



SAINT VINCENT AND THE GRENADINES

ACT NO. 13 OF 1998

I ASSENT

CHARLES J. ANTROBUS  
Governor-General  
15th December, 1998

[L.S.]

AN ACT to amend and restate the International Insurance Act, 1996.

[ By Proclamation ]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

PART I  
PRELIMINARY

1 This Act may be cited as the International Insurance (Amendment and Consolidation) Act, 1998 and shall come into force on such date as the Governor-General may by Proclamation appoint.

Short title and commencement

2. The International Insurance Act, 1996, is repealed

Repeal of International Insurance Act, 1996

3. (1) Nothing in the Insurance Act Cap. 103 shall be construed so as to apply to the regulation or licensing of persons carrying on exclusively "international insurance business", as such term is defined in this Act, or to any business carried on in or from within the State that is incidental to international insurance business

Limitation on Application of Insurance Act

(2) Nothing in this Act shall be construed so as to apply to the regulation and licensing of persons carrying on exclusively "domestic insurance business", as such term is defined in this Act.

(3) Except as provided herein, nothing in this Act shall be construed to limit the application of the Insurance Act in the regulation of domestic insurance business.

4. (1) In this Act unless the context requires otherwise

Definitions and interpretation

“Act” means the International Insurance (Amendment and Consolidation) Act. 1998;

“actuary” means

- (a) a person qualified as an actuary by examination of the Institute of Actuaries in England, the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, or
- (b) a person approved by the Authority as having actuarial knowledge or experience sufficient to act as an actuary under this Act;

“adjuster” means a person who, not being a lawyer acting in the usual course of his profession, a trustee of insured property or a person having an insurable interest in insured property, for compensation, directly or indirectly solicits the right to negotiate the settlement of a loss under a contract of insurance on behalf of the insured of the insurer, or holds himself out as an adjuster of losses or assessor of damages under contracts of insurance;

“affiliate” means a person controlling, controlled by, or under common control with, another person;

“annuity” means a contract that provides a periodic income at regular intervals for a specified period of time, such as a number of years or for life:

“auditor” means a person who

- (a) is a current member in good standing of and is qualified as an accountant by examination conducted by
  - (i) one of the institutes of Chartered Accountants in England, Wales, Ireland or Scotland.
  - (ii) the Association of Chartered Certified Accountants.
  - (iii) the Canadian Institute of Chartered Accountants. or
  - (iv) the American Institute of Certified Public Accountants;
- (b) is a Certified General Accountant in Canada. or

(c) possesses such other qualification in accountancy as an auditor as the Authority approves in writing, and is in good standing with respect to such qualification.

“Authority” means the Saint Vincent and the Grenadines Offshore Finance Authority established under section 3 of the Saint Vincent and the Grenadines Offshore Finance Authority Act, 1996;

“Class” and “Classes” refer to the classes of insurance licences set out in section 12 of this Act;

“certificate of authority” means a certificate issued by the Commissioner to evidence a license or other authorisation granted or conveyed under this Act.

“Commissioner” means the Commissioner of International Insurance appointed under section 5 or such other person as may be exercising its powers and discharging its duties under this Act including, where the context permits, the Deputy Commissioner of International Insurance;

“constituted” means

- (a) in the case of a company, incorporated and existing under the Companies Act, 1994 or under the International Business Companies Act, 1996.
- (b) in the case of a trust, settled by will or deed or established by agreement, which will, deed or agreement chooses the law of the State as the proper law thereof. or
- (c) in the case of a partnership, formed or established under or pursuant to the laws of the State;

“constitutional documents” means

- (a) in the case of a company, the articles of incorporation and by-laws, memorandum and articles of association, or other instrument of incorporation or registration.
- (b) in the case of a partnership, the agreement or other instrument by which the partnership is formed and governed.

(c) in the case of a trust, the trust deed, settlement, agreement or other instrument by which the trust is settled, organised or governed;

“contract” or “contract of insurance” includes any policy, annuity, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

“control” means the power to direct the management and policies of a person, directly or through one or more intermediaries, whether through the ownership of voting shares, by contract, or otherwise;

“court” means the High Court in the State;

“domestic insurance business” means insurance business where, whether the contract of insurance is made in the State or elsewhere, the subject matter of the contract is

(a) the life, safety, health, fidelity or insurable interest of a person who at the time of the making of the contract is or then intends to be ordinarily resident in the State or an entity organised and existing under any laws of the State other than the Offshore Finance Laws, or

(b) property that at the time of making of the contract is in, or in transit to or from, the State, or

(c) a vehicle, vessel, aircraft or other moveable property ordinarily and regularly based in the State;

“Confidentiality Act” means the Saint Vincent and the Grenadines Confidential Relationships Preservation (International Finance) Act, 1996, including any amendments [hereto and regulations promulgated thereunder];

“\$” or “dollars” means, for purposes of this Act only, the lawful currency of the United States of America;

“financial year”, in relation to an insurer, means the period not exceeding twelve months at the end of which the balance of the accounts is struck, and may be up to eighteen months; in the case of the first or last period or when the period is changed:

“general international insurance business” means international insurance business other than long-term international insurance business, and for the removal of doubt includes

- (a) credit life business, that is the business of effecting and carrying out contracts of insurance against risk of loss to persons arising from the non-payment of debts due to such persons by reason of the death of their debtors, being contracts that are-
  - (i) not contracts of domestic insurance business,
  - (ii) expressed to be in effect for a period of eight years or less, and
  - (iii) not either automatically renewable or convertible into contracts of insurance of any other kind or for any different period; and
- (b) employee group business, that is the business of effecting and carrying out contracts of insurance on the lives of employees of the insured or of an affiliate of the insured, being contracts that are
  - (i) not contracts of domestic insurance business,
  - (ii) expressed to be in effect for a period of eight years or less,
  - (iii) not either automatically renewable or convertible into contracts of insurance of any other kind or for any different period; and
  - (iv) made on a group basis;

“independent custodian” means a bank, brokerage company, merchant bank or other licensed financial institution located within or outside the State that is not an affiliate of the insurer maintaining or seeking to establish an account with that institution;

“Insurance Act” means the Saint Vincent and the Grenadines Insurance Act, Cap. 103, together with amendments thereto and any replacement thereof and regulations promulgated thereunder;

“insurance business” means the business of effecting and carrying out a contract

- (a) protecting a person against loss or liability for loss in respect of risks to which such person may be exposed, or
- (b) to pay a sum of money or money's worth or other thing of value upon the happening of an event specified in the contract, and includes re-insurance business and all pursuits and activities regulated under the Insurance Act;

“insurer” means, for the purposes of this Act, a person carrying on or intending to carry on some aspect of international insurance business other than those activities regulated under Part VI, which person is registered as the holder of a valid and subsisting licence to carry on such business under this Act or is exempt from holding such a licence by the terms of this Act or the regulations;

“international insurance agent” means a person (not being an insurer or a regular employee of an insurer) who with the authority of an insurer acts on its behalf in relation to any or all of the following matters, that is to say, the initiation and receipt of proposals, the issue of policies and the collection of premiums therefor, being proposals, policies and premiums relating to international insurance business;

