



# INSURANCE (AMENDMENT) BILL, 2009

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## INSURANCE (AMENDMENT) BILL, 2009

### A BILL FOR AN ACT TO AMEND THE INSURANCE ACT

Enacted by the Parliament of The Bahamas

**1. Short title and commencement.**

- (1) This Act, which amends the Insurance Act (*Act No. 16 of 2005*), may be cited as the Insurance (Amendment) Act, 2009.
- (2) This Act shall come into force on such date as the Minister may appoint by notice, published in the Gazette.

**2. Amends section 2 of the principal Act.**

Section 2 of the principal Act is amended by inserting, in the appropriate alphabetical position, the following —

““**associate**” means, in relation to a person —

- (a) the person's husband, wife, child or stepchild;
- (b) any person who is an employee or partner of that person;
- (c) any company of which he is a director;
- (d) where the person is a body corporate, any director or employee of the body corporate, any subsidiary of the body corporate, and any director or employee of such a subsidiary; and
- (e) where the person concerned is a body corporate any other body corporate, with whom the person has an agreement or

arrangement to act together in exercising voting power in relation to the person.”.

**3. Amends section 8 of the principal Act.**

Section 8 of the principal Act is amended —

- (a) in subsection (2)(m), by deleting the full stop and substituting therefor a semi-colon; and
- (b) by inserting immediately after paragraph (2)(m), the following new paragraph (n) —
  - “(n) delegate any of its powers as it sees fit.”.

**4. Amends section 10 of the principal Act.**

Section 10(b) of the principal Act is amended by deleting the words “a percentage” immediately after the words “,fines and” and substituting therefor the words “twenty-five percent”.

**5. Amends section 25 of the principal Act.**

Section 25 of the principal Act is amended by deleting subsection (4) and substituting therefor the following —

- “(4) No company shall be registered as a mutual company unless it has a minimum excess of assets over liabilities of not less than that required for companies with paid-up share capital.”.

**6. Amends section 30 of the principal Act.**

Section 30 (5) of the principal Act is amended by inserting immediately after the words “branch office” , the words “in another jurisdiction”.

**7. Amends section 34 of the principal Act.**

Section 34 of the principal Act is amended by deleting subsection (3) and substituting therefor the following —

- “(3) Cancellation of registration by the Commission for a particular class of business shall prevent the company from accepting any new or renewal policies in respect of that class of business but such cancellation shall not relieve the company of its responsibility for complying with the requirements of this Act as may be required to discharge its liabilities in respect of the class of business.”.

**8. Inserts new section 64A into the principal Act.**

The principal Act is amended by inserting, immediately after section 64, of the following new section 64A —

“64(A).Control over registered Company.

- (1) Any person that proposes to take control of, or increase his interest in a registered insurance company or intermediary shall obtain the prior approval of the Commission, in writing.
- (2) Any person who, without any conscious action on his part acquires control of a registered insurance company or intermediary shall notify the Commission before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.
- (3) A person who is under the duty to notify the Commission imposed by subsection (1) shall also give notice to the Commission on acquiring or increasing the control in question.
- (4) A person who fails to comply with the requirements in subsections (1), (2) and (3) commits an offence and the Commission may declare the transaction null and void.
- (5) For the purposes of this section, a person (“the acquirer”) acquires control over a registered company (“A”) on first falling within any of the cases in subsection (6).
- (6) The cases referred to in subsection (5) are where the acquirer —
  - (a) holds 51% or more of the shares in A;
  - (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
  - (c) holds 51% or more of the shares in a parent undertaking (“P”) of A;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
  - (e) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A;
  - (f) is able to exercise significant influence over the management of A by virtue of its voting power in A;

- (g) is entitled to exercise, or control the exercise of 50% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (7) In subsection (6), “the acquirer” means —
- (a) the acquirer;
  - (b) any of the acquirer’s associates; or
  - (c) the acquirer and any of his associates.
- (8) For the purpose of this section, each of the following is to be regarded as a kind of control —
- (a) control arising as a result of the holding of shares in A;
  - (b) control arising as a result of the holding of shares in P;
  - (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in A;
  - (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.
- (9) On being notified pursuant to subsections (1), (2) and (3), the Commission, after due consideration, may approve the acquisition of control with or without conditions, or alternatively it may refuse approval on the grounds that —
- (a) the acquirer is not a fit and proper person to have control over the registered insurer or intermediary; and
  - (b) the interests of consumers would be threatened by the acquirer’s control or by his acquiring that control.
- (10) The Policies and procedures for the notification by the acquirer and any approval and refusal of the Commission shall be in such manner as may be prescribed by the Commission.”.

**9. Amends section 58 of the principal Act.**

Section 58 ( of the principal Act is amended by deleting subsection (4) and substituting therefor the following —

“(2) Every company shall publish its balance-sheet and other statements in a manner to be prescribed.”.

**10. Inserts new sections 75A to 75E into the principal Act.**

The principal Act is amended by inserting, immediately after section 75, of the following new sections 75A, 75B, 75C, 75D, and 75E —

“75A. Appointment of Administrator, proceedings etc.

