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THE EXTERNAL INSURANCE ACT, 2009

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THE EXTERNAL INSURANCE ACT, 2009

A BILL FOR AN ACT TO REVISE THE LAW REGULATING THE CARRYING ON OF EXTERNAL INSURANCE BUSINESS FROM WITHIN THE BAHAMAS

Enacted by the Parliament of The Bahamas

PART I

PRELIMINARY

1. Short title.

- (1) This Act may be cited as the External Insurance Act, 2009.
- (2) This Act shall come into operation on such day as the Minister, may by notice published in the Gazette appoint.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
“**accountant**” or “**auditor**” means —
 - (a) a person who is a member of the Bahamas Institute of Chartered Accountants who holds a practicing certificate from the Institute;
 - (b) a person recognised by the Commission as being suitably qualified to act as an auditor by reason of his knowledge and experience; or

- (c) a person who for the time being is authorised by the Commission under section 53 to be appointed as an auditor or accountant for the purposes of this Act.

“actuary” means a person who satisfies the Commission that he is a fellow of a professional body of actuaries that is internationally recognised;

“affiliate” means a company which—

- (a) stands in relation to another company by reason of their membership in common of an affiliated group;
- (b) stands in relation to another company by reason of their participation or the participation of their affiliates, as defined at (a) above, in a joint venture in which the participants will share revenue or profits; or
- (c) is, in relation to another company, a member of the same group of companies by virtue of common ownership or control;

“affiliated group” means one or more chains of companies connected through ownership with a common parent;

“annuity” means a policy under which an insurer assumes the obligation to make, after the expiration of a certain period or during a specified period, a payment or a series of periodic payments to a particular person, in exchange for a premium or series of premiums paid to the insurer;

“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.

“beneficiary” means the person named in a life insurance policy, or as notified in writing to the life insurance company and noted

in its records from time to time, to receive the insurance proceeds upon the death of the policyholder or upon the maturity of an endowment;

“body corporate” means any body corporate including a body corporate constituted under the law of a country or territory outside The Bahamas;

“carry on external insurance business” and its derivatives, includes —

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

“class of insurance business” means any class of insurance business as determined by regulations;

“company” means body corporate;

“court” means any court of The Bahamas of competent jurisdiction;

“the Commission” means the Insurance Commission of The Bahamas established under section 4 of the Insurance Act (*No. 16 of 2005*);

“external insurer” means a company carrying on external insurance business;

“external insurance broker” means a company licensed under this Act (not being an external insurer) who, for commission or

other compensation brings together, with a view to external insurance business, persons seeking insurance or reinsurance and insurance or reinsurance undertakings, carries out work preparatory to the conclusion of contracts of insurance or reinsurance, and where appropriate, assists in the administration and performance of such contracts;

“external insurance business” means insurance business where the risk is located outside The Bahamas;

“financial year” means, in relation to Licensee, the period not exceeding 53 weeks at the end of which the balance of the Licensees accounts is struck, or if no such balance is struck or if a period in excess of 53 weeks is employed, then a calendar year except that, in the case of a new Licensee commencing business, the commission may upon application, allow an extension;

“general insurance business” means the classes of insurance business other than long term insurance business as determined by regulations;

“insurance” includes “reinsurance” unless the context requires otherwise;

“insurance business” means the business of effecting and carrying out contracts of general insurance business, long term insurance business and any other form of insurance business and including but not limited to —

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay to a person a sum of money or other thing of value upon the happening of an insurable event, and includes running-off insurance business including the settlement of claims;

“insurance manager” means a person that provides or holds himself out as providing insurance management services to one or more persons;

“insurance management services” includes the provision of accounting, administrative, brokerage, underwriting, and claims processing services in respect of external insurance business;

- “insured”** means the person named on or in a policy, certificate or contract of insurance;
- “liabilities”** include liabilities to policyholders by way of claims including incurred-but-not-reported claims, reserves for unearned premiums, and reserves for re-insurance receivables due but not paid;
- “licence”** and its cognates means a licence to carry on external insurance business from within The Bahamas granted under this Act;
- “licensee”** means the holder of a valid licence and any person whose licence has been suspended or revoked by the Commission;
- “life insurance policy”** means a contract of life insurance in accordance with the definitions set out in the regulations;
- “long term insurance business”** means the classes of insurance business other than general insurance business as determined by Regulations;
- “magistrate”** means a magistrate appointed under the Magistrates Act (*Ch.*) and includes a Justice of the Peace lawfully exercising the jurisdiction of a magistrate;
- “Minister”** means the Minister responsible for Insurance(excluding National Insurance);
- “mutual insurance company”** means a company which has no share capital whose management is directed by a board elected by the participating policyholders and which issues participating insurance policies to policyholders who may thereby be owners of the company to the extent provided in the articles of the said company;
- “net premium income”** means the premium income less any premiums or other considerations paid by the Licensee for reinsurance;
- “oath”** and **“affidavit”** include, in the case of persons allowed or required by law to affirm instead of swearing, affirmation; and **“swear”** in the like case include affirm;
- “overseas regulatory authority”** means an authority which, in a country or territory outside The Bahamas, exercises functions corresponding to any functions of the Commission or the Superintendent;

“person” includes any public body and any body of persons, corporate or unincorporated, and this definition shall apply notwithstanding that the word “person” occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;

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

“power” includes any privilege, authority and discretion;

“prescribed” means prescribed by this Act or any regulation made under this Act;

“premium income” means the aggregate of premiums derived during the financial year from the issuance of contracts of insurance;

“resident representative” means a licensee’s management company or such individual as the Commission approves for the purpose of managing the business of a licensee;

“restricted external insurer” means an external insurer that only underwrites the risks of—

- (a) its members, subsidiaries and affiliates;
- (b) reinsureds, not being members, subsidiaries and affiliates, who acknowledge in writing that they know and accept that the external insurer is a restricted external insurer;
- (c) such other persons as the Commission may approve;

“superintendent” means the Superintendent of Insurance appointed pursuant to the provisions of the First Schedule of the Insurance Act (*No. 16 of 2005*);

“underwriting manager” means a company incorporated in The Bahamas prior to the coming into force of this Act and which, operating in or from within The Bahamas as manager or consultant (but not as *bona fide* employee) provides underwriting and insurance expertise for one or more external insurers;

“unrestricted external insurer” means an external insurer that is not a restricted external insurer;

“variable insurance business” means insurance business, under a policy or contract, in respect of which the benefits payable under the policy are to be determined wholly or partly —

- (a) according to the investment experience of a separate account or accounts owned and maintained by the licensee in respect of that policy or class of policy, separate and apart from the general account of the licensee and insulated from the claims of the licensee involved as provided herein;
 - (b) by reference to the value of or income from property of any description allocated in the general accounts of the licensee in respect of that policy or class of policy whether specified in that policy; or
 - (c) by reference to fluctuations in or in an index of, the value of property of any description, whether specified in the policy, and includes variable life insurance business and variable annuity business.
- (2) An auditor, actuary or accountant shall not be considered to be an independent auditor, actuary or accountant for the purposes of this Act if he is an employee or an officer of the respective licensee or owns any financial interest in the business of that licensee.

3. Exemption of Licensed External Insurer from Insurance.

An external insurer licensed under this Act, shall not, in respect of external insurance business carried on by him, be subject to any of the provisions of the Insurance Act (*No. 16 of 2005*).

