

**ANTIGUA AND BARBUDA**



**THE INSURANCE ACT, 2007**

**No. 13 of 2007**

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*The Insurance Act 2007.*

**THE INSURANCE ACT, 2007**

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I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

16th November, 2007.

**ANTIGUA AND BARBUDA**

**THE INSURANCE ACT, 2007**

**No. 13 of 2007**

**AN ACT** to make provision for regulating the carrying on of insurance business and regulating the operation of Pension Fund Plans in Antigua and Barbuda and related matters.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Insurance Act, 2007, and shall come into operation on a day to be appointed by the Minister by Notice published in the *Gazette* and different days may be appointed for different provisions of this Act.

**2. Interpretation**

In this Act—

“actuary” means a person who satisfies the Superintendent that he—

- (a) is a Fellow of a professional body of actuaries that is internationally recognised;
- (b) is a person of equivalent status to that of a Fellow mentioned in paragraph (a); or
- (c) is a person recognised by the Commission as having actuarial knowledge and experience;

“admissible assets” means assets that may from time to time be prescribed to be admissible assets;

“assets” does not include goodwill;

“association of underwriters” means either

- (a) the association of underwriters known as Lloyd’s; or
- (b) an association of individual or corporate underwriters in which every underwriting member of a syndicate becomes liable for a separate part of the sum insured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum so insured;

“Board” means the Board of the Directors of the Financial Services Regulatory Commission appointed under section 316 of the International Business Corporations Act.

“carrying on insurance business” includes the receipt of proposals for or the issuing of policies in the State or the collection or receipt in the State of premiums on policies issued in the State by an insurer but does not include

- (a) the collection or receipt in the State of premiums under a policy issued outside of the State to a person resident outside of the State at the date of issue of the policy and who is temporarily resident in the State; or
- (b) the making of payments due under a policy;

“chief executive officer” means a person employed by a company, who, subject to any directions of the directors of the company, is responsible for the conduct of the insurance business of the company;

“class of insurance business” means any class of insurance business specified in the First Schedule;

“Commission” means the Financial Services Regulatory Commission established under section 316 of the International Business Corporations Act.

“company” means a body corporate which carries on or proposes to carry on insurance business in Antigua and Barbuda;

“director” means any person occupying the position of director, by whatever name called, of a company;

“financial year”, in relation to an insurer, means each period not exceeding twelve months at the end of which the balance of the accounts of the insurer is struck;

“foreign company” means a company which is not a local company;

“foreign insurance broker” means an insurance broker that is not a local insurance broker;

“foreign insurer” means an insurer that is not a local insurer;

“general insurance business” means any class of insurance business other than long-term insurance business;

“industrial policy” means a policy in respect of which the premiums are contracted to be paid at intervals of less than two months and are contracted to be received by means of collectors and includes

- (a) a policy that has at any time been such a policy; and
- (b) a paid-up policy (not being a policy expressed to be a non-industrial policy) granted in lieu of an industrial policy or of a policy referred to in paragraph (a);

“insurance adjuster” means any person who, as an independent insurance professional, for compensation, a fee, a commission or a salary investigates and negotiates settlement of claims under policies solely on behalf of either the insurer or the insured but does not include

- (a) a salaried employee of an insurer or an insurance agent while acting on behalf of that insurer or insurance agent in the adjustment of losses; or
- (b) an insurance agent who is authorised to settle claims on behalf of an insurer;

“insurance agent” means any individual, firm, partnership or body corporate appointed by an insurer or an insurance agent to solicit applications for insurance or negotiate insurance on its behalf and if authorised to do so by the insurer, to effectuate and countersign policies but does not include an individual who is an employee of the insurer;

“insurance broker” means any individual who, or any firm, partnership or body corporate which, for compensation as an independent contractor in any manner solicits, negotiates or procures insurance or the renewal or continuance of insurance on behalf of existing or prospective policy-holders;

“insurance business” means the assumption of obligations by an insurer to pay a certain sum on the happening of a particular event and includes re-insurance business;

“insurance fund” in relation to a company means a fund maintained by a company in accordance with section 29;

“insurance intermediary” means any insurance adjuster, insurance agent, insurance broker or sales representative;

“insurer” means a company carrying on insurance business and, except where otherwise stated, includes an association of underwriters;

“local company” means

- (a) a company incorporated under the Companies Act, with not less than fifty-one per centum of its paid-up share capital held by citizens of the State; or
- (b) any company incorporated in a country other than Antigua and Barbuda, which country the Minister has specified by Order published in the *Gazette*;

“local insurance broker” means an insurance broker that is either

- (a) an individual who is a citizen of Antigua and Barbuda;
- (b) a firm or partnership in which the partners holding the majority interest are citizens of Antigua and Barbuda; or
- (c) a local company;

“local insurer” means an insurer that is a local company or an association of underwriters constituted in Antigua and Barbuda.

“local policy” means in relation to

- (a) long-term insurance business, a policy issued or effected by an insurer registered under this Act on the life of a person resident in Antigua and Barbuda at the time the policy was issued or effected;
- (b) property insurance business, a policy issued or effected by an insurer registered under this Act upon property situated in Antigua and Barbuda at the time the policy was issued or effected; and
- (c) any other class of insurance business, a policy issued or effected by an insurer registered under this Act where the risks covered by the policy are ordinarily situated in Antigua and Barbuda at the time the policy was issued or effected;

“long-term insurance business” includes insurance business of all or any of the following classes:

- (a) ordinary long-term insurance business;
- (b) industrial life insurance business; and
- (c) in relation to any insurer, insurance business carried in by the insurer as incidental only to any of the classes of business referred to in paragraphs (a) and (b);

“Minister” means the Minister to whom responsibility for the Financial Services Regulatory Commission is assigned;

“mutual company” means a company whose capital is owned by the policy-holders of that company;

“officer” includes the chief executive officer, the manager, secretary, treasurer, actuary of that body or any other person designated as an officer of a company by its articles of incorporation, its by-laws or any rules regulating its operation;

“paid-up policy” means a policy on which no further premium payments are to be made;

“paid-up value” means the reduced face amount of insurance which the insured buys with the cash surrender value;

“policy” means a valid contract of insurance or reinsurance, whatever the form, in which the rights and obligations of the parties to the contract are expressed and includes a sinking fund policy;

“policy-holder” 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;

“premium income” means the gross premiums less refunds collected by an insurer in the State during its financial year;

“prescribed securities” means the securities listed in the Second Schedule;

“principal office” means the office notified to the Superintendent in accordance with section 16;

“principal representative” means a person appointed by a foreign company pursuant to section 16;

“sales representative” means an individual who is contracted by an insurer or an insurance agent to solicit applications for insurance or negotiate insurance on behalf of an insurer or an insurance agent, but shall not include a bona fide salaried employee of an insurer, insurance agent or insurance broker who is employed at its principal office or branch of it;

“spouse” includes,

- (a) a single woman who was living together with a single man as his wife for a period of not less than five consecutive years; or
- (b) a single man who was living together with a single woman as her husband for a period of not less than five consecutive years;

“superannuation allowances” includes payment of a lump sum on retirement;

“Superintendent” means the Superintendent of Insurance appointed under section 4;

“underwriter” includes any person named in a policy as liable to pay or contribute towards the payment of the sum insured by the policy;

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

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

(2) For the purpose of this Act, a person shall not be treated as carrying on insurance business in Antigua and Barbuda if the only reason for so treating the person is the fact that the risk covered by a policy issued by the person is situated in Antigua and Barbuda.

### **3. Application of Act**

(1) This Act applies to

- (a) all insurers, whether or not incorporated in Antigua and Barbuda, which carry on any class of insurance business in Antigua and Barbuda; and
- (b) privately administered pension fund plans whether administered by individual trustees or by trust corporations.

Cap. 222

(2) A body corporate incorporated under the Companies Act, that carries on insurance business in any part of the world other than Antigua and Barbuda shall, for the purposes of this Act, be deemed to be a company carrying on that business within Antigua and Barbuda.

(3) For the purposes of this Act, the re-insurance of liabilities under policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer, and all the provisions of this Act shall apply to the re-insurance save that a company or an association of underwriters carrying on the re-insurance shall not be required to make in respect of the re-insurance any deposit as required by section 22



## **PART II**

### **ADMINISTRATION**

#### **4. Superintendent of Insurance**

(1) For the purposes of this Act there shall be a Superintendent of Insurance who shall be responsible for the general administration of this Act.

(2) The Superintendent of Insurance shall be appointed by the Board and shall be a person who holds qualification in accountancy, business, finance or insurance and has had not less than seven years of professional experience in the related area.

(3) The Superintendent shall, in the performance of his functions under this Act, be subject to the direction of the Administrator of the Commission and the Board.

#### **5. Board may secure services of persons**

The Board may on the recommendation of the Superintendent obtain the services of an actuary or any competent person for the purpose of carrying out any survey, investigation, inquiry or functions under this Act.

#### **6. Delegation by the Board**

(1) The Board may, after consultation with the Superintendent, by writing delegate to any person employed in the Commission, all or any of his powers or duties under this Act on terms and conditions as it deems fit, except the power conferred on it by this section.

(2) Any delegation under subsection (1) shall be revocable at any time by the Board and no delegation shall prevent the exercise of such powers or duties by the Superintendent himself.

#### **7. Registers to be maintained**

The Superintendent shall maintain separate registers of the following:

First Schedule

- (a) companies registered to carry on in Antigua and Barbuda the various classes of insurance business specified in First Schedule;
- (b) associations of underwriters registered to carry on in Antigua and Barbuda the various classes of insurance business specified in Schedule 1; and
- (c) any other registers that may be required to be maintained under this Act or its Regulations

#### **8. Annual report**

(1) The Superintendent shall on or before the last day of June in each year or a later date specified by the Board, prepare and submit to the Board a report containing

- (a) statements on the working of this Act during the previous year;
- (b) printed copies or summaries of the documents lodged with the Superintendent under sections 38, 40, 83, 171, 193 and 194; and
- (c) any other documents and information required by the Board.

(2) The Superintendent may attach to any printed copies or summaries furnished pursuant to paragraph (1)(b) such comments on the document as the Superintendent considers necessary, together with a copy of any correspondence relating to the document.

### **PART III**

## **REGULATION OF INSURANCE COMPANIES**

### **Registration**

#### **9. Restriction on carrying on insurance business**

(1) Subject to this Act, no person may carry on insurance business in Antigua and Barbuda, unless that person

- (a) is a company, or an association of underwriters, and registered under this Act; and
- (b) has
  - (i) made the deposit required by section 22; and
  - (ii) filed with the Superintendent the names and addresses of one or more persons resident in Antigua and Barbuda and authorised to accept on behalf of the company service of process in legal proceedings.

(2) A company that contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

#### **10. Company deemed registered**

A company registered to carry on insurance business in Antigua and Barbuda immediately before the commencement of this Act, shall be deemed to have been registered under this Act.

#### **11. Contracts with non-registered insurers**

(1) The Board may, in special circumstances, grant approval for insurance to be placed with non-

registered insurers where it is satisfied that it is not possible to obtain similar protection from an insurer registered under this Act.

(2) A person who desires to enter into an insurance contract with a non-registered insurer (except a contract relating to re-insurance), shall apply to the Superintendent for permission to do so.

## **12. Share capital necessary for registration**

(1) Subject to this Act, no company may be registered, or may continue to be registered, to carry on long-term insurance business unless,

- (a) if a local company, it has a paid-up share capital of not less than two million dollars; or
- (b) if a foreign company, it has a paid-up share capital of not less than five million dollars, the capital to be fully paid up in cash; or
- (c) in the case of a mutual company, it has uncommitted reserves of not less than five million dollars.

(2) No company may be registered, or may continue to be registered, to carry on any class of insurance business other than long-term insurance business unless,

- (a) if a local company, it has a paid-up share capital of not less than two million dollars; or
- (b) if a foreign company, it has a paid-up share capital of not less than five million dollars, the capital to be fully paid-up in cash; or
- (c) in the case of a mutual company, it has uncommitted reserves of not less than five million dollars.

(3) Notwithstanding subsections (1) and (2), the Board may, if it appears to it necessary, require a company seeking registration under this Act to increase its paid-up share capital or uncommitted reserves beyond the minimum level stated in subsections (1) or (2), as the case may be.

(4) A company that immediately before the coming into force of section 1 of this Act is registered to carry on any class of insurance business shall within five years of its coming into force, increase its paid-up share capital or its uncommitted reserves to the level required in subsection (1) or subsection (2), as the case may be.

## **13. Application for registration Schedule 3**

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

(2) The Superintendent may, upon receipt of an application under this section, request the applicant insurance company to furnish the additional information he may consider to be relevant in relation to the application and the company shall comply with the request.

(3) Within a reasonable time of the receipt of the application for a licence and of such additional information as he may require under subsection (2), the Superintendent shall make his recommendations on the application for licence to the Board.

(4) The Minister may, on the recommendation of the Board, by order, published in the Gazette, amend the Third Schedule.