“international insurance broker” means a person (not being an insurer or a regular employee of an insurer) who arranges or places international insurance business with insurers on behalf of prospective or existing policy-holders;

“international insurance business” means any insurance business that is not domestic insurance business;

“international insurance manager” means a person who (not being an insurer or a regular employee of an insurer) holds himself out as a manager or administrator in relation to one or more insurers to perform functions involving more than the custody of insurance business records or merely acting as a registered agent under the Registered Agent and Trustee Licensing Act, 1996;

“licence” means the authority to conduct international insurance business pursuant to Part III of this Act, and “licensee” means the person so authorised;

- “long-term **business fund**” means the fund described in section 23 (b) (i);
- “long-term international insurance business” means international insurance business of any of the following kinds which is not general international insurance business, namely -
- (a) effecting and carrying out contracts of international insurance on human life or contracts to pay annuities on human life;
  - (b) effecting and carrying out contracts of international insurance against risks of the persons insured
    - (i) sustaining injury as the result of an accident or of an accident of a specified class; or
    - (ii) dying as the result of an accident or of an accident of a specified class; or
    - (iii) becoming incapacitated or dying in consequence of disease or diseases of a specified class; or
  - (c) effecting and carrying out contracts of international insurance, whether by the issue of policies, bonds, endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable in the **future** to the persons insured, not being contracts otherwise falling within either paragraph (a) or (b);
- being contracts that are expressed to be in effect for a period of more than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the effective date thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;
- “minimum margin of solvency” has the meaning set forth in the regulations;
- “Minister” means the Minister for Finance;
- “net worth” means excess of assets over liabilities, or such other definition as may be prescribed by the regulations;

“Offshore Finance Laws” means the International Business Companies Act, 1996, the International Trusts Act, 1996, the Mutual Funds 1997 and The Mutual Funds (Amendment) Act 1998 and the International Banks Act, 1996, as each have been or may be amended from time to time, and regulations promulgated thereunder;

“person” includes an individual natural person, a mutual fund, a company, a partnership, a trust, or other legal entity recognised as such under the laws of another country or jurisdiction;

“policy” means a policy of insurance issued by an insurer to a policy-holder;

“policy-holder” means the person with whom an insurer has entered into a contract of insurance;

“prescribed” means prescribed by this Act or regulations made hereunder-;

“principal office” means the chief place of business maintained by an insurer and at which such insurer’s books and records are permanently kept;

“registered agent” means a person licensed to carry on the business of Offshore Representation under the Registered Agent and Trustee Licensing Act, 1996;

“regulations” or “the regulations” means statutory rules and orders and other regulations made from time to time under this Act; and

“State” means Saint Vincent and the Grenadines

(2) In this Act

(a) any reference to carrying on business in or from within the State includes reference to carrying on business outside the State from a fixed place of business within the State;

(b) every company incorporated under the laws of the State with the object and power to carry, on insurance business, shall, if carrying on international insurance business anywhere, be deemed to be carrying on international insurance business in or from within the State for the purposes of section 11(1);

- (c) "carrying on" business includes, without limitation, receiving premiums (other than as an independent custodian) and writing, or entering into contracts or policies of insurance; and
- (d) unless the context otherwise requires, any reference to carrying on international insurance business of any kind includes reference to carrying on one aspect, or some aspects, only of that business.

## PART II ADMINISTRATION

5. (1) The Authority shall appoint

- (a) a Commissioner of International Insurance, and
- (b) a Deputy Commissioner of International Insurance, both of whom shall be public officers; and
- (c) any other public officers as may be required for the administration of this Act.

Commissioner of  
International  
Insurance and  
staff

(2) The Commissioner in the exercise of powers conferred and the duties imposed upon him by this Act and the regulations, shall act under the instructions and supervision of the Authority.

(3) The Authority, or the Commissioner with the consent of the Authority, may delegate any of the powers or duties of the Commissioner to the Deputy Commissioner and thereupon this Act shall be read as if such delegated powers or duties were originally conferred or imposed on the Deputy Commissioner.

(4) The Commissioner, the Deputy Commissioner or any employee in the office of the Commissioner, shall not be interested, directly or indirectly

- (a) as a shareholder in or in association with any company that is licensed under this Act as an insurer; or
- (b) as a shareholder in or in association with a company or a partner in or in association with a partnership that is authorised under this Act to act as an insurance manager, agent or broker.

6. (1) The Commissioner shall --

- (a) have general supervision of the insurance business regulated under this Act:

Powers of the  
Commissioner.

- (b) ensure that the laws and regulations relating to the conduct of international insurance business are enforced and obeyed;
- (c) examine and report to the Authority from time to time on all matters connected- with international insurance business; and
- (d) co-ordinate his supervisory and regulatory responsibilities with those of the Registrar of Insurers **under the Insurance Act** and with any other inspectors appointed by the Minister pursuant to section 60 (1) of the Insurance Act.

(2) For the purpose of discharging his duties and in the exercise of his powers under this Act or the regulations, the Commissioner may require to be made and may take and receive affidavits and statutory declarations.

Access to books,  
records, etc

7. (1) Subject at all times to the provisions of the Confidentiality Act, the Commissioner shall, at all reasonable times, have access to and may take copies of all the books, securities, records and documents of any insurer, insurance manager, agent, adjuster or broker which relate directly or indirectly to the international insurance business conducted thereby, and any director, officer, agent or person in charge, possession, care, custody or control of any of such books, securities, records or documents who refuses or wilfully neglects to afford such access shall be guilty of an offence.

(2) The Commissioner may make an inquiry to any insurer, insurance manager, agent, adjuster or broker relating to the conduct of its international insurance business or its financial affairs and such insurer, insurance manager, agent or broker shall make prompt and explicit answer to the inquiry.

(3) Any insurer, insurance manager, agent, adjuster or broker who refuses or wilfully neglects to answer any inquiry made under this section is guilty of an offence.

Annual Report

8. The Commissioner shall on or before the 30th day of April in each year, in co-ordination with the Registrar of Insurers under the Insurance Act, prepare for the Authority an annual report showing an overall statement of affairs and statistics of all matters relating to international insurance business carried on and conducted in and from within the State during the preceding calendar year.

Registers to be  
kept by the  
Commissioner.

9. The Commissioner shall keep the following registers -

(1) a register of all licenses issued to insurers under this Act, in which shall appear —

- (a) the name of the insurer;
- (b) the address of the insurer's head office outside the State (if any);
- (c) the address of the insurer's principal office and other fixed offices in the State;
- (d) the name and address of the registered agent for the insurer;
- (e) the name and address of the international insurance manager for the insurer (if applicable);
- (f) a general description of the international insurance business and the Classes of insurance for which the insurer is licensed, noting any special restrictions on the use of such licence; and
- (g) any other information the Commissioner may consider necessary for the purposes of this Act;

(2) a register of all certificates of authority issued under this Act to —

- (a) insurance managers and agents, showing their names and addresses and the names and addresses of the insurers for whom they are authorised to act; and
- (b) insurance brokers and adjusters showing their names and addresses.