PART II

LICENSING OF EXTERNAL INSURANCE COMPANIES

4. Licensing requirements.

- (1) No person shall carry on external insurance business from within The Bahamas, nor hold himself out as carrying on external insurance business from within The Bahamas, without a licence issued under this Act.

- (2) No licence may be issued under this Act to a person other than a company that satisfies the following requirements —
 - (a) it is incorporated in and under the laws of The Bahamas;
 - (b) its objects and activities include carrying on external insurance business in The Bahamas;
 - (c) its business plan is acceptable to the Commission;
 - (d) it will be beneficially owned, controlled and managed by persons who the Commission determines to be fit and proper;
 - (e) its Memorandum and Articles of Association are acceptable to the Commission;
 - (f) its paid-up capital or, in the case of a mutual insurance company approved by the Commission, the aggregate of its contributed reserves and subordinated capital accord with requirements prescribed from time to time;
 - (g) its business plan and financial projections have been reviewed by an independent accountant and an independent actuary, if requested by the Commission, each of whom shall certify the feasibility of the plan and the projection from his own perspective;
 - (h) it provides, if it is incorporated under the Companies Act, a statement from the Central Bank of The Bahamas to the effect that it is regarded as a non-resident Company for the purpose of the Exchange Control Regulations Act; and
 - (i) it provides, if it is incorporated under the International Business Company Act, its Certificate of Incorporation with its application.
- (3) In determining whether a person is a fit and proper person for the purpose of this Act, the Commission shall consider whether he is a person —
 - (a) who, whether in The Bahamas or elsewhere —
 - (i) has not been convicted of an offence involving dishonesty; or
 - (ii) is not an undischarged bankrupt;
 - (b) who, in the Commission's opinion is a person of sound probity, is able to exercise competence, diligence and sound judgement in fulfilling his responsibilities in relation to insurance business, and whose relationship with an insurance

company will not threaten the interest of policyholders; and for the purposes of this paragraph, the Commission shall have regard to his employment record and also any evidence that he has —

- (i) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper which reflect discredit to his method of conducting business; and
 - (ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty; incompetence or malpractice by persons concerned in the provision of insurance, investment or other financial services or in the management of companies or due to bankruptcy.
- (4) Subsection (2) notwithstanding, the Commission may issue a licence to a company incorporated outside The Bahamas that satisfies the following requirements —
- (a) it is lawfully constituted in accordance with the laws of the country in which it is incorporated;
 - (b) it is duly authorised and licensed under the laws of the country in which it is incorporated or any other country, to undertake insurance business and has undertaken insurance business in that country for a period satisfactory to the Commission and is subject to regulations in its country of domicile under a regime which in the Commission's opinion is at least as comparable to that in The Bahamas;
 - (c) the business plan and corporate instruments of the company are acceptable to the Commission;
 - (d) the capital of the company accords with the requirements prescribed from time to time; and
 - (e) it satisfies the Commission that the relevant overseas regulatory authority having primary jurisdiction over it has been informed of, and has no objection to, or at the Commission's discretion has not responded within three months of being informed of its application for a licence.
- (5) No applicant may be granted a licence under a name, or using a trade name or mark that in the opinion of the Commission may mislead or confuse persons for whom the proposed licensee intends

to provide its services or the general public inside or outside The Bahamas.

5. Participation.

A licensee may participate in the ownership of another licensee under this or any other Act.

6. Application.

Notwithstanding any other legislation, no company may be incorporated in and under the laws of The Bahamas for the purpose of carrying on external insurance business in The Bahamas unless its incorporation has been approved by the Commission.

7. Contents of application.

An applicant wishing to obtain a licence under this Act shall apply to the Commission in the form prescribed, pay the prescribed fee and shall provide the Commission with such documentation and information as may be prescribed or required by the Commission.

8. Issue or refusal of a licence.

- (1) When the Commission is satisfied that it is proper to do so, it may approve or refuse a licence under this Act.
- (2) Where the Commission proposes to refuse a licence, or refuse a licence in respect of one or more of the classes of insurance business for which the application is made, it shall notify the applicant in writing of its reasons and shall notify it of its rights of appeal.
- (3) On refusal of a licence the applicant is not entitled to repayment of the application fee.

9. Type of licence.

Upon approval of an application for a licence and on payment of the relevant fee —

- (a) the Commission shall license a company as either a restricted or unrestricted external insurer;
- (b) the Commission shall effect the licensing of the applicant in accordance with that approval in a register kept for that

purpose and issue to the applicant a certificate in evidence of such licensing; and

- (c) the register referred to in paragraph (b) shall contain, in respect of each external insurer, such documents and other information as may be prescribed.

10. Conditions of licence.

- (1) On issuing a licence under this Act, the Commission shall specify the class or classes of insurance business in which the licensee may engage, and whether the licensee has been licensed as a restricted or un-restricted external insurer.
- (2) On issuing a licence under this Act, the Commission may attach any such other conditions as it deems necessary to the issue and continuance of a licence.
- (3) Notwithstanding any conditions imposed pursuant to subsection (2), it shall be a condition of a licence approved under this Act, and breach of which shall render the licence liable to revocation in accordance with section 12, that the licensee will not, without the prior approval in writing of the Commission —
 - (a) enter into a merger or consolidation;
 - (b) transfer, other than in the ordinary course of its business including a transfer by way of re-insurance, the whole or any part of its assets or liabilities;
 - (c) charge the whole or any part of its assets except as provided for under subsection (6);
 - (d) issue, transfer, or allow the transfer of any shares to any person who was not named as a shareholder in the application for a licence or any amendment to the application, except in the case where the issue or transfer is to a person who immediately after the issue or transfer will own shares with a book value equal to ten percent or less of the aggregate book value of the total outstanding shares of the licensee;
 - (e) change its name from that set out in the licence or adopt a business name or trade mark not previously approved by the Commission;
 - (f) engage in a class of insurance business other than that specified in its licence;
 - (g) alter its articles of incorporation;

- (h) appoint a person as director or officer who was not named as a director or officer in the application; and
 - (i) make any other material change in the information supplied in the application for the licence.
- (4) It shall not be a condition of a licence issued under this Act that the licensee commences business within a specific period of time; and a licensee shall not be struck off the register of companies or incur a penalty or sanction for not commencing business within a specified period of time, notwithstanding any other enactment to the contrary.
- (5) Subsection (3)(b) does not apply where the licensee has filed documents specifying procedures which in the opinion of the commission are satisfactory for effecting the full discharge of any claims and losses including incurred but not reported losses, unearned premiums and liabilities to policyholders or similar creditors.
- (6) Subsection (3)(c) does not apply —
 - (a) where the charge is by way of letters of credit acceptable to the Commission issued to secure the insurance or reinsurance obligations of the Licensee;
 - (b) where the amount of the charge does not exceed the excess of surplus over the minimum capital and surplus required to meet the statutory and solvency margin required by the Commission to be maintained as a condition of the licence and, if none, then as required by law; and
 - (c) where pledges, mortgages or other encumbrances of assets held in accounts segregated under this or any other Act.
- (7) Where a transfer under this section is effected pursuant to subsection (5), the licensee shall as soon as possible thereafter notify the commission.
- (8) In respect of a licensee engaged in variable insurance business, it shall be a condition of the licence that the licensee comply with licensing and reporting provisions prescribed by regulation.
- (9) The Commission may at any time by regulation, add to, vary or delete any condition imposed under this section.