#### **14. Conditions for registration**

(1) If the Board, after considering the application for licence and the recommendations of the Superintendent thereon is satisfied in respect of the applicant insurance company that

- (a) the requirements of sections 9, 12 and 13 in so far as they are applicable, have been complied with;
- (b) the company is not deemed to be insolvent under the provisions of section 53;
- (c) the company is likely to be able to comply with the provisions of this Act applicable to it;
- (d) the company has made adequate arrangements for re-insurance of that class of business or that there is no justification for making the arrangements;
- (e) the proposed directors and persons who constitute the management of the company are fit and proper in accordance with the criteria under section 198;
- (f) in the case of a company that carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of both insurance and that other business is not contrary to the public interest;
- (g) the name of the company is not identical with or does not so closely resemble the name of an insurance company already registered under this Act as to be likely to deceive;
- (h) the significant shareholders are suitable;
- (i) the ownership structure is sufficiently transparent; and
- (j) being a foreign company, it
  - (i) is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least three years before the date of the application; and
  - (ii) has appointed some person resident in Antigua and Barbuda to be its principal representative in Antigua and Barbuda and has informed the Superintendent in writing of the name and address of that person,

the Board shall either, unconditionally or subject to any conditions it may specify, direct the Superintendent to register the company in respect of the class or classes of insurance business and shall cause him to notify the applicant accordingly, or if the Board is of the opinion that it would be undesirable in the public interest to register the company in respect of one or more classes of insurance for which the application is made, it may refuse to register the company in that class or those classes stating in writing the reasons for so refusing and directing the Superintendent to inform the company of its refusal and of its right of appeal under section 202.

(2) The Board may at any time make the company subject to conditions or add to, amend or revoke any conditions to which it has made the company subject under subsection (1) or this subsection.

(3) Notwithstanding subsection (1)(j)(i) where a company is the subsidiary of, or is the parent of, or is the subsidiary of the parent of, an existing registered company, or where a new company has been created as a result of a merger of two or more companies involving at least one registered insurance company, the Board may, provided it is satisfied as to the other conditions set out in subsection (1), direct the Superintendent to register the company notwithstanding that the applicant company has not undertaken insurance business in its country of incorporation for at least three years.

(4) The cost of any investigation carried out under this section shall be borne by the applicant for licence.

### **15. Certificate of registration**

(1) The Superintendent shall furnish to every company registered under this Act a certificate in the prescribed form that the company has been so registered, and the certificate shall contain a statement of the class or classes of insurance business for which the company is registered and is *prima facie* evidence that the insurance company specified in the certificate has been so registered.

(2) A company registered under this Part shall prominently display its registration certificate at its principal place of business in Antigua and Barbuda in a part of the place of business to which the public has access and a copy of the registration certificate shall be similarly displayed at each of its branches in Antigua and Barbuda.

(3) On the notification to an insurance company that its registration has been cancelled, that company shall forthwith surrender the registration certificate and every copy of the registration certificate to the Superintendent.

(4) A person who without lawful excuse fails to comply with subsections (2) and (3), or displays a registration certificate or a copy of it that is not currently valid, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

### **16. Obligations of foreign companies**

(1) A registered foreign company shall maintain a principal office in Antigua and Barbuda and shall appoint to that office a principal representative.

(2) The principal representative of a registered foreign company shall have a power of attorney sufficient to satisfy the Superintendent that the representative is authorised to act for the company in all matters to secure compliance by that foreign company with this Act, and a copy of the power of attorney shall be lodged with the Superintendent immediately after the appointment of the principal representative.

(3) Service of any notice, writ, summons or other document or process on a principal representative shall be deemed to be service on the foreign company concerned.

(4) If a registered foreign company changes the address of its principal office in Antigua and Barbuda or appoints a new principal representative, it shall, within twenty-one days of the change or the new appointment, give notice of the change or new appointment to the Superintendent in writing.

### **17. Notification of change in particulars of registration**

Where subsequent to the registration of a company under this Act there is any change in the particulars specified in the application for the registration of the company, or in the documents submitted with the application, the company shall, within thirty days of the change, notify the Superintendent in writing of the change.

### **18. Application and policy forms**

(1) The Superintendent may prohibit a company from issuing any form of policy, endorsement or application for a policy the issue or use of which, in his opinion is fraudulent, unjust or not in the public interest.

(2) A company which continues to issue or continues to use a form of policy, a form of endorsement or a form of application for a policy the issue or use of which is prohibited by the Superintendent under subsection (1) commits an offence.

### **19. Cancellation of registration**

(1) The Superintendent may cancel the registration of a company registered under this Act

- (a) if he is satisfied that the company has ceased to carry on insurance business in Antigua and Barbuda for more than one year;
- (b) if he is satisfied that the company has not commenced business in Antigua and Barbuda within two years of registration;
- (c) at the request of the company or its liquidator or trustee;
- (d) if he is satisfied that the company obtained registration as a result of any misleading or false representation or in consequence of any incorrect information;

- (e) if the company is deemed insolvent within the meaning of section 53;
- (f) if he is satisfied that there is unreasonable delay in the settlement of claims payable under policies issued by it;
- (g) if one month has elapsed since the date by which the company was required under this Act to furnish information to the Superintendent and the company has, without reasonable excuse, failed to furnish the information or failed to do so in the manner specified in this Act;
- (h) if the company fails to comply with subsection 12(1), (2) or (3) as the case may be;
- (i) if the company fails to comply with a condition specified under subsection 14(1) or (3);  
or
- (j) if any of the re-insurance arrangements of the company is not satisfactory.

(2) The Superintendent shall, before exercising the power of cancellation under subsection (1), notify the company of the intended cancellation giving reasons for so doing and the company shall have the right to make written representations within any period stipulated by the Superintendent in the notice.

(3) The Superintendent shall, when the registration of a company is cancelled,

- (a) give notice of cancellation to the company; and
- (b) require the company to deliver its registration certificate and every copy of the registration certificate to him within twenty-eight days of the cancellation or any shorter period that may be specified in the notice.

(4) No registration of a company shall be cancelled under this section without the prior approval of the Board.

## **20. Reasons for refusal to register**

The Superintendent shall, where he refuses to register a company or where he cancels the registration of a company, after the refusal or the cancellation, within fourteen days notify the company in writing of his reasons for so doing and of its right of appeal under section 220.

## **21. Effect of cancellation of registration**

(1) If the registration of a company is cancelled the company shall not, after the date on which it was notified of the cancellation, enter into any new policy in Antigua and Barbuda.

(2) For the purpose of subsection (1), a company shall be treated as having entered into a new policy where a policy entered into prior to the date of the notification under section 19 is renewed or varied after that date.

(3) Nothing in this section shall be construed as relieving an insurance company, the registration of which has been cancelled under this Act or any other Act, of the obligation to maintain the deposit required to be made under section 22 and the insurance funds required to be maintained under section 29.

(4) A company that contravenes subsection (1) commits an offence.

### **Deposits**

#### **22. Amount of deposits**

(1) No insurer shall be registered under this Act to carry on and may not carry on any class of insurance business unless it has deposited an amount of two hundred thousand dollars with the **Commission**.

(2) A deposit shall be in the form of cash or prescribed securities or partly in one and partly in the other.

(3) A deposit made by a company under this section shall form part of the assets of the insurer and all interest accruing on any securities deposited under this section shall be paid to the depositor concerned.

(4) Garnishment of the statutory deposits of an insurer, by any person, is prohibited.

(5) If an insurer fails to satisfy the statutory deposit requirement, but has bank deposits, the Board may attach the bank deposits.

#### **23. Variation of form of deposits**

The Superintendent may from time to time by notice in writing require or on application permit any company to vary the form of its deposit with the **Commission**.

#### **24. Failure to make deposits**

A company that fails to comply with section 22 and with section 29 commits an offence and is liable on summary conviction to a fine of ten thousand dollars, and in addition to any other punishment, shall be liable to have its certificate cancelled by the Superintendent.

#### **25. Release of deposits**

(1) When a company has ceased to transact business and has given notice to that effect to the Superintendent or where the registration of a company has been cancelled, the deposits made under



section 22 shall be retained by the Commission and shall not be delivered to the insurer until all the outstanding risks of the company have been provided for or have been surrendered to the satisfaction of the Superintendent.

(2) Upon making application for the release of its deposits, a company shall file with the Superintendent in respect of all local policies, a list of all policy-holders who have not been provided for, or who have not surrendered their policies, and the company shall at the same time publish, and continue the publication at least once a week for six consecutive weeks in the *Gazette* and in at least one newspaper circulating in Antigua and Barbuda and approved by the Superintendent, a notice that it will apply to the Superintendent for the release of its deposits on a certain day not less than three months after the date on which the notice is first published in the *Gazette* and calling upon the policy-holders opposing the release to file their opposition with the Superintendent on or before the day so specified.

(3) After the day so specified in the notice, if the Superintendent is satisfied that the deposits of the company are substantially in excess of the requirements under this Act governing deposits in respect of continuing policy-holders, he may, from time to time, advise the Commission to release to the insurer that portion of the excess as he thinks proper in the circumstances, and the **Commission** shall continue to hold the remainder of the deposits for the protection of the continuing policy-holders as is provided by this Act, and subsequently from time to time as the policies lapse or proof is adduced to the satisfaction of the Superintendent that they have been satisfied, further amounts may be released by the Commission on the authority of the Superintendent.

(4) Notwithstanding this section if a company is

- (a) in liquidation; or
- (b) under judicial management,

the deposits or a part of the deposit may, on an order of the court having jurisdiction under this Act, be released by the Commission, after informing the Superintendent, to the liquidator or Judicial Manager but the liquidator or Judicial Manager must first satisfy in full the claims of policy-holders before making any other payment.

## **26. Refund of deposits**

Notwithstanding section 25, where the registration of a company that has not commenced to carry on business in Antigua and Barbuda is cancelled in pursuance of this Act, the Superintendent must authorize the Commission to refund and deliver to the company any monies or securities, or both, deposited by him in pursuance of section 22.

## **27. Deposits to be increased**

(1) If the Superintendent is satisfied that by reason of depreciation in the value of securities or for any other cause the value of monies and prescribed securities deposited by or on behalf of a company

falls short of the value required by this Act, he shall, by notice in writing, require within a period not exceeding three months, the company to deposit with the Commission monies or approved securities or both to the value deemed by him to be sufficient to bring the amount of the deposit to the value required.

(2) A notice under subsection (1) shall not be issued until the Superintendent has given an opportunity to the insurer to make written representations in connection with the matter.

### **28. Lost securities**

If any monies or securities held on, or as part of, any deposit required to be made by a company under this Act are, while so deposited, lost, stolen, damaged or destroyed the injury occasioned to all persons interested in the monies or securities shall be made good out of monies to be appropriated by Parliament for the purpose.

## **Insurance Funds**

### **29. Establishment and investment of insurance funds**

(1) Notwithstanding section 22, every company shall, in respect of each class of insurance business being transacted, establish an insurance fund equal to its liability and contingency reserves in respect of policies in Antigua and Barbuda in that class of business as established by the revenue account of the company, less the amounts held on deposit with the **Commission**.

(2) Within four months of the end of each financial year a company shall place in trust the assets of its long-term insurance fund and of its motor vehicle insurance fund, as the case may be.

(3) The assets of an insurance fund shall be invested only in the securities specified in the Fourth Schedule.

(4) The Minister may on the recommendation of the Board by Order published in the *Gazette* amend the Fourth Schedule.

### **30. Restriction and use of assets in a fund**

(1) The assets representing the long-term insurance fund or the motor vehicle insurance fund shall not be applied directly or indirectly to any class of insurance business other than that in respect of which the fund was established and is maintained.

(2) Where the value of the assets in an insurance fund exceeds the amount of the liabilities attributable to the classes of insurance business referred to in subsection 29(2), the trustee may, with the approval of the Superintendent, release the assets held in excess of the requirement of the fund.

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

(4) No company incorporated in Antigua and Barbuda carrying on long-term insurance business or motor vehicle insurance business shall declare a dividend at any time when the value of the assets of a long-term insurance fund or a motor vehicle insurance fund, as the case may be, is less than the liabilities attributable to that business.

### **31. Creating a trust**

(1) A trust referred to in section 29(2) shall be created by trust deed the contents and the trustees of which shall be approved by the Superintendent before the trust is created.

(2) The Superintendent may, for the purpose of this section, allow the assets required to be placed in trust to be held by a bank in Antigua and Barbuda or a financial institution approved by the Superintendent to the order of or on behalf of the Superintendent and the assets shall be deemed to be placed in trust and the bank or financial institution shall be deemed to be a trustee.

### **32. Restrictions on trustee**

(1) A trustee may not deal with any assets held in trust by him without the prior general or specific approval of the Superintendent.

(2) A trustee shall, as required by the Superintendent, submit a list of the assets held in trust pursuant to section 31.

(3) A trustee who contravenes subsection (1) shall be under the same liability as if the appropriate policy-holder had been the beneficiary of the trust.

### **33. Maintaining particulars of fund**

(1) A company transacting more than one class of insurance business shall maintain the records necessary for the purpose of identifying the assets representing each insurance fund.

(2) A company shall, within four months of the expiration of each financial year, furnish to the Superintendent a statement showing particulars of

- (a) the liabilities in respect of each fund; and
- (b) the assets comprising each fund.

### **34. Capital Adequacy**

(1) A registered local company shall not at any time have a capital adequacy ratio of less than such percentage, and calculated in such manner, as the Superintendent may determine in respect of all companies or any company.

(2) Any ratio required under subsection (1) shall be calculated on a consolidated and a solo basis for every registered local company within a financial group.

(3) Where there is a deficiency in a company's capital ratio, the Superintendent shall require the company to present a plan that is satisfactory to him to reconstitute its capital adequacy ratio within thirty days or such longer period as the Superintendent may determine.

(4) Where the company

(a) fails to present a satisfactory plan pursuant to subsection (3); or

(b) fails to implement a plan prescribed pursuant to subsection (3),

the Superintendent shall take such remedial action as he considers necessary and in accordance with section 56.

