be eligible for re-enrolment.

Inspection of documents. 229. Any person may, upon payment of such fee as is prescribed, inspect at the office of the Commission any document furnished to the Commission under section 60 and maintained in the Register pursuant to section 19 and make a copy of, or extract from, the document.

Documents to be received in evidence. 230. Every document purporting to be certified by the Commission to be a document lodged with it under this Act, and every document purporting to be similarly certified to be a copy of such a document, shall be deemed to be that document or copy, as the case may be, and shall be received in evidence as if it were the original document, unless some variation between it and the original document is proved.

Authority to sign documents. 231. Any document required by or under this Act to be signed by a director or the principal officer of a company may be signed by any other officer of the company if that officer is authorised by the board of directors to so sign and the board of directors has notified the Commission in writing of the authorisation.

Printing of documents. 232. Where a document is, by this Act, required to be printed, the Commission may, in its discretion, permit it to be typewritten or lithographed or to be reproduced by any mechanical means approved by the Commission.

Service of notices. 233. (1) Without prejudice to section 7 of the Interpretation and General Clauses Act, where a notice is required or permitted by this Act to be given to or served upon a person, the notice shall be in writing and may be given or served -

(a) in the case of a notice addressed to a person other than a company, by serving it upon him personally or by sending it by registered post addressed to him at his usual or last known place of abode or business; and

(b) in the case of a notice addressed to a company, by serving it personally upon the

person last known to the Commission as being a director or the principal representative or officer of the company or by sending it by registered post addressed to him at his address last known to the Commission or to the address filed with the Commission under subsection (1) of section 23,

and if it is so sent by post, shall be deemed to have been given or served on the date shown on the postal receipts as the date on which it was delivered, or if no such date is shown, fourteen clear days after the date of posting.

(2) In this section, the expression "company" includes a body corporate that has ceased to carry on insurance business in The Bahamas.

Power to
collect
statistics.

234. (1) The Commission may collect such statistics at such times as may, in the Commission's opinion, be necessary or desirable.

(2) For the purpose of enabling the Commission to collect statistics under this section, every company shall provide the Commission with such particulars as may be prescribed.

Appeals.

235. Any person aggrieved by a decision of the Commission on any matter pursuant to this Act may appeal to the Supreme Court in accordance with rules of Court.

Gazetting
of regis-
tration,
etc.

236. (1) Where -

(a) the application for registration of an insurance company under Part III, an association of underwriters under Part IV or of any person under Part V is refused;

(b) an insurance company, an association of underwriters or a person is registered under Part III, Part IV or Part V, as the case may be;

(c) the registration of an insurance company, an association of underwriters or of any person under Part III, Part IV or Part V, as the case may be, is cancelled,

the Commission shall cause notice of the refusal, registration or cancellation to be published at least once in the Gazette and in a newspaper published in The Bahamas.

(2) The Commission shall from time to time cause to be published in the Gazette and in a newspaper published in The Bahamas up-to-date lists of companies, associations of

underwriters and persons registered under Part III, Part IV or Part V, as the case may be.

Restric-
tion on
use of
insurance
terms.

237. Subject to this section, no person who -

- (a) carries on any class of insurance business specified in subsection (1) of section 3 may have or use, or continue to have or use, the word "Insurance" or "Assurance", or any derivative thereof, in the name under which that person is carrying on business, unless that person is registered or exempted from registration under this Act;
- (b) carries on any class of insurance business specified in subsection (1) of section 3 may have or use, or continue to have or use, in the name under which that person is carrying on business any words indicating that the person is an insurer unless that person is registered or exempted from registration under Part III;
- (c) is registered under Part III may, without the written consent of the Commission, carry on any insurance business unless that person has and uses as part of the business name of such person the word "Insurance" or "Assurance" or a derivative thereof;
- (d) is registered under Part V as a broker may, without the written consent of the Commission, carry on business as such unless that person has and uses as part of the business name of that person the words "Insurance Broker" or "Assurance Broker";
- (e) is registered under Part V as an agent or sub-agent and not also registered under Part III may, without the written consent of the Commission, carry on business as such unless such person has and uses as part of the business name of such person the words "Insurance Agent" or "Assurance Agent".

Extension
of time
limits.