11. Validity of licence.

A licence issued under this Act remains valid until revoked or suspended under this Act.

12. Revocation or suspension of licence.

- (1) The Commission may revoke or suspend a licence if the licensee —
 - (a) fails to pay the prescribed annual renewal fee;
 - (b) fails to comply with a condition of its licence;
 - (c) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act;
 - (d) is carrying on insurance business outside The Bahamas and loses its licence to carry on insurance business in that other jurisdiction, or commits an offence under the laws of that other jurisdiction;
 - (e) appears to the Commission to be carrying on business in a financially hazardous condition or in a manner likely to be detrimental to the public interest or to the interest of its creditors or policyholders;
 - (f) ceases to carry on external insurance business under its licence; or
 - (g) becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved.
- (2) The Commission may by notice in writing addressed to the licensee direct the licensee to remedy, to the extent this is possible, any breach of this Act within the time specified in such notice.
- (3) Where the licensee fails to comply with the Commission's directions given under subsection (2) above, the Commission may suspend a licence for a period not exceeding 90 days, in accordance with the procedure for doing so provided by this Act.
- (4) Where the Commission intends to revoke or suspend a licence, it is its duty to give the licensee notice of its intention to do so, together with its reasons, and to give the licensee a reasonable opportunity to show cause why the licence should not be revoked or suspended, as the case may be.
- (5) Subject to subsection (4) above the Commission shall give the licensee 30 days notice, in writing, of its intention to suspend or revoke a licence.

- (6) Notwithstanding anything contained in this section to the contrary, where the Commission having received a report upon a licensee, made pursuant to section (42), and is of the opinion that it is detrimental to the public interest that the licensee should continue to carry on business, it may suspend or revoke the licence pursuant to the provisions for doing so provided by this Act.

13. Appeal on suspension or revocation of licence.

- (1) A person who is aggrieved by the proposed suspension or revocation of a licence by the Commission may, within thirty days of the giving of the notice of suspension under section 12, appeal against that proposed suspension or revocation to the Supreme Court in accordance with the Rules of Court.
- (2) The Commission may pending the determination of an appeal under subsection (1), suspend the operation of any suspension or revocation of a licence in relation to the existing business of the Licensee.
- (3) Where the Commission suspends or revokes a licence and there is no appeal, or where there is an appeal that is disallowed, notice of suspension or revocation must be published in the official Gazette and in a daily newspaper published and circulated in The Bahamas.

14. Effect of suspension or revocation of a licence.

- (1) Notwithstanding the suspension or revocation of a licence —
 - (a) it shall be lawful for the licensee to continue to carry on business relating to policies issued before the date on which it is notified of the suspension or revocation, hereinafter in this section referred to as “the date of notification” and it shall continue to carry on such business, and be subject to the supervision of the Commission, unless the Commission is satisfied that the licensee has made suitable arrangements for its obligations under those policies to be met; and
 - (b) it shall not be lawful for the licensee, after the date of notification, to issue any new policy or to enter into any new contract in relation to which a licence under this Act is required and which prior to the suspension or revocation the licensee held.

- (2) Nothing in paragraph (a) of subsection (1) shall be taken as authorising the renewal, after the date of notification, of any policy issued before that date; and where any such policy is renewed after that date the licensee shall be regarded as having issued a new policy in contravention of paragraph (b) of subsection (1).
- (3) Any person who contravenes subsection (1) is guilty of an offence.

15. Effect of suspension or revocation of a company.

The provisions of section fourteen above shall apply with any necessary modification in relation to a company that was carrying on external insurance business in The Bahamas immediately before the commencement of this Act and whose application for a licence is refused, as they apply to any subsequent licensee whose licence has been suspended or revoked.

16. Service of documents.

- (1) Before carrying on external insurance business from within The Bahamas, a licensee shall deposit with the Commission a certificate setting out the address of the licensee's registered office and the name and the address of a resident representative, appointed pursuant to section 17, in The Bahamas acceptable to the Commission as a person on whom documents relating to the licensee are to be delivered or served.
- (2) Notwithstanding any other enactment, any notice, instrument or other document or legal process to be delivered to or served on a licensee may be delivered or served by leaving the same, or sending it through the post in a prepaid letter, addressed to the licensee at its registered office or, if the same is outside The Bahamas, at the address of the resident representatives of the licensee.
- (3) If the registered office or resident representative cannot reasonably be found or is not open to business during normal office hours, the notice, instrument, document or legal process may be delivered or served by leaving it at the office of the Commission, which must publish that fact in the Official Gazette and in a daily newspaper published and circulated in The Bahamas.

17. Resident representative.

- (1) Subject to section 16(1) every licensee shall appoint a resident representative for the purpose of this Act and shall maintain at the

offices of the resident representative such books and records pertaining to its business as may be prescribed from time to time.

- (2) Within 30 days from the date of an appointment under subsection (1), and subject to section 16(1) a licensee shall submit in writing to the Commission the name, address and terms of appointment of its resident representative, and licensee shall give thirty days prior written notice to the Commission of the particulars of any change.
- (3) No licensee may terminate the appointment of its resident representative; and no resident representative may cease to act as such unless the licensee or the resident representative gives thirty days written notice to the Commission of the intention to do so.
- (4) A licensee or resident representative that fails to comply with the provisions of this section is guilty of an offence.

18. Resident representative to report certain events.

- (1) It is the duty of the resident representative within fourteen days of —
 - (a) becoming aware that there is a likelihood of the licensee for which such acts being unable to pay its debts; or
 - (b) becoming aware or having reason to believe that an event to which this section applies has occurred,to report in writing to the Commission all the particulars that are available to him on the matter, and to send a copy of that report to the licensee's auditor.
- (2) The resident representatives' duties under this section applies to the following events —
 - (a) compliance with the solvency criteria prescribed by section 31;
 - (b) compliance with any other requirements of this Act;
 - (c) the licensee ceasing to carry on business under its licence; or
 - (d) the licensee's final adjudicated violation of applicable insurance or securities laws in other jurisdictions, or any adjudication of fraudulent conduct.
- (3) A resident representative that fails to discharge the duty imposed by subsection (1) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars..

19. Notice to resident representative.

The resident representative —

- (a) shall be notified by the Licensee of all meetings of shareholders and directors;
- (b) may inspect corporate records of the Licensee; and
- (c) shall be notified by the licensee of any governmental claims of violation of insurance or securities laws in other jurisdictions, or adjudication of fraudulent conduct.

20. Restriction on use of words with insurance business.

After the expiration of six months from the commencement of this Act, any person who without the approval of the Commission or not being associated with a licensee under this Act —

- (a) uses or continues to use the words “underwriter”, “insurance”, “reinsurance”, “indemnity”, “casualty”, or any other word which represents or conveys the impression that such person carries on external insurance business in or from within The Bahamas; or
- (b) uses, makes or continues to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any manner whatsoever that he is carrying on external insurance business, shall be guilty of an offence.

21. Transitional.

Unless otherwise stated in this Act, with respect to a company carrying on external insurance business in The Bahamas immediately prior to the coming into force of this Act, the period of time within which such company shall comply with this Act, the regulations or any portion thereof, shall be twelve months or such longer period of time as the Commission may designate.