(5) Notwithstanding that a company is complying with subsection 29(1) or a local company with subsection 34(1), the Superintendent may direct the company to increase the assets in any or all of its insurance funds or increase its capital adequacy ratio, as the case may be.

### **Accounting Requirements**

#### **35. Company to keep records**

(1) A company shall keep at its head office or at the office of its principal representative in Antigua and Barbuda, as the case may be, any books, vouchers, records, receipts and other documents as may be necessary to enable it to prepare for transmission to the Superintendent a statement of the insurance business carried on by it in Antigua and Barbuda.

(2) The Superintendent may request in writing a company to furnish the statement referred to in subsection (1) and it must be in the form required by the Superintendent.

#### **36. Information in order to ascertain ability of company to meet obligations**

(1) The Superintendent may require any company registered under this Act or the director, manager, auditor, actuary, secretary or principal representative of the company to furnish him, within the time specified by him, with any information necessary to ascertain the ability of the company to meet its obligations under policies issued by it.

(2) A company or any director, manager, auditor, actuary, secretary or principal representative of the company who without reasonable excuse fails to comply with the requirements of subsection (1) commits an offence.

#### **37. Company to keep separate accounts**

(1) A company that carries on any other business besides insurance must keep separate accounts in respect of its insurance business.

(2) A company that carries on general insurance business in addition to its long-term insurance business, must keep separate accounts in respect of its long-term insurance business.

### **38. Annual accounts**

(1) Subject to subsection (3) a company shall, within four months of each financial year, or within an extended period not exceeding two months as the Superintendent may allow, submit to the Superintendent three copies of

- (a) a balance sheet showing the financial position of all insurance business of the company at the close of that year;
- (b) a profit and loss account in respect of all its insurance business in that year;
- (c) separate revenue accounts in respect of each class of insurance business carried on by it; and
- (d) an analysis of long-term insurance policies in force at the end of that year.

(2) A company shall provide the Superintendent with such other documents and information required by the Superintendent at such times and in such form as he may require.

(3) A company shall furnish the Superintendent with a copy of any report on the affairs of the insurer submitted to the policy-holders or shareholders of the insurer in respect of the financial year to which those documents relate.

(4) All the documents required to be furnished under subsection (1) shall separately provide information on the world wide business of the company as well as the business in Antigua and Barbuda and the documents shall be prepared in the form prescribed.

(5) A company incorporated outside Antigua and Barbuda carrying on business in Antigua and Barbuda shall submit to the Superintendent a copy of the statement of accounts submitted to the regulatory authority in its country of incorporation.

(6) If, in the opinion of the Superintendent, a document furnished by a company under subsection (1) is incorrect or incomplete or is not prepared in accordance with this Act, he may, by notice in writing, call upon the company to amend the document or to furnish a correct document, as the case may be.

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

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

(9) If a document has been rejected by the Superintendent under subsection (7) the company shall be treated as having failed to comply with subsection (1) in relation to that document, unless it has furnished within the time specified another document in accordance with the directions of the Superintendent.

(10) A company that fails to submit any account, statement or other document or information required under this section, shall pay a fee of two hundred dollars for every day that the account, financial statement or other document remains not submitted after the due date or the date extended by the Superintendent, and the fee shall be payable by the company on the date fixed by the Superintendent and if not paid the company commits an offence and is liable on summary conviction to a fine of forty thousand dollars together with any fee incurred for not submitting the statements or other documents on the due date or on the date extended by the Superintendent.

(11) A company shall, at the request of a policy-holder, make available to that policy-holder a copy of the relevant revenue account, profit and loss account and balance sheet prepared by the company under subsection (1) in respect of its last preceding financial year.

(12) The documents required to be furnished under subsection (1) shall be certified by an independent auditor, and the secretary or the principal representative and a director of the company, and, by the actuary of the company.

### **39. Production of information and documents by an affiliate**

(1) The Superintendent may direct an affiliate of a registered company to provide him with such information or documents as he requests where he believes that the production of the information or documents is necessary to be satisfied that the provisions of this Act are being complied with and that the company is in sound financial condition.

(2) An affiliate to whom a direction has been issued under subsection (1) shall provide the information or documents within the time specified in the direction.

### **40. Actuarial reports**

(1) A company carrying on insurance business shall, every three years or at any shorter intervals that the company notifies the Superintendent to be the intervals adopted by it for the purposes of this section

- (a) cause its actuary to make an investigation into its financial condition including a valuation of its liabilities in respect of every class of insurance business and to furnish the Superintendent with a report of the result of the investigation; and
- (b) cause an abstract of the report of the actuary and a statement of its insurance business to be prepared.

(2) A valuation balance sheet shall be annexed to every abstract prepared under this section.

(3) The basis of valuation adopted shall place a proper value on the liabilities, having regard to the average rate of interest from investments and to expenses of management, including commissions, and shall ensure that no policy is treated as an asset.

(4) The Superintendent may appoint an actuary to value the matters referred to in subsection (1) if the Superintendent is of the opinion that the appointment is necessary.

(5) The expenses incurred in carrying out a valuation under subsection (4) are payable by the company.

#### **41. Group accounts**

Where two or more insurance companies, that operate as separate entities that can be wound up in accordance with the law under which they are incorporated, are associated together in a group, then, in addition to the separate accounts required by section 37, the parent company of the group shall submit, at the end of its financial year

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

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

#### **42. Appreciation and depreciation of assets**

If a company treats any asset as having appreciated or depreciated in value, the company shall regard the amount of the appreciation or depreciation as an item of income or expenditure as the case may be.

#### **43. Superintendent may request appraisal of property of company**

- (1) If on perusal of any information furnished to the Superintendent under this Act it appears
- (a) that the value placed by the company on any real (immoveable) property owned by it in Antigua and Barbuda is too great; or
  - (b) that the property is not adequate security for any loan secured by mortgage on the property and the interest on the loan,

the Superintendent may request the company to have the real (immoveable) property appraised by a valuer approved by him, and failing compliance with that request, the Superintendent may cause an appraisal of the real (immoveable) property to be done at the expense of the company.

(2) If the appraised value of the real (immoveable) property of a company is substantially less than the value disclosed in the information furnished pursuant to section 38(1), the Superintendent may, in order to ascertain the ability of the company to meet its obligations, substitute the appraised value for the value disclosed.

(3) If the appraised value of the real (immoveable) property of a company is not adequate security for a loan secured by mortgage on the property and the interest on the loan, the Superintendent may write off from the loan and the interest a sum sufficient to reduce them to an amount that may be fairly realisable from the sale of the property; but the reduced sum must in no case exceed the appraised value of the property.

#### **44. Auditors approved by the Commission.**

(1) The accounts of a company shall be audited annually by its auditors, and every revenue account and balance sheet required to be prepared by the company under section 38(1) shall be accompanied by a report of the auditors addressed to the Superintendent stating whether in their opinion

- (a) the accounts have been prepared in accordance with this Act;
- (b) the revenue account and the profit and loss account present fairly the results of the company's operations for the financial period to which they relate;
- (c) the balance sheet presents fairly the state of the company's affairs at the end of the financial period to which it relates;
- (d) adequate records of account have been maintained by the company and are reasonably up to date;
- (e) the reserves relating to unexpired policies have been calculated in accordance with section 178; and
- (f) the provisions regarding the settlement of outstanding claims are adequate, having regard to the latest estimated cost of settlement of such claims.

(2) Paragraphs (e) and (f) of subsection (1) shall apply only to a company carrying on general insurance business in the State.

(3) If the auditors, for the purpose of exercising the powers conferred on them by subsection (1)

- (a) are unable to obtain all the information they require; or



- (b) are not completely satisfied with the information contained in the accounts on which they are reporting,

they shall in their report specify the matters in respect of which they were unable to obtain all the information or matters about which they were not completely satisfied.

**45. Auditors to have access to books etc. of company**

(1) On the request of the company's auditors, the present or former directors, officers, employees or representatives of the company shall, to the extent that they are reasonably able to do so,

- (a) permit access to such records, assets and security held by the company or any entity in which the company has a substantial investment, and
- (b) provide such information and explanations

as are, in the auditor's opinion, necessary to enable the auditors to perform the duties of the company auditors.

(2) On the request of the company's auditors, the directors of the company shall, to the extent that they are reasonably able to do so,

- (a) obtain from the present or former directors, officers, employees and representatives of any entity in which the company has a substantial investment the information and explanations that such persons are reasonably able to provide and that are, in the auditor's opinion, necessary to enable the auditors to perform the duties of the company auditors; and
- (b) provide the auditors with the information and explanations so obtained.

**46. Superintendent may request special examination or direct special audit**

(1) The Superintendent may, in writing, require that the auditors report to the Superintendent on the extent of the auditor's procedures in the examination of the annual statement and may, in writing, require that the auditors enlarge or extend the scope of that examination or direct that any other particular procedure be performed in any particular case, and the auditors shall comply with any such requirement of the Superintendent and report to the Superintendent thereon.

(2) The Superintendent may, in writing, require that the auditors make a particular examination relating to the adequacy of the procedures adopted by the company for the safety of its creditors, shareholders and policyholders, or any other examination as, in the Superintendent's opinion, the public interest may require, and report to the Superintendent thereon.

(3) The Superintendent may direct that a special audit of a company be made if, in the opinion of

the Superintendent, it is so required and may appoint for that purpose auditors qualified pursuant to section 51 to be the company's auditors.

(4) The expenses entailed by any examination or audit referred to in any of subsections (1) to (3) are payable by the company on being approved in writing by the Superintendent.

#### **47. Auditor to report to company**

(1) It is the duty of the company's auditors to report in writing to the chief executive officer and chief financial officer of the company any transactions or conditions that have come to the auditor's attention affecting the well-being of the company that in the auditor's opinion are not satisfactory and require rectification and, without restricting the generality of the foregoing, the auditor shall, as occasion requires, make a report to those officers in respect of transactions of the company that have come to the auditor's attention and that in the auditor's opinion have not been within the powers of the company.

(2) Where the auditors of a company make a report under subsection (1),

- (a) the auditors shall transmit the report, in writing, to the chief executive officer, chief financial officer and the actuary of the company;
- (b) the report shall be presented to the first meeting of the directors following its receipt;
- (c) the report shall be incorporated in the minutes of that meeting; and
- (d) the auditors shall, at the time of transmitting the report to the chief executive officer and chief financial officer, provide the Superintendent with a copy of the report.

#### **48. Auditors entitled to attend meetings of audit committee**

(1) The auditors are entitled to receive notice of every meeting of the audit committee of the company and, at the expense of the company, to attend and be heard at that meeting.

(2) If requested by a member of the audit committee, the auditor shall attend every meeting of the audit committee held during the member's term of office.

#### **49. Auditors may request meetings of audit committee**

(1) The auditors of a company may call a meeting of the audit committee.

(2) The chief internal auditor of a company or any officer or employee of the company acting in a similar capacity shall, at the request of the auditors and on receipt of reasonable notice, meet with the auditors.

#### **50. Directors to notify audit committee or company of errors or misstatement**

(1) A director or an officer of a company shall forthwith notify the audit committee and the auditors of the company of any error or misstatement of which the director or officer becomes aware in an annual statement or other financial statement on which the auditors or former auditors have reported.

(2) If the auditors or former auditors of a company are notified or become aware of an error or misstatement in an annual statement or financial statement on which the auditors reported and in the auditor's opinion the error or misstatement is material, the auditors or former auditors shall inform each director of the company accordingly.

(3) Where under subsection (2) the auditors or former auditors of a company inform the directors of an error or misstatement in an annual statement or other financial statement, the directors shall

- (a) prepare and issue a revised annual statement or financial statement; or
- (b) otherwise inform the shareholders and policy-holders and the Superintendent of the error or misstatement.

#### **51. Appointment of auditors**

No person may be appointed auditor of a company incorporated in Antigua and Barbuda unless

- (a) he is a member of an Institute of Chartered Accountants or any other professional accounting association that may be prescribed; or
- (b) the company has served on the Superintendent written notice of its intention to make the appointment and the Superintendent has failed to serve on the company a written notice of objection to the appointment within one month of the date on which the company served notice of the appointment on him.

#### **52. Prohibitions**

(1) A company shall not after the commencement of this Act directly or indirectly

- (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;
- (b) lend any of its funds to a director or an officer of the company or to the spouse or a child of a director or an officer except on the security of the company's own policies or on some other adequate security;
- (c) lend any of its funds to a company where more than one-half of the shares of that other company is owned either jointly or severally by a director or an officer of the company or by the spouse or a child of a director or an officer or by any combination of those persons;

- (d) grant unsecured credit to any person;
  - (e) pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisational expenses, share-selling commission and brokerage) not represented by tangible assets, has been completely written off; and
  - (f) enter into any guarantee or provide any security in connection with a loan by any other person to a person or company mentioned in paragraph (b) or (c).
- (2) A company that contravenes this section commits an offence.

### **Solvency and Intervention**

#### **53. Solvency.**

- (1) A company shall be deemed to be insolvent
- (a) in the case of a company carrying on only long-term insurance business, if the value of its liabilities exceeds its assets;
  - (b) in the case of a company carrying on only general insurance business, if the excess of assets over liabilities is less than the greater of the following amounts, namely
    - (i) five hundred thousand dollars; or
    - (ii) twenty per centum of its premium income in respect of its general insurance business in its last preceding financial year; and
  - (c) in the case of a company carrying on both long-term insurance business and general insurance business, if the excess of its total assets over its total liabilities is less than the amount specified in paragraph (b).
- (2) For the purpose of subsection (1)
- (a) in computing the amount of the liabilities of a company, all contingent and prospective liabilities of the company in respect of policies including adequate provision for unexpired policies and outstanding claims, but not liabilities in respect of share capital, shall be taken into account;
  - (b) the premium income of a company in any financial year shall be assessed as the net amount, after deduction of any premiums paid by the company for re-insurance in that year in respect of all general insurance business carried on by it; and

- (c) assets have been valued in accordance with any rules prescribed for the valuation of assets and only admissible assets shall be included in determining the solvency of a company.

