

VIRGIN ISLANDS
THE INSURANCE ACT, 1994

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NO. OF 1994 The Insurance Act, 1994 Virgin Islands
I Assent

Governor
, 1994

VIRGIN ISLANDS

No. of 1994

An Act to provide for the regulation and Control of the Carrying on of insurance business in and from within the Virgin Islands; to provide for the licencing of insurers and other persons engaged in that business and for related matters.

[Gazetted , 1994]

ENACTED by the Legislature of the Virgin Islands as follows -

PART I PRELIMINARY

Short title and Commencement. 1. This Act may be cited as the Insurance Act, 1994, and shall come into force on such date as the Governor may appoint by Proclamation published in the Gazette.

Interpretation. 2. (1) In this Act unless the context otherwise requires -

"actuary" means a person qualified as an

actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, or a person recognised by the Governor as an actuary;

"adjuster" means a person who, not being a

barrister or a solicitor acting in the usual course of his profession or a trustee of the insured property or the person having an insurable interest in the insured property, for compensation, directly or indirectly solicits the right to negotiate the settlement of a loss under a contract of insurance on behalf of the insured or the insurer, or holds himself out as an adjuster of losses or assessor of damages under Contracts of

insurance.

"auditor" means a person who -

- (a) is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a current member in good standing of one of those institutes; or
- (b) possesses such other qualification in accountancy as the Governor, by order approves and is in good standing with respect to such qualification;

"commissioner" means the Commissioner of

Insurance appointed under section 3 or such other person as may be exercising his Powers and discharging his duties under this Act and includes the Deputy Commissioner of Insurance;

"contract or contract of insurance"

includes any Policy, certificate, interim receipt, renewal receipt, or writing evidencing the Contract, whether sealed or not, and a binding oral agreement;

"court" means the High court;

"financial year" means any period of not more than twelve months at the end of which the balance of the accounts of an insurer is struck;

"general business" means insurance business that is not long-term business;

"Governor" means the Governor in Council;

"insurance agent" means a person who, for compensation, solicits insurance on behalf of any insurer or transmits, for other persons, an application for or a policy of insurance to or from the insurer or offers or assumes to act in the negotiation of insurance or in negotiating its continuance or

renewal;

"insurance broker" means a person who, for compensation, acts or aids in any manner in negotiating contracts of insurance or placing risks or effecting insurance, or in negotiating the continuance or renewal of insurance contracts with insurers on behalf of other persons;

"insurance business" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of certain risk or peril to which the object of insurance might be exposed, or to provide a service or pay a sum of money or other thing of value on the happening of a certain event and includes reinsurance and any of the activities and actions set out in section 10;

"insurance manager" means a person not being the employee of any insurer who is, or has available to him a person with such insurance knowledge and expertise as the Governor may deem necessary for the conduct and management of the insurance business of any one or more insurers in a competent manner;

"insurer" means a person who undertakes or effects or agrees or offers for valuable consideration to undertake or effect a contract of insurance business within the meaning of this Act;

"long-term business" means

- (a) an undertaking by an insurer to pay insurance money
 - (i) on death;
 - (ii) on the happening of an event or contingency dependant on human life;
 - (iii) for a term dependant on human life;
 - (iv) at a fixed or determinable future time;
 - (v) in the event of sickness of the person insured;

- (vi) in the event of an accidental death of the person insured where the undertaking of the insurer is incidental to and part of any of the undertakings mentioned in sub-paragraphs (i) to (v);
- (b) an undertaking by an insurer to provide an annuity dependant on human life whether it is for a fixed period or whether the periodic payments are in equal or unequal amounts; or
- (c) an undertaking by an insurer to pay insurance money or other benefits in the event that the person insured becomes disabled as a result of bodily injury or disease;

"Lloyds" means the association of individual underwriters formed on the plan known as Lloyd's of London, whereby each associate underwriter becomes liable for a stated, limited or proportionate part of the whole amount insured by a contract;

"Minister" means the member of the Executive Council charged by the Governor with the administration of this Act;

"mutual insurance company" means a Company that is not limited by shares and carries on insurance business on the mutual principle as a co-operative enterprise where the company is owned by its policy holders and must maintain a reserve fund to which policy holders contribute by way of premiums;

"officer" includes the president, a vice-president, a managing director, the secretary, the treasurer, the insurance manager, the actuary of an insurer and any other person designated as an officer of the insurer by by-law or by the memorandum and articles of association or by resolution of the directors of the insurer;

"policy" means an instrument evidencing a

contract of insurance;

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

"premium" means the single or periodical
payment whether equal or
unequal to be made for insurance,
and includes dues, assessments, and
other consideration;

"prescribed" means prescribed by
regulations made under this Act;

"principal office" means the chief place
of
business required to be maintained
within the Territory by every
insurer licensed under this Act and
at which the insurer's books and
records which are prescribed by the
regulations are kept permanently;

"regulations or the regulations" means
regulations made under this Act;

(2) In this Act

(a) any reference to carrying on
business from within the
Territory includes reference to
carrying on business outside the
Territory from a principal place

of business within the
Territory;

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

PART II ADMINISTRATION

Staff.

3. (1) The Governor shall appoint

(a) a Commissioner of Insurance;

(b) a Deputy Commissioner of
Insurance,

both of whom shall be public officers; and

(c) any other public officers as
may

be required for the administration of this Act.

(2) The Commissioner shall act under the instructions of the Minister and shall have the powers conferred and the duties imposed upon him by this Act.

(3) The Governor may delegate any of the powers or duties of the Commissioner to the Deputy Commissioner and thereupon this Act shall be read as if those powers or duties were originally conferred or imposed on the Deputy Commissioner.

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

(a) as a shareholder in any company

that is licensed under this Act as an insurer carrying on insurance business in or from within the Territory, or

(b) as a shareholder in a company or

a partner in a partnership that is authorized under this Act to act as an insurance manager, agent or broker.

Powers of the Commissioner.

4. (1) The Commissioner shall -

(a) have general supervision of the

insurance business being carried on in or from within the Territory;

(b) ensure that the laws and regulations relating to the conduct of the insurance business are enforced and obeyed; and

(c) examine and report to the

Minister from time to time on all matters connected with insurance; and

(d) have the same power as any Court has in Civil cases to summon persons to attend at a hearing or as witnesses, to enforce their attendance, and to compel them to produce books, documents and things and to give evidence.

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

Access to books,
records etc.

5. (1) The Commissioner or a person authorized under his hand shall, at all reasonable times, have access to and may take copies of all the books, securities, records and documents of any insurer, insurance manager, agent, adjuster or broker which relate to insurance business and any officer, agent or person in charge, possession, custody or control of any of those books, securities, records or documents who refuses or neglects to afford such access shall be guilty of an offence.

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

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

Annual report.

6. (1) The Commissioner shall on or before the 30th day of April in each year prepare for the Minister an annual report showing an overall statement of affairs and statistics of all matters relating to insurance business carried on and conducted in and from within the Territory during the preceding calendar year.