PART III
FINANCIAL OBLIGATIONS

22. Capital requirements.

- (1) A licence may be issued to an unrestricted external insurer where that company has a minimum fully paid-up capital, capital surplus, and subordinated capital or contributed reserve fund of at least such amount as may be prescribed or approved, by the Commission.
- (2) A licence may be issued to a restricted external insurer where that company has a minimum paid-up capital or contributed reserve fund, as may be approved by the Commission.
- (3) Paid-up capital or contributed reserves may be in the form of cash or such assets and in such amount as the Commission approves.

23. Additional financial requirements of licenced external insurers.

- (1) In respect of all external insurance business, the Commission may prescribe that a licensee shall maintain in cash, short-term securities, or other easily realisable investments, funds adequate for prompt payment of claims save that, notwithstanding such prescription, the amount so required at any material time of a licensee shall not exceed forty per centum of the annual total net premium income of the licensee.
- (2) In respect of Licensees other than restricted external insurers, the Commission may prescribe that a licensee shall not make investments of a specified class without the prior written approval of the Commission.
- (3) Where restrictions are imposed pursuant to subsection (2) the Commission may require the licensee to realise investments of that class within such period as may be prescribed.

24. Financial statement.

- (1) Not later than four months after the close of the financial year of a licensee, or such longer period as the Commission allows, the licensee shall submit to the Commission one copy of its audited financial statements in a form that complies with international

accounting standards, or any other such standard determined by the Commission, together with such other related information as may be prescribed.

- (2) The financial statements referred to in subsection (1) shall be audited by an independent auditor approved by the Commission.
- (3) The financial statements and any other related Information submitted to the Commission under subsection (1) shall be accompanied by the independent auditor's report in accordance with international accounting standards or in such form as the Commission may prescribe.
- (4) A licensee shall, in addition, if requested by the Commission, submit to the Commission a certificate of an actuary approved by the Commission, stating that the licensee's reserves are adequate to meet its liabilities.
- (5) A licensee shall submit to the Commission, together with the documents required by this section, a certificate of the independent auditor stating whether in his opinion —
 - (a) the statutory books and records of the licensee have been kept properly, accurately, up-to-date and in accordance with applicable laws;
 - (b) the licensee has complied with the solvency criteria prescribed by section 31 at the balance sheet date and with such other requirements as may be prescribed; and
 - (c) the licensee has complied with the reporting and other relevant provisions of the anti-money laundering and counter terrorism financing legislation.
- (6) A licensee whose outstanding claims, including those claims that are incurred but that are not reported to the licensee, exceed two hundred per cent of its capital and surplus accounts shall submit to the Commission an annual review of those claims given by an actuary approved by the Commission.
- (7) A licensee that is a company incorporated outside The Bahamas, shall within four months of the end of its financial year furnish to the Commission a certificate issued by the overseas regulatory authority in the country in which it is incorporated, or any other country where it is authorised and licensed to undertake insurance business, to the effect that the licensee is complying with all the

applicable insurance supervisory requirements of that overseas regulatory authority.

25. Separation of funds.

- (1) A licensee carrying on variable insurance business may establish any number of separate accounts in respect of the respective premiums paid to it to provide insurance coverage consistent with the licensee's external insurance business and with respect to the increment of value resulting from the investment and reinvestment of the same.
- (2) Such respective premiums and increments in value referred to in subsection (1) shall be credited to a separate account which shall be kept separate one from the other separate accounts and independent of all other funds and the general account of the licensee.
- (3) Notwithstanding any other law to the contrary, separate accounts referred to in subsection (1) are not chargeable with any liability arising from any other business of the licensee or arising from any activity carried out by the licensee in relation to any other separate account.
- (4) Separate accounts referred to in subsections (1) and (2) shall not be included in the calculation of the minimum share capital of the licensee but shall nevertheless be deemed property of the licensee.
- (5) Notwithstanding any law to the contrary, where any person shall die leaving a policy of insurance issued on his life or the life of another by a licensee, the said insurance and any proceeds thereof shall inure exclusively to the benefit of the person or persons for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of any creditor of the policyholder, or the insured, or estate of the foregoing, and of any beneficiary (or other claimant other than a beneficiary under the policy) or the estate of any beneficiary under the policy.
- (6) Notwithstanding any law to the contrary, where any person shall acquire an annuity contract issued by a licensed external insurer of which he or any foundation founded by him or any other person is the annuitant or beneficiary and he or a trust settled on him or foundation is the owner, the said annuity contract and the proceeds thereof including periodic or non-periodic payments or any refund on death shall inure to the benefits solely of the person or persons for whose use and benefit all such annuity benefits are allocated

under the contract and all the foregoing shall be exempt from the claims of any creditor of the policyholder, annuitant or beneficiary of the annuity contract or any creditor of the estate of the policyholder, annuitant or any beneficiary as provided herein.

- (7) Notwithstanding any law to the contrary, unless the insurance policy or annuity contract was effected for the benefit of such creditor, the cash surrender value of and the death benefit payable under any life insurance policies and proceeds of annuity contracts issued by a licensee shall not be liable to attachment, garnishment or legal process in favor of any creditor of the policyholder, his estate, the insured, and of any beneficiary under the policy or beneficiaries' estate or of any trust or foundation which the benefit of any trust or foundation which is the policyholder of a life insurance policy or an annuity contract issued by a licensee.
- (8) Life insurance policies and annuity contracts issued by a licensee, by their terms subject to cancellation or redemption by the policyholder thereof shall not be subject to cancellation or redemption during any period during which the owner is acting under duress imposed by any lawful authority or otherwise other than lawful authority in The Bahamas. Any licensee acting under the authority of this subsection (8) shall be indemnified out of policy proceeds and exonerated by the policyholder for so doing.
- (9) In the case where a surrender or partial surrender payment, or a policy proceeds payment, or an annuity payment is made by an external insurer carrying on long-term business or by any person acting on its behalf in contravention of subsection (8) shall be guilty of an offence.
- (10) Life insurance policies and annuity contracts shall not be deemed by their terms subject to cancellation or redemption to the extent that any person shall be designated as the irrevocable beneficiary of any such policy or contract except with the express written consent of that irrevocable beneficiary.
- (11) Any claim of the insurer under a contract of reinsurance taken out by the insurer in respect of a contract for which a separate account has been established shall be deemed to be an asset of the relevant separate account to the extent only that the insurer fails to meet its obligations under the relevant contract and upon payment of any amount due under such contract of reinsurance shall be immediately

credited to the relevant separate account, whether the insurer is solvent or not.

- (12) When a policy of insurance or an annuity contract whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favour of some person other than himself, and the policy of life insurance or annuity contract is assigned or in any way made payable to another person, then such third person then being the lawful beneficiary or assignee thereof, shall be exclusively and directly entitled to the proceeds or avails of such policy of life insurance or annuity contract to the exclusion of the creditors and representatives of the insured and of the person effecting such insurance or annuity contract whether or not the right to change the beneficiary if it is reserved permitted and whether or not the policy or annuity contract is made payable to the person whose life is insured or the measuring life under the annuity contract, if the beneficiary or assignee shall predecease such; and the licensee issuing the policy or annuity contract shall be discharged of all liability thereon by payment of its proceeds in accordance with the terms of the policy or assignment.
- (13) Nothing herein contained shall prevent a Licensee having recourse to segregation provisions as set forth in any other Act.