#### **54. Power to request information**

(1) The Superintendent may require a company, registered under this Act, to carry on insurance business

- (a) to furnish, at a time and in a manner he may determine, information in connection with its insurance business as the Superintendent may specify;
- (b) to produce at a time and place as he may determine the securities, books, accounts papers, documents or statistics appearing to be in connection with its insurance business as the Superintendent may specify; or
- (c) to produce to any person authorised in writing by the Superintendent any books or records as he may specify.

(2) A person who is authorised by the Superintendent pursuant to subsection (1)(c) shall, where requested to do so, produce evidence of the authority to the company.

(3) The power conferred under subsection (1) on the Superintendent or on a person authorised by the Superintendent may be exercised even where the books, papers, or other documents are in the possession of another person, except that where the person who is in possession claims a lien on the books, papers or other documents the production shall be without prejudice to the lien.

(4) The power conferred under subsection (1) on the Superintendent or on a person authorised by the Superintendent includes a power

- (a) to take copies of or extracts from the books, papers or other documents which have been produced;
- (b) to require the company or the person in whose possession the books, papers or other documents were, or any other person who is or was a director or auditor of the company or who is or was employed by the company to explain any of the contents of the books, papers or other documents; and
- (c) where the books, papers or other documents have not been produced, to require the company which or the person who was requested to produce them to give reasons for failing to do so.

#### **55. Entry and search of premises**

(1) If a Magistrate is satisfied on information on oath laid by the Superintendent or by any person authorised in that behalf by the Superintendent that there are reasonable grounds for suspecting that

there are on any premises any securities, books, accounts, documents or statistics of which production has been required by virtue of section 54 and that have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any member of the police force, together with any other persons named in the warrant to enter the premises specified in the information (using any force reasonably necessary for the purpose) and to search the premises and seize and remove the required securities, books, accounts, documents or statistics or to take, in relation to the required securities, books, accounts, documents or statistics, 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 one month after the date that 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) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or obstructs the exercise of a right of seizure so conferred commits an offence.

#### **56. Power of intervention**

(1) Subject to subsection (2) and to section 58, the Superintendent may at any time intervene in the affairs of a company registered under this Act to carry on insurance business.

(2) The power of intervention conferred by subsection (1) shall be exercisable where the Superintendent is satisfied that

- (a) the exercise of the power is essential in order to protect policy-holders or potential policy-holders of the company against the risk of the company's inability to meet its liabilities or, where a company is carrying on long-term insurance business, to fulfill the reasonable expectations of policy-holders or potential policy-holders;
- (b) the company has failed to submit financial returns within six months of the end of its financial year;
- (c) the company has failed to satisfy any obligation imposed on it by this Act;
- (d) the company has furnished misleading or inaccurate information to the Superintendent under or for the purposes of this Act;
- (e) adequate arrangements have not been or will not be made for the re-insurance of risks against which persons are insured by the insurer and in respect of which the insurer considers the arrangements to be necessary;
- (f) an application for registration would be refused if the application were made at the time of the proposed intervention;

- (g) a company is deemed to be insolvent in accordance with section 53;
- (h) the company is committing or is about to commit an act, or is pursuing or is about to pursue a course of conduct, that is unsafe or unsound practice in conducting the business of the company; and
- (i) after liability has been established there has been unreasonable delay in the settlement of claims under policies issued by the company.

### **57. Notice of intervention**

The Superintendent shall, before exercising the power conferred on the Superintendent by section 56, serve on the company a written notice that the Superintendent is exercising the power of intervention and the grounds on which it is being exercised.

### **58. Superintendent may impose requirements**

(1) In exercising the power of intervention, the Superintendent may direct the company by instrument in writing to perform any or all of the following:

- (a) to refrain from the date specified in the instrument
  - (i) from effecting any policy either generally or with respect to a specified class whether or not the effecting of the policy falls within a class of insurance business which the company is authorised to carry on; or
  - (ii) from varying any existing policies;
- (b) to limit to a specified amount the aggregate amount of premiums to be written by the company whether the aggregate relates to premiums to be received by the company or to the aggregate after deducting any premiums payable by the company for re-insuring the liabilities in consideration of which premiums are to be received;
- (c) to refrain from making investments of a specified class or description;
- (d) to realise, before the expiration of the period specified in the instrument, the whole or a specified portion of investments of a specified class or description held by the company;
- (e) to prepare and submit at earlier dates and with greater frequency the documents required to be prepared and furnished under section 38;
- (f) to have an actuary or any other person appointed by the Superintendent investigate the financial position of the company in respect of its insurance business or any part of the business and to submit to the Superintendent a report of the investigation on or before a specified date;

- (g) to take any action that appears to the Superintendent to be necessary for the purpose of protecting policy-holders or potential policy-holders of the company against the risk that the company is or is likely to be unable to meet its liabilities or, in the case of an insurer carrying on long-term insurance business, to fulfill the reasonable expectations of policy-holders or potential policy-holders;
- (h) cease or refrain from committing an act or pursuing a course of conduct that is unsafe or unsound practice in conducting the business of the company; or
- (i) to take any action that appears to the Superintendent to be necessary for the proper administration of the Act.

(2) The Superintendent may request any company within five years of its registration under this Act to comply with any or all of the requirements of subsection (1) whether or not the power to intervene is exercisable under section 56(2).

(3) The Superintendent may, where it is considered desirable so to do, revoke or vary any requirement imposed by him on a company pursuant to subsection (1).

(4) Notice of the imposition of a requirement or the rescission or variation of a requirement may be published in the Gazette.

(5) No direction issued to a company under this section shall remain in force for more than twelve months, but nothing in this subsection prevents the Superintendent from issuing any further directions to the company.

#### **59. Superintendent may enter into prudential agreement**

The Superintendent may enter into an agreement called a “prudential agreement” with a company for the purpose of implementing any measure designed to maintain or improve its safety and soundness  
Judicial Management and Winding-Up

#### **60. Guaranteed Companies**

(1) If on the application of an insurance company carrying on general business, the Superintendent is satisfied that the company is guaranteed by another insurance company satisfying the requirements of a guarantor set out in subsection (2), the Superintendent may direct in writing that, subject to any conditions that may be specified, section 53 shall not apply to the first-mentioned insurance company.

(2) For the purposes of this section a guarantor must be

- (a) a body corporate that complies with any of the requirements of section 12 as are applicable to it and the value of whose assets exceeds the value of its liabilities by the amount required by section 53;



- (b) a member of an association of underwriters approved by the Superintendent; or
- (c) an insurance company which, being itself guaranteed by another insurance company, is the subject of a directive under this section,

and, for the purposes of this section, an insurance company will be deemed to be guaranteed by another insurance company if, but only if, all its liabilities to policy-holders in respect of insurance business of any class specified in the First Schedule are re-insured with or guaranteed by the other insurance company.

(3) A directive made under this section may be revoked by the Superintendent

- (a) if he ceases to be satisfied of the matters on the basis of which the directive was made; or
- (b) if he is satisfied that a condition in the directive has not been complied with.

#### **61. Application for judicial management**

(1) The Superintendent may apply to the court for an order that a company or any part of the business of a company be placed under judicial management where, after exercising the power of intervention under section 56(1), the Superintendent is of the opinion that it is necessary or proper to apply for an order.

(2) A company may after giving the Superintendent one month's notice in writing of its intention so to do, apply to the court for an order that it or any part of its business be placed under judicial management.

(3) The company and the Superintendent are both entitled to be heard on any application made to the court for an order under this section.

(4) Where an application is made under this section for an order in respect of a company, all actions and the execution of all writs, summonses and other processes against the company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the court unless the court directs otherwise

#### **62. Order for judicial management**

(1) An order for the judicial management of a company or any part of the business of a company shall be subject to this section and sections 63 to 68.

(2) The court shall appoint a Judicial Manager who shall receive such remuneration from the company as the court directs and the court may at any time on application by the Superintendent, cancel the appointment and appoint some other person as the Judicial Manager.

(3) The court may, if it thinks fit, charge the remuneration, charges and expenses of the Judicial Manager on the property of the company in the order of priority, in relation to any existing charges on that property, as it thinks fit.

(4) Where the court by order directs that a company or any part of the business of a company be placed under judicial management, the management of the company or of that part of its business to which the order relates shall, on and after the date specified in the order, vest exclusively in the Judicial Manager, who shall have complete control of the management of the company notwithstanding any appointment of a receiver prior or subsequent to the appointment of the Judicial Manager.

(5) A person who is appointed Judicial Manager shall not, except with the leave of the court, issue any new policies except paid-up policies.

(6) The court shall from time to time issue to the Judicial Manager directions regarding the powers and duties of the Judicial Manager as it considers necessary.

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

(8) The Judicial Manager shall

- (a) give the Superintendent the information the Superintendent may, from time to time, require; and
- (b) report to the Superintendent whenever he intends to apply to the court for instructions and at the same time furnish the Superintendent with particulars of the application.

(9) The Superintendent is entitled to be heard on any application made pursuant to subsection (7) and may himself make an application to the court to be heard on any matter relating to the conduct of the judicial management.

### **63. Report of Judicial Manager**

(1) The Judicial Manager shall conduct the management with the greatest economy compatible with efficiency, and must, as soon as possible after his appointment, file with the court a report stating which of the following courses is, in the circumstances, in his opinion most advantageous to the general interests of the policy-holders of the company:

- (a) the transfer of the business of the company to some other company in pursuance of a scheme to be prepared in accordance with this Act (whether the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or for reduced amounts);

- (b) the carrying on of its business by the company (whether the policies of the business continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);
- (c) the winding up of the company or of any part of the business of the company; or
- (d) the dealing with part of the business of the company in one manner, and with another part in another manner.

(2) The Judicial Manager shall, as soon as he has filed the report, furnish a copy of it to the Superintendent and make a written application to the court for an order to give effect to the course of action stated in the report.

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

#### **64. Decision of court on report of Judicial Manager**

(1) The court shall on the hearing of an application made under section 63(2)

- (a) after hearing the Superintendent, the Judicial Manager, and any other person who in the opinion of the court ought properly to be heard; and
- (b) after considering the report of the Judicial Manager,

make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the policy-holders of the company.

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

#### **65. Transfer of business to another company**

If an order is made by the court for the transfer of the business of a company to some other company, the Judicial Manager shall prepare a scheme for the transfer in accordance with this Act and until the scheme is confirmed by the court in accordance with this Act, the management of the company shall continue to be vested in the Judicial Manager.

#### **66. Cancellation of contracts or agreements**

The court may,

- (a) either of its own motion; or
- (b) on the application of the Judicial Manager or Superintendent,

at any time while an order made under section 62 is in force with respect to a company, after hearing all persons who, in the opinion of the court, are entitled to be heard, cancel or vary, either unconditionally or subject to the conditions the court thinks just, any contract or agreement other than a policy between the company and any other person, which the court is satisfied is detrimental to the interests of the policy-holders.

#### **67. Indemnity of Judicial Manager**

The Judicial Manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of or in connection with the exercise of the powers conferred on the Judicial Manager under this Part.

#### **68. Cancellation of order**

(1) The Judicial Manager, the Superintendent or any interested person may at any time apply to the court for the revocation of an order made by the court under section 64(1).

(2) If an application is made under subsection (1), the court may revoke the order if it appears to it that

- (a) the purpose of the order has been fulfilled; or
- (b) it is undesirable for the order to remain in force.

(3) Upon the revocation of an order, the Judicial Manager must be divested of the management and the management must then vest in the board of directors or other governing body of the company.

#### **69. Court may order winding up**

(1) The court may order the winding up of a company in accordance with the legislation for the time being in force with respect to companies, and that legislation shall apply accordingly, subject to this section, sections 70 to 76 and to the modification that the company may be ordered to be wound up

- (a) on the petition of ten or more policy-holders owning policies of an aggregate sum assured of not less than ten million dollars; or
- (b) on the petition of the Superintendent.

(2) A petition referred to in subsection (1) shall not be presented except by leave of the court and leave must not be granted

- (a) unless a prima facie case has been established to the satisfaction of the court; and
- (b) until security for costs for the amount the court may think reasonable has been given.

(3) The Superintendent shall be a party to any proceedings relating to the winding up of a company and the liquidator in a winding up shall give the Superintendent the information about the affairs of the company he may, from time to time, require.

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

#### **70. Procedure on winding up**

(1) An order of the court for the winding up of a company shall be subject to sections 71 to 76.

(2) On making an order for the winding up of a company, the court shall appoint a liquidator.

(3) Subject to subsections (4) and (6), the liquidator shall act under the control of the court and may apply to the court at any time for instructions as to the manner in which he shall conduct the winding up or in relation to any matter arising in the course of the winding up.

(4) The liquidator may, in the case of a company that was carrying on long-term insurance business, continue to carry on the business with a view to its being transferred as a going concern to another insurance company, whether in existence or being formed for that purpose.

(5) For the purpose of exercising his functions under subsection (4), the liquidator may agree to the variation of any policies in existence at the date of the order but he shall not effect any policies.

(6) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the company attributable to its long-term insurance business require the appointment of a special manager, he may apply to the court for an appointment.