238. Where any provision of this Act requires anything to be done within a specified period of time and no provision is made for the extension thereof, that period may

in any particular case be extended by the Commission.

Technical
and manage-
ment
agreements.

239. No company, association of underwriters or intermediary shall enter into any arrangement for the provision of technical or management services outside The Bahamas in respect of a company, association or intermediary doing business in The Bahamas unless first submitting a written copy of the intended agreement to the Commission, and obtaining in writing, the approval of the Commission.

Regulations.

240. (1) The Commission may make regulations for giving effect to this Act and, in particular, the regulations may make provision in relation to all or any of the following -

- (a) the prescribing of anything required or permitted by this Act to be prescribed;
- (b) the forms to be used in connection with any of the provisions of this Act;
- (c) the fees to be paid by registered insurers and insurance intermediaries;
- (d) the matters in respect of which other fees shall be payable and the amount of such fees;
- (e) deposits by companies;
- (f) the maintenance and investment of funds by companies;
- (g) the recovery of the expenses of any investigation under this Act;
- (h) the assignment of policies generally or by way of mortgage or upon trust;
- (i) the disposal and vesting of policy moneys which have remained unclaimed for the prescribed period;
- (j) the recognition of examining bodies in respect of the qualifications for registration of brokers, salesmen, agents and sub-agents;
- (k) amalgamations and transfers falling within section 66;
- (l) the registers to be kept for the purposes of this Act;
- (m) where there is no provision or not sufficient provision in this Act in respect of any matter or thing necessary to give effect to this Act, the manner or form in which the deficiency is to be supplied.

(2) Notwithstanding section 25(e) of the Interpretational and General Clauses Act, any regulation may provide for the imposition of a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years or both for any contravention of any of the provisions of the regulations.

(3) Regulations may contain such incidental or supplementary provisions as appear to the Commission to be expedient for the purposes of the regulations.

Guidelines.

241. Subject to this Act and to the Regulations prescribed under section 240, the Commission may from time to time issue guidelines for the better management of insurance companies, reinsurers, associations and intermediaries registered under this Act.

Form of
policy.

242. Every registered insurer shall take such steps as are reasonably necessary to ensure that -

- (a) policies issued by that insurer;
 - (i) provide fair value to policyholders;
 - (ii) do not contain provisions which are likely to impair the insurer's financial position; and
- (b) new policies are developed in accordance with standards of sound business and financial practice.

Management
of Agents.

243. (1) Every registered insurer that authorizes one or more agents to act on its behalf shall establish and maintain a system that -

- (a) is reasonably designed to ensure that each agent complies with the requirements of this Act and any regulations made hereunder;
- (b) provides for the screening of each agent for suitability to carry on business as an agent.

(2) An insurer shall report to the Commission if it has reasonable grounds to believe that an agent who acts on its behalf is not suitable to carry on business as an agent.

Exemptions.

244. Without prejudice to any special power of exemption howsoever expressed conferred by any other provision of this Act, the Commission may by order -

- (a) declare that, with effect from a date specified in the order, such of the provision of this Act as may be so specified shall not apply in relation to

such class or division of insurance business as may be so specified;

(b) in the case of any insurance company or class of insurance company or any other person or class of persons direct that, subject to such conditions, if any, as it thinks fit, insurance business of a class specified in subsection (1) of section 3 shall be treated as if it were insurance business of another class so specified or as if it were insurance business of a class not so specified;

(c) exempt, subject to such conditions, if any, as it thinks fit, any insurance company or class of insurance company or any other person or class of person from all or any of the provisions of this Act.

Offences.

245. (1) Any person who contravenes -

(a) any provision of this Act;

(b) any provision of any statutory instrument, or

(c) any direction or requirement given or made by the Commission or an inspector appointed under section 73,

is guilty of an offence, unless he can prove that he did not knowingly commit the contravention or omission the burden of proof of which shall be on him and, in the case of a default in complying with any such provision, direction or requirement, the offence shall be deemed to be continued so long as the default continues.

(2) Where an offence against this Act is committed by a company and the offence is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, principal officer, or other officer or an actuary or auditor of the company, he, as well as the company, shall be deemed to be guilty of the offence.

(3) Where any document required by or under this Act to be signed by any person is false in any particular to the knowledge of the person who signs it, that person is guilty of an offence.