PART VI

WINDING-UP OF LICENSEES

26. Petition for compulsory winding up.

- (1) A judge of the Supreme Court may order compulsory winding-up of a licensee *mutatis mutandis* pursuant to the Court's general jurisdiction under the Supreme Court Act (*Ch. 53*) but subject to this Part —
 - (a) on the petition of the Commission;
 - (b) in the case of a licensee engaged in long-term insurance business, on the petition of policyholders with an aggregate

- cash surrender value of at least five hundred thousand dollars of the policy or policies involved;
- (c) in the case of a licensee engaged in general insurance business, on the petition of policyholders with an aggregate annual premium of at least one hundred thousand dollars; and
 - (d) in the case of a licensee engaged in both long-term and general insurance business, on the petition of the policyholders who qualify under either paragraph (b) or (c) above.
- (2) No petition for the compulsory winding-up of a licensee may be presented without leave of the Supreme Court, which must be satisfied that a *prima facie* case has been established-
 - (a) on the petition for the Commission, of the licensee being unable to pay its debts; and
 - (b) on the petition of a policyholder, of the licensee failing to pay a substantial claim that is uncontested or awarded by a court or other tribunal of competent jurisdiction and as to which all rights of appeal have been waived or have elapsed through the passage of time.
 - (3) In any proceedings upon a petition for the winding-up of a licensee, evidence that the licensee was unable to pay its debts at any time before the start of the proceedings is evidence that the licensee continues to be unable to pay its debts unless the contrary is proved.
 - (4) The Commission shall be a party to any winding-up proceedings under this Part and shall be given such information as it may require concerning the affairs of the licensee.

27. Petition by Commission.

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

- (a) for compulsory winding-up by the Court of a licensee on the ground that the licensee is unable to pay its debts; and
- (b) for an order that the licensee or any part of the insurance business of the licensee be placed under judicial management in accordance with prescribed regulations, on the ground that it is in the public interest to do so, and the Supreme Court may order accordingly.

28. Petition by licence.

- (1) On giving the Commission one month's notice in writing, or such shorter period of notice as the Commission may agree to, of its intention so to do, a licensee may petition the Court without leave for an order to be voluntarily wound-up.
- (2) Both the licensee and the Commission are entitled to be heard on any petition presented to the Court under this section.
- (3) Where a licensee has passed a resolution for the voluntary winding-up of its business, it shall notify the Commission in writing of such resolution, and of the date on which it will cease to enter into new contracts of insurance, and of the name and address of its proposed liquidator.
- (4) Notwithstanding anything in this or any other Act, or regulation, an external insurer which carries on long-term business shall not be wound-up voluntarily.

29. Stay of legal process.

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

30. Rights and interests of policy holder.

- (1) The rights and interests of a policyholder in the assets of a separate account maintained under a variable life insurance or variable annuity policy issued by a licensee shall not be liable to be applied or made available in payment of the debts of any creditor, and no creditor of the policyholder may attach any rights or interests in the policy or claim payment thereof, except where —
 - (a) the purchase of the policy or acquiring, conveying, transferring settling the assets used to purchase the policy was made with the intent to wilfully defeat an obligation owed by the policyholder to the creditor; or
 - (b) proceedings in bankruptcy have been commenced by or against the policyholder in a court of competent jurisdiction at the date of purchase of the policy or within three months of the date of purchase of the policy.

- (2) No action or proceeding shall be commenced pursuant to subsection (1) (a) above unless commenced within two years of the date of the relevant disposition.

31. Margin of solvency.

- (1) Unless the Commission otherwise determines, an unrestricted external insurer carrying on general insurance business is unable to pay its debts if at any time after the expiration of the first financial year, the value of its assets does not exceed its liabilities —
 - (a) by $1/5$ of the premium income for the preceding financial year, where the premium income does not exceed five million dollars; and
 - (b) by the aggregate of one million dollars and $1/10$ of the amount by which the premium income in the preceding financial year exceeded ten million dollars where the premium income for that year exceeded five million dollars.
- (2) A restricted external insurer carrying on general insurance business is unable to pay its debts if at any time the value of its assets does not exceed its liabilities by such amount as the Commission may prescribe from time to time.
- (3) A licensee carrying on long-term insurance business is unable to pay its debts if the value of its assets does not exceed its liabilities.
- (4) In computing a licensee's liabilities for the purposes of this section, all contingent and prospective liabilities, other than liabilities in respect of share capital and surplus, are to be taken into account.
- (5) In computing the assets and liabilities of a licensee carrying on variable insurance business, there shall not be included in such computation, the assets of any one or more separate accounts maintained by the licensee in respect of its variable insurance business, or the liabilities chargeable against such accounts in respect of such business, nor any assets acquired and held in fiduciary capacity as designated by its auditor in financial statements filed with the Commission.
- (6) For the purposes of this section —
 - (a) assets include —
 - (i) cash,

- (ii) bonds, debentures, fixed deposits, and equities listed on a recognised stock exchange, or legally recognised inter-dealer market,
 - (iii) mortgage loans on real estate,
 - (iv) net accrued investment income due,
 - (v) premiums receivable,
 - (vi) reinsurance balance receivable,
 - (vii) funds held by ceding reinsurers,
 - (viii) accounts receivable (except from a person with whom the external insurer is associated, unless approved by the Commission),
 - (ix) irrevocable letters of credit drawn or confirmed by a bank licensed under the Bank and Trust Companies Act (*Ch. 316*); and
- (b) liabilities include loss reserves and unearned premiums, and other outstanding liabilities, but do not include capital and surplus.

PART IV

LICENSING OF EXTERNAL INSURANCE INTERMEDIARIES

32. Insurance managers and brokers to be licensed.

- (1) Subject to the provisions of this Act, no person shall in or from within The Bahamas provide or purport to provide insurance management services or act or purport to act as an insurance manager or external insurance broker unless licensed for that purpose by the Commission under section 33.
- (2) No person shall be licensed as an insurance manager or as an external insurance broker under this Act other than a body corporate that is incorporated in and under the laws of The Bahamas.

33. Condition of licence.

- (1) Subject to section 34 and 35 the Commission may, on application being made to it for that purpose by any person, and on payment of the prescribed fee, license that person as an insurance manager or an

external insurance broker, as the case may be, subject to that person complying with such conditions as the Commission may prescribe.

- (2) Every application under subsection (1) for a licence shall be made to the Commission, shall be in such form, shall contain such information, and shall be accompanied by such documents as the Commission may prescribe.

34. Factors to be considered by the Commission.

- (1) In considering whether to license a company under section 33, the Commission shall (but without prejudice to its discretion under section 35 to refuse licensing) have regard to whether the owners, directors and senior managers Commission. appear to it to be fit and proper persons to be so licensed and, in particular —
 - (a) whether the persons have or have access to sufficient knowledge and practical experience of insurance business adequate to enable them to act in the capacity in which they have applied to be licensed; and
 - (b) whether the net value of the assets of the company is adequate.
- (2) No company shall be licensed as an insurance manager or external insurance broker unless there exists in respect of that company such minimum capital and insurance coverage as the Commission may prescribe.

35. Power of the commission in relation to licensing.

- (1) In deciding whether to license a company under section 33, the Commission shall act as it thinks fit in the public interest, and if it is of the opinion that it is not in the public interest that a licence should be granted, it shall refuse to grant it.
- (2) Where the Commission proposes to refuse to license an insurance manager or an external insurance broker, it shall notify the applicant in writing of its rights of appeal.