(2) The report shall be tabled by the Minister before the Legislative Council.

Records of the
Commissioner.

7. (1) The Commissioner shall keep the following registers -

(a) a register of all licences

issued to insurers under this Act, in which shall appear -

(i) the name of the insurer;

(ii) the address of the insurer's head office outside the Territory;

(iii) the address of the insurer's principal office in the Territory;

(iv) particulars of the

insurance business and classes of insurance for which the insurer is licensed; and

(v) any other information the

Commissioner may consider necessary for the purposes of this Act;

(b) a register of all certificates of authority issued under this Act to -

(i) insurance managers and agents showing their names and addresses and the names and addresses of the insurers for whom they are authorized to act; and

(ii) insurance brokers and adjusters showing their names and addresses;

(c) a register of names and addresses of all directors of every insurer licensed under this Act.

(2) Notwithstanding anything to the contrary in any other enactment the registers required to be kept by this section shall be open to inspection by any person during business hours and upon payment of the fee that may be prescribed by regulations.

(3) The Commissioner shall, during March in each year, publish in the Gazette a list of licensed insurers and authorized insurance managers, agents, adjusters and brokers.

Proof of licence

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

Immunity and actions by the Commissioner.

9. (1) No liability shall be incurred by and no suit, action or proceeding shall lie against the Crown, the Commissioner, the Deputy Commissioner or any person acting under their authority for anything done or omitted to be done bona fide for the purpose of executing any of the provisions of this Act or the regulations in the performance or intended or

supposed performance of their duties under this Act or under any other enactment that imposes duties on them.

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

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

PART III GENERAL PROVISIONS APPLICABLE TO ALL INSURERS

Licencing of Insurers

Deemed
carrying on
insurance

10. An insurer that -
- (a) carries on or offers to carry on business.
insurance business in
or from within the Territory;
 - (b) within the Territory sets up or
causes to be set up any
sign containing the name of an
insurer;
 - (c) in or from within the Territory
distributes or publishes
or causes to be distributed or
published any proposal,
circular, card, advertisement,
printed form or like document
relating to insurance business;
 - (d) makes or causes to be made, in
or from within the
Territory any written or oral
solicitation for insurance
business;
 - (e) in or from within the Territory
issues or delivers any
policy
or contract of insurance or
interim receipt;
 - (f) in or from within the Territory
collects or receives or
negotiates for or causes to be

collected or received or negotiated for any premium for a contract of insurance;

(g) inspects any risks in the Territory; or

(h) in or from within the Territory

adjusts or causes to be adjusted any loss under a contract of insurance;

shall be deemed to be carrying on insurance business in or from within the Territory within the meaning of this Act.

Insurers to be licensed.

11. (1) No person may carry on insurance business in or from within the Territory without holding a subsisting licence issued under this Act.

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

Application for

12. An application for a licence to carry a licence. on insurance business in or from within the

Territory shall be made to the Governor in the form and contents as may be prescribed and shall be accompanied by -

(a) the prescribed fee;

(b) any information as the Governor may reasonably require; and

(c) the following documents -

(i) a certified copy of the memorandum and articles of

incorporation or other

instrument of incorporation

of the applicant insurer

and a certified copy of its

constitution and by-laws

accompanied by English translation if in another language;

(ii) where the applicant insurer is already engaged in the insurance business,

a certified copy of the latest balance sheet of the applicant insurer and the auditor's report thereon; and

(iii) notice of the address of

the principal office of the applicant insurer in the Territory and the names and addresses of its insurance manager resident in the Territory, its insurance agents and its directors.

Insurers to be incorporated and have insurance knowledge. 13. (1) No insurer shall be licensed under this Act unless it is a body corporate or the unincorporated association of underwriters known as Lloyd's.

(2) No licence shall be granted to any insurer unless the Governor is satisfied that it has or has available to it the knowledge and expertise necessary to carry on insurance business in a competent manner and that it has submitted an adequate business plan.

Minimum capital 14. (1) A licence shall not be granted to an insurer which is a joint stock company or to an insurer which is a mutual insurance company unless the fully paid-up capital of the joint stock company or the contributed reserve fund of the mutual insurance company is, in the currency of the United States of America or the equivalent in a foreign currency, not less than -

(a) \$200,000 where the insurer proposes to carry on long-term business;

(b) \$100,000 where the insurer proposes to carry on general business; or

(c) \$300,000 where the insurer proposes to carry on both long-term business and general business.

(2) The Governor may, on the recommendation of the Commissioner, require an insurer to increase its fully paid-up capital or reserve fund, as the case may be, to such greater amount as the Governor may determine for the nature and volume of the insurance business being or being sought to be carried on by the insurer.

(3) Subject to the approval of the Governor, the minimum capital or reserve fund, as the case may be, required for licences may be in the form of cash or an irrevocable letter of credit issued by a financial institution approved by the Commissioner.

Minimum assets

15. (1) A licence shall not be granted or required for renewed under this Act unless the Governor is satisfied that the total value of the insurer's assets exceeds the total amount of its liabilities by at least the amount prescribed by regulations.

(2) For the purposes of this Act the total value of any assets and the total amount of any liabilities shall be determined on the basis prescribed by the regulations.

Granting and

16. (1) Where the Governor is satisfied that refusal of a

it is proper to do so he may, in his

licence.

discretion

, grant or refuse a licence in

respect of which application has been made under section 12.

(2) Where the Governor refuses to grant a licence he shall not be bound to assign any reason therefor and his decision shall not be subject to appeal or review in any Court.

Form of licence.

17. The licence shall be in the form determined by the Governor, and it shall -

- (a) specify the insurance business and classes of insurance

which the insurer is authorized to carry on and whether such business shall be carried on in the Territory, from within the Territory or both in and from within the Territory;

- (b) be subject to the payment of the annual fee prescribed by the regulations;
- (c) be subject to such terms, conditions, limitations, or restrictions as the Governor may specify therein and may from time to time see fit to impose; and
- (d) expire on December, 31 in each year but may be renewed from year to year upon application to and subject to the approval of the Governor and payment of the prescribed renewal fee.

Publication of 18. Every insurer on first being granted licence. and obtaining a licence shall forthwith give notice thereof in two successive issues of the Gazette and shall give the like notice when it ceases to carry on insurance business in or from within the Territory.

Effect of 19. A licence issued under this Act licence. authorizes the insurer named therein to exercise all rights and powers that are reasonably incidental to the carrying on of the kind of insurance business and the class or classes of insurance named in the licence and which are not inconsistent with this Act or the regulations or with the objects and terms stated in the insurer's memorandum and articles of association or other instrument of incorporation.

Reinsurance with 20. Nothing in this Act prevents a unlicensed licensed insurer that has lawfully effected a insurers. contract of insurance in or from within the Territory from re-insuring the risk or any portion thereof with any insurer carrying on business outside the Territory and not licensed under this Act provided such reinsurer is acceptable to the Commissioner.

Regulation of Licensed Insurers

Principal office 21. (1) Every insurer licensed under this Act and appointment shall - of insurance manager.