(4) Notwithstanding any limitation on the time for the taking of proceedings under any Act, summary proceedings for an offence against this Act may be commenced at any time

within three years from the date on which evidence of the offence comes to the knowledge of the Commission.

(5) For the purposes of this section, a certificate purporting to be signed by the Commission as to the date on which that evidence came to its knowledge shall, in any such summary proceedings, be conclusive evidence of that date.

(6) Any proceedings against a company for an offence against this Act shall be without prejudice to any proceedings for the judicial management, or the winding-up of the company or of any part of the business of the company which may be taken in respect of the matter constituting the offence.

Penalties.

246. All offences against this Act for which no other penalty is prescribed shall be punishable on summary conviction thereof -

- (a) in the case of a company, by a fine not exceeding ten thousand dollars, and where the offence is a continuing offence, by a further fine of one thousand dollars for every day during which the offence continues, and
- (b) in the case of an individual, by a fine not exceeding three thousand dollars or imprisonment for one year, and where the offence is a continuing offence, by a further fine of three hundred dollars for every day during which the offence continues.

Power of Commission to issue sanctions including fines.

247. (1) Notwithstanding section 246, or any other provisions in this Act, the Commission may where it is satisfied under section 245 that a registered insurer, an association of underwriters, or an intermediary has committed an offence:

- (a) impose a penalty on the registered insurer, association of underwriters or intermediary which may include:
 - (i) a public reprimand;
 - (ii) a ban on carrying out certain operations;
 - (iii) the temporary suspension of a manager; or
 - (iv) the rescinding of the approval a principal representative, auditor, or actuary; or
- (b) order the registered insurer, association of underwriters or intermediary to pay a fine

based on the amounts set out in section 246.

(2) Where the commission makes an order under this section -

- (a) the order shall be put in writing;
- (b) the order shall specify the offence which the registered insurer, association, or intermediary committed and the penalty imposed by the Commission;
- (c) a copy of the order shall be given to the registered insurer, association, or intermediary;
- (d) once the registered insurer, association, or intermediary pays the fine as ordered, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the registered insurer, association, or intermediary to prove that the offence with which it is charged has been dealt with under this section; and
- (e) the order may be enforced in the same manner as an order of the court.

Insurance
Advisory
Committee.

248. (1) There shall be established a committee, to be known as the Insurance Advisory Committee (hereafter referred to as "Committee"), to advise the Commission with respect to general matters relating to the insurance industry within or outside The Bahamas, and with respect to such other matters as may be deemed relevant to the insurance industry in The Bahamas.

(2) The Committee shall advise the Commission on any matter which may be referred to it, and may also, on its own initiative, provide advice to the Commission concerning any matters set out in subsection (1).

(3) The composition of, appointments to and other matters related to the Committee shall be prescribed by regulations.

Non-
application.

249. Sections 130 to 133 and section 191 of the Companies Act, 1992 shall not apply to a company registered under this Act.

Married
persons.

250. The Married Women's Property Act or any legislation in force relating to married persons' property, insofar as it creates a statutory trust of a life policy shall have no effect in relation to sections 160 to 169 of this Act.

Transitional.

251. (1) A reference -

(a) in a law of The Bahamas; and

(b) in any document,

in force immediately before the date of the coming into operation of this Act to the former Registrar shall be read, deemed and taken to refer to the Commission.

(2) The persons who immediately before the coming into operation of this Act was the Registrar and Deputy Registrar under the repealed Act shall continue in office under the new title of Superintendent and Deputy Superintendent respectively on the same terms and conditions as existed before the coming into operation of this Act.

(3) Notwithstanding anything to the contrary contained in this Act, with respect to companies carrying on insurance business in The Bahamas and intermediaries carrying on the business of insurance intermediation in The Bahamas immediately prior to the coming into force of this Act, the period of time within which such companies or intermediaries shall comply with the Act, the regulations or any portion thereof, shall be twelve months or such longer period of time as the Commission may designate by notice published in the Gazette.

Repeal.

252. **The Insurance Act** is hereby repealed.