10. A certificate of authority issued under the hand and seal of office of the Commissioner that the person named therein is, or is not, licensed as an insurer or authorised as an insurance manager, agent or broker under this Act may be admitted in evidence as *prima facie* proof of the facts stated in such certificate.

**Proof of licence and certificate of authority**

### PART III LICENSING OF INSURERS

11. (1) Subject to the provisions of section 49, as from the commencement of this Act, no person may carry on any international insurance business from in or from within the State or through an entity organised or registered under the laws of the State unless such person holds a valid and subsisting licence under this Act to carry on the business as conducted by that person.

**Requirement to hold licence**

(2) A person who acts in contravention of sub-section (1) commits an offence.

Classes and  
requirements of  
licences

12. (1) A person intending to carry on an international insurance business in or from within the State may make application under this Act for one of the following Classes of licence which, if issued to the person as provided in this Act, shall allow that person to carry on the form of international insurance business described in such licence so long as such licence shall be in effect:

- (a) Class I Unrestricted Licence permits the insurer to carry on any international insurance business, including long-term international insurance business.
  - (b) Class II General Licence permits the insurer to carry on general international insurance business, but not long-term international insurance business.
  - (c) Class III Association Licence permits the insurer to carry on general international insurance business and long-term international insurance business, with two or more owners of the insurer, and their affiliates, and to carry on no more than thirty percent (30%) of its international insurance business (based on net premiums written) with persons who are not owners of the insurer or their affiliates.
  - (d) Class IV Group Licence permits the insurer to carry on any international insurance business, including long-term international business, with a single owner of that insurer and its affiliates, and employees of the owner or its affiliates.
  - (e) Class V Single Licence permits the insurer to carry on any international insurance business including long-term international insurance business, with the sole owner of the insurer, if a company. or with the beneficial owners of the Insurer. if a trust.
- (2) No person may directly, indirectly or through an affiliate—
- (a) hold a licence to carry on international insurance in more than one of the Classes described in subsection (1) unless approved by the Authority;
  - (b) hold any licence under this Act while that person holds a licence under the Insurance Act; or

- (c) conduct any insurance business that is not expressly permitted with respect to the Class of licence held by such person.

(3) Any person who violates subsection (2) shall be guilty of an offence.

(4) Each licence granted under this Act shall be a certificate of authority issued by the Commissioner, in the form set forth in the regulations and shall

- (a) specify the international insurance business, by reference to the Class set forth in subsection (1) to which the certificate of authority relates, that the insurer is authorised to carry on;
- (b) be subject at all times to the payment by the insurer of all fees prescribed by the regulations;
- (c) be subject to such additional terms, conditions, limitations or restrictions as the Commissioner, with the consent of the Authority, may include therein; and
- (d) expire on December 31 in each year but be renewable from year to year, or for such longer term as may be specified in regulations, upon application to and subject to the approval of the Commissioner and the payment of all renewal and annual fees prescribed in the regulations.

(5) A licence granted under this Act authorises and permits the insurer named therein to carry on all activities that are reasonably incidental to the carrying on of the Class of international insurance business for which such licence is granted so long as such activities are not inconsistent with this Act or the regulations or with the objects and terms stated in the constitutional documents of the insurer

13. (1) A person may be issued a Class I Unrestricted Licence where Eligibility for licence

- (a) it is a company or mutual company constituted under the laws of the State or a company or mutual company constituted in a country or jurisdiction that is approved by the Authority; and
- (b) it has at the time of its application for licence, or will have before it commences to carry on international insurance business, a net worth of at least \$200,000 and the minimum margin of solvency prescribed in the regulations

(2) A person may be issued a Class II General Licence where –

- (a) it is a company or mutual company formed under the laws of the State or a company or mutual company constituted in a country or jurisdiction that is approved by the Authority; and
- (b) it has at the time of its application for licence, or will have before it commences to carry on international insurance business, a net worth of at least \$100,000 and the minimum margin of solvency prescribed in the regulations.

(3) A person may be issued a Class III Association Licence where

- (a) it is a company or mutual company constituted under the laws of the State;
- (b) it has at the time of its application for licence, or will have before it commences to carry on international insurance business, a net worth of at least \$50,000 and the minimum margin of solvency prescribed in the regulations; and
- (c) it intends to or does carry on international insurance business not less than 70% of the net premiums written in respect of which will be written for the purpose of-
  - (i) insuring the risks of the owners of the insurer or affiliates of those owners; or
  - (ii) insuring risks which, in the opinion of the Commissioner, arise out of the business or operations of those owners or their affiliates.

(4) A person may be issued a Class IV Group Licence where

- (a) it is a company constituted under the International Business Companies Act, 1996;
- (b) it has at the time of its application for licence, or will have before it commences to carry on international insurance business, a net worth of at least \$25,000;
- (c) it is owned by a single company, trust or partnership, or directly by 15 or fewer individual natural persons who are in association in a common business enterprise, association, profession or professional undertaking; and

(d) it intends to carry on international insurance business consisting only of insuring the risks of the owners or writing annuities for the owners.

(5) A person may be issued a Class V Single Licence where --

(a) it is a company registered under the **International Business Companies Act, 1996** or is a trust registered under the **International Trusts Act, 1996**;

(b) it has at the time of its application for licence, or will have before it commences to carry on international insurance business, a net worth of at least \$10,000;

(c) it has a single owner, in the case of a company, or no more than **five** beneficiaries, in the case of a trust; and

(d) it intends to carry on international insurance business consisting only of insuring the risks of the owner of such company or the beneficiaries of such trust, as the case may be, or writing annuities for such persons.

(6) Subject to the terms of this section and of section 12, the Commissioner shall determine whether a person who has made application for licence under this section is entitled to be registered and to be issued a licence in Class I, II, III, IV or V.

14. An application for a licence under this Act shall be made in writing to the Commissioner in the form and containing information as may be prescribed in the regulations and in any event each such application shall be accompanied by --

Application for  
Licence

(a) the prescribed application fee; and

(b) any additional information as the Commissioner may reasonably require.

15. (1) The promoters of a person that is proposed to be formed to operate as an insurer hereunder may apply to the Commissioner for consent to license such person as an insurer in one of the Classes specified in section 12 upon being lawfully constituted in the State and meeting the net worth and minimum margin of solvency requirements specified in section 13 and the regulations.

Application for  
consent to license

(2) An application for consent under subsection (1) shall be in the form set out in the regulations and shall be accompanied by the application fees specified in the regulations.

(3) The consent of the Commissioner shall be in the form specified in the regulations and shall be valid for a period of three months from the date it is granted, subject to there being no change that the Commissioner deems material in any of the particulars contained in the original application for consent filed under subsection (1).

(4) Immediately after the Commissioner has granted his consent under section 15 the applicant shall pay the consent to license fees prescribed in the Regulations.

(5) The promoters of the proposed insurer may, prior to the expiry of the three months period referenced in subsection (3), apply to the Commissioner for renewal of the consent as for an additional consecutive three-month term, and the same may be granted by the Commissioner, in its discretion, subject to its receiving such additional documents as it may reasonably require in connection with the renewal and payment of the consent renewal fee prescribed in the regulations.