36. Licence.

- (1) Where the Commission determines to license any company under section 33, it shall cause the prescribed particulars relating to that

company to be entered in a register to be maintained by it for that purpose.

- (2) Where in considering the licensing of company, the Commission is of the opinion that there are circumstances requiring that the company's licence should be subject to conditions, it may attach any of those conditions to the licence and so specify them in the certificate as the circumstances require.
- (3) A licence remains valid until suspended or revoked by the Commission.
- (4) The Commission may suspend or revoke the licence of a company in such circumstances as are prescribed by paragraphs (a), (b), (c) and (d) of subsection 12(1); and sections 12 and 13 shall apply, with such adaptations as are necessary to make them applicable to certificates of "licence", as they apply to an external insurer under this Act.
- (5) The provisions of subsection (1) and (2) of section 10 shall, as they apply to an external insurer, apply with such adaptation as are necessary *mutatis mutandis* to an insurance manager or an external insurance broker.

37. Responsibilities of intermediaries.

- (1) Licensed insurance managers or external insurance brokers shall use their best efforts to provide underwriting or other management services only to or for
licensed external insurers.
- (2) If it appears to an insurance manager or external insurance broker or if he has knowledge or information that any of the external insurers for whom he acts —
 - (a) is conducting its business in financially hazardous manner or in a matter that would expose such external insurer to risk of becoming insolvent;
 - (b) is not complying with the provisions of this or any other Act or the regulations made there under;
 - (c) has defaulted on the payment of any of its liabilities other than in connection with a good faith dispute;

- (d) is experiencing a state of affairs that might be prejudicial to the interests of such external insurers policyholders or creditors;
 - (e) is involved as defendant in criminal proceedings in any country or jurisdiction; or
 - (f) has ceased to carry on the business for which it is licensed, it shall forthwith report the same to the Commission giving particulars of the information and documents in its possession.
- (3) In discharging its duty and reporting to the Commission in good faith, the insurance manager or external insurance broker shall not, nor shall any director, officer, member, agent or employee thereof be liable to any action, suit or proceeding for or with respect to such reporting.
- (4) An insurance manager or external insurance broker shall not by reason of being licensed under this Act be prohibited from providing services from within The Bahamas to persons outside The Bahamas who do not carry on external insurance business in or from within The Bahamas.
- (5) An external insurance broker licensed under this Act shall only place business with companies that are operating lawfully in the jurisdictions where they transact business.

38. Annual returns.

- (1) A licensed insurance manager or external insurance broker shall, subject to any prescription made under subsection (2), within four months of the end of its financial year furnish to the Commission —
- (a) a list of all external insurers for whom the insurance manager provides services;
 - (b) a list of all external insurers with whom the external insurance broker has placed contracts of insurance or re-insurance during the year;
 - (c) confirmation in writing by the company's directors that it has conducted its business in accordance with the information provided with its licence application and in compliance with this Act;
 - (d) a certificate by the insurance manager or external insurance broker that those external insurers have to the best of his

knowledge and belief complied with the requirements of this Act and with any terms or conditions attached to their licences; and

- (e) a certificate signed by the insurance manager or external insurance broker that to the best of his knowledge and belief those external insurers continue to be of sound reputation and probity.
- (2) The Commission may prescribe the form and nature and extent of the particulars required of the returns to be made by an insurance manager and an external insurance broker under this section.

39. Existing underwriting managers.

A company which, immediately before the commencement of this Act, was carrying on business in The Bahamas as an underwriting manager or an external insurance broker, and which intends to continue to carry on similar business on and after the commencement of this Act shall, within one month of the commencement of this Act, make an application for licensing under section 33, and in the event of such a company making such an application it shall not be taken for the purpose of this Act to be acting or to have acted in contravention of section 23 pending the determination of its application.

PART V

CORPORATE GOVERNANCE AND POWERS OF THE COMMISSION

40. Corporate Governance.

- (1) Each external insurer, insurance manager, and external insurance broker licensed under this Act shall have in place compliance and procedural manuals and internal controls that will ensure effective management and compliance with relevant legislation.
- (2) The Commission shall prescribe regulations and issue Corporate Governance guidelines for the appointment and responsibilities of boards of directors, auditors and actuaries; for the establishment of audit, conduct review and other relevant committees; and for other relevant matters as is deemed necessary.

41. Powers of the Commission.

- (1) The Commission shall —
 - (a) have general supervision of the external insurance business carried on from within The Bahamas;
 - (b) have authority to conduct annual on-site inspections and regulatory hearings to determine the extent to which licensees are in compliance with the provisions of this Act;
 - (c) have authority to demand from any person information relating to any matter in connection to its insurance business;
 - (d) ensure that the laws and regulations relating to the conduct of external insurance business are obeyed;
 - (e) examine and report to the Minister from time to time on all matters connected with external insurance business;
 - (f) have the power to petition the Supreme Court for the winding up of a licensee and for the appointment of a liquidator; and
 - (g) have power to impose conditions on and after issuing a licence to an external insurer.
- (2) For the purposes of discharging its duties and in the exercise of its powers under this Act or the regulations, the Commission may require to be made and may take and receive affidavits, statutory declarations and depositions, and may examine witnesses under oath.
- (3) An oath required to be taken under this Act may be administered and certified by the Superintendent.

42. Power to make investigation.

- (1) Where it appears to the Commission that —
 - (a) a company is, or is likely to become, unable to meet its obligations;
 - (b) a company has failed to comply with any of the provisions of this Act, the regulations, or any directives of the Commission; and
 - (c) a company has not, within a period of thirty days as from the date on which the Commission demanded from the company in writing any information which the Commission was entitled under this Act to demand, furnish that information duly and satisfactorily; or

- (d) any information in the possession of the Commission warrants an investigation into the whole or any part of any class of the external insurance business of the company, the Commission may serve on the company a notice in writing calling upon it to show cause within such period as is specified in the notice, not less than thirty days from the date of the notice, why it should not, on the grounds so specified, investigate the whole or any part of the business of the company or appoint a person, in this Part referred to as the Inspector, to make such an investigation and report to the Commission the results of the investigation.
- (2) Where the company fails within the period specified in a notice served pursuant to subsection (1) above to show cause to the satisfaction of the Commission, the Commission may cause an investigation to be made by the Inspector.
- (3) In connection with any investigation, the Commission shall have the power and authority to engage such professional or other expert as may, in its opinion, be necessary or desirable and the costs incurred in connection with engaging such professional or other expert shall be borne by the company that is under investigation.
- (4) Any costs incurred in connection with subsection (3) above which are not paid within 28 days of notification of the same are recoverable by the Commission summarily as a civil debt.

43. Power to obtain information.

- (1) In making an investigation under this Part, the Commission or the Inspector may —
 - (a) require the company to produce any securities, books, accounts, documents or statistics of the company for inspection and to allow for the making of such extracts from them as are considered necessary; and
 - (b) call upon the manager or resident representative of any company for such information or explanation as the Commission or Inspector may reasonably require for the purpose of enabling it or him to perform their functions under this Act.