FIRST SCHEDULE

(section 4)

THE INSURANCE COMMISSION OF THE BAHAMAS

A Body Corporate

1. (1) The Commission shall consist of the following persons to be appointed by the Governor-General after consultation with the Minister, that is to say -

(a) the Superintendent of Insurance ex officio;

(b) the Deputy Superintendent of Insurance ex officio;

(c) three to five other Commissioners, being persons appearing to the Governor-General to have wide experience in, and to have

shown capacity in, insurance, financial or commercial matters, industry, law, or administration.

(2) The Commission may make bye-laws regulating the conduct of the Commission's business, and may make regulations and issue orders for the purpose of giving effect to the provisions of this Act.

(3) Sections 2 to 9 shall have effect in relation to the Commission and Commissioners other than the Superintendent and Deputy Superintendent.

2. (1) Each Commissioner shall, subject to the provisions of this paragraph, hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) A Commissioner shall not be appointed or re-appointed for a period exceeding four years.

3. The Governor-General may appoint any person eligible to be appointed a Commissioner to act temporarily in the place of any Commissioner who is absent or unable to act.

4. Any Commissioner may at any time by notice in writing to the Governor-General resign his office.

5. If the Governor-General is satisfied that a Commissioner -

- (a) has been absent from meetings longer than three consecutive months without permission of the Commission;
- (b) has become bankrupt or made arrangements with his creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a Commissioner,

the Governor-General may declare his office as Commissioner to be vacant and shall notify that fact in such manner as the Governor-General thinks fit, and thereupon that office shall become vacant.

6. The name of all the Commissioners and every change therein shall be published in the Gazette.

7. The Commission shall pay to the Commissioners such remuneration (if any), whether by way of salary, honorarium or fees, as the Governor-General may determine and, if a person ceases to be a Commissioner and it appears to the Governor-General that there are special circumstances which may make it right that the person should receive compensation,

the Governor-General may require the Commission to pay to that person a sum of such amount as the Governor-General may determine.

8. The Superintendent, or in case of his absence or inability, the Deputy Superintendent, shall -

- (a) preside as chairman at the meetings of the Commission;
- (b) be responsible to the Commission for the execution of its policies;
- (c) except as may otherwise be provided in this Act, the bye-laws or resolutions of the Commission, have the power to act, contract, and sign instruments and documents on behalf of the Commission and, pursuant to the resolutions of the Commission, delegate such power to other officers of the Commission.

9. (1) The Commission shall meet as often as may be required for the due performance of its functions, and in any case at least once every month.

(2) A meeting of the Commission -

- (a) may be convened by the Superintendent or, in his absence, the Deputy Superintendent; or
- (b) shall be convened on the written requisition of two commissioners specifying the reasons for which the meeting is required.

(3) Three Commissioners (of whom one shall be either the Superintendent or the Deputy Superintendent) shall form a quorum at any meeting.

(4) A decision shall be adopted by a simple majority of the Commissioners present, and in the case of an equality of votes the person presiding at the meeting shall have and exercise a casting vote.

(5) A Commissioner who is directly or indirectly interested otherwise than as a Commissioner or in common with other Commissioners in a contract or other transaction made or proposed to be made by the Commission, shall disclose the nature of his interest at the first meeting of the Commission at which he is present after the relevant facts have come to his knowledge, and any such disclosure shall be recorded in the minutes of the Commission, and after the disclosure that Commissioner shall not take part in any deliberation or

decision of the Commission with respect to that contract or transaction.

(6) Minutes of each meeting of the Commission shall be kept in such form as the Commission may determine.

(7) No act or proceeding of the Commission shall be invalidated merely by reason of any vacancy in the Commission or of any defect in the appointment of a Commissioner.

(8) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any Commissioner in respect of any act done bona fide in pursuance of the execution or intended execution of this Act.

(9) Where any Commissioner is exempt from liability by reason only of the provision of **sub-paragraph (8)**, the Commission shall be liable to the extent that it would be if the member were an employee or agent of the Commission.

Appointment of the Superintendent

10. The Governor-General shall appoint a person to be the Superintendent of Insurance and a person to be the Deputy Superintendent of Insurance, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, insurance, actuarial or financial matters, law or administration.

11. The person appointed Superintendent shall be the Chief Executive Officer of the office of the Insurance Commission and shall have charge of the day to day management and operation of the office.