- (1) The Commission may appoint an Administrator who shall seize the management and control of a company or any part of the insurance business of the company in any of the following circumstances —
  - (a) the capital and the value of the assets of the company have, in the opinion of the Commission, reached a level or are eroding in a manner that may detrimentally affect its policyholders or creditors, with no reasonable prospects of timely restoration of such capital and value;
  - (b) the realizable value of the assets of the company, in the opinion of the Commission, is not sufficient to give adequate protection to the policyholders and creditors of the company, or is less than its liabilities, or the company’s financial condition suggests that it will shortly be in that circumstance;
  - (c) the company has failed to pay its liabilities or, in the opinion of the Commission, is likely to be unable to meet its liabilities and other obligations as they mature or become due;
  - (d) the business of the company is being conducted in a manner detrimental to its policyholders and creditors or is not being conducted in accordance with this Act;
  - (e) the company has refused to submit to audit or examination of its records by the Commission;
  - (f) the licence of the company has been revoked or limited under this Act;
  - (g) any asset appearing on the books or records of the company or held under its administration is not, in the opinion of the Commission, satisfactorily accounted for;
  - (h) where in the opinion of the Commission, any state of affairs exists in respect of the company that may be materially prejudicial to the interests of the policyholders or creditors of the company or of the owners of any assets under the administration of the company, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in The Bahamas or elsewhere in respect of the financial holding company or other holding body corporate of the company;

- (i) where in the opinion of the Commission, the company, intermediary or a person with respect to a company —
  - (i) is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business of the company, or
  - (ii) is pursuing, or is about to pursue any course of conduct that is an unsafe or unsound practice in conducting the business of the company.
- (2) For the purposes of this Act, the person appointed as Administrator shall be referred to as the Statutory Administrator.
- (3) Notice of the appointment of a Statutory Administrator by the Commission shall forthwith be published in the Gazette or in any other manner as may be prescribed by the Commission.
- (4) The Commission shall have the power to revoke any appointment made under this section at any time upon written notice to the person so appointed, and that person forthwith shall cease to act as Statutory Administrator, and the Commission may elect to carry out such functions on their own behalf or appoint a successor to act as Statutory Administrator.

75B. Proceedings after Appointment of Administrator.

- (1) Within ninety days after the appointment of the Statutory Administrator under this Act, the Statutory Administrator shall make an application to the Supreme Court —
  - (a) for an order for the compulsory winding-up of the company if the Statutory Administrator determines that there is no reasonable prospect for the return of the company to financial soundness through re-organisation or otherwise;
  - (b) for an order that the company or any part of the insurance business of the company be placed under judicial management under section 77 (1)(b) of this Act; or
  - (c) for approval of a plan of re-organisation of the company developed under section 75D and submitted with the application if the Commission determines that

there is a reasonable prospect of restoring the company to financial soundness through such re-organisation.

- (2) In proceedings under subsection (1) in respect of a company, the Supreme Court may order —
  - (a) the compulsory winding-up of the company;
  - (b) that the company or any part of the insurance business of the company be placed under judicial management under section 77 (1)(b) of this Act; or
  - (c) the re-organisation of the company pursuant to the plan of re-organisation with such changes and subject to such terms and conditions as the Supreme Court may determine; or
  - (d) the return of the management and control of the company to its shareholders, directors and officers, subject to such safeguards or conditions, if any, as the Supreme Court may consider necessary for the purposes of this Act.
- (3) The Commission shall, immediately after it makes an application under subsection (1) in relation to a company, give notice of the application to —
  - (a) the directors and shareholders of the company or the principal representative of a foreign company; and
  - (b) the policyholders and other creditors of the company.

75C. Powers of Administrator after appointment.

- (1) The Statutory Administrator shall have the exclusive power to manage and control the affairs of the company.
- (2) Without limiting its powers under subsection (1), the Statutory Administrator may, in respect of the company —
  - (a) continue or discontinue the company's operations;
  - (b) stop or limit the payment of the company's obligations;
  - (c) employ staff to participate in the operations or control of the company;
  - (d) execute any instrument in the company's name;
  - (e) initiate, defend and conduct in the company's name any action or proceeding to which the company is or might be a party;

- (f) take such steps as may be necessary to protect the assets of the company, including any assets in The Bahamas of the foreign insurance company of which a foreign company is a branch that were under the control of the principal representative of the foreign company;
- (g) end the seizure of the licensee by restoring it to its directors and shareholders.

75D. Re-organisation.