(6) Any consent granted or renewed under this section shall be void if the requirements of section 15 (1) and 15 (8) are not met by the person to whom the consent was issued within the time period allowed in this section.

(7) Any consent by the Commissioner for a person to operate as an insurer in Class I, II or III shall be granted only with the advice and approval of the Authority.

(8) Where the Commissioner has granted his consent to license under section 15 and such consent, or the renewal thereof, has not expired as provided in that section, the Commissioner shall grant a licence in respect of that consent upon presentation to him, by the promoters to whom the consent was granted of the following

- (a) satisfactory proof that the insurer as to which the consent was granted has been lawfully constituted in the State;
- (b) the registration fee, prescribed in the regulations;
- (c) satisfactory proof that the insurer has met the net worth and minimum margin of solvency requirements for the Class as to which the consent was granted; and
- (d) such other information as may be prescribed in the regulations.

(9) Where the Commissioner refuses to grant its consent under this section it shall not be bound to assign any reason therefor provided. any such refusal shall not preclude the promoters from making application under section 14 with respect to the proposed insurer.

16. (1) No Class I, Class II or Class III licence shall be granted under this Act to any person unless the Authority is satisfied that such person has or has available to it the knowledge and expertise necessary to carry on in a competent manner the type of international insurance business for which such licence is to be granted.

Insurance  
knowledge and  
appointment of  
insurance manager

(2) Each applicant for a Class I, Class II or Class III licence under this Act shall appoint an insurance manager holding a valid and subsisting licence under Part V of this Act to act as its international insurance manager in the State.

17. (1) No licence shall be granted to a person unless the minimum margin of solvency of that person at the time of application is equal to or greater than that required by the regulations, based upon premiums to be written by that person on account of the international insurance business for which it is, or is to be, issued a licence.

Minimum margin  
of solvency for  
Insurers

(2) Each insurer holding a licence under this Act shall maintain its minimum margin of solvency at the level, and in the form or deposit, prescribed or allowed in the regulations.

(3) The Authority may, on the recommendation of the Commissioner, require an insurer to increase its paid-up capital, reserve fund, or deposit, as the case may be, to such greater amount as the Commissioner may determine reasonable to meet the minimum margin of solvency applicable to such insurer based upon the nature and volume of international insurance business written or to be written by the insurer.

(4) A licence shall not be renewed under this Act unless the Commissioner is satisfied that such insurer has met and maintained, at all times during the preceding financial year, and is capable of maintaining in the year next following, the minimum margin of solvency applicable to it as prescribed in the regulations.

18. (1) The Commissioner if he is satisfied that an application under section 14 for the grant of a licence in Class IV or Class V, is complete and all the requirements for the grant of such licence are satisfied he may in his discretion grant the application and issue to the applicant the licence subject to such terms and conditions as he may deem necessary.

Granting and  
refusal of licence

(2) The Authority if it is satisfied that an application under section 14 for the grant of a licence is class I, class II or class III is complete and all the requirements for the grant of such licence are satisfied it may in its discretion approve the application and consent to the issuing of the licence by the Commissioner.

(3) A decision to refuse to grant a licence is final and is not subject to any appeal, and no reason for the refusal need be given.

Publication o f  
notice

19. The Authority shall, upon the issuance of a licence under this Act, forthwith give notice thereof in two successive issues of the **Gazette** and shall give the like notice when it cancels any such licence or receives notice that an insurer has ceased to carry on insurance business under the terms of a licence issued to an insurer.

Rem insurance with  
un licensed  
Insurance  
companies.

20. (1) Nothing in this Act shall prevent an insurer **from** reinsuring any insured risk or any portion thereof with any person carrying on business outside the State and not licensed under this Act; provided, in the case of insurers licensed under Class I, II and III, any such re-insurer shall at all times be acceptable to the Commissioner.

(2) Subject to the provisions of subsection (1), a person who only issues a policy of reinsurance to an insurer shall not be deemed to be carrying on an insurance business in the State under this Act or the Insurance Act.

Use of the word  
"insurance", etc

21. (1) A person who, without the prior written approval of the Authority or without a valid and subsisting licence to undertake international insurance business under this Act or to undertake insurance business under the Insurance Act -

- (a) uses or continues to use in the name, description or title under which it carries on business in or from within the State the words " insurance", "assurance", "indemnity", "guarantee", "underwriting", "re-insurance", "surety", "casualty" or any of their derivatives in English or in any other language, or any other word or phrase which in the opinion of the Authority implies insurance business; or
- (b) makes or continues to make, in any place in the world, any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any manner that he is carrying on international insurance business that is subject to regulation under this Act, commits an offence.

(2) Any person who constitutes a company, partnership, or trust under the laws of the State intending to submit an application for a licence under this Act shall not be guilty of an **offence** under this section unless it shall commence doing business through such company, partnership or trust prior to the issuance of a licence hereunder.

(3) Prior to granting its approval under subsection (1), the Authority may require of any person to provide to it such references and such information and particulars as may be prescribed.

(4) The Authority **may** revoke a licence granted under this Act to any person if such person carries on international insurance business, or acts as an insurance manager, an insurance broker or an insurance agent under a name which –

- (a) is identical with that of any other person, company, firm or business house whether within the State or not, or which so nearly resembles that name as to be calculated to deceive any person as to an affiliation which does not **exist**; or
- (b) is calculated to falsely suggest –
  - (i) the patronage of or connection with some person or authority whether within the State or not;
  - (ii) that such person has a special status in relation to or derived **from** the government of the State, or has the official backing of or acts on behalf of the said government or of any department official thereof or is **recognised** in the State as a national insurer, insurance broker, insurance agent or insurance manager; or
  - (ii) that the licensee is carrying on insurance business under a licence **different from** that which it has been granted as shown on the records maintained by the Commissioner.

#### PARTIV OPERATING AND REPORTING REQUIREMENTS FOR INSURERS

22. (1) Every insurer licensed under this Act shall at all times maintain the appointment of a registered agent in the State to act as the insurer's agent to accept on its behalf service of process in any legal proceedings and any notices to be served on such insurer.

G e n e r a l  
requirements for  
licensed insurers

(2) Every contract of international insurance business written by an insurer shall be subject to the jurisdiction of the courts of the State, notwithstanding any provision to the contrary contained in such contract or in any agreement supplemental or related to such contract.

(3) An insurer may only carry on international insurance business in accordance with and based upon the information contained in its original application for a licence, and an insurer shall forthwith **provide** notice to the Commissioner of any material change in such information. in the form provided in the regulations.

(4) Any change by an insurer in the nature of the business for which it holds a licence hereunder shall require the prior approval of the Commissioner, with the advice and consent of the Authority if such change involves insurance business undertaken or to be undertaken in Class I, Class II or Class III.

(5) Each insurer shall furnish annually to the Commissioner a certificate, at the time and in the form prescribed in the regulations, certifying among other matters that the insurer has not changed the nature of its insurance business and that there has been no material change in the information contained in the original application for a licence submitted by it, and such certificate shall be signed by the insurer and by the insurance manager for the insurer, if it has appointed one.