12. The person appointed Deputy Superintendent shall perform such functions in relation to the office of the Superintendent as are delegated to him by the Superintendent and in the event of the Superintendent's inability to act or a vacancy in the office of the Superintendent, the Deputy Superintendent shall have and may exercise the functions of the Superintendent.

13. The persons appointed Superintendent and Deputy Superintendent shall be appointed by instrument in writing for a period not exceeding five years and shall be eligible for re-appointment, they shall be appointed on such terms and conditions as may be set out in their instruments of appointment, and such terms and conditions may not be altered to their disadvantage during their tenure in office.

14. **The Governor-General by instrument in writing**

may, for just cause and after an appropriate investigation, revoke the appointment of the person appointed Superintendent or Deputy Superintendent.

15. The person appointed Superintendent or Deputy Superintendent may at any time resign his office by instrument in writing addressed to the Commission.

16. Notwithstanding paragraph 13, the Governor-General may revoke the appointment of the person appointed Superintendent or Deputy Superintendent where -

- (a) the person has become bankrupt or has not made arrangements with his creditors;
- (b) the person has become incapacitated by physical or mental illness; or
- (c) the person is otherwise unable or unfit to discharge the functions of his office.

17. The person appointed Superintendent or Deputy Superintendent shall not borrow money from any insurance entity or from any related institution unless he first informs the Commission in writing of his intention to do so.

18. (1) The person appointed Superintendent or Deputy Superintendent shall not, while holding office as such, hold any other office of employment, whether remunerated or not, without prior approval of the Commission.

(2) Neither the person appointed Superintendent or the Deputy Superintendent may -

- (a) be a member of either House of Parliament;
- (b) be a director, officer or servant of an insurance entity; or
- (c) be a shareholder holding a controlling interest in an insurance entity.

19. There shall be paid from the funds of the Commission to the person appointed Superintendent or Deputy Superintendent such remuneration whether by way of honorarium, salary or fees and such other allowances, if any, as the Commission may determine.

Staff

20. (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as the Commission thinks fit, such officers and employees as the Commission considers necessary for the due discharge of the functions of the Commission.

(2) The Commission shall have power -

- (a) to pay to or in respect of officers or employees of the Commission such pensions or gratuities;
- (b) to make payments towards the provisions for such officers and employees of pensions and gratuities; or
- (c) to maintain for them such pension schemes (whether contributory or not), as the Commission may determine.

21. Section 22 notwithstanding, the Commission may indemnify the Superintendent and the Superintendent may indemnify any person duly authorized by him under this Act against the cost of defending their actions while so discharging their functions.

SECOND SCHEDULE (Sections 43, 120 and 142)

**PROVISIONS RELATING TO DEPOSITS UNDER
SECTIONS 43, 120 AND 142**

1. The assets which a company is required to deposit with the Commission shall consist of -
 - (a) cash;
 - (b) unencumbered securities of, or guaranteed by, the government;
 - (c) other securities, at an accepted value and on the conditions established by the Commission; or
 - (d) any combination of (a) to (c).
2. (1) All deposits made by or on behalf of a company pursuant to section 43, 120 or 142 shall be deemed to form part of the assets of the company.
 - (2) All interest and dividends accruing due on any securities deposited pursuant to section 43, 120 or 142 shall be paid to the company.
3. The Commission shall, on demand by a company, furnish to the company a certificate in writing setting out the nature and extent of any deposit held by the Commission under section 43, 120 or 142 in respect of that company together with the particulars of the securities (if any) forming the whole or part of the deposit.
4. (1) Where the Commission is satisfied that, by

reason of depreciation in the value of securities or other cause, the value of money and prescribed securities deposited by or on behalf of a company with it falls short of the value required by Part III or Part IV, it shall, by notice in writing, require the company to deposit with it money or prescribed securities or both to a value deemed by the Commission to be sufficient to bring the amount of the deposit to the value required by Part III or Part IV, as the case may be.

(2) A notice under this paragraph shall not be issued until the Commission has given an opportunity to the company to be heard in connection with the matter.

(3) Any company which fails to deposit with the Commission money or prescribed securities or both as required by it under this paragraph is guilty of an offence, and the Commission may, if it considers it necessary in the interest of the policyholders, cancel the registration of the company.