- (a) maintain a principal office in

the Territory at which it shall maintain permanently full and proper books and records of its insurance business as may be prescribed by the regulations;

- (b) appoint and maintain an insurance manager resident in the Territory; and
- (c) where required by the Commissioner, appoint for its general business an actuary who shall be approved by the Commissioner.

(2) An insurer at the time of issue of its licence shall notify the Commissioner in writing of -

- (a) the address of its principal office in the Territory;
- (b) the name and address of its insurance manager resident in the Territory; and
- (c) the name and address of its auditor to be approved by the Commissioner.

(3) The insurer shall notify the Commissioner in writing of any change in any of the information required in subsection (2) within twenty-one days from the date of such change.

(4) An insurer who fails to comply with any of the provisions of this section is guilty of an offence.

Annual accounts
Statement.

22. (1) Every insurer licensed under this Act and annual shall -

- (a) prepare accounts for each financial year in accordance with accounting principles acceptable to the Commissioner and such accounts shall be audited by the insurer's auditor approved by the Commissioner in this Act referred to as the "insurer's approved auditor";
- (b) prepare annually and deliver to the Commissioner within three months of the end of each financial year, or at such later date as may be granted by the Commissioner upon written

application by the insurer, a statement of the conditions of the insurer's affairs as at the end of the preceding financial year and such statement shall -

- (i) be in the form and content prescribed by regulations;
- (ii) exhibit the assets, liabilities, receipts and expenditures of the insurer for the preceding financial year;
- (iii) exhibit particulars of the business transacted by the insurer in or from within the Territory during the preceding financial year;
- (iv) be accompanied by a report from the insurer's approved auditor in which he shall -

(A) state that he has

examined the books and records of the insurer and is satisfied that the insurer is not in breach of any conditions attached to its licence or in contravention of any provision of this Act or the regulations; and

(B) name the Country or

Jurisdiction of which the generally accepted auditing standards were applied in auditing the insurer's accounts.

(2) For the purpose of the annual statement required under this section, the assets of the insurer shall be valued and its liabilities shall be calculated in the manner prescribed by the regulations -

and prohibited investments not to be shown as assets.

section 22 shall not show as assets the unpaid balances owing by agents or other insurers that are more than six months overdue, or bills receivable on account thereof, or bills receivable more than one year overdue, or investment in office furniture or equipment, or unpaid capital, or unpaid premium on subscribed shares of capital stock, nor shall such statement include as assets any investments prohibited or not authorized by this Act or the regulations.

Segregation of

24. An insurer which carries on any insurance business other than insurance business shall keep separate accounts, assets and liabilities. An insurer shall segregate the assets and liabilities of its insurance business from those of its other business.

Conditions in licence.

25. (1) It is a condition of every licence issued under this Act to an insurer, breach of which shall render the licence liable to cancellation by the Governor, that -

(a) the licensed insurer shall

notify the Commissioner forthwith of -

(i) any material change in the

information supplied in or accompanying the application or in the documents submitted therewith; or

(ii) the removal from office or the resignation of any director or officer of the insurer giving the reasons therefor;

(b) no shares or other interests,

whether legal or equitable, in the insurer shall be issued, transferred or otherwise disposed of and no appointment of a director or an officer of the insurer shall be made without the prior written approval of the Governor;

(c) the licensed insurer shall not,

without the prior written approval of the Governor -

(i) enter into any merger,

amalgamation or consolidation;

- (ii) transfer, other than in the ordinary course of its business by way of re-insurance any of its contracts of insurance or the whole or any part of its property, assets or liabilities;
- (iii) charge or pledge the whole or any part of its assets;
- (iv) change its name from that set out in its licence;
- (v) engage in or carry on insurance business other than that of the class or classes of insurance named in the licence or other than in the manner specified therein;
- (vi) alter the terms of its memorandum and articles of association or other instrument of incorporation.

(2) The Governor shall not grant to any insurer the prior written approval required under sub-paragraphs (i) and (ii) of paragraph (c) of subsection (1) unless he is satisfied that-

- (a) the proposed insurer involved in the merger, amalgamation or transfer with the insurer applying for approval is properly licensed or qualified to be licensed under this Act; and
- (b) the paid-up capital and unimpaired surplus of such proposed insurer after the merger, amalgamation, consolidation or transfer will be in amounts which are approved by the auditor and actuary of such proposed insurer and acceptable to the Governor.

Cancellation of Licence

Cancellation of 26. The Governor may cancel the licence

licence.

of an insurer if it-

- (a) has contravened any condition of its licence;
- (b) has failed to prepare and deliver to the Commissioner its annual audited accounts and annual statement in accordance with section 22 or its long-term business annual or periodic actuarial valuations certified in accordance with section 43;
- (c) has committed an offence under this Act or the regulations;
- (d) has failed to comply with any provision of law or of this Act and the regulations or any directives issued thereunder;
- (e) has contravened any term of its memorandum and articles of association or other instrument of incorporation;
- (f) has wilfully furnished misleading, false or inaccurate information for the purposes of any provision of this Act or the regulations or failed to disclose any information required thereunder;
- (g) has insufficient assets to justify its continuance to carry on insurance business in or from within the Territory;
- (h) is experiencing a serious state of affairs that is or may be prejudicial to the interests of its policyholders or creditors;
- (i) has ceased to carry on insurance business in or from within the Territory;
- (j) has failed to commence carrying on insurance business in or from within the Territory during a continuous period of twelve months from the date its licence was issued; or

- (k) is in the opinion of the Governor carrying on insurance business in or from within the Territory in a manner that is or may be detrimental to the public interest.

Cancellation

27. (1) The Governor shall give an insurer procedure. reasonable notice in writing of his intention to cancel its licence under section 26 and shall afford the insurer an opportunity of making representations to him.

(2) A notice under subsection (1) shall specify the ground on which the Governor intends to cancel the licence.

(3) When the Governor cancels a licence he shall notify the insurer in writing of the cancellation stating his reasons therefor.

(4) Upon the cancellation of its licence an insurer shall forthwith cease to engage in or carry on any insurance business in or from within the Territory unless the Governor in his discretion authorizes the insurer so to do -

(a) pending the determination of an appeal against the cancellation;

(b) for such period as the Governor may specify for the purpose of running off and closing the insurer's business.

(5) The Governor shall exercise his powers under subsections (1) and (2) through the Commissioner who shall act on behalf of and by the authority of the Governor.

Appeal to the Court.

28. (1) An insurer aggrieved by the cancellation by the Governor of its licence may appeal to the Court by serving the Governor with a notice of appeal within twenty-one days or such longer period as the Court may allow after receipt of notification of such cancellation.

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No. 223.

(2) An appeal under this section shall be by way of summons to a judge in Chambers.

(3) If an appeal is allowed by the Court, the insurer shall be entitled to carry on its insurance business in or from within the Territory in the same manner as it did before its licence was cancelled.