(6) Each insurer licensed in Class I, Class II or Class III shall prepare annual accounts in accordance with generally accepted accounting principles and audited by an independent auditor.

Requirements  
concerning  
certain long-term  
international  
business

23. Every insurer licensed under Class I and Class III which is carrying on long-term international business shall, in addition to the accounts required under section 22 (6), prepare annually an actuarial valuation of its assets and liabilities, certified by an actuary to be submitted to the Commissioner as proof of the solvency of the insurer, and in addition

- (a) every such insurer carrying on both long-term international business and general international business shall keep separate accounts in respect of each category of business;
- (b) in respect of funds received by it from its international insurance business,
  - (i) all funds received by any such insurer in respect of premiums written in connection with its long-term international business shall be placed in a separate, segregated fund maintained with an independent custodian; and
  - (ii) payment from the said long-term business fund shall not be made directly or indirectly for any purpose other than those relating directly to such insurer's long-term international business; provided that payments can be made for such other purpose out of any surplus disclosed on an actuarial valuation and certified by an actuary to be distributable otherwise than to policy-holders; and

(c) without limiting the application of Part V to such accounts, every such insurer may establish any number of separate accounts in respect of premiums paid to it to provide –

- (i) annuities on human life; and
- (ii) contracts of insurance on human life;

and such respective premiums shall be kept segregated one from the other and independent of all other funds of the insurer, and, notwithstanding the provisions of any other written law to the contrary, are not chargeable with any liability arising from any other insurance business or other business of that insurer.

24. (1) Each insurer who holds a licence under Class I shall furnish to the Commissioner within six months of the end of its financial year an annual return in the form prescribed in the regulations and including –

**Annual returns  
and fees**

- (a) a certificate of solvency and a certificate of compliance with insurance legislation in each country or jurisdiction where the insurer carries on its business, or some equivalent certificate of good-standing acceptable to the Commissioner;
- (b) written confirmation by the directors of the insurer that such certificate or equivalent document referred to in paragraph (a) embraces the said insurer's liabilities in respect of its international insurance business; and
- (c) if applicable, in respect of the said insurer's long-term international business, information concerning the investment of premium income received by the said insurer from such business.

(2) Each insurer who holds a licence under Class I or Class II shall furnish to the Commissioner within six months of the end of its financial year an annual return in the form prescribed in the regulations and including

- (a) an independent auditor's report showing that annual accounts have been prepared as required under section 22 (6) and whether or not the auditor's certificate for such accounts is qualified or unqualified;
- (b) if the said insurer is licensed under Class I and it carries on long-term international business, the actuarial valuation of its assets and liabilities, certified by an actuary, in accordance with section 23; and

- (c) if the said insurer is licensed under Class I and conducts long-term international business, such information as the Commissioner may require to establish that premium income received from such long-term business has been prudently invested.

(3) Every insurer who holds a licence under Class III shall furnish to the Commissioner within six months of the end of its financial year an annual return in the form prescribed in the regulations and including written confirmation from an independent auditor that annual accounts have been prepared as required under section 22 (6) and whether or not the auditor's certificate for such accounts is qualified or unqualified.

(4) No insurer who holds a licence under Class IV or V shall be obligated to prepare audited financial statements or to deliver financial statements to the Commissioner or to deliver any other information to the Commissioner on an annual basis except as may be set forth elsewhere in this Act or prescribed in the regulations.

(5) Every insurer licensed under this Act shall pay the annual fees prescribed in the regulations, and, failing the making of such payment as and when prescribed, the license held by such insurer shall be subject to revocation.

## PART V

### PROTECTED PREMIUM ACCOUNTS

Special definitions  
and application

25. (1) As used in this Part, and unless the context requires otherwise -

- (a) "creditor" means a person to whom an obligation is owed and includes any person who alleges or pursues a claim or cause of action in behalf of or in the name of a creditor;
- (b) "intent to defraud" means an intention of a policy-holder wilfully to defeat an obligation owed to a creditor;
- (c) "long-term premium" means any money, money's worth or property (including existing policies of insurance or annuities) that is paid or transferred to an insurer licensed under this Act as, or held by such insurer as security for payment of, a *bona fide* premium under a contract of long-term international insurance issued by that insurer. which premium is paid in connection with
- (i) an annuity on human life: or
  - (ii) contract of insurance on human life;

- (iii) a policy of insurance containing features of both (i) and (ii).
  - (d) “obligation” means an obligation or liability due to a specific creditor that existed on or before the date of a transfer of a long-term premium to a protected premium account and of which the policy-holder had actual knowledge or notice;
  - (e) “protected policy-holder” means, for purposes of this Part, a person who makes a contract with an insurer for a policy of long-term international insurance and who pays or is obligated under that contract or an associated contract or policy to pay a long-term premium; and
  - (f) “protected premium account” means an account or sub-account established by an insurer with an independent custodian to hold one or more long-term premiums paid or to be paid, or to secure payment to the insurer, which account is **from** or accounted for by the insurer separate **from** the general operating accounts of the insurer and **from** any protected premium accounts established for other unrelated policy-holders.
- (2) This Part applies to
- (a) any action or proceedings in any jurisdiction relating to the transfer or payment of money or other property, or the exchange of an existing policy, as a long-term premium payment to an insurer licensed hereunder in return for a contract or policy of long-term international insurance, whether the money or property so transferred has its *situs* within or outside the State after such transfer or disposition, so long as the transfer, payment or exchange of policies takes place after the commencement of this Act; and
  - (b) any action or proceeding by a creditor alleging fraudulent conveyance, fraud or a cause of action sounding in fraud against a protected policy-holder who has paid a long-term insurance premium to an insurer, and/or against the insurer to which or for whose benefit such premium was paid, to the exclusion of any other remedy, principle or rule of law of any jurisdiction, whether provided by statute or based on principles of equity or the common law

(3) For purposes of this Part, a premium shall be deemed paid when it is transferred to an international insurance agent or broker, under the terms of section 39, or when an existing contract or policy is exchanged in lieu of payment of a premium.

Actions against  
policy-holders or  
insurers

26. (1) No creditor of a protected policy-holder who has paid a long-term premium to an insurer may set aside or seek to set aside a transfer or payment of any long-term premium by the protected policy-holder to that insurer if such premium, less commissions charged or paid by or to the insurer, is placed in a protected premium account prior to or following such transfer unless it is determined, in a final order or judgement by the court, that the transfer or payment of the premium by the protected policy-holder was made with the principal intent to defraud that creditor.

(2) For purposes of this Part, the onus of proof of the protected policy-holder's intent to defraud a creditor lies on the creditor, and the required standard of proof in such a case is to prove that policy-holder's intent beyond a reasonable doubt.

(3) Notwithstanding anything to the contrary in this Act, no action or proceedings may be commenced in any jurisdiction to rescind, avoid, set aside or divert any payment of a long-term premium to which this Part applies later than one year after the date of transfer or payment of that premium, or later than one year after the date of transfer or payment of the first premium, if the contract or policy calls for payments in instalments.