44. Entry and search of premises.

- (1) Where a magistrate is satisfied on information on oath laid by the Commission or by any person authorised by the Commission for the purpose, that there are reasonable grounds for suspecting that there are on any premises any securities, books, accounts, documents or statistics, production of which has been required by virtue of section 43 and which have not been produced in compliance with that requirement, the magistrate may issue a warrant authorising any member of the Royal Bahamas Police Force, together with any other person named in the warrant —
 - (a) to enter the premises specified in the information using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and seize and remove any securities, books, accounts, documents or statistics appearing to be the securities, books, accounts, documents or statistics required by the Commission;
 - (c) to take, in relation to any securities, books, accounts, documents or statistics so appearing, any other steps that may appear necessary for preserving them and preventing interference with them.
- (2) A warrant issued under this section shall continue in force until the expiration of the period of 14 days after the date on which it is issued.
- (3) Any securities, books accounts, documents or statistics that have been seized under this section may be retained for a period of three months or, if within that period criminal proceedings have been brought in respect of the seizure, until the conclusion of those proceedings.
- (4) This section and sections 42 and 43 shall be deemed not to be in conflict with any other statute of The Bahamas.

45. Anti-Money Laundering Reporting.

- (1) For the purpose of carrying out its responsibilities in this area, the Commission shall satisfy itself that the provisions of the anti-money laundering legislation are being complied with.
- (2) Every external insurer, insurance manager and external insurance broker to which the Financial Transactions Reporting Act and Regulations 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 and Regulations.
- (3) A copy of the report required in paragraph (e) above must be forwarded to the Commission within four months of the end of the licensee's, insurance manager's or external insurance broker's financial year.

46. Regulations.

- (1) The Commission may make regulations giving effect to the purposes of this Act and, in particular, the regulations may make provisions with respect to any or all of the following —
- (a) the licensing, operation, conduct and activities of external insurers;
 - (b) the licensing, operation, conduct and activities of insurance managers;
 - (c) the licensing, operation, conduct and activities of external insurance brokers;
 - (d) prescribing anything that is required by this Act to be prescribed;
 - (e) exempting any person or class of persons or business or class of business from any provision of this Act;

- (f) constituting the breach of any provision of this Act or of any regulation to be an offence;
 - (g) prescribing anything that is required with respect to the financial obligations or requirements under this Act; and
 - (h) where there is no provision or not sufficient provision of this Act in respect of any matter or thing necessary to give effect to this Act, the manner or form in which the deficiency is to be supplied.
- (2) Regulations may contain such incidental or supplemental provisions as appear to the Commission to be expedient for the purposes of the regulations.
- (3) Subject to subsections (1), the Commission may from time to time issue rules, guidelines and directives for the better management of licensees or insurance managers and external insurance brokers licensed under this Act.

47. Confidentiality.

- (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or advisor of the Commission who discloses any information relating to —
- (a) the affairs of the Commission;
 - (b) any application made to the Commission;
 - (c) the affairs of an external insurer, an insurance manager or external insurance broker; or
 - (d) the affairs of a customer, client or policyholder of an external insurance broker,
- that he has acquired in the course of his duties or in the exercise of the Commission's functions under this or any other law, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.
- (2) Subsection (1) shall not apply to a disclosure —
- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) for the purpose of assisting the Commission to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;

- (c) in respect of the affairs of an external insurer, insurance manager or external insurance broker or of a customer, client or policyholder of an external insurer, insurance manager or external insurance broker with the consent of the external insurer, insurance manager or external insurance broker or customer, client or policyholder, as the case may be, which consent has been voluntarily given;
 - (d) where the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in a manner that does not enable the identity of any external insurer, insurance manager or external insurance broker or of any customer, client or policyholder of the external insurer, insurance manager or external insurance broker to which the information relates to be ascertained;
 - (f) to a person with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties; and
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his duties; or
 - (g) in any legal proceedings in connection with —
 - (i) the winding-up or dissolution of an external insurer, insurance manager or external insurance broker, or
 - (ii) the appointment or duties or a receiver of an external insurer, insurance manager or external insurance broker.
- (3) Subject to subsection (6), the Superintendent may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings or enforce laws, regulations and rules administered by that authority.
- (4) In deciding whether or not to exercise his power under subsection (3), the Superintendent may take into account —

- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
 - (b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.
- (5) The Superintendent may decline to exercise his powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Superintendent considers appropriate.
- (6) Nothing in subsection (3) authorises a disclosure by the Superintendent unless —
 - (a) the Superintendent has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality;
 - (b) the Superintendent has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Superintendent;
 - (c) the Superintendent is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
 - (d) the Superintendent is satisfied that information provided following the exercise of his power under subsection (3) will not be used in criminal proceedings against the person providing the information.
- (7) Where in the opinion of the Superintendent it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Superintendent shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus*

curiae, to appear or take part in any proceedings, in The Bahamas, or in any appeal from such proceedings , arising directly or indirectly from any such request.

- (8) The Superintendent may cooperate with any other regulatory authority in The Bahamas including by sharing information, that he has acquired in the course of his duties or in the exercise of his functions under this or any other law where he considers such cooperation or information may be relevant to the functions of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

48. Fees.

- (1) Fees shall be as prescribed by the Commission in respect of —
- (a) any application for licensing under the provisions of the Act;
 - (b) the resignation of any person;
 - (c) the issue of any certificate;
 - (d) the inspection of any Register;
 - (e) the furnishing by the Commission of any document or copy;
 - (f) extra-ordinary inspections conducted by the Commission to determine compliance with the provisions of this Act; and
 - (g) any other costs incurred in connection with subsection (1) which are not paid within 28 days of notification of the same are recoverable by the Commission as a civil debt.
- (2) In addition to the fees for which subsection (1) provides, there shall, subject to subsection (3), be payable by a licensee or insurance manager, or external insurance broker, in every year following the year in which it was licensed an annual licence fee of such amount as shall be prescribed by the Commission.
- (3) An unpaid annual fee payable pursuant to subsection (2) above or any other fee or charge due to the Commission under this Act, is recoverable by the Commission summarily as a civil debt and -
- (a) the Commission may (whether in such an action or not) require; and
 - (b) where judgement is given for the Commission in any action, the court may order, for late payment of an annual fee, or any other fee or charge due to the Commission under this Act,

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

PART VI

MISCELLANEOUS

49. Licensing not prohibitive.

Subject to section 3, nothing in this Act shall be construed as prohibiting any person licensed under Part II and Part IV, respectively, from carrying on insurance business or providing broking or management services to which this Act does not apply.

50. Insurable Interest.

- (1) Any individual of competent legal capacity may produce or effect an insurance contract upon his life or body for the benefit of any person, but except as provided herein, no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives or to a person or the contract is owned by a person having, at the time when such contract was made, an insurable interest in the individual insured as defined herein.
- (2) For the purpose of this Act, but without restricting the meaning of the expression “insurable interest” an insurable interest shall be deemed to be had by —
 - (a) an individual in his own life, body or health;
 - (b) parent of a child under eighteen years of age, or a person in loco parentis of such a child, in the life of the child;
 - (c) a spouse, in the life of his or her spouse;
 - (d) any person in the life of another upon whom he is wholly or in part dependent for support or education;
 - (e) a company or other person in the life of an officer, director or employee thereof;
 - (f) any trust or foundation in the life of any beneficiary or settler or founder thereof;

- (g) a person who has a pecuniary interest in the longevity of another person; and
 - (h) any trustee, nominee, custodian or foundation acting on behalf of, for the direct or indirect benefit of, or at the discretion of a person identified as having an insurable interest in the life of another person in this subsection (2) shall be deemed to have an insurable interest in the life of such other person.
- (3) Notwithstanding the foregoing an individual of legal age may —
- (i) apply for a policy insuring the individual’s life; and
 - (ii) agree in writing in the application for the policy or otherwise designate an individual, partnership, association, corporation, foundation or other legal entity or any trust as —
- (a) a beneficiary of a policy;
 - (b) an absolute or partial owner of the policy; or
 - (c) both a beneficiary and an absolute or partial owner of the policy, without regard to whether such persons otherwise have an insurable interest in the life of the individual applicant and designer.
- (4) This section shall apply to policies whether effected before or after the Commencement of this Act.
- (5) For the purposes of this section, the expression “child” in relation to any person, includes —
- (a) an adopted child;
 - (b) a step-child;
 - (c) any other child, living with that person and wholly or mainly maintained by that person; or
 - (d) any person designated as the child of another by statute or otherwise by due process of law.
- (6) An external insurer shall be entitled to rely upon all statements, declarations, and representations made by an application for insurance relative to the insurable interest which such applicant has in the insured; and no external insurer shall incur any legal liability, by virtue of any untrue statements, declarations, or representations so relied upon by an external insurer acting in good faith.