(4) If an appeal is dismissed by the Court, the insurer shall, forthwith or in such time as the Governor may allow, cease to engage in or carry on any insurance business in or from within the Territory.

Publication of 29. Where the insurer does not appeal the cancellation, cancellation of its licence in accordance with section 28 or where it appeals the cancellation and its appeal is dismissed by the Court, the Commissioner shall cause a notice of cancellation to be published in the Gazette and in a local newspaper.

Termination of a 30. Where an insurer goes into licence and liquidation or is being wound-up or otherwise publication dissolved its licence is ipso facto terminated thereof. and becomes void for all purposes and thereupon the Commissioner shall cause a notice of termination to be published in the Gazette and in a local newspaper.

PART IV SPECIAL PROVISIONS APPLICABLE TO INSURERS
CARRYING ON DOMESTIC BUSINESS

Carrying on Domestic Business

Definition of 31. (1) For the purposes of this Act every domestic business. contract insuring a person domiciled or resident in the Territory at the date thereof, or the subject matter of which is property of any kind within the Territory or in transit to or from the Territory, in this Act called "domestic business" shall be deemed to be made in the Territory and shall be construed accordingly.

(2) This section has effect notwithstanding any agreement, condition or stipulation to the contrary.

Specific authority 32. No insurer shall carry on domestic to carry on business unless it is specifically authorized domestic business. so to do in a licence issued to it by the Governor under this Act.

Domestic business 33. (1) The Governor shall not grant assets vested in trust. authorization in a licence issued under this Act to any insurer to carry on domestic business unless such insurer maintains within the Territory -

(a) in cash; or

(b) in securities in which trustees

may invest trust money and acceptable to the Governor

assets equal to its liabilities in the

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Territory and such assets, in this Act called "domestic business assets", shall be vested in trust in a bank licensed under the Banks and Trust Companies Act, 1990 and approved by the Governor.

(2) A trust deed shall be approved by the Commissioner before it is entered into.

(3) A trustee of the insurer's domestic business assets may deal with such assets in any manner provided for in the Trust Deed but in such way that the total value of such assets shall at all times be at least equal to the total amount of the insurer's liabilities in the Territory.

Assets not to be vested in trust.

34. (1) An insurer authorized to carry on domestic business may not, for the purpose of its domestic business assets, vest in trust securities issued by or debt obligations of such insurer or any of its subsidiaries or affiliates.

(2) For the purposes of this section -

(a) a company is a subsidiary of the insurer if -

(i) it is controlled by the insurer; or

(ii) it is controlled by two or more companies each of which is controlled by the insurer; or

(iii) it is a subsidiary of a subsidiary of the insurer;

(b) a company is controlled by the

insurer if shares of such company carrying more than fifty percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the insurer and such votes are sufficient, if exercised, to elect a majority of the board of directors of such company.

(c) a company is an affiliate of an

insurer if such company or the insurer is the subsidiary of the other or both are subsidiaries of one and the same company.

Prohibited loans

35. (1) An insurer that is authorized to

and investments. carry on domestic business shall not make or retain an investment other than a loan on the security of a policy insuring human life issued by it -

- (a) by way of a loan to any director or officer of the insurer, or to the wife or child of any such director or officer; or
- (b) in a corporation that is a substantial shareholder of the insurer.

(2) For the purposes of this section

- (a) an "investment" means -
 - (i) an investment in a corporation by way of purchasing its shares, bonds, debentures, notes or other evidence of its indebtedness; or
 - (ii) a loan to a person or persons

but does not include any normal

working balance between an insurer and any other corporation licensed and authorized under this Act to carry on domestic business or any loan or advance that is merely ancillary to the main domestic business of the insurer;

- (b) a corporation is a substantial shareholder of the insurer if it owns beneficially either directly or indirectly shares of any class to which are attached more than ten percent of the full or limited voting right attached to the total shares of the insurer for the time being outstanding.

Termination of Domestic Business

Application to 36. (1) An insurer which intends to release domestic business assets. the Territory shall give the Commissioner written notice of such intention and the reasons therefor at least four months prior to the date of discontinuance.

(2) An insurer that discontinues its domestic business in the Territory, in this

Part referred to as the "discontinuing insurer", may apply to the Governor in writing for the release of its domestic business assets.

Conditions for

37. Except as provided in this Part, the release of domestic business assets in the Territory of a assets.

discontinuing insurer shall not be released unless such insurer -

(a) obtains the surrender of its

outstanding policies in the Territory or transfers them with another insurer that -

(i) is licensed and authorized

to carry on domestic business under this Act and approved by the Commissioner; and

(ii) its paid-up capital and

unimpaired surplus shall, after the transfer be in amounts approved by its approved auditor and actuary; and

(b) provides he Commissioner with

proof of the publication, for eight consecutive weeks in a local newspaper of a notice that it will apply to the Governor for the release of its assets in the Territory on a day specified in the notice, which shall be at least two months after the date of the notice, and calling on its policyholders in the Territory opposing the release to file their opposition with the Commissioner on or before that day.

Governor may

38. After the day specified in the notice authorize the required under section 37 (b), the Governor release of may authorize the release to the discontinuing assets. insurer of its domestic business assets in the

Territory, if he is satisfied that such insurer has discharged or provided for the discharge of all its obligations in the Territory including its liabilities under its domestic business policies issued in the Territory.

Governor may authorize trustee to deal with

39. The Governor may authorize the trustee of the domestic business assets of the discontinuing insurer to employ any assets. portion of those assets

for the purpose of effecting the surrender or transfer of outstanding policies of such insurer in the Territory but not so as to reduce the domestic business assets below the amount of the total liabilities of such insurer under its continuing policies in the Territory.

Release of assets to liquidator.

40. (1) Notwithstanding the provisions of this Part, the domestic business assets of a discontinuing insurer that is incorporated under the laws of the Territory and is in liquidation or being wound-up, may on the order of a Court of competent jurisdiction within the Territory, be released to the liquidator appointed by such court.

(2) In any winding-up or liquidation of a discontinuing insurer the domestic business assets of such insurer shall be available only to meet its liabilities under its domestic business policies notwithstanding any provision or rule of law to the contrary.

(3) Subsection (1) shall apply to a discontinuing insurer that is incorporated outside the Territory only in so far as its affairs in the Territory are being wound-up in the same manner as an insurer incorporated under the laws of the Territory pursuant to the provisions of section 56.

PART V SPECIAL PROVISIONS APPLICABLE TO INSURERS
CARRYING ON LONG-TERM BUSINESS

Appointment of Actuary

Application of part V.

41. This Part shall apply to insurers licensed to carry on long-term business.

Appointment

42. (1) An insurer to which this Part applies of approved shall at the time of the issue of its licence actuary. to carry on long-term business, appoint an actuary approved by the Commissioner, in this Act referred to as the "insurer's approved actuary".

(2) When and so often as an appointment of an actuary under this section is terminated, the insurer shall forthwith notify the Commissioner in writing of such termination and the reasons therefor and within fourteen days from such notice make a new appointment in accordance with the provisions of subsection (1).