5. Where any moneys or securities held by the Commission as, or as part of, the deposit required to be made by the company under section 43, 120 or 142 are lost, stolen, destroyed or damaged while so deposited, the injury occasioned to all persons interested in the moneys or securities shall be made good out of moneys to be provided for the purpose by Parliament.

6. (1) A company may at any time substitute for any security or cash held by the Commission as, or as part of, the deposit required to be made under section 43, 120 or 142, any prescribed security, but so that the total amount then deposited is not less than the amount required by Part III or Part IV, and any security so substituted shall be subject to the same charge or liability as the security or cash withdrawn.

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

(b) upon making application for its securities

or cash, a company shall file with the Commission, in respect of all policies issued locally, a list of all policyholders who have not been so reinsured or who have not surrendered their policies and the company shall at the time publish, and continue the publication at least once a week for twelve consecutive weeks, in the Gazette and in at least one newspaper published in The Bahamas and approved by the Commission, a notice that he will apply to the Commission for the release of his securities and cash on a certain day not less than three months after the date on which the notice is first published in the Gazette and calling upon the policyholders opposing such release to file notice of their opposition with the Commission on or before the day so named;

- (c) after the day so named in the said notice, if the Commission is satisfied that the deposit of the company with it is substantially in excess of the requirements of Part III or Part IV, as the case may be, in respect of the continuing policyholders, it may release to the company such portion of the excess as it thinks proper in the circumstances, and shall continue to hold the remainder of the deposit for the protection of the continuing policyholders as provided for in Parts III and IV;
- (d) thereafter from time to time as such policies lapse, or proof is adduced that they have been satisfied, further amounts may be released on the authority aforesaid;
- (e) notwithstanding this paragraph, where the company is in liquidation the securities of such company may, on the order of any court having jurisdiction under this Act or the Companies Act be released by the Commission to the liquidator.

(3) Where the registration of a company which has not commenced to carry on insurance business in The Bahamas is cancelled pursuant to Part III or Part IV, the Commission shall refund to such company any moneys and deliver to it any securities, deposited by it pursuant to section 42, 120 or 142.

OBJECTS AND REASONS

This Bill seeks to replace the Insurance Act, 1969. The existing Act was the first major piece of legislation in The Bahamas which attempted to address the regulation of the domestic insurance market. During the years since passage of the existing Act, it has not been amended in any substantial way and has become increasingly out of date compared to legislation in other jurisdictions.

Part I

Preliminary

This Part defines the terms which are used throughout the Bill. These are quite extensive, with the goal of minimizing the need for redefining the same term throughout the Bill.

The Bill recognises that the regulation of certain activities and certain institutions may not be appropriate within the context of this legislation. Accordingly, this Part also sets out the activities and institutions to which the Bill is to apply.

Part II

Insurance Commission

This Part provides for an independent insurance Commission to be established as a body corporate. Along with the First Schedule it also addresses certain administrative matters in connection with the establishment of a Superintendent of Insurance who replaces the existing Registrar. It also establishes the powers and responsibilities of the Superintendent.

Part III

Regulation of Insurance Companies

This Part imposes registration requirements on insurers and intermediaries. It also imposes some general

restrictions and prohibitions on insurers, intermediaries, and others, including the requirement that insurers not engage in both life business and general business.

Later Parts impose more specific restrictions on the activities in which insurers and intermediaries engage.

This Part also imposes particular requirements on insurers. In particular, it addresses the following matters-

- (a) insurers are required to maintain a minimum degree of capital, as set out in regulations, with transitional provisions for existing insurers;
- (b) all new and existing insurers are required to apply for registration under the Bill, and an approval procedure is specified;
- (c) insurers must meet certain conditions to be eligible to be registered;
- (d) grounds are set out, and a procedure is established, with respect to cancellation of registration;
- (e) the Superintendent is empowered to impose restrictions on new business;
- (f) insurers are required to vest with the Superintendent certain deposits as set out in the regulations;
- (g) foreign insurers are required to vest assets in trust in The Bahamas, in a manner to be set out in regulations, sufficient to meet their liabilities;
- (h) insurers are required to adhere to the principles of sound and prudent insurance management business practice and investment and lending policies, and are further subject to certain specific restrictions;
- (i) borrowing and pledging restrictions are imposed on insurers;
- (j) specific accounting and administrative requirements are imposed on insurers including annual consolidated and unconsolidated financial statements and audit requirements;
- (k) for life insurance business, annual actuarial reviews are required;