51. Single integrated death benefit.

A policy of life insurance issued by an external insurer shall be deemed to provide a single integrated death benefit provided that any separated account backing the policy or any additional or alternative payout benefits are not separable from the policy and all elements of and benefits under such a policy providing a single integrated death benefit shall be treated for all purposes under this Act as a single policy of life insurance and not as separate from the policy.

52. Exemptions.

Notwithstanding the provisions of any other Act, every external insurer licensed under this Act and the proceeds or avails of any Policy of life insurance or annuity contract issued by an external insurer licensed under this Act relating to or imposed on such licensee or proceeds or avails shall

- (a) be exempt from the payment of any tax, fee, duty or impost in The Bahamas other than any provisions for the same in force at the commencement of, or payable in respect of a licence under, this Act, for a period of twenty years from the date of the first such licence of the external insurer; and
- (b) be exempt from any regulation by the Securities Commission with regard to the sale of variable life products.

53. Appointment by Commission of actuary, etc.

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

54. Offences.

A person who —

- (a) subject to section 21 of this Act, carries on external insurance business from within The Bahamas during any period in which he does not hold a licence under this Act; and
- (b) subject to section 39 of this Act, offers or provides the services of an insurance manager or external insurance broker to an external insurance company or in relation to the

transaction of external insurance business from within The Bahamas during any period when that person is not a licensed insurance manager or external insurance broker within the meaning of this Act, is guilty of an offence and liable on summary conviction to fine not exceeding fifty thousand dollars.

55. Policy not illegal.

- (1) No insurance policy shall be illegal or invalid by reason only of the fact that prior to its conclusion and at the time it was entered into any person involved was acting in breach of any provision of this Act.
- (2) Any such insurance policy shall be enforceable against, but unenforceable by, the person acting in breach of this Act and if a body corporate any director.

56. Deception by director, etc.

- (1) A director, officer, employee or agent of a licensee or insurance manager or external insurance broker who, with intent to deceive —
 - (a) makes any false or misleading statement or entry in a book, account, record, report or statement or fails to make any entry that should be made therein; or
 - (b) obstructs the carrying out by an auditor of his functions under this Act, is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand or imprisonment for a term not exceeding two years, or both.

57. Contravention of sections 16 and 17 of the Act.

Any person who contravenes sections 16(1) and 17 is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to a fine of two hundred dollars for every day or part thereof during which the offence continues.

58. False statements.

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

imprisonment for a term not exceeding one year or to both such fine and imprisonment.

59. Offences generally.

- (1) Any person guilty of an offence under this Act, including any regulations made hereunder, and for which no specific provision or penalty is otherwise provided in this Act or such regulations shall, if the offender is an individual, be liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term six months, or to both such fine and imprisonment, or if the offender is not an individual, to a fine not exceeding three thousand dollars.
- (2) Where any offence under this Act or regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer or employee of the body corporate, he as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where by this Act or by any subsidiary legislation made thereunder it is provided that any offence shall be prosecuted summarily, or any sum of money is directed or authorised to be recovered summarily, or where a magistrate is authorised to order or require a person to do or abstain from doing any act or thing other than the payment of money, or where anything is declared capable of being enforced summarily, or by summary order, or where any amount is declared to be recoverable summarily as civil debt, the Magistrate Act and any Act amending the same shall apply accordingly, and such expressions as aforesaid shall mean and include that Act and any Act amending the same and any subsequent Act repealing the Magistrate Act and conferring jurisdiction on a magistrate to do any of the acts and things above set out in summary manner.

60. Power of Commission to issue sanctions including fines.

- (1) Notwithstanding any other provisions in this Act, the Commission may where it is satisfied that a licensed insurer, an association of underwriter, or an insurance intermediary has committed an offence

- (a) impose a penalty on the licensed insurer, association of underwriters or insurance intermediary which may include:
 - (i) a public reprimand;
 - (ii) a ban on carrying out certain operation;
 - (iii) the temporary suspension of a manager;
 - (iv) the rescinding of the approval of a principal representative,
 - (v) the removal of a director; responsible officer or other senior manager; or
 - (vi) the imposition of conditions on a licence.
 - (b) order the licensed insurer, association of underwriters or insurance intermediary to pay a fine based on the amounts set out in section 54.
- (2) Where the Commission makes an order under this section —
- (a) the order shall be put in writing;
 - (b) the order shall specify the offence which the licensed insurer; association, or insurance intermediary committed and the penalty imposed by the Commission;
 - (c) a copy of the order shall be given to the licensed insurer, association, or insurance intermediary;
 - (d) once the licensed insurer, association, or insurance intermediary pays the fine as ordered, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the licensed insurer, association, or insurance intermediary to prove that the offence with under this section; and
 - (e) the order may be enforced in the same manner as an order of the court.

61. Repeal.

The External Insurance Act (*Ch. 348*) is hereby repealed.

OBJECTS AND REASONS

The purpose of this Bill is to repeal the External Insurance Act, 1983, and replace it with more modern, up-to-date, and user-friendly legislation and regulatory framework within which external insurance business may be operated in and from The Bahamas.

Part I of the Bill provides for preliminary matters such as the title of the Act, the commencement clause, the definition of various terms used within the Act, and the exemption of external insurance business from the provisions of the Insurance Act.

Part II of the Bill imposes licensing requirements on external insurance companies. It also imposes general and specific restrictions and prohibitions on the activities in which external insurance companies engage. This part also establishes the role and obligations of the resident representative within The Bahamas, restrictions on the use of certain words and other expression, and transitional arrangement for external insurance companies carrying on business prior to the coming into force of the Act.

Part III of the Bill provides for the capital and other financial requirements of external insurance companies to file certain annual financial returns, and procedures for the segregation of funds held by licensed external insurers that carry on long-term business involving variable insurance.

Part IV of the Bill imposes rules and procedures with respect to the winding-up and liquidation of external companies, the establishment and maintenance of solvency margins.

Part V imposes particular requirements on the manner in which insurance managers and external insurance brokers are licensed and conduct their business.

Part VI of the Bill sets out the powers of the Insurance Commission and the responsibilities of the Superintendent of Insurance. It also makes provisions relating to anti-money laundering reporting, confidentiality and fees.

Part VII of the Bill, in the miscellaneous provisions, addresses various matters, including provisions relating to insurable interest and the establishment and punishment of offences.