Annual and

43. (1) An insurer to which this Part applies periodic shall, in addition to any other requirement actuarial under this Act and the regulations, prepare valuations. annually and deliver to the Commissioner with

its annual statement required under section 22 an actuarial valuation of its assets and liabilities certified by the insurer's approved actuary.

(2) In addition to the annual actuarial valuation required by subsection (1), the Commissioner may, at the intervals he determines, require periodic actuarial valuations certified by the insurer's approved actuary of the assets and liabilities of individual long-term business segregated funds required to be maintained by the insurer pursuant to the provisions of this Part.

(3) The certificate of actuary shall be in the form and shall contain the information prescribed by the regulations.

Separate Accounts and Segregated Funds

Separate

44. An insurer to which this Part applies accounts. which carries general business in addition to its long-term business shall keep separate and distinct accounts in respect of its long-term business.

Segregated funds.

45. (1) In this Act

"segregated funds" means a separate and

distinct fund with separate and distinct assets maintained pursuant to subsection (2) -

(2) Every insurer to which this Part applies shall maintain in respect of each class or category of contracts of long-term business it issues one or more separate and distinct funds with separate and distinct assets for each fund.

(3) A segregated fund shall at all times consist of money or securities in which trustees may invest trust money.

(4) A segregated fund is available only to meet the liabilities arising under contracts of long-term business in respect of which the segregated fund is maintained, except that money or securities in the segregated fund may, at the discretion of the insurer's directors but subject to actuarial certification by the insurer's approved actuary and filed with the Commissioner, be withdrawn from the segregated fund and paid into the shareholders' fund but the amount of money and the market value of any securities when so withdrawn shall not exceed in the aggregate the proportionate interest of the shareholders in the segregated

fund.

Actuarial certification required for declaration of dividend etc.

46. An insurer to which this Part applies shall not -

- (a) declare any dividend;
- (b) redeem any debenture or preference share;
- (c) purchase, redeem or cancel any
of its own shares

unless a certificate from the insurer's approved actuary is filed with the Commissioner stating that the insurer's margin of solvency prescribed by the Regulations is sound and will not thereby be breached and that the assets in the insurer's segregated funds continue to be sufficient at all times to meet its long-term liabilities.

Transfer of long-term Business

Restriction on transfer of long-term business.

47. (1) Where an agreement for the transfer of the whole or any part of the long-term business of any insurer to which this Part applies has been entered into, the insurers that are parties to such agreement shall apply to the Court by petition for an order to sanction and confirm the agreement.

(2) The Court shall not entertain such a petition unless it is accompanied by the following documents -

- (a) certified copies of the statement of the assets and liabilities of the insurers that are parties to the agreement;
- (b) a certified copy of the agreement under which the transfer is effected;
- (c) certified copies of the actuarial and other reports on which the agreement is founded;
- (d) a declaration by two directors

and the insurance manager of each insurer that is party to the agreement that to the best of their knowledge and belief every payment made or to be made to any person whomsoever on account of the transfer, is therein fully set out and that no other payments beyond those set out have been made or are to be made either in money, contracts of insurance, bonds, valuable securities or other property,

by or with the knowledge of any of the parties to the agreement; and

(e) proof satisfactory to the Court

that -

(i) sufficient notice of the

agreement has been served on each policyholder affected and that such notice has been published in the Gazette at least thirty days before the application to the Court is made; and

(ii) copies of the petition and

all accompanying documents have been served on the Commissioner.

(3) The Commissioner and any person who alleges that he will be adversely affected by the sanctioning and confirmation of the agreement shall be entitled to be heard on any petition under this section.

(4) The Court shall hear and determine the matter and may approve the agreement as presented or approve it subject to compliance with any terms or conditions it thinks fit, having regard to the rights and interests of all policyholders affected by the agreement.

(5) Notwithstanding anything in this section the Court shall not make an order sanctioning and confirming the agreement unless it is satisfied that the insurer to which the long-term business is being transferred under the agreement is or, after the making of the order, will be entitled under this Act to carry on long-term business.

Enforcement of contracts when change of insurer.

48. The insurer to which the long-term business is transferred under an agreement sanctioned and confirmed by the court pursuant to section 47 shall assume liability under the contracts of insurance transferred to it and any person entitled to rights under those contracts may enforce such rights against such insurer as though those contracts have been issued by such insurer.

Winding-up rules. 49. The winding-up rules applicable to companies incorporated under the laws of the Territory, in this Part referred to as the

"companies' winding-up rules" shall apply to the winding-up of insurers licensed under this Act in so far as such rules are not inconsistent with the provisions of this Act.

Winding-up by the Court. 50. (1) An insurer licensed under this Act may be wound-up by the Court -

(a) on a petition by the Commissioner with the approval of the Governor if the Court is satisfied that -

(i) the insurer is unable to pay its debts within the meaning of subsection (2);

(ii) the insurer has failed to prepare its annual accounts and deliver to the Commissioner its annual statement as required by section 22 or its annual or periodic actuarial valuations required under section 43;

(iii) the insurer has carried on business or entered into a contract or used its funds in a manner or for a purpose prohibited or not authorized by this Act or the regulations or by the insurer's instrument of incorporation; or

(iv) other sufficient cause has been shown.

(b) on a petition of ten or more of the insurer's policyholders holding policies of an aggregate sum insured of not less than \$100,000.00 which petition shall not be presented except by leave of the Court, and such leave shall not be granted unless a prima facie case has been established to the satisfaction of the Court and unless security for costs for such amount as the Court may think reasonable has been given.

(2) For the purposes of this Act an insurer shall be deemed to be unable to pay its debts if at any time the total value of its assets does not exceed the total amount of its liabilities by the amount prescribed by the regulations.

(3) In any proceedings upon a petition to wind-up an insurer, evidence that the insurer was insolvent at any time before the proceedings is evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

(4) Where the petition for the winding-up of an insurer is presented by any person other than the Commissioner, a copy of the petition shall be served on the Commissioner and he shall be entitled to be heard on the petition.

Reduction of contracts as alternative to winding-up.

51. Where an insurer has been proved to be unable to pay its debts, the Court may, if it thinks fit, reduce the amount of the insurer's contracts on such terms and subject to such conditions as the court thinks just, instead of making a winding-up order.

Winding-up of Insurers
Carrying on Long-term Business

No voluntary

52. Notwithstanding anything in the winding-up rules companies winding-up rules an insurer which carries on long-term business shall not be wound-up voluntarily.

Protection of

53. (1) In the winding-up of an insurer segregated funds carrying on long-term business the assets of assets.

the segregated funds of such insurer shall be available only to meet the insurer's long-term liabilities attributable to such funds and not otherwise.

(2) Where the value of the assets mentioned in subsection (1) exceeds the amount of the insurer's liabilities attributable to such assets the excess may be available to meet other liabilities of the insurer.