(7) The court may on an application under subsection (6), appoint a special manager to act during that time and with any powers the court may direct.

(8) The court shall give to the liquidator any directions as may appear necessary or desirable for the purpose of the winding up.

(9) The liquidator shall furnish the Superintendent with the information the Superintendent may from time to time require and report to him whenever he intends to apply to the court for instructions and particulars of the application must be furnished simultaneously with the report.

(10) The Superintendent is entitled to be heard on an application under subsection (9) and may himself make an application to the court to be heard on any matter relating to the conduct of the winding up.

(11) A liquidator or a special manager, or both, shall receive the remuneration the court directs and the court may, at any time, cancel the appointment of a liquidator or a special manager or both and appoint some other person as a liquidator or a special manager.

#### **71. Value of liability under policies**

(1) The liquidator shall

- (a) ascertain, in a manner and on a basis the court may approve, the value of the liability of the company to every person who, according to the books of the company, is entitled to or is interested in a policy issued by the company; and
- (b) in a manner he thinks proper give notice of the value so ascertained to every person referred to in paragraph (a).

(2) A person to whom notice is given under subsection (1), shall be bound by the value ascertained by the liquidator unless, within fourteen days of receipt of the notice, he gives notice of his intention to dispute the value.

#### **72. Application of certain assets**

(1) The value of the liabilities and of the assets of an insurance fund of a company shall, on the winding up of the company, be ascertained separately from the value of any other liabilities or from the value of any other assets of the company, and the assets of the insurance fund must not be applied to the discharge of any liabilities other than those in respect of that fund except in so far as those assets exceed the liabilities of that insurance fund.

(2) If, on the winding up of a company the liabilities and assets of an insurance fund of the company have been ascertained and there is a surplus of the assets over the liabilities, there shall be added to the liabilities of that insurance fund an amount equal to the proportion of the surplus equivalent to the proportion of the profits, if any, in the class of insurance business to which the insurance fund relates, which was allocated to shareholders and policy-holders during the ten years immediately preceding the commencement of the winding up.

(3) The assets of an insurance fund referred to in subsection (2) shall be deemed to exceed the liabilities of that fund only in so far as the assets exceed the liabilities after the addition referred to in that subsection and where it appears to the court that by reason of special circumstances it would be inequitable for the amount specified to be added to the liabilities of the insurance fund, the amount to be added shall be an amount the court directs.

#### **73. Reduction of contracts as alternative to winding up**

In the case of a company that has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amounts due under the contracts of the company upon the terms and subject to the conditions the court thinks just, in place of making a winding up order.

#### **74. Liability of directors and officers**

(1) If in the course of the winding up of a company, the court is satisfied that the amount of an insurance fund has been diminished by reason of any contravention of this Act, every person who at the time of the contravention was a director, the principal representative or an officer of the company, are deemed in respect of the contravention to have committed misfeasance unless he proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the occurrence.

(2) The court may assess the sum by which the amount of the insurance fund has been diminished by reason of the misfeasance and may order any person found guilty of misfeasance to contribute to the insurance fund the whole or any part of that sum by way of compensation.

#### **75. Application of deposits**

On the winding-up of a company the Commission must pay to the liquidator all monies and securities held as a deposit in respect of that company and the liquidator must, in accordance with this Act, apply the monies and securities towards discharging the liabilities of the company in respect of policies issued by it.

#### **76. Winding up part of business**

(1) Where the court makes an order for the winding up of part of the business of a company a scheme for the purpose of the winding up must be prepared and submitted for the confirmation of the court

- (a) by the person who made the application, where an order is made after the hearing of an application under section 70; or
- (b) by the Judicial Manager appointed in respect of the company, where the order is made pursuant to section 64.

(2) A scheme prepared under this section shall provide

- (a) for the allocation and distribution of the assets and liabilities of the company between any classes of business affected by the winding up (including the allocation of any surplus assets which may arise on the proposed winding up);
- (b) for any future rights of every class of policy-holders in respect of their policies; and
- (c) for the manner in which any part of the business of the company may be wound up,

and may contain any provision expedient for giving effect to the scheme.

(3) Sections 70 to 75 shall apply with any adaptation necessary, on a winding up in accordance with a scheme under this section.

### **Voluntary Liquidation**

#### **77. Voluntary liquidation**

(1) A voluntary liquidation of a registered local company shall be subject to authorisation by the Board upon the recommendation of the Superintendent and the Superintendent shall so recommend when

- (a) the company is not deemed to be insolvent under section 53; and
- (b) the liquidation has been properly approved by the shareholders of the company.

(2) When it has received the authorisation of the Board the company shall:

- (a) immediately cease to carry on business, retaining only the powers necessary to effect an orderly liquidation;
- (b) discharge or provide for the discharge of all its obligations; and
- (c) wind up all operations undertaken prior to the receipt of the authorisation.

(3) Within thirty days from the receipt of the authorisation of the Board, a notice of voluntary liquidation, setting out such information as the Board, upon the recommendation of the Superintendent, may determine, shall be sent by mail to all claimants and other creditors of the company.

(4) The notice shall be posted conspicuously on the premises of each office and branch of the company and shall be given such publication as the Board, upon the recommendation of the Superintendent, shall direct.

(5) The Board, upon the recommendation of the Superintendent, may exempt the mailing of such notice to specified persons upon a showing of cause therefor by the financial institution.

(6) The authorisation to go into voluntary liquidation shall not prejudice the rights of a claimant or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the company to its return.

(7) When the Board, after consultation with the Superintendent, is satisfied that the company has discharged or provided for the discharge of all of its obligations, the company shall be struck from the list of registered local companies and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights, but no such distribution shall be made before:



- (a) all obligations have been discharged or provided for or, in the case of a disputed claim, before the company has turned over to the Superintendent as agent for the Board, sufficient funds to meet any liability that may be determined by a court of competent jurisdiction;
- (b) any funds payable to a claimant or other creditor who has not claimed them have been turned over to the Superintendent as agent for the Board; and
- (c) any other funds and property held by the company that could not be returned to the owners thereof have been transferred to the Superintendent as agent for the Board together with the inventories pertaining thereto.

(8) Upon paying or delivering funds and property under paragraph 7(b) and (c) into the custody of the Superintendent, the company shall be relieved of all liability to the extent of the value of the funds and property for any claim in respect thereof.

(9) Any person claiming an interest in funds or property paid or delivered under paragraph 7(b) or (c) may file a claim thereto with the Superintendent and, after an appropriate hearing, the decision of which shall be communicated to the claimant and made a public record, the Superintendent may deliver up the property or make the payment.

(10) Any person aggrieved by a decision of the Superintendent may commence an action in the High Court to establish his claim within thirty days following the decision of the Superintendent.

(11) If the assets of a registered local company, whose voluntary liquidation has been authorised, will not be sufficient for the full discharge of all its obligations or completion of the liquidation is unduly delayed, the Board, after consultation with the Superintendent, may direct the Superintendent to apply, and the Superintendent shall apply, for an order placing the company under judicial management and the provisions of sections 61 to 68 shall apply to the application and the order with such modifications as the circumstances may require.

## **PART IV**

### **ASSOCIATION OF UNDERWRITERS**

#### **78. Registration of association of underwriters**

(1) No association of underwriters may carry on insurance business in the State unless it is registered in accordance with this Part, but an association that was carrying on insurance business in the State before the commencement of this Act shall be deemed to be so registered.

(2) No association of underwriters that is constituted outside Antigua and Barbuda may be registered under this Act unless there are one or more persons resident in Antigua and Barbuda who are authorised to accept on behalf of the members of the association service of process in any legal proceedings, being persons nominated for that purpose by the association.

**79. Application for registration of association of underwriters**

An application by an association of underwriters for registration shall be made to the Superintendent and shall be accompanied by evidence of payment of the prescribed fee and the following documents and information:

- (a) a copy of its statute or deed of association;
- (b) in the case of an association constituted outside Antigua and Barbuda, a certificate that
  - (i) it has been established for at least five years,
  - (ii) the laws of the country in which it is constituted provides for the regulation of an association of underwriters, and
  - (iii) the association is operating in accordance with that law;
- (c) the names of the members of the association of underwriters;
- (d) the name and address of every person who is nominated pursuant to section 78(2);
- (e) the name and address of the insurance brokers through whom insurance may be placed as brokers in Antigua and Barbuda; and
- (f) any further information the Superintendent may require.

**80. Conditions for registration**

(1) If the Superintendent, after appropriate enquiry or after the production of documentary evidence, or both, is satisfied in respect of the applicant association of underwriters that

- (a) the relevant requirements of this Part have been complied with;
- (b) the association is likely to be able to comply with the provisions of this Act applicable to it;
- (c) being an association of underwriters constituted outside Antigua and Barbuda;
  - (i) it has made or has caused to be made with the Commission the deposit required by section 81;
  - (ii) there are one or more persons resident in Antigua and Barbuda who are authorised to accept on behalf of the members of the association service of process in any legal proceedings, being persons authorised for that purpose by the association;

(d) the persons who manage the association of underwriters are of good character and are otherwise fit and proper persons to manage the association; and

(e) the staff, the applicant employs is, in relation to any class of insurance business in respect of which the application is made, capable of carrying on that business in an efficient manner,

the Superintendent shall make his recommendation to the Board for registration of the association.

(2) The Board, after considering the recommendations of the Superintendent and after causing him to carry out such further investigation as it may deem fit, either unconditionally or subject to the conditions it may specify, approve the registration of the association of underwriters and direct the Superintendent to register the association of underwriters and notify the applicant accordingly or, if the Board is of the opinion that it would be undesirable in the public interest to register the association of underwriters, it may refuse to register the association of underwriters stating in writing the reasons for so refusing, and the Superintendent shall inform the association of the Board's refusal and of its right of appeal under section 220.

(2) The Board may at any time make the association of underwriters subject to conditions or add to, amend or revoke any conditions to which it has made the association of underwriters subject under subsection (1) or this subsection.

### **81. Deposits by association of underwriters**

Subject to this Act, an association of underwriters may not be registered under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Commission in cash or in prescribed securities or partly in cash and partly in prescribed securities an amount equal to one hundred thousand dollars.

### **82. Premiums to be held in trust**

All premiums received by each member of an association of underwriters shall be held in trust in the names of trustees for the payment of the underwriting liabilities attached to the premiums of each member and the expenses of its insurance business.

### **83. Documents to be supplied to Superintendent**

(1) An association of underwriters registered in accordance with this Part shall within four months of the end of each financial year or within an extended period not exceeding two months as the Superintendent may allow furnish to the Superintendent a statement of receipt and expenditure in the State by its members during the preceding year.

(2) In the case of an association constituted outside Antigua and Barbuda the following documents must be submitted:

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

- (b) a certificate signed by the Chairman or other Presiding Officer of the association and a certificate by or on behalf of the public authority in the country in which it is constituted, stating whether the association has complied with the requirements of the law for the regulation of associations of underwriters in that country;
- (c) the latest annual list of members and the names of the members of its committee or other governing body and including any change in the particulars specified in section 79; and
- (d) any documents and information the Superintendent may require.

(3) The documents indicated in subsection (2) shall be submitted as soon as possible after the certificate from the public authority in the country in which it is constituted is made available.

(4) In the case of an association constituted within the State the following documents must be submitted within four months of the end of each financial year, or within an extended period not exceeding two months as the Superintendent may allow:

- (a) an audited statement of its accounts for that year;
- (b) the returns relating to the insurance business carried on by each of the members of the association as the Superintendent may require; and
- (c) any other documents and information the Superintendent may require.

(5) An association which fails to submit the statement required by subsection (1) shall pay a fee of two hundred dollars for every day that the statement remains not submitted after the due date or the date extended by the Superintendent.

#### **84. Superintendent may prohibit writing new policies**

(1) The Superintendent may prohibit a registered association of underwriters from writing new policies in any class of insurance business if he is satisfied that it is in the interest of the policy-holders or prospective policy-holders to do so.

(2) If the Superintendent exercises the power conferred by subsection (1) the Superintendent shall notify the registered association in writing,

- (a) stating the reasons for his decision; and
- (b) of its right of appeal under section 220.

#### **85. Cancellation of registration of association**

(1) The Superintendent may cancel the registration of an association of underwriters

- (a) if he is not satisfied that the insurance business of its members is being conducted in accordance with sound insurance principles;
- (b) if he is satisfied that the association obtained registration as a result of misleading or false representation or in consequence of any incorrect information;
- (c) if the association has failed to comply with any requirement imposed upon it in accordance with this Part;
- (d) if he is satisfied that the members of the association have not commenced business within one year of registration or have ceased to carry on business within Antigua and Barbuda; or
- (e) at the request of the association.

Provided that the Superintendent shall not cancel the registration of an association of underwriters without the approval of the Board.

(2) If the Superintendent cancels the registration of an association, he shall state in writing his reasons for so doing, and notify the association of its right of appeal under section 220.

### **86. Obligations of association**

An association of underwriters whose registration has been cancelled in accordance with this Part shall continue to carry on business relating to policies issued by it before the date on which it was notified of the cancellation, unless the Superintendent is satisfied that it has made suitable arrangements for its obligations under those policies to be met.

## **PART V**

### **INSURANCE INTERMEDIARIES**

#### **87. Requirement for registration**

(1) After one year from the commencement of this Act, no person may, in respect of any class of insurance business, carry on or purport to carry on business as or act as an insurance adjuster, insurance agent, insurance broker or sales representative unless that person is registered under this Part.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for twelve months or to both.