- (1) Where the Statutory Administrator considers it feasible to restore the company to financial soundness, he shall develop a plan of re-organisation for the company.
- (2) Without limiting the generality of subsection (1), the plan of re-organisation may provide for the Statutory Administrator to carry out or cause the company to carry out —
  - (a) a transaction or series of transactions to achieve one or more of the following —
    - (i) an increase in the capital or assets in The Bahamas of the company;
    - (ii) the issue of shares or the sale of all or part of the outstanding shares in the company;
    - (iii) reconstitution of the board of directors or appointment of new officers of the company, including the principal representative of a foreign company;
    - (iv) the amalgamation of the company with any other company operating under the provisions of this Act;
    - (v) the sale or other disposition of all or part of the assets of the company or the assumption of all or part of its liabilities, or both;
    - (vi) the sale or other disposition of all or part of the insurance business of a local company or the insurance business in The Bahamas of a foreign company; and
  - (b) any other transaction or series of transactions the purposes of which is to re-organise a substantial part of the business of the company.

- (3) Where the Supreme Court has ordered a re-organisation under paragraph 75B(2)(c), the Statutory Administrator shall deliver a copy of the re-organisation plan of each of the policyholders and other creditors of the company who under the plan would not receive full restitution or payment of their claims.
- (4) The copy of the re-organisation plan must be accompanied by a notice requiring that objections to the plan be delivered to the Statutory Administrator not later than thirty days after the last of the copies have been delivered under subsection (3).
- (5) If within the time provided under subsection (4) the Statutory Administrator does not receive any objections in writing to the re-organisation from at least twenty percent of the policyholders of the company, the Administrator may carry out the re-organisation plan referred to in subsection (1).
- (6) When an objection to the re-organisation plan is received from twenty percent or more of the policyholders the Statutory Administrator shall submit further re-organisation plans in like manner until such time as fewer than fifteen percent of the policyholders object within the time provided under subsection (4), or it may refer the matter back at any time to the Supreme Court for further directions.
- (7) The Supreme Court may extend the time limit imposed by subsection (4), and upon cause shown may exempt the Statutory Administrator from delivering the plan to some or all of the persons mentioned in subsection (3).

75E. Inability of execution.

If, in the course of the re-organisation of a company, it appears to the Statutory Administrator that circumstances render the plan of re-organisation or its execution undesirable, the Statutory Administrator may apply to the Supreme Court for an order —

- (a) to modify the plan;
- (b) to wind-up the company compulsorily.”

**11. Amends section 77 of the principal Act.**

Section 77 (1) of the principal Act is amended, in the chapeau, by deleting the words “, by reason of the conclusion arrived at by it as a result of an investigation under section 71 in respect of any company;” immediately after the words “the Commission”.

**12. Repeals and replaces section 207 of the principal Act.**

Section 207 of the principal Act is repealed and replaced by the following —

“207. Anti-money laundering returns.

(1) Every registered insurance company to which the Financial Transactions Reporting Act (*Ch. 368*) applies shall —

- (a) ensure that adequate policies and procedures are in place to comply with Anti-Money Laundering (AML) and the Combating of Financing of Terrorism (CFT) laws and obligations;
- (b) establish on-going training programs to ensure that employees and agents are kept informed of new money laundering and financing of terrorism techniques, methods and trends;
- (c) establish proper screening procedures to ensure high ethical and technical standards when hiring employees or appointing agents;
- (d) ensure that its overseas branches or subsidiaries also have appropriate AML/CFT policies and procedures in place; and
- (e) 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 and the combating of the financing of terrorism, pursuant to the Financial Transactions Reporting Act (*Ch.368*).

(2) A copy of the report required in paragraph (e) above shall be forwarded to the Commission within four months of the end of the financial year.”.

### OBJECTS AND REASONS

This Bill seeks to empower the Commission to more effectively fulfil its oversight functions with regard to insurance companies, and to establish measures to ensure international best practices in combating money laundering.

Clause 1 of the Bill deals with the preliminary provision.

Clause 2 of the Bill defines the word and expression “associate”.

Clause 3 of the Bill seeks to empower the Commission to delegate its powers as it sees fit.

Clause 4 of the Bill seeks to enhance the funding capacity of the Commission in order to more effectively carry out its functions.

Clause 5 of the Bill seeks to require mutual companies, which have no share capital to have as a condition of registration, financial strength that is the same as required for a stock company.

Clause 6 of the Bill seeks to remedy the ambiguity that the word “branch” might convey.

Clause 7 of the Bill ensures that the cancellation of the licence for a particular class of business does not relieve the company from having to make adequate provisions for any outstanding liabilities.

Clause 8 of the Bill seeks to ensure, among other things, that the Insurance Commission is able to exercise greater control or monitoring of changes in the beneficial ownership of a parent or holding company of a registered insurance company or intermediary.

Clause 9 of the Bill seeks to give an insurance company the option of the medium of publication of its balance-sheet and audited accounts.

Clause 10 of the Bill provides for five new provisions (sections 75A, 75B, 75C, 75D and 75E dealing with the appointment of an Administrator, his powers and matters connected thereto.

Clause 11 of the Bill seeks to remove the limitation on the ability of the Commission to petition for winding-up or the appointment of a Judicial Manager after a report under section 71 has been submitted.

Clause 12 of the Bill seeks to ensure that a company undertakes full compliance with the FATF Recommendations on Anti-Money Laundering (AML) and the Combating of the Financing of Terrorism (CFT).