(3) Where under the companies winding-up rules the Court orders any delinquent person to repay or restore any money or property to the insurer or to contribute any sum to its assets, the Court shall, in so far as the delinquency relates to assets belonging to the insurer's segregated funds attributable to its long-term business, order that such money, property or contribution shall be treated for the purposes of this Act as assets of such segregated funds and this Act shall have effect accordingly.

Continuation of

54. (1) The liquidator shall, unless

long-term otherwise ordered by the Court, carry on the business of long-term business of the insurer being wound-up and, subject to the approval of the Court, liquidation.

sell or transfer such business as a going concern to another insurer licensed and authorized under this Act to carry on such business.

(2) In carrying on the insurer's business pursuant to subsection (1) the liquidator may, subject to the approval of the Court, agree to the variation of any contracts of insurance in force at the commencement of the winding-up but shall not effect any new contracts of insurance.

(3) The Court may, if it thinks fit and subject to such terms as it may determine, reduce the amounts of the contracts made by the insurer in the course of carrying on its long-term business.

(4) Where the liquidator is satisfied that the interests of the insurers policyholders and creditors in respect of its long-term business require the appointment of -

- (a) a special manager to manage such business; or
- (b) an actuary to conduct actuarial valuations of such business;

he may apply to the Court and the Court may on such application appoint a special manager or an actuary or both as it thinks fit.

(5) A special manager or an actuary appointed under subsection (4) shall

- (a) act during such time as the Court may direct, with such powers as may be entrusted to him by the Court; and
- (b) give such security and account in such manner as the Court shall direct and receive such remuneration as may be fixed by the Court.

Voluntary Winding-up

Notice of

55. (1) Where an insurer, other than that Voluntary which carries on long-term business, proposes winding-up. to

cease carrying on business or to call a general meeting to consider a resolution for voluntary winding-up under the companies winding-up rules it shall give at least thirty days notice in writing thereof to the Commissioner.

(2) Where such insurer has passed a resolution for voluntary winding-up, the insurer shall notify the Commissioner in writing of such resolution and of the date at which contracts of insurance will cease to be entered into by the insurer, and of the name and address of its liquidator.

(3) The notice required under subsection (2) shall be published by the insurer in the Gazette and in any newspaper and other publications as the Commissioner may require.

Winding-up of Insurers
Incorporated Outside the Territory

Winding-up
by the Court
of insurers

outside the
Territory.

56. Where the Governor
- (a) cancels the licence of an incorporated insurer incorporated outside the Territory and the cancellation was not appealed by the insurer or its appeal was dismissed by the Court in accordance with the provisions of this Act; and
 - (b) the Governor is satisfied that it would be in the interests of any creditor of such insurer or of any other person to whom the insurer has an obligation that the affairs of the insurer in the Territory should be wound-up in the same manner as an insurer incorporated under the laws of the Territory,

the Governor may direct the Commissioner to petition the Court to wind-up such affairs and the Court may make such orders for the winding-up of such affairs pursuant to the provisions of this Part as is practicable.

PART VII INSURANCE MANAGERS, INTERMEDIARIES AND PROFESSIONALS

General Provisions Applicable to
Insurance Managers and Intermediaries

Certificate of 57. (1) Except as provided in subsection (3), authority. no person shall,

either on his own account or

as a member or representative of a corporation or partnership, act or offer to undertake to act, as an insurance manager, agent, adjuster or broker in or from within the Territory unless such person applies for and is granted a certificate of authority issued under this Act.

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

(3) Subsection (1) does not apply to -

(a) an agent holding a Certificate

of authority who acts as an adjuster for and with the approval of any insurer for whom he is the authorized agent and within the limits specified in his agency agreement; and

(b) a person who is not resident or

domiciled in the Territory and who because of his special knowledge and expertise receives from the Minister, upon the recommendation of the Commissioner, written permission to adjust a particular loss or assess particular damage which occurred within the Territory.

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

Application for

58. (1) An application for a certificate of a certificate. authority shall be made to the Minister in the form determined by him and delivered to the Commissioner accompanied by the prescribed fee and any information and documents the Minister may reasonably require.

(2) The application shall be endorsed in writing -

(a) in the case of an insurance

manager by any insurer who appointed him pursuant to section 21;

(b) in the case of an insurance

agent by any insurer with whom the agent signed an agency agreement;

(c) in the case of an insurance

broker by any insurer authorizing him to place risks with it; and

(d) in the case of an insurance

adjuster, by any insurer licensed under this Act.

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

Issue of the Certificate.

59. (1) On receipt of the application and the prescribed fee in accordance with the requirements of section 58, the Minister may, upon the recommendation of the Commissioner and if he is satisfied that the applicant has the qualifications required to act in the capacity applied for, issue to the applicant a certificate of authority.

(2) The certificate shall be in the form determined by the Minister and shall -

(a) be subject to the payment of the annual fee prescribed by the regulations;

(b) be subject to any limitations, restrictions or conditions specified therein or that the Minister may, from time to time, see fit to impose; and

(c) expire on December 31 in each year, but may be renewed on application to and subject to the approval of the Minister and payment of the prescribed fee.

Refusal to grant a

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

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

Revocation or
suspension of
certificate.

61. (1) The Minister may revoke or suspend a certificate of authority if the holder thereof -

- (a) has committed an act of misrepresentation, fraud, deceit or dishonesty;
- (b) has contravened any law or any of the provisions of this Act or the regulations, or any conditions attached to his certificate;
- (c) has unreasonably failed to pay over to an insurer, agent or an insured person entitled thereto any money received or collected by him on the account of the business under the authority of his certificate; or
- (d) has demonstrated his incompetency or untrustworthiness to undertake the duties and responsibilities of the capacity in which he is authorized to act by reason of anything done or omitted in or about the business conducted under the authority of his certificate.

(2) A person who acts or holds himself out to the public as an insurance manager, agent, adjuster or broker without holding a valid and subsisting certificate of authority or during the suspension of his certificate is guilty of an offence.

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

Application of
sections 27, 28,
29 and 30 with
necessary
modifications.

62. Sections 27, 28, 29 and 30 shall apply with the necessary modifications in relation to a holder of a certificate of authority as they apply to a licensed insurer.

Insurance Managers

Prohibited

63. A person authorized under this Act to interests. act as an insurance manager or any employee or associate thereof shall not directly or indirectly be interested as a shareholder in or a director, officer or employee of any insurer for whom he is authorized to act as its insurance manager.

Reporting duties
of insurance
manager.

64. (1) If it appears to the insurance manager or if he has knowledge or information that any of the insurers for which he acts as manager -

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

he shall forthwith report to the Commissioner giving particulars of information and documents in his possession.

(2) In reporting to the Commissioner in good faith and in discharge of his duties pursuant to subsection (1) the insurance manager 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.

Notice of
intention to
terminate
management
agreement.

65. Where either the insurance manager or the insurer which appointed him intends to terminate their management agreement, the insurance manager shall give to the Commissioner written notice of such intended termination and the reasons therefor at least thirty days prior to the date on which the termination takes effect.

Insurance Agents and Brokers

Evidence of
agency agreement
and security.