(4) A policy-holder shall not have imputed to him any intent to defraud a creditor by reason that the policy-holder —

- (a) is an owner, director or officer of the insurer to which the protected premium was paid; or
- (b) the policy-holder is the settlor, trustee, protector or a beneficiary of a trust which is a beneficiary under the policy as to which a protected premium account is maintained.

(5) This section shall apply to actions, proceedings and arbitrations against protected policy-holders, beneficiaries of policies with protected policy-holders, insurers, and each of their officers, directors, employers and agents.

Nature and extent  
of protection

27. (1) So long as a protected premium account maintained under this Part is accounted for by the insurer separate from every other such account, and independent of all other funds of the insurer, and notwithstanding the provisions of any law or principle of common law or equity to the contrary, no protected premium account or the insurer which owns or establishes such account shall be chargeable with or liable for

- (a) any liability, obligation or loss arising from any general or other business of the insurer maintaining such account, or
- (b) the claims of any creditor or of any person, except as provided in this Part or expressly in the policy as to which such protected premium account is maintained, or
- (c) any liability, obligation or loss arising from or primarily relating to any other policy-holder of the insurer, whether that other policy-holder is entitled to the protections of this Part or not.

(2) Neither the cash, liquidation or residual value under any policy as to which a protected premium account is maintained, nor dividends or other income paid to, by or for any such account, shall be subject to any lien, charge, charging order, encumbrance, injunction, attachment or sequestration by any court except to the extent provided in a final order under section 26 ( 1).

(3) No residual interest of an insurer, or any interest of a beneficiary in or under a policy, or policy, to which this Part applies may be subject to any injunction, lien, charge, charging order, encumbrance, attachment or sequestration.

(4) No judgement or order issued by a court, tribunal, arbitral panel or government of any other country or jurisdiction which is contrary to this Part shall be enforceable or effective in the State or elsewhere.

(5) A long-term premium paid by or for an insurer into a protected premium account shall be conclusively presumed to be a premium payment for insurance, and no protected premium account shall be construed to be a trust account or give rise to any inference that the relationship between the policy-holder and the insurer is that of beneficiary and trustee, principal and agent, or broker and customer,

28. (1) A transfer of a long-term premium into a protected premium account may be rescinded or set aside only as provided in this Part and then only to the extent necessary to satisfy the actual obligation to the creditor at whose instance the transfer has been set aside.

Extent of  
avoidance of  
premium  
payment

(2) Other creditors of the protected policy-holder or the insurer shall not benefit or be entitled to any legal presumption from any judgement or order in favour of a creditor against that policy-holder or its insurer.

29. The Covetous and Fraudulent Conveyance Act, 27 Elizabeth 1 Ch. 4 (1584) and any statute based upon the principles thereof, whether in the law of insolvency, bankruptcy or otherwise, shall have no application to a payment of a long-term premium to a protected premium account.

Fraudulent  
Conveyance Act  
inapplicable

PART VI  
INTERNATIONAL INSURANCE MANAGERS,  
INTERMEDIARIES AND PROFESSIONALS

***General Provisions Applicable to International Insurance  
Managers and Intermediaries***

Certificate of  
Authority

30. (1) Except as provided in subsection (3) or in the regulations, no person shall, either on his own account or as an officer, member or representative of a company or partnership, act or offer to undertake to act, as an international insurance manager, agent, or broker in or from within the State unless such a person applies for and is granted a certificate of authority under this Act.

(2) A company or a partnership may apply for a certificate of authority in its name and shall designate one individual who has the insurance knowledge and expertise to act as its or their representative and the certificate of authority, if granted, shall be issued in the name of the company or the partnership and shall designate the name of its or their principal representative.

(3) Any person who contravenes subsection (1) is guilty of an offence.

Application for a  
certificate

31. (1) An application for a certificate of authority under section 30 shall be made to the Authority in the form prescribed in the regulations and accompanied by the prescribed fee.

(2) To the extent applicable, the application shall be endorsed in writing —

- (a) in the case of an international insurance manager by any insurer who has appointed, or who has expressed in writing the intent to appoint, that person as an international insurance manager pursuant to this Act;
- (b) in the case of an international insurance agent by any insurer with whom the agent has signed an agency agreement;
- (c) in the case of an international insurance broker by any insurer who has authorised him to place risks with it.

(3) The endorsement of the insurers required under subsection (2) shall be given by the insurer's president or managing director or other person duly authorised by the insurer.

32. (1) On receipt of the application and the prescribed fee in accordance with the requirements of section 30, the Authority may, upon the recommendation of the Commissioner and if it is satisfied that the application has the qualifications required to act in the capacity applied for, issue to the applicant a certificate of authority to undertake the activities for which application was made.

Issue of the Certificate

(2) The certificate of authority shall be in the form prescribed in the regulations and shall

- (a) be subject to the payment of the annual fee prescribed by the regulations;
- (b) be subject to any limitations, restrictions or conditions specified therein or that the Authority may, from time to time, see fit to impose; and
- (c) expire on December 31 in each year, but may be renewed on application to and subject to the approval of the Authority and payment of the prescribed fee.

33. (1) If the Authority, after due investigation, is of the opinion that an applicant is not for any reason a suitable person to receive a certificate of authority to act in the capacity applied for, it may, in its discretion, refuse to grant a certificate of authority to the applicant

Refusal to grant a certificate

(2) Where the Authority refuses to grant a certificate of authority to an applicant it shall not be bound to assign any reason therefor and his decision shall not be subject to appeal or review in any court.

34 (1) Where the Authority is of the opinion that the holder of a certificate of authority issued under this Part

Suspension or revocation of certificate

- (a) is carrying on the business in respect of which he holds the certificate of authority in a manner detrimental to the public interest of the State, or of the policy holder or principal as the case may be;
- (b) has contravened any of the provisions of this Act or regulations or any requirements of or conditions attached to the certificate of authority;
- (c) has ceased to carry on the business in respect of which the certificate of authority was issued;
- (d) has failed to pay over to an insurer, agent or an insured person entitled thereto any money he received or collected on the account of the business in respect of which the certificate of authority was issued;

- (e) has demonstrated incompetence or **untrust** worthiness, to undertake the duties and responsibilities of the capacity in which he is authorised to act, by reason of anything done or omitted in or about the business in respect of which the certificate of authority was issued.

The Authority may require that the holder of the certificate of authority forthwith take such steps as the Commissioner may deem necessary to rectify the matter and may forthwith suspend the certificate of authority pending the receipt of information or evidence that the matter has been rectified.

(2) Upon suspension of the certificate of authority the Commissioner shall immediately provide notice of the suspension to the holders of the certificate of authority.

(3) The Authority may revoke a certificate of authority upon the occurrence of any of the following:

- (a) the conviction of the holder of the certificate of authority or any person controlling the holding of the certificate of authority or any person controlling the holder of the certificate of authority of misrepresentation, fraud, deceit, dishonesty or any other crime involving moral turpitude;
- (b) The failure of the holder of the certificate of authority to rectify the matter causing the suspension of the certificate of authority within a reasonable time being not more than 60 days following the date of the suspension.