#### **88. Application for registration**

##### **Third Schedule**

(1) An application for registration shall be made to the Superintendent on the prescribed form and

accompanied by evidence of payment of the registration fee specified in Third Schedule and by any documents prescribed or required by the Superintendent.

(2) On receipt of an application the Superintendent may request the applicant to furnish any additional information the Superintendent may consider relevant in relation to the application, and the applicant must comply with that request.

(3) Where a person wishes to be registered as an insurance agent or a sales representative, the application shall be endorsed by the registered insurer (in this Part referred to as “the principal”) with whom that agent or sales representative is contracted.

### **89. Restrictions on registration**

(1) No individual may be registered under this Part to carry on business as an insurance intermediary if that person is

- (a) under the age of eighteen years in the case of a sales representative;
- (b) under the age of twenty-one years in the case of an insurance agent, an insurance broker or an insurance adjuster;
- (c) an undischarged bankrupt, unless that individual has been granted leave to carry on the business by the court by which he was adjudged bankrupt; or
- (d) a person who has been found by a court to be of unsound mind or is so certified under the law relating to mental health.

(2) No director or officer of a company carrying on business as an insurance broker may be registered as a sales representative or as an insurance agent, or be a director of an insurance company or of a company carrying on business as an insurance agent or insurance adjuster.

(3) No director, officer or employee of an insurance company may be registered as an insurance broker, or be a director of a company carrying on the business of an insurance broker.

(4) No person registered to carry on business as a sales representative or an insurance agent may be registered to carry on business as an insurance broker or as an insurance adjuster and no person registered to carry on business as an insurance broker may be registered to carry on business as a sales representative or an insurance agent.

(5) No person and no director of a company carrying on business as an insurance adjuster may be registered as a sales representative, an insurance agent or an insurance broker.

(6) No person may be registered as an insurance broker if the name under which the applicant desires to be registered is likely to suggest that the applicant is an insurer.

(7) No person may be registered as an insurance agent if the name under which the applicant desires to be registered is likely to suggest that the applicant is an insurer or an insurance broker.

**90. Conditions for registration**

(1) Subject to this Part, and after considering such recommendation as the Superintendent may make regarding the application for registration made under section 88, the Board may either

- (a) unconditionally; or
- (b) subject to any conditions it considers necessary,

direct the Superintendent to register an applicant as a sales representative or an insurance agent of the company by which he was employed or contracted or as an insurance adjuster or insurance broker in respect of the class of insurance business specified.

(2) The Board may subject to sections 88 and 89 direct the Superintendent to register an applicant as a sales representative, an insurance agent, an insurance broker, or an insurance adjuster, if it is satisfied that

- (a) the applicant is a person of good character and a fit and proper person;
- (b) the applicant is competent to carry on business as a sales representative, an insurance agent, an insurance broker, or an insurance adjuster, in the particular class of insurance business in which he applied to be registered;
- (c) in the case of a person applying to carry on business as an insurance broker, that he has the professional indemnity insurance cover prescribed;
- (d) in the case of an applicant who, before the commencement of this Part, was carrying on business in Antigua and Barbuda as an insurance adjuster, an insurance broker, a sales representative, or an insurance agent for a period of not less than three years, that he carried on the business in an efficient manner;
- (e) the applicant has complied with any requirement relating to the passing of any examination; and
- (f) the application is for registration to carry on business as an insurance broker, or an insurance agent and the applicant is a body, whether incorporated or not, that having regard to the competence of the person managing the body or of the partners and the staff the body may employ, the body is in relation to any class of insurance business in respect of which the application is made, capable of carrying on the business efficiently in the capacity in which it seeks to be registered.

(3) The Superintendent shall, if the Board refuses an application for registration under this Part, notify the applicant

- (a) in writing of this refusal either generally or in respect of a particular class of insurance business and give reasons for the refusal; and
- (b) of his right of appeal under section 220.

### **91. Certificate of registration**

(1) The Superintendent shall issue a Certificate of registration (in this Part referred to as “a Certificate”) to every person registered under this Part as an insurance agent, insurance broker, sales representative or insurance adjuster, as the case may be.

(2) A Certificate must

- (a) be valid for a period not exceeding one year as stated on the Certificate, and is renewable before the expiry of the original Certificate.
- (b) state the effective and expiry dates, the category and each class of insurance business in respect of which the person is registered; and
- (c) specify the insurance company in respect of which the person is so registered, if the person is registered as an insurance agent or as a sales representative.

(3) Notwithstanding subsection (2), where a person seeks to renew a Certificate or seeks a new Certificate after the expiry of the original Certificate, the applicant shall pay an additional registration fee of five per centum of the original registration fee for each month or part of a month after the expiry of the original Certificate.

(4) A certificate shall be prima facie evidence that the person named in the Certificate is registered in the capacity stated in the Certificate.

(5) A person who displays a Certificate that is not valid, commits an offence and is liable on summary conviction to a fine of five hundred dollars and to a further fine of fifty dollars for each day the offence continues after conviction.

### **92. Certificate to be produced on request**

(1) A person registered under this Part shall produce his Certificate when requested so to do

- (a) by the Superintendent or any other person authorised by him;
- (b) by the insurance company or a person in respect of which or whom he is registered to carry on business as a sales representative, or an insurance agent;



- (c) in the case of an insurance broker or an insurance adjuster, by the insurance company with which he proposes to transact business; and
- (d) by an actual or a prospective client.

(2) A person who fails to comply with subsection (1) commits an offence.

### **93. Intention to cancel registration**

(1) The Superintendent may, with the approval of the Board and by instrument in writing, notify a person who is registered under this Part that he proposes to cancel the registration of the person in respect of all or any of the classes of insurance business he was registered to carry on.

(2) The power of cancellation under subsection (1) shall be exercised if the Superintendent is satisfied that

- (a) registration was granted as a result of any misleading or false representation;
- (b) the person has become an undischarged bankrupt;
- (c) the person is not carrying on the business in accordance with sound insurance principles and practice;
- (d) the person has demonstrated that he cannot carry on efficiently the class of insurance business that he is registered to carry on, or in the case of a body, whether incorporate or not, that all the persons managing the body or the partners of the body have demonstrated that they cannot carry on efficiently the class of insurance business which they are registered to carry on;
- (e) the person has repeatedly and unreasonably delayed transmitting monies received for the account of an insurer or a client to the person entitled to the money;
- (f) one month has elapsed since the date by which the person was required under this Act to furnish financial statements or other information to the Superintendent and the person has without reasonable excuse failed to do so; or
- (g) the person has pursued a fraudulent or dishonest practice or any other practice that is generally regarded in the insurance business as being undesirable.

(3) The Superintendent shall, on notifying a person that he proposes to cancel his registration, inform him of the reason for taking the action contemplated by him, and notify him of his right of appeal under section 220.

(4) The Superintendent shall cancel the registration of a person if

- (a) the person fails to exercise his right of appeal within the time specified in subsection (1) of section 220; or
- (b) on an appeal the decision of the Superintendent to cancel the registration is upheld.

(5) If the Superintendent cancels the registration of a person registered under this Part the person shall forthwith surrender to the Superintendent his Certificate and every copy of the Certificate.

(6) A person who has had his registration cancelled under paragraph (2)(f) may apply to the Superintendent for reinstatement of his registration and the Superintendent may with approval of the Board reinstate his registration if he is satisfied that the person has complied with the requirements of this Act.

(7) Section 88 shall apply to reinstatement of registration as it does to registration.

(8) A person who fails to comply with subsection (6) commits an offence and is liable on summary conviction to a fine of five hundred dollars and to a further fine of fifty dollars for each day the offence continues after conviction.

#### **94. Cancellation of registration**

The Board may at any time cancel the registration of a person registered under this Part if

- (a) it is satisfied that the person has not carried on business in Antigua and Barbuda as an insurance intermediary after one year of his being registered to carry on such business or has not carried on the business in Antigua and Barbuda for a period of more than one year;
- (b) it is satisfied that the person obtained registration as a result of any misleading or false representation;
- (c) in the case of a person registered as an insurance agent or a sales representative, the Board is satisfied that the registration of the insurance company or the person in respect of which or whom the person was registered to carry on business as an insurance agent or a sales representative has been cancelled or that the contract of the agency or of the sales representative contract has been terminated;
- (d) the person fails to renew his registration within one month from the expiry date of the registration; or
- (e) the person requests that his registration be cancelled.

#### **95. Submission of information**

(1) An insurance broker registered under this Act shall within four months of the end of its financial year submit to the Superintendent any information regarding the business placed with insurers that may be prescribed.

(2) An insurance agent and an insurance broker registered under this Act shall within four months of the end of its financial year submit an analysis of premiums due but not paid to its principal or to each insurer, as the case may be, listing the aging of the sums outstanding.

**96. Notice of termination of agency**

(1) If the contract of a registered insurance agent, or a registered sales representative is terminated or amended, notice in writing shall forthwith be given to the Superintendent by the insurance agent or the sales representative as the case may be, and by the principal with whom he is contracted.

(2) A person who fails to comply with this section commits an offence.

**97. Superintendent may request information**

(1) The Superintendent may request in writing from any person registered under this Part or from the person's employer or principal any information relating to the person's business as an insurance intermediary.

(2) The Superintendent may require any person to produce to the Superintendent or to any person designated by him in writing at a time and place he may determine, the books, records or other documents in connection with the business that he may specify.

(3) A person who fails to comply with a request or a requirement under this section commits an offence.

**98. Agent of the insurer**

An insurance agent or a sales representative shall for the purpose of receiving any premium for a policy, be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary.

**99. Liability for unlawful contracts**

An insurance agent, an insurance broker or a sales representative is personally liable to the insured on all policies unlawfully made by or through him directly or indirectly with any insurer not registered to carry on insurance business in Antigua and Barbuda in the same manner as if the insurance agent, insurance broker or sales representative had been the insurer.

**100. Misleading advertisements**

(1) No insurer, and no insurance agent, insurance broker, or sales representative may make any oral statement or issue or permit to be issued any advertisement, statement, circular, descriptive booklet

or other document, or make or permit to be made a statement, by means of any broadcasting or other medium, which misleads or tends to mislead the public.

(2) A person who contravenes subsection (1) commits an offence.

### **101. Restriction on compensation to unregistered agents**

(1) If, at the date of placing or negotiating insurance a person is not registered as an insurance agent, an insurance broker or a sales representative, no insurance broker, insurance agent, or insurer and no officer, employee or agent of the insurer shall pay, agree to pay or allow to be paid to that person compensation or anything of value for placing, negotiating or attempting to place or negotiate insurance or for negotiating the continuance or renewal of insurance, other than re-insurance, on lives, property or interests in the State.

(2) A person who fails to comply with this section commits an offence.

### **102. Rebating**

(1) No insurer and no officer, employee or agent of an insurer and no insurance broker, or sales representative shall directly or indirectly

- (a) make or attempt to make an agreement as to the premium to be paid for a policy other than as specified in the policy; or
- (b) pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person who is insured or is applying for insurance in respect of life, property or interest in the State.

(2) An insurer or any other person who contravenes subsection (1) commits an offence.

### **103. Bona fide salaried employees**

Nothing in sections 101 and 102 shall affect any payment by way of dividend, bonus, profit or savings that is provided for by a policy, or shall be construed so as to prevent an insurer compensating a bona fide salaried employee of its head or branch office or a spouse or child of that employee, in respect of insurance issued by the employing insurer upon the life or property of that person or so as to require that the person be licensed as an insurance intermediary under this Part to effect the insurance.

### **104. Returns to the Superintendent**

An insurer and an insurance agent who has appointed insurance agents or sales representatives, shall make a return to the Superintendent in the form and at the time required by the Superintendent, showing all persons, firms, partnerships and companies

- (a) registered as its insurance agents or sales representatives in Antigua and Barbuda; and
- (b) to whom it has, within a period specified in the form, paid or agreed to be paid or allowed to be paid directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in the State or negotiating the continuance or renewal of that insurance or for attempting to do so.

#### **105. Keeping of records by registered insurance brokers**

An insurance broker registered in accordance with this Part shall keep within the State and submit to the Superintendent within four months of the end of a calendar year

- (a) a record of all local policies issued by him on behalf of members of a registered association of underwriters;
- (b) a record of the aggregate amount of the premiums received on the policies; and
- (c) an analysis of premiums payable to insurers by the number of days outstanding.

#### **106. Procuring premiums by fraudulent means**

An insurance agent or a sales representative commits an offence if he

- (a) knowingly procures by fraudulent representation payment or the obligation for payment of any premium on a policy; or
- (b) without being satisfied on reasonable grounds that the discontinuance of a policy is to the benefit of an insured, causes the insured to discontinue that policy.

#### **107. Failure to pay over money to client or insurer**

(1) An insurance agent, an insurance broker or a sales representative commits an offence if he receives money

- (a) from an insurer for the account of an insured and fails to pay over the same within fourteen days; or
- (b) from a client for the account of an insurer and fails to pay over the same less any commission and other deduction that he may be entitled to by agreement, within thirty days after demand for payment made in writing.

(2) If an insurer at the request of an insurance broker provides cover to an insured, the insurance broker is liable to the insurer for the premium due in respect of the cover and the premium may be sued for and recovered from the insurance broker as a civil debt.

**PART VI**

**LONG-TERM INSURANCE BUSINESS**

**Actuary**

**108. Company to appoint actuary**

(1) A company carrying on long-term insurance business in Antigua and Barbuda shall appoint an actuary, as a member of its staff or as a consulting actuary, and notify the Superintendent in writing within fourteen days of making the appointment.

(2) The company may terminate the appointment of an actuary.