66. (1) Every insurance agent or broker shall, before receiving a certificate of authority, deliver to the Commissioner -

- (a) in the case of an insurance

agent evidence
satisfactory to the
Commissioner of an agency
agreement entered into with the
insurer who endorsed the
agent's application for a
certificate of authority;

(b) in the case of an insurance

broker any form or type of
security acceptable to the
Minister; and

(c) a list of all insurers who
authorize the agent to act on
their behalf or the broker to
place risks with them.

(2) Every insurance agent and broker -

(a) shall notify the Commissioner in
writing of any change in the
list of insurers required in
paragraph (c) of subsection (1)
within ten days from the date of
such change;

(b) who fails to comply with the
provision of paragraph (a) is
guilty of an offence.

(3) The certificate of authority is ipso facto suspended where -

(a) in the case of an insurance

agent, the agency
agreement referred to in
subsection (1) (a) is
terminated; and

(b) in the case of an insurance

broker, the security
required under subsection (1)
(b) is altered in any way.

(4) A certificate of authority that is
suspended under subsection
(3) is, subject to the approval of the
Commissioner, reinstated upon proof
satisfactory to the Commissioner that -

(a) in the case of an insurance
agent -

(i) the agent has discharged
or
provided
for the discharge of all
his
obligations under the
agency agreement which
was terminated; and

(ii) a new agency agreement has been entered into by the agent with another insurer licensed under this Act; and

(b) in the case of an insurance

broker, the security required under subsection (1) (b) has been reinstated or replaced with other security acceptable to the Minister.

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

67. (1) An agent or broker shall, for the purpose of receiving any premium, be deemed to be agent of the insurer and the payment received by the agent or the broker is deemed payment to the insurer notwithstanding any conditions or stipulations to the contrary.

(2) An agent or broker who acts in negotiating, renewing or continuing a contract of insurance with an insurer licensed under this Act, and who receives any premium from any person for such a contract is deemed to hold such premium in trust for the insurer.

(3) If the agent or broker fails to pay the premium he received pursuant to subsection (2) over to the insurer on demand, his failure shall be deemed prima facie evidence that he is guilty of breach of trust.

Personal

68. An agent or broker is personally liable of liable to the insured person, as if he were the agents and insurer, on all contracts of domestic business brokers. unlawfully made by or through the agent or the broker directly or indirectly with any insurer that is not licensed or authorized to carry on domestic business insurance under this Act.

Approved Auditors and Actuaries

Reporting duties and exclusion of liability.

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

(a) he becomes aware during the

performance of his duties that the insurer for whom he acts -

(i) is experiencing a financial

state of affairs of a serious nature that may breach its margin of

solvency as prescribed by the regulations;

- (ii) is not maintaining adequate long-term segregated funds with sufficient assets to meet its long-term business liabilities;
- (iii) is not complying with any of the provisions of this Act or the regulations or any condition attached to its licence; or
- (iv) has defaulted on the payment of any of its liabilities;

(b) he forms a view of the affairs or any aspect of the affairs of the insurer which would cause him to add a qualification or adverse notes to any of his reports or certificates required to be submitted by the insurer under the provisions of this Act or the regulations;

(c) the insurer terminates his appointment or otherwise he ceases to hold office giving the reasons therefor; or

(d) he resigns before the expiration of his term of office or decides not to seek re-appointment giving the reasons therefor.

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

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

General

Privilege of
information
and gateways for
disclosure.

70. (1) Any information, document, record, statement or thing made or disclosed to the Commissioner, the Deputy Commissioner or any justifiable person acting under their authority in the course of discharging any duty or exercising any power under this Act or the regulations concerning any person licensed or authorized or applying for a licence or a certificate of

authority under this Act, is absolutely privileged and shall not be disclosed except as provided in subsection (2).

(2) The restriction on disclosure in subsection (1) does not apply when the disclosure is made -

(a) to the Governor, the Minister or a public officer approved by the Minister;

(b) to any person for the purpose of discharging any duty or exercising any power under this Act or the regulations;

(c) on the order of a Court of competent jurisdiction for the purposes of any criminal or civil proceedings;

(d) on request by -

(i) a high ranking officer of a competent authority in an international organisation recognised by the Governor; or

(ii) a high ranking officer of the law enforcement authority in a country or jurisdiction approved by the Governor,

for the purpose of legal assistance in the investigation of any criminal activity; or

(e) for the purpose of enabling or assisting a regulatory authority in a country or jurisdiction approved by the Governor in discharging duties

or exercising powers corresponding to those under this Act or the regulations;

Provided that in a disclosure made under paragraph (d) or (e) the authority receiving the disclosure shall be required not transmit anything disclosed to any other person except with the prior written consent of the Governor.

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

Insurer in breach of law.

71. Any act or omission by the insurer in breach of any provision of this Act or the regulations does not render any contract of insurance void or voidable as against the insured or any other person having any rights under such contract.

Dealing with unlicensed insurers.

72. (1) Except as provided in subsection (2), no person shall cause any insurance to be effected with any insurer that is not licensed under this Act.

(2) Subsection (1) does not apply to

- (a) a contract of reinsurance; or
- (b) any contract of domestic business arranged with the prior written authorization of the Minister in accordance with any conditions, restrictions or limitations imposed by the Minister, notwithstanding any provision in Part IV, or
- (c) any contract of insurance arranged with an association of underwriters organized according to the plan known as Lloyd's and approved by the Minister subject to any conditions, restrictions or limitations as the Minister may think fit to impose.

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

Restriction on the use of words associated with the insurance business.

73. (1) Any person who not being licensed as an insurer or authorized as an insurance manager, agent or broker under this Act -

- (a) uses or continues to use the words "insurance", "assurance", "reinsurance", "indemnity", "guarantee", "underwriting", "surety", "casualty" or any similar words or derivatives of such words in

English or any other language which in the opinion of the Commissioner suggests or is likely to suggest the undertaking of insurance business or the business of an insurance manager, agent or broker; or

- (b) by means of advertisements, cards, circulars, letterheads, signs or other methods represents or holds himself out to the public as an insurer, insurance manager, agent or broker;

is guilty of an offence.

(2) Any director, officer or manager of an insurer, insurance manager, agent or broker who is knowingly a party to an offence committed under subsection (1) shall be liable on summary conviction to a fine of not less than one hundred dollars for every day during which the offence continues.

Governor's power to grant exemption from certain

74. (1) On application by an insurer that does not carry on domestic business and upon the recommendation of the Commissioner, the Governor may grant an exemption to such insurer provisions. from the application of any of the provisions of this Act or the regulations if the Governor is satisfied that -

- (a) the regulation and supervision of the affairs of such insurer is conducted by a competent authority in a country or jurisdiction outside the Territory which the Governor adopts and considers adequate; or

- (b) the business of such insurer is restricted exclusively to insuring risks of its parent company or affiliated companies.