(4) The Authority shall before revoking the certificate of authority -

- (a) give the holder of the certificate of authority written notice of the grounds on which it intends to do so;
- (h) afford the holder of the certificate of authority opportunity to make a written objection within 30 days of the mailing of the notice; and
- (c) take any such objections into consideration

(5) Where the Authority has decided to revoke the certificate of authority it shall cause the document revoking the certificate of authority to be served on the holder of the certificate of authority.

(6) **Subject** to the provisions of subsection (7) the revocation of the certificate of authority takes effect on the expiration of 21 days commencing on the date of service on the holder of the certificate of authority of the document revoking the certificate of authority.

(7) An appeal lies to the Court by summons or on motion from a decision of the Commissioner or the Authority as the case may be to suspend or ~~revoke~~ a certificate of authority under this section.

(8) A person who acts or holds himself out to the public as an international insurance manager, agent or broker without holding a valid and subsisting certificate of authority under this Part or during the suspension of the same is guilty of an offence.

(9) No person whose certificate of authority has been revoked shall be granted another certificate to act in any capacity under this Act until the lapse of a period of three years after revocation.

#### ***International Insurance Managers***

35. A person authorised under this Act to act as an international insurance manager or any employee or associate thereof shall not directly or indirectly be interested as a shareholder in or a director, officer or employee of any insurer for which such person is authorised to act as its international insurance manager.

**Prohibited  
Interests**

36. (1) If it appears to the international insurance manager, or if such manager has knowledge or information that any insurer for which it acts as manager

**Reporting duties  
of international  
insurance  
managers**

- (a) is conducting its business in a manner that would expose such insurer to the risk of becoming insolvent;
- (b) is not complying with any of the provisions of this Act or the regulations;
- (c) has defaulted on the payment of any of its liabilities;
- (d) is experiencing a serious state of affairs that is or may be prejudicial to the interests of such insurer's policyholders or creditors;
- (e) is involved as a defendant in any criminal proceedings in any country or jurisdiction; or
- (f) has ceased to carry on business in or from within the State;

such manager shall forthwith report to the Commissioner giving particulars of relevant information and documents in its knowledge or possession.

(2) In reporting to the Commissioner in good faith and in discharge of its duties pursuant to subsection (1 j), no international insurance manager, nor any director, officer, member, agent or employee thereof, shall be liable to any action, suit or proceeding for or with respect to such reporting or to prosecution under the Confidentiality Act.

Notice of  
intention to  
terminate  
management  
agreement

37. In the case of management of insurers licensed under Class I or Class II, where either the international insurance manager or such insurer intends to terminate their management agreement, the international insurance manager and the insurer each shall give to the Commissioner written notice of such intended termination and the reasons therefor at least thirty days prior to the date on which the termination is to take effect.

***International Insurance Agents and Brokers***

Evidence of  
agency agreement  
and security

38. (1) Every international insurance agent or broker shall, before the grant of a certificate of authority to it, deliver to the Commissioner -

- (a) in the case of an international insurance agent, evidence satisfactory to the Commissioner of an agency agreement entered into with the insurer who endorsed the agent's application for a certificate of authority;
- (b) in the case of an international insurance broker any form or type of security acceptable to the Authority; and
- (c) a list of all insurers which have authorised the agent or the broker to act on their behalf.

(2) Every international insurance agent or broker

- (a) shall notify the Commissioner in writing of any change in the list of insurers required in paragraph (c) of subsection (1) within ten days from the date they have knowledge of such change;
- (b) who fails to comply with the provision of paragraph (a) is guilty of an offence.

Agent or broker  
receiving  
premium deemed  
agent of insurer  
and trustee of  
premium.

39. (1) Without limiting the provisions of Part V, an international insurance agent or broker shall, for the purpose of receiving any premium, be deemed to be agent of the insurer and the payment received by the agent or the broker is deemed payment to the insurer notwithstanding any conditions or stipulations to the contrary.

(2) Without limiting the provisions of Part V, an international insurance agent or broker who acts in negotiating, renewing or continuing a contract of insurance with an insurer licensed under this Act, and who receives any premium from any person for such a contract is deemed to hold such premium in trust for the insurer.

(3) If the international insurance agent or broker fails to pay the premium it received pursuant to subsection (2) over to the insurer on demand, its failure shall be deemed *prima facie* evidence that it has committed a breach of trust.

### **Approved Auditors and Actuaries**

40. (1) Every approved auditor or actuary shall make an immediate report to the Commissioner where –

Reporting duties  
and exclusion of  
liability

- (a) he becomes aware during the performance of his duties that an insurer for whom he acts –
  - (i) is experiencing a financial state of affairs of a serious nature that may cause a breach of the minimum margin of solvency applicable to such insurer as prescribed by the regulations;
  - (ii) is not maintaining its long-term business fund with sufficient assets to meet its long-term business liabilities;
  - (iii) is not complying with any material provisions of this Act or the regulations or any condition attached to its licence, which could result in the insolvency of the insurer;
  - (iv) has defaulted in the payment of any of its liabilities to the extent the same could result in the insolvency of the insurer;
- (b) he forms a view of the affairs or any aspect of the affairs of the insurer which cause him to add a qualification or adverse notes to any of his reports or certificates required to be submitted by, the insurer or the auditor or actuary under the provisions of this Act or the regulations:
- (c) the insurer terminates his appointment or otherwise ceases to hold such appointment, giving the reasons therefor; or
- (d) he resigns before the expiration of his term of office or appointment or he decides not to seek re-appointment, giving the reasons therefor.

(2) Any report made in good faith to the Commissioner by the approved auditor or actuary in compliance with the requirements of subsection (1) shall not constitute a breach of confidentiality or trust in respect of any person or a violation of the Confidentiality Act, and no liability shall be incurred and no suit, action or proceeding shall lie against the approved auditor or actuary or any partner, director, officer, member, agent or employee thereof in respect of such report.

(3) This section has effect notwithstanding any provision in any enactment, any rule of law, or any agreement, condition or stipulation to the contrary.

**Annual returns  
and fees**

41. (1) Every licensed international insurance agent, broker or manager shall furnish to the Commissioner within six months of the end of each of the calendar year the following returns in respect of its international insurance business --

- (a) confirmation in writing of the names and addresses of the insurers for which the agent, broker or manager acts;  
**and**
- (b) confirmation in writing that the information set out in the application for the said agent's, broker's or manager's certificate of authority, as modified by subsequent notifications of changes in such information, remains correct and gives a full and fair picture of its business.

(2) Each holder of a certificate of authority issued pursuant to part VI of this Act shall pay annual fees to the Commissioner in connection with the renewal of such certificate. as prescribed in the regulations.

(3) The Commissioner may prescribe additions, deletions or modifications of the returns required to be made by agents, brokers and managers under this section.

**PART VII  
POWERS OF THE STATE**

**Preservation of  
secrecy**

42. (1) Except for the purpose of the performance of statutory duties under this Act or when lawfully required to do so by any court of competent jurisdiction within the State or under the provisions of any law of the State, neither the Minister, the Authority, the Commissioner, the Deputy Commissioner, nor any person acting under its or their authority shall disclose any information which it has acquired in the performance of its duties or the exercise of its commercial activities under this Act relating to any application by any person under the provisions of this Act or to the affairs of a licensee or of any policy-holder of a licensee, or the holder of a valid certificate of authority.