(3) The company shall, within three months of the termination of the appointment or resignation of an actuary, appoint another actuary.

(4) If the appointment of an actuary is terminated, the company shall

- (a) forthwith after the termination of the appointment, notify the Superintendent in writing of the termination; and
- (b) within fourteen days of appointing another actuary notify the Superintendent in writing of the appointment.

(5) No person may carry out the functions of an actuary unless the Superintendent is satisfied that he possesses the necessary qualifications to carry out these functions.

(6) An actuary who resigns or whose appointment is terminated shall submit to the directors of the company and the Superintendent a written statement of the circumstances and reasons why the actuary resigned or why, in the actuary's opinion, the appointment was terminated.

(7) The chief executive officer or chief operating officer or a person performing like functions of insurer may not be appointed as, or hold the position of, actuary of the insurer unless authorised in writing by the Superintendent.

(8) The chief financial officer or a person performing like functions of insurer may not be appointed as, or hold the position of, actuary of the insurer unless

- (a) the audit committee of the company has provided the Superintendent with a written statement indicating that it is satisfied that the duties of both positions in the company will be adequately performed and that the actuarial duties will be performed in an independent manner; and

(b) the appointment or holding of the position is authorised by the Superintendent.

(9) An authorisation under subsection (1) or paragraph (2)(b) may contain conditions, including a condition limiting the time during which the person may hold the position of actuary of the company.

### **Issue of Policies**

#### **109. Premium rates to be approved by actuary**

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

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

(3) If a requirement is made under subsection (2), the company shall not issue any policy of that class until it has, in accordance with the requirement, obtained the approval of its actuary as to the rate of premium.

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

(a) the maximum rate of commission proposed to be paid to any person; and

(b) the maximum rate of reduction of premium to be allowed to any person,

in respect of that class of policy.

(5) Where a rate of premium is approved by its actuary in respect of any class of policy the company shall not, except with the approval of its actuary, pay or allow in respect of any policy of that class a commission or a reduction of premium at a rate greater than the maximum rate of commission or reduction of premium that the actuary had regard to when approving the rate of premium.

#### **110. Notice in respect of long-term policies by insurer**

(1) Subject to subsection 111(3) an insurer shall not enter into a policy of long-term insurance unless the insurer, not later than seven days after receipt of an application for a policy, serves on the applicant a notice containing the information specified in subsection (2).

(2) A notice mentioned in subsection (1) shall

- (a) specify the nature and type of the policy; and
  - (b) have annexed to it a form of notice of withdrawal for use by the applicant.
- (3) An insurer who contravenes this section commits an offence.

### **111. Insurer's right of cancellation**

(1) A person who has applied for a policy of insurance with an insurer may serve notice of withdrawal of that application on the insurer

- (a) not later than the expiration of the tenth day from the date that he receives a notice mentioned in section 111; or
- (b) not later than ten days from the expiration of the day that he first became aware that the application had been received by the insurer,

whichever is the later.

(2) A notice of withdrawal need not be in the form attached to the notice required to be served under section 111(1) and it is sufficient if the notice of withdrawal indicates a desire to withdraw from the contract.

(3) If an application has been withdrawn as a result of the service of a notice, any monies paid by way of premium or otherwise, whether to the insurer or to any person acting on behalf of the insurer for the purpose of receiving the monies, are recoverable from the insurer as a debt in civil proceedings.

### **112. Notice regarding proof of age**

If a company issues a life policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company must, unless the age of the person whose life is insured, has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.

### **113. Procedure where company declines to accept proof**

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

(2) The Judge in chambers may upon an application made to him under subsection (1), make an order in relation to the application as he thinks just.



(3) An order made under this section shall be binding on the company and must be complied with on its part.

#### **114. Mis-statement of age**

(1) A policy is not avoided by reason only of a mis-statement of the age of the life insured.

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

(3) If there is proof of the true age of the life insured and the age is less than the age on which the policy is based, the company shall either

- (a) vary the sum insured by, and the bonuses, if any, allotted to the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses, if any, allotted to the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
- (b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay the policy-holder the amount of over payments of premium less any amount paid as the cash value of bonuses in excess of the cash value that would have become payable if the policy had been based on the true age.

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

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

#### **115. Provisions relating to state of health of insured**

Nothing in any term or condition of a life policy, issued after the commencement of this Act, shall operate to exempt an insurance company from liability under the policy or to reduce the liability of

the company under the policy on the ground of any matter relating to the state of health of the person whose life is insured, other than the ground of the proposer's having, when making the proposal or subsequently and before the making of the contract,

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

#### **116. Minors may effect policies and take assignments**

(1) A minor who has attained the age of ten years but has not attained the age of sixteen years may, with the written consent of his parent or of a person standing in loco parentis to the minor

- (a) effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) take an assignment of a policy.

(2) A minor who has attained the age of sixteen years

- (a) may effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) may take an assignment of a policy; and
- (c) subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policy-holder in relation to a policy of which he is the holder as he would had he been of full age.

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

(4) This section does not

- (a) impose on a minor any liability that, but for this section, he would not be subject to;
- (b) confer on a minor any power or capacity that, but for this section, he would not have;
- (c) validate a receipt, a discharge or a surrender of, or security over a policy given by a minor, if, but for this section, that receipt, discharge, surrender or security would not be valid; or

- (d) validate any assignment of a policy that, but for this section, would not be valid.

### **117. Insurable interest**

(1) Without in any way limiting or restricting the meaning of the expression “insurable interest”, as understood on the coming into force of this Act, an insurable interest shall be deemed to be had by

- (a) a parent of a child who is under eighteen years of age, or a person in loco parentis of that child, in the life of the child;
- (b) a husband, in the life of his wife;
- (c) a wife, in the life of her husband;
- (d) any person, in the life of another upon whom the person is wholly or partly dependent for support or education;
- (e) a company or other person, in the life of an officer or employee of the company; and
- (f) any person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

(2) For the purposes of this Act, “child”, in relation to any person, includes

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

### **Beneficiaries**

#### **118. Designation of beneficiaries**

(1) A policy-holder may at the time the policy is taken out or at any time subsequently by declaration in writing designate his personal representative or a named person to be the beneficiary under his policy and may alter or revoke the designation by declaration in writing.

(2) A designation in favour of “heirs”, “next of kin”, “estate”, “succession” or similar designation shall be deemed to be a designation of the personal representative of the policy-holder.

(3) A designation by a will does not affect a designation made under a policy.

### **119. Irrevocable designations of beneficiaries**

(1) The provisions of this section apply only in respect of policies taken out after the commencement of this Act.

(2) Subject to subsections (4), (5) and (6) a policyholder may, by declaration in writing filed with the insurer at the time the policy is taken out, or at any time subsequently, designate irrevocably a named person to be beneficiary under the policy and, in that case,

- (a) the policy-holder, subject to section 134, may not during the life time of a named beneficiary, alter or revoke the designation without the consent of the beneficiary; and
- (b) the monies payable under the policy are not subject to the control of the policy-holder or the creditors of the policy-holder and do not form part of his estate.

(3) Notwithstanding paragraph (2)(a), consent of the beneficiary is not required where the beneficiary under a policy of insurance is a former spouse and the marriage ended in divorce or the common law union has come to an end, as the case may be.

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

(5) An irrevocable designation may only be made by a policy-holder in favour of a spouse or a child, including a child born out of wedlock.

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

### **120. Trusts for beneficiaries**

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

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

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

### **121. Beneficiary pre-deceasing policy-holder**

(1) If by a contract or by a declaration filed with the insurer, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy pre-deceases the policy-holder and no provision is made in the contract or declaration for the disposition of monies payable

under the policy in the event of the beneficiary pre-deceasing the policy-holder then, without limiting or affecting the application of section 110, the monies payable under the policy must vest in the following persons in the following order:

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

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

### **122. Simultaneous deaths**

Unless a declaration otherwise provides, if the policy-holder and a beneficiary die in circumstances that render uncertain the order of the deaths, in the absence of proof to the contrary, it shall be presumed that the beneficiary pre-deceased the person whose life is insured.

### **123. Designated beneficiary**

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

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

### **124. Assignment of policy**

(1) If a beneficiary is not designated irrevocably, the policy-holder may assign, exercise rights under or in respect of, surrender or otherwise deal with the policy as provided in the policy or in this Part or as may be agreed upon with the insurer.

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

**125. Enforcement by beneficiary trustee**

A beneficiary may enforce for his own benefit and a trustee appointed pursuant to section 120 may, in accordance with the terms of the contract or declaration, as the case may be, enforce payment of monies payable under a policy even though there is no privity of contract, but the insurer may invoke against the beneficiary or trustee any defence available against the policy-holder or his personal representative.

**126. Entitlement to dividends and bonuses**

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

(2) Unless the policy-holder otherwise directs, the insurer may apply the dividends or bonuses declared on a policy for the purpose of keeping the policy in force.

**127. Effect of assignment of policies on beneficiaries**

(1) An assignee of a policy who gives notice in writing of the assignment to the insurer has priority of interest as against

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary other than one designated irrevocably as provided in section 119 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

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

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

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

**Group Life Insurance**

**128. Policy of group insurance**

If a policy is entered into for the provision of group insurance, the insurer must

- (a) set out in the policy the following particulars:

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

### **129. Power of group life insured to sue insurer**

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

## **Assignment and Mortgages of Policies**

### **130. Assignment of policies**

(1) After the coming into effect of this Act every assignment of a policy must be by deed or other instrument in writing.

(2) An assignment is not binding on the company liable under the policy until written notice of the date and purport of the assignment is received by the company at its principal office in Antigua and Barbuda.

(3) An insurer shall in a register of policies, required by section 205 to be maintained, enter the date and purport of every assignment that it receives notice on and the date that the notice is received.

(4) Upon the presentation of a memorandum of discharge of an assignment, the insurer must enter the discharge in the register.

### **131. Effect of notice on assignment**

(1) Notwithstanding section 130, a company shall not be entitled to any protection under that section or to rely upon that section where the company

- (a) has not acted in good faith; or
- (b) has received express notice in writing of any trust, right, equity or interest of any person.

(2) If a company receives express notice in writing of any trust, right, equity or interest of any person, the company may, if it thinks fit, pay to the Superintendent any money payable under the policy, and the receipt of the Superintendent for the money shall be a valid discharge to the company for the money so paid.

(3) Money paid to the Superintendent pursuant to subsection (2), shall be paid by the Superintendent to the person or persons the court so orders.

### **132. Assignment not to distinguish rights**

(1) The rights and liabilities arising under a policy shall not be deemed, either at law or in equity, to be merged or extinguished by reason only of an assignment of the policy, whether at law or in equity, to the company that issued the policy.

(2) Notwithstanding anything to the contrary in section 130 or section 131, but subject to subsection (3), no assignment of an industrial policy shall be valid without the consent of the company liable under the policy.

(3) If the company refuses its consent to the assignment of an industrial policy, the policy-holder may appeal to the Superintendent whose decision shall be final.

### **133. Release of assignments**

Upon payment or discharge of any money or other obligation secured by an assignment of a policy, the assignee shall give to the assignor a memorandum of discharge indicating that the assignment is relinquished and the policy discharged and if the assignment was by deed, the assignee shall execute a deed of release in favour of the assignor.

## **Protection of Policies**

### **134. Lost policy**

(1) If the holder of a policy or a person claiming the benefit of the provisions of section 146 or section 147 in respect of a policy, claims that the policy, in this section referred to as the original



policy, is lost or has been destroyed, the company liable under the original policy may, subject to this section upon

- (a) application by the holder of the policy or that person; and
- (b) any evidence as to the loss or destruction of the original policy as the company deems sufficient,

issue to the applicant a special policy in substitution for the original policy.

(2) If an application under subsection (1) is made by a person referred to in that subsection, the company shall not issue a special policy unless the company is satisfied that section 146 or 147 should be applied in favour of the applicant in relation to the policy.

(3) A special policy shall

- (a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;
- (b) contain copies of every endorsement on the original policy registered by the company; and
- (c) state the reason for the issue of the special policy.

(4) Before issuing a special policy, the company shall, if the amount insured, exclusive of bonus additions exceeds, five thousand dollars, give at least one month's notice of its intention to do so in the Gazette and in a newspaper circulating in Antigua and Barbuda and approved by the Superintendent.

(5) The expenses of the advertisement and all other costs of the issue of a special policy shall be paid by the applicant at the time of the application.

(6) The fact of the issue of a special policy and the reason for its issue shall be recorded by the company in the appropriate register of policies.

(7) A special policy is valid and available for all purposes that the original policy would have been valid and available for and, after the issue of the special policy, the original policy becomes void.

(8) If the company fails to issue a special policy within six months after receipt of an application in writing from the policy-holder, the court may, upon application by summons, and upon any evidence as to the loss or destruction of the original policy as the court deems sufficient, order the company, upon the terms and within the time the court thinks fit, to issue a special policy.

(9) If the holder of a special policy or a person claiming the benefit of the provisions of section 146 or 147 in respect of a special policy, claims that the special policy is lost or has been destroyed, this section shall apply as if the special policy were an original policy issued by the company.

### **135. Interest of the insured to be protected**

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

(2) If a person who has effected a policy on his own life dies after the commencement of this Act, the monies payable upon his death under or in respect of that policy shall not be applied or made available in payment of his debts by any judgment, order or process of any court, or by retainer by an executor or administrator, or in any other manner whatsoever, except by virtue of a contract or charge made by the person whose life is insured, or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the monies arising from the policy shall be so applied.