(2) For the purposes of this section -

- (a) a "parent company" means a corporation that directly or indirectly owns, controls or holds with power to vote more than fifty percent of the outstanding voting shares of the insurer; and
- (b) "affiliated company" means any company in the same

corporate group by virtue of common ownership, control, operation or management.

(3) Where upon application by the insurer and the recommendation of the Commissioner, the Governor is satisfied that it is in the public interest so to do he may grant any insurer exemption from any or all of the provisions of this Act or the regulations.

(4) In the exercise of his powers under this section the Governor may -

(a) grant exemption subject to any conditions, limitations or restrictions as may be specified therein or as the Governor from time to time sees fit to impose;

(b) grant exemption with retroactive effect; or

(c) vary, modify or revoke the exemption at any time giving the insurer ten days prior notice in writing.

Service of

75. (1) Service of any legal process, notice process on or document on an insurer licensed under this insurers. Act may be made by leaving a copy thereof at the principal office of the insurer.

(2) If such office cannot be reasonably located, the service of any such legal process, notice or document may be made by leaving a copy thereof at the office of the Commissioner and publishing notice of that fact in the Gazette and such publication shall be deemed to be due service on the insurer.

Exemption from certain enactments.

76. The holder of a valid and subsisting licence or certificate of authority under this Act shall not, for the purposes of this Act, be required to hold a licence under (a) or (b)

Cap.

(a) the Business, Professions and 200 Trades Licences Act; and

No. 8 of 1990

(b) the Company Management Act, 1990.

Regulations.

77. (1) The Governor may make regulations generally for the better administration of this Act and for carrying the intent and purpose of its provisions into effect and,

- (k) prescribing anything required to be or which may be prescribed under this Act;
- (l) prescribing deposits to be made by licensed insurers and authorised insurance managers, agents, adjusters and brokers for the purposes of this Act and prescribing the amounts, terms and conditions of such deposits.

(2) The Governor may by general or particular regulations provide that any society, association, corporation, board, commission or the like organisation need not be licensed as an insurer under this Act and thereupon such society, association, corporation, board, commission or the like organisation is not required to be licensed as an insurer and this Act and the regulations shall not apply to it.

Incorporation of Insurance Companies etc.
Cap. 285

78. (1) Notwithstanding anything to the contrary in the Companies Act or in the International Business Companies Ordinance or in any other enactment, no person may Cap. 291 incorporate a company under the laws of the

Territory for the object and purpose of carrying on insurance business of any class, category or kind whatsoever or for the object and purpose of acting as an insurance manager, agent, adjuster or broker unless prior approval for such incorporation has been granted in writing by the Governor.

(2) The memorandum and articles of association of a company incorporated under the laws of the Territory for the object and purpose of carrying on insurance business of any class, category or kind whatsoever shall, notwithstanding anything to the contrary in any other enactment, be read as if it contained the provisions set out in subsection (3).

(3) A company incorporated for the object and purpose specified in subsection (2) shall not have power to -

- (a) issue bearer shares, or
- (b) have a corporate body as a director, or
- (c) have less than two directors, or
- (d) continue in another country or

jurisdiction without the prior written approval of the Governor.

(4) The Governor from time to time may by regulations declare that any provisions or any part of the Companies Act or the International Business Companies Ordinance shall not apply to companies incorporated under either of these enactments for the object and purpose specified in subsection (2) or that in the application of any provisions or any part of either of the aforesaid enactments such provisions or part shall be varied in such manner as shall be set out in the regulations.

(5) Any regulations made by the Governor under subsection (4) shall be subject to affirmative resolution.

Transitional.

79. A person who at the date of the coming into force of this Act is carrying on in or from within the Territory insurance business of any kind or acting as insurance manager, agent, adjuster or broker shall, within three months from such date of coming into force, comply with the provisions of this Act.

Repeal of
No. 3 of 1990 and
No. 1 of 1991.

80. The Companies (Amendment) Act, 1990 and the Insurance Business (Special Provisions) Act 1991 are repealed.

PART IX PENALTIES

General
penalty.

81. Any insurer or other person contravening this Act or the regulations or refusing, omitting or neglecting to fulfil, observe, carry out or perform any duty or obligation created, prescribed or imposed by this Act or the regulations, is, unless otherwise provided in this Act or the regulations, guilty of an offence and liable on summary conviction to a fine of not less than \$5,000. and not more than \$50,000. for each offence.

False statements
and statements
of financial
standings.

82. Any person who for any purpose of this Act or the regulations -

(a) represents by any method that

the issue of a licence to an insurer or the regulation and supervision of insurers under this Act is a warranty or guarantee of the financial soundness of any insurer;

(b) wilfully makes any statement or

gives any information that is false or misleading to the Governor, the Minister, the Commissioner, the Deputy Commissioner or to any person acting under their authority;

(c) knowingly fails to disclose in

any application, report or other document any fact required to be disclosed therein by this Act or the regulations;

(d) causes, agrees or allows to

cause any policy, interim receipt or other insuring document to be printed, published or issued falsely bearing the words "Licensed or authorized under the Insurance Act" or the like effect; or

(e) represents by any means that he has any connection or a special status with any government or public official whether that of the Territory or of elsewhere, or that he is recognized in the Territory as a national insurer, insurance manager, agent or broker;

is guilty of an offence and liable on summary conviction to a fine of not less than \$5,000. and not more than \$50,000 or to imprisonment for a term not exceeding two years or both such fine and imprisonment.

Burden of proof in prosecution.

83. In any prosecution under this Act or the regulations of any person accused of acting without being the holder of a valid licence or certificate of authority it is incumbent on the accused to prove that he was at the time licensed or authorized under this Act.

Prosecution

84. A prosecution for an offence under this Act or the regulations may be commenced within five years from the date of the commission of the offence but not thereafter.

Passed by the Legislative Council this 21st day of November, 1994.

Speaker

Clerk of the Legislative Council

OBJECTS AND REASONS

This Bill provides the much needed legislative regime for the regulation of the insurance industry which undoubtedly is a vital segment of our Territory's economy.

The underlying philosophy of the Bill is two fold: responsibility and flexibility. It strikes an appropriate balance between:

- (a) the need for a reasonably firm regulatory system which protects the image of the Territory as a responsible and respectable jurisdiction within the international business community;
- (b) the need to provide adequate safeguards for the protection of our citizens; and
- (c) the need to avoid the bureaucratic imposition of regulatory requirements in a manner that may not be in the public interest and which may reduce the ability of the Territory to attract quality, legitimate and responsible international insurance business.

Provision is made for the licensing of insurers by application to the Governor, (defined in the Bill as Governor in Council) their adequate capitalisation, the stability of their financial resources and the proper conduct of their business. Adequate safeguards in the form of trust assets to be held within the Territory are provided for the protection of insured citizens. Special provisions are also made to protect the interest of persons insured under long-term insurance contracts.

The Bill also regulates the activities of insurance intermediaries and provides for confidentiality of information with appropriate gateways for disclosure of information to regulatory authorities and law enforcement agencies in other countries and jurisdictions for the purpose of assisting in the investigation of irregular or criminal activities.