(2) This section is not intended to limit in any way the duties imposed, or the qualifications and exemptions available under the Confidentiality Act.

**Powers of the  
Authority in the  
case of suspected  
Insolvency. etc**

43. (1) Where the Authority is of the opinion that any licensee or holder of a certificate of authority under this Act is or may be

- (a) carrying on business in a manner likely to be detrimental to the public interest or to the interest of its policy-holders or principals; or
- (b) acting in contravention of the terms of its licence, certificate of authority or if this Act,

it may require such licensee to submit to the Commissioner information that is relevant to such opinion and/or take immediate steps to rectify the matter.

(3) When the Authority, having received a report on any licensee under sections 36, is of the opinion that it is detrimental to the public interest or to the interests of its policy-holders that the licensee should continue to carry on business, it may, without compensation or liability to the licensee, revoke the relevant licence.

(4j) The Commissioner shall cause notice of the suspension or revocation of licences under this section to be sent to the registered agent for the insurer and to be published in the *Gazette*.

44. (1) Without limiting the provisions of Part V, in any case where the Authority has suspended a licence under section 43 (2) or revoked a licence under section 43 (3), the Authority may apply *ex parte* to the court for an order that the assets, books or papers of the licensee be preserved, not moved or otherwise disposed of and the court may, if it is satisfied that such assets, books or papers are liable to be moved, destroyed or otherwise disposed of make an order that they shall be preserved, and not moved or otherwise disposed of until a further order of that court.

Preservation of assets, etc

(2) Where an order has been made by the court under paragraph (1), the licensee may apply to the court at any time within fourteen days after it has notice of the same for the discharge of such order, and the court may thereupon discharge, vary or confirm the order.

45. (1) An appeal shall lie to the court by summons or on motion against any order of the Authority to suspend a licence under section 43 (2) or to revoke a licence under section 43 (3), such appeal to be lodged within fourteen days of the date the decision of the Authority is published in the *Gazette*.

Appeal

(2) An appeal under this section shall not operate as a stay of any decision by the Authority.

46. (1) A person who for any purpose knowingly makes any false representation in connection with a right, duty, or obligation under this Act commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and to imprisonment for a term not exceeding two years and in the case of a corporate body to a fine not exceeding ten thousand dollars.

Offences and penalties

(2) A person who by act or omission contravenes any requirement of this Act for which no specific penalty is provided commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding one year and in the case of a corporate body to a fine not exceeding five thousand dollars.

(3) Any person who causes or solicits a person to enter into, or to make application to enter into, a contract of insurance with a person who is not a licensed insurer under this Act, but whose activities are governed by this Act, is guilty of an offence under this Act.

#### PART VIII GENERAL PROVISIONS

Regulations

47. (1) The Minister may make regulations generally for carrying out the provisions of this Act and without prejudice to the generality of the foregoing may, in particular, make regulations

(a) exempting any person, business or class or persons or business from any provision of this Act;

(b) prescribing —

(i) the forms to be used;

(ii) the format for any returns to be made under this Act;

(iii) capital and liquidity margins and ratios to be maintained by licensees; and

(iv) anything by this Act that is required or allowed to be prescribed.

(2) The Minister may make changes to the applications or forms prescribed in the regulations deemed necessary by the Authority to the proper administration of the Act.

(3) All regulations and changes in applications or forms made under this section shall be published in the *Gazette*.

Exchange  
Control and tax  
exemptions

48. (1) Notwithstanding any provision or rule of law in the State to the contrary —

(a) an insurer which holds a valid and subsisting licence in any Class under this Act shall not be subject, while such licence is in effect, to any corporate tax, income tax, withholding tax, capital gains tax or other like taxes based upon or measured by assets or income originating outside the State or in connection with matters of administration or management which may occur or be performed in whole or in part in or from within the State; and

- (b) for purposes' of this section, but without limiting the provisions of section 4 (2) no insurer which holds a valid and subsisting licence under this Act shall be considered to be doing business in the State solely because it engages in one or more of the following activities -
- (i) maintaining one or more bank, trust or securities accounts in the State;
  - (ii) holding meetings of directors, agents, investors or policy-holders in the State;
  - (ii) maintaining corporate or financial records in the State;
  - (iv) maintaining one or more administrative or managerial offices in the State with respect to assets or activities outside the State;
  - (v) maintaining a registered agent or registered office in the State; or
  - (vi) investing in stocks, bonds or investments issued by the State or by entities doing business in the State or being a partner in a partnership existing under the laws of the State or a beneficiary of a trust or estate which has the State as its situ.

(2) No estate, inheritance, succession or gift tax, rate, duty, levy or other similar charge is payable by persons who are not persons ordinarily resident or domiciled in the State with respect to any proceeds or receipts from any policy issued by an insurer licensed hereunder at the time the policy was issued.

(3) Notwithstanding any provision of the Stamp Act to the contrary -

- (a) all instruments relating to transfers of any property to or by an insurer licensed hereunder;
- (b) all instruments relating in any way to the assets or activities of an insurer licensed hereunder; and
- (c) all instruments relating in any way to policies issued by an insurer licensed hereunder;

are exempt from the payment of stamp duty

(4) Any premium payment, policy benefit, dividend or distribution by an insurer licensed hereunder to individuals, trusts or other entities which are not ordinarily resident in the State shall be exempt from any tax or withholding provisions of State law which would otherwise be applicable to the recipient or the payer of the dividend or distribution.

(5) An insurer to which this Act applies shall not be subject to the provisions of the Exchange Control Act Cap 322 or to any order or regulation made thereunder, or to any other exchange or currency control legislation or regulations of the State or applicable to the State from time to time.

(6) The Commissioner may, under the name and authority of the Minister, issue a certificate of tax exemption guaranteeing that the provisions of this section shall apply for a minimum of twenty-five years from the date of such certificate.

Transitional

49. (1) Subject to subsection (2), any person who at the date of the coming into force of this Act is carrying on in or from within the State international insurance business of any kind or acting as an international insurance manager, agent or broker shall, within one year of such date, comply with the provisions of this Act and make application to the Authority for a licence hereunder.

(2) Any person described in subsection (1) who would qualify for registration in Class IV or Class V based on the provisions of section 13 of this Act shall, within one year of the date of coming into force of this Act, comply with all of the requirements of this Act relating to insurers in Class IV or Class V, as the case may be, and applicable to such insurers, but such person shall not be required to make application for a licence in respect of the international insurance business conducted by it as at such date until two years following such date.

(3) Notwithstanding the transitional provisions as to compliance and licensing contained in this section, any person carrying on international insurance business on the date of coming into force of this Act shall, at the end of the calendar year in which such date falls, pay to the Commissioner the annual fees required of insurers in the Class applicable to such person.

(4) Any determination by a person of the class of insurer applicable to it shall be subject to review by the Commissioner, who shall,

for purposes of this section, be authorised to make assessments of fees and determination of compliance based on a different class than that claimed by the person.

Passed in the House of Assembly this 24th day of September, 1998.

J. THERESA ADAMS  
Clerk of the House of Assembly

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