- (l) the appointment of actuaries and auditors is required, and specific duties and responsibilities are imposed upon them;
- (m) restrictions are placed on the transfer of insurance business;
- (n) notification requirements are imposed in respect of various changes which may occur;
- (o) supervisory approval is required with respect to changes in control and ownership;
- (p) restrictions are imposed with respect to reinsurance with affiliated entities and additional restrictions may be imposed by regulations;
- (q) rules and procedures are set out with respect to winding-up and liquidation, and the priority of claimants is established;
- (r) insurers are required to maintain certain records and file certain returns; and
- (s) mutual insurers wishing to become stock insurers and stock insurers wishing to become mutual insurers must obtain the approval of the Superintendent.

Part IV

Regulation of Associations of Underwriters

This Part imposes particular requirements on Associations of Underwriters.

Part V

Regulation of Intermediaries

This Part imposes particular requirements on the manner in which intermediaries conduct their business. In particular, it addresses the following matters -

- (a) all new and existing intermediaries are required to apply for registration under the proposed Act, and an approval procedure is specified;
- (b) intermediaries must meet certain

conditions to be eligible to be registered;

- (c) grounds are set out, and a procedure is established, with respect to cancellation of registration;
- (d) notification requirements are imposed in respect of various changes which may occur;
- (e) supervisory approval is required with respect to changes in ownership and control;
- (f) in some circumstances, insurers are bound by the action of the intermediaries through which their products are distributed;
- (g) intermediaries are made personally liable for engaging in unauthorised activities;
- (h) certain business practices are restricted or prohibited; and
- (i) intermediaries are required to maintain certain records and file certain returns.

Part VI

Provisions Relating to Long-term Business

This Part imposes particular requirements on the manner in which insurers conduct their business. These include provisions relating to all long term insurance business and provisions relating to general insurance business.

In particular, it addresses the following matters -

- (a) all insurance business -
 - (i) premium rates must be approved by an actuary;
 - (ii) restrictions are imposed on payment of certain commissions,
 - (iii) the Superintendent is to approve policy forms;
 - (iv) policy documents are to be delivered to policyholders within a specified time, failing which no premiums are

- chargeable thereon;
 - (v) rules are imposed with respect to lapse and termination of policies;
 - (vi) minors are specifically made eligible for certain types of coverage;
 - (vii) a procedure is established for the replacement of lost policies;
 - (viii) policy proceeds are required to be paid within a specific time, failing which they are to bear interest at market rates from the date of the event pursuant to which they became payable;
 - (ix) unclaimed policy proceeds are to be forwarded to the Central Bank on a yearly basis; and
 - (x) structured settlements are specifically authorized.
- (b) all life insurance business -
- (i) policies and policy proceeds are exempted from claims of creditors;
 - (ii) applicants for insurance are required to disclose certain matters;
 - (iii) insurance policies must clearly disclose certain matters;
 - (iv) rules are imposed with respect to the designation of beneficiaries including the designation of irrevocable beneficiaries;
 - (v) rules are imposed with respect to paid-up policies, surrender values and the non-forfeiture of policies; and
 - (vi) provision is made for the transfer of certain policies upon death.
- (c) life insurance business -
- (i) disclosure in an insurance

- policy of the right to obtain dividends is required;
 - (ii) a beneficiary under a group policy is given the right to sue the insurer to enforce payment of entitlements; and
 - (iii) rules are imposed with respect to premium receipt books.
- (d) general insurance business -
- (i) policyholders are given the right to assign the benefits of a contract of insurance; and
 - (ii) third parties are given the right to embrace a claim against an insurer in certain circumstances.

Part VII
Provisions relating to
General Insurance Business

This Part imposes particular requirements on the manner in which insurers contract long-term insurance business.

In particular it addresses the following matters -

- (a) insurers are given the power to limit their liability in connection with motor vehicle insurance; and
- (b) the Minister is given the power to establish an insurance fund in certain circumstances.

Part VIII
Miscellaneous

This Part addresses various matters, including quarterly returns from insurers, anti-money laundering reports, the establishment and punishment of offences, and the application of the Married Women's Property Act.