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

### **136. Effect of capital punishment, suicide on policy**

A policy shall not be avoided merely on the ground that the person whose life is insured suffered capital punishment or died by his own hand or act, whether or not at the time of death he was mentally ill, if upon the true construction of the policy, the company agreed to pay the sum insured on the happening of either of those events.

### **137. Condition reducing the sum insured void**

A term or condition of a policy that limits, to an amount less than the sum insured, the amount payable under the policy, in the event of the death of the life insured, shall not have any force or effect unless the person who effected the policy agreed in writing to the insertion in the policy of that term or condition.

## **Paid-up Policies, Surrender Values and Non-Forfeiture**

### **138. Application to certain types of policies**

Sections 139 to 145 shall not apply to

- (a) an instrument securing the grant of an annuity for a term dependent upon human life, not being a deferred annuity, during the period of deferment; or

- (b) a policy that provides insurance against contingencies none of which may happen, not being a policy that provides for the payment of a sum of money if the life insured by the policy survives a specified period.

### **139. Paid-up policies**

(1) A policy-holder who desires to discontinue further premium payments on a policy on which not less than three years' premiums have been paid shall, if the policy has a cash surrender value, be entitled on application to the company to receive instead of that policy, a paid-up policy.

(2) If a paid-up policy is issued pursuant to subsection (1) and the contingency occurs that would have rendered the company liable under the original policy, the company shall then be liable under the paid-up policy, limited to its paid-up value.

### **140. Surrender of policies**

Notwithstanding the terms of a particular policy the owner of a policy that has been in force for at least three years, shall, on application to the company, be entitled to surrender the policy and to receive not less than the cash surrender value of the policy less any tax payable and the amount of any debt owing to the company under, or secured by, the policy.

### **141. Superintendent may vary obligation to pay surrender value**

The Superintendent may on an application by a company, suspend or vary for a period and subject to any value conditions he thinks fit the obligation of the insurance company to pay surrender values pursuant to section 140 if, in his opinion, the payment of cash of those surrender values would be prejudicial to the financial stability of the insurance company or to the interests of its policy-holders.

### **142. Dividends**

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

### **143. Non-forfeiture of ordinary policies**

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

- (a) the policy contains provisions enabling the exercise of certain options in lieu of the forfeiture of the policy; and
- (b) the surrender value of the policy calculated as at the day immediately preceding that on which the overdue premium falls due, exceeds the sum of the amount of the debts owing to the company under, or secured by, the policy and the amount of the overdue premium.

(2) The company may until payment of the overdue premium, charge interest on it, on terms not less favourable to the policy-holder than the terms, if any, as may be prescribed.

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

(4) Without affecting the generality of the foregoing provisions of this section, an ordinary policy on which not less than three years' premiums have been paid shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day that the premium fell due

- (a) the company liable under the policy serves a notice on the policy-holder stating
  - (i) the amount due or payable to the company at the date of the notice;
  - (ii) that the policy will be forfeited at the expiration of twenty-eight days after the date of the notice if a sufficient sum is not paid to the company within that period; and
- (b) a period of at least thirty days has elapsed after the service of the notice.

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

#### **144. Non-forfeiture of industrial life policies**

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

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

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

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

(5) If a paid-up policy is issued pursuant to subsection (4) and the contingency occurs that would have rendered the company liable under the original policy the company shall then be liable under the paid-up policy limited to its paid-up value.

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

(7) An industrial policy shall not be forfeited by reason only of the non-payment of any premium if the non-payment is as a result of non-collection by the company.

#### **145. Treatment of debts on issue of paid-up policies**

If in pursuance of any provisions of this Part a policy holder is entitled to receive, or a company is required to grant, a paid-up policy and there is any debt owing to the company under or secured by the policy, the company may elect

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

#### **Payment of Policy Monies**

#### **146. Payment without probate or administration in certain cases**

(1) An insurer by whom any monies are payable under one or more policies to the personal representative of a deceased person may, without requiring the production of probate or letters of administration, pay out of the monies any amount (including any bonuses added to the policy or policies) not exceeding five thousand dollars to any person who satisfies the insurer that he is entitled to

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

(2) An insurer who makes a payment pursuant to subsection (1) shall be discharged from all further liability in respect of the monies so paid.

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

#### **147. Death of policy-holder not being life insured**

(1) Subject to this section, where a policy-holder, not being the person whose life is insured by the policy, pre-deceases the person whose life is insured, and a person satisfies the company that issued the policy

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

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

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

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

(4) This section does not apply in relation to

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

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

#### **148. Company not bound to see to application of monies**

Nothing contained in this Part shall be construed as requiring a company to see to the application of any monies paid under section 146 by the company in respect of any policy.

#### **149. Company may pay money to Superintendent**

(1) A company may pay to the Superintendent any money payable by it in respect of a policy that, in the opinion of the company, no sufficient discharge can otherwise be obtained.

(2) The receipt of the Superintendent for any money paid under subsection (1) shall be a good and valid discharge to the company for the money so paid, and the money shall be dealt with according to an order made by the court.

#### **150. Unclaimed monies**

(1) A company shall, not later than sixty days after the end of its financial year, deliver to the Superintendent a statement of all unclaimed monies as at that date.

(2) The statement shall specify, in respect of each policy to which it refers

- (a) the name and last known address of the person whose life is insured;
- (b) the name of the policy-holder (if known) and his last known address; and
- (c) the amount due and the date that it became due.

(3) The company shall pay to the Superintendent at the time of the delivery of the statement, the total amount of unclaimed monies shown in the statement, less any amount paid by the company, between its financial year and the date that the copy of the statement is delivered, to the person to whom the amount was due, and the company shall furnish, with the copy of the statement, particulars in writing of the amounts paid.

(4) If unclaimed money is paid to the Superintendent under this section and he is satisfied that, but for this section, a person would have been paid the unclaimed money by the company that made the payment or if that company is no longer carrying on that class of insurance business, by the company to which it sold or disposed of the business, the Superintendent shall arrange payment of the unclaimed money to that company and specify the person to whom that company is to pay the money, and that company shall then pay the money to the person specified.

(5) If in pursuance of this section a company has paid to the Superintendent an amount in respect of a policy and the company satisfies the Superintendent that the amount paid exceeds the amount that would have been payable under the policy to the policy-holder, the Superintendent shall arrange for payment of a refund to the company in the amount of the excess.

(6) On payment to the Superintendent of unclaimed money in accordance with this section, a company is, subject to subsection (4), discharged from further liability in respect to the amount paid.

(7) There shall be paid from the Consolidated Fund the sums necessary to give effect to this section.

(8) A company that fails to comply with this section commits an offence.

(9) In this section

“unclaimed money” means all sums of money that, after the commencement of this Act, become legally payable by a company in respect of policies but in respect of which the time within which proceedings may be taken for their recovery has expired, and includes sums of money payable on the maturity, after the commencement of this Act, of an endowment insurance policy which are not claimed within seven years after the maturity date of the policy.

## **Variable Life Products**

### **151. Interpretation**

In this

“variable product” means a variable life insurance policy, a variable annuity contract, or an universal life insurance policy;

“universal life insurance policy” means a policy where the mortality, investment income and administrative charges are expressed separately in the policy;

“variable annuity contract” means an annuity where the contributions, after the deduction of administrative charges, are deposited in an investment fund and the benefits payable depend on the performance of that fund;

“variable life insurance policy” means a policy where a fixed portion of the premium is placed in an investment fund and the benefits payable under the policy is dependent on the performance of that fund.

### **152. Policy document**

The policy document of a variable product shall contain any specifications that may be prescribed.

### **153. Sales illustration**

(1) An insurance agent, insurance broker and sales representative in making a presentation for the sale of a variable product to a prospective client shall use a pre-printed sales illustration approved by the insurer.

(2) A sales illustration shall contain any particulars that may be prescribed.

(3) An insurance agent, insurance broker or sales representative who makes a presentation for a variable product without using an approved sales illustration, or uses a sales illustration that has not been approved by the insurer commits an offence.

Industrial Life Insurance Business

### **154. Objection to policies**

(1) If, within twenty-eight days after a company delivers an industrial policy

(a) to the policy-holder; or

(b) at the residence of the policy-holder to some other person who resides there and appears to be not less than sixteen years of age and by whom any premium in respect of the policy is paid on behalf of the policy-holder,



the policy-holder returns the policy to the company with an objection in writing to any term or condition of the policy, the company shall immediately refund any premium that has been paid in respect of the policy and the policy shall be cancelled.

(2) If an industrial policy is sent by post by a company to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time that it would have reached him in the ordinary course of post.

(3) For the purpose of this section, a policy shall be deemed to have been returned to a company with an objection if the policy and the writing specifying the objection are posted for transmission to the company by registered letter.

#### **155. Returning policies, premium receipt books**

If at any time a company that carries on industrial life insurance business, or any person authorised by the company, takes possession of an industrial policy or premium-receipt book or other document issued in connection with the policy, a receipt for the policy, book or document shall be given to the person from whom it was received, and the policy, book or document shall be returned to that person on demand at any time after the expiration of twenty-eight days, unless

- (a) it is required for the purposes of evidence in legal proceedings;
- (b) the policy has been terminated by reason of the satisfaction of all claims capable of arising under it; or
- (c) in the case of a policy, the company is entitled to retain the policy as security for money owing to the company by the policy-holder.

#### **156. Falsification of entries an offence**

A person who willfully makes, or orders or allows to be made, an entry or erasure in, or omits an entry, or orders or allows an entry to be omitted from, a collecting book or premium-receipt book, with intent to falsify the book, or to evade any of the provisions of this Act, commits an offence

#### **157. Avoidance where proposal is filled in by agent**

(1) Where any agent or servant of a company writes or fills in or has before the commencement of this Act written or filled in any particulars in a proposal for an industrial policy with the company, then, notwithstanding any agreement to the contrary between the proponent and the company, any policy issued in pursuance of the proposal shall not be avoided by reason only of any incorrect or untrue statement contained in the particulars so written or filled in unless the incorrect or untrue statement was in fact made by the proponent to the agent or servant for the purposes of the proposal.

(2) The burden of proving that a statement was so made shall lie upon the company.

(3) Nothing in this section shall be deemed to allow the avoidance of a policy for any reason or in any circumstances for or in which the policy could not have been avoided apart from this section.

**158. Particulars to be set out in policies**

An industrial policy issued by a company after the commencement of this Act shall contain an endorsement in distinctive type setting out

- (a) whether the policy is or is not a participating policy; and
- (b) a short statement in a form approved by the Superintendent as to
  - (i) the right of the policy-holder to be granted a paid-up policy;
  - (ii) the right of the policy-holder to surrender his policy and to receive in cash the surrender value of the policy; and
  - (iii) the forfeiture of the policy.

**159. Issue of premium receipt book**

(1) A company shall, in respect of each industrial policy issued by the company, issue to the policy-holder a premium-receipt book as follows:

- (a) where the policy was issued before or is issued within the period of twelve months immediately following the commencement of this Act, issue the book before the end of that period of twelve months; or
- (b) where the policy is issued after the end of that period of twelve months, issue the book at the time of the issue of the policy.

(2) Notwithstanding subsection (1), if the policy-holders concerned do not object, the company may

- (a) issue one premium-receipt book in respect of two or more policies if held by the same policy-holder or by two or more policy-holders who are members of the same household; or
- (b) add the endorsements and entries required by this section in respect of any policy to the premium-receipt book issued in respect of any earlier policy held by the same policy-holder or by a member of the same household.

(3) After the end of the period of twelve months immediately following the commencement of this Act a company shall not issue or permit to be used one premium-receipt book in respect of two or more policies held by different policy-holders not being members of the same household.

(4) A premium-receipt book issued to a policy-holder by a company, whether before or after the commencement of this Act, shall, if it complies with this section or if it is amended to comply with these provisions and returned to the policy-holder within the period of twelve months immediately following the commencement of this Act, be deemed to be a premium-receipt book issued in accordance with this section.

(5) A premium-receipt book issued by a company shall contain in respect of each policy to which it relates

- (a) an endorsement in distinctive type of the particulars referred to in paragraphs 158 (a) and (b);
- (b) an entry made by the company of the following matters:
  - (i) the surname and initials of the policy-holder and, where the policy is issued in respect of the life of a person other than the policy-holder, the surname and initials of that person; and
  - (ii) the amount of the weekly or other periodic premium; and
- (c) a notice stating that proof of age may be required before payment of the sum insured.

#### **160. Premium receipt book to show date premium paid**

(1) A payment in respect of premiums under an industrial policy made to an agent or servant of the company shall be recorded by the agent or servant in the premium-receipt book so as to clearly indicate the date that premiums have been paid in respect of the policy or policies to which the premium-receipt book relates, and the record shall

- (a) if it is the first entry on a page of the premium-receipt book, be signed by the agent or servant with his usual signature; and
- (b) if it is not the first entry, be signed by the agent or servant with his usual signature or be initialled by him.

(2) If a premium-receipt book relates to more than one policy and any payment for premiums on the policies is made that is less than the aggregate of the weekly or other periodic premiums in respect of all those policies, the person making the payment shall be required by the agent or servant of the company to whom the payment is made to state the policy or policies in respect of which no payment or an insufficient payment is made, and the agent or servant shall clearly record in the premium-receipt book the fact stated.

(3) Unless the amount of the deficiency is paid before any further premiums are paid, the company shall cause a separate premium-receipt book in compliance with section 159 to be issued in respect of any policy in relation to which the deficiency exists and shall cause the particulars and entry in the first mentioned premium-receipt book relating to the policy to be cancelled.

### **Mutualisation**

#### **161. Conversion to a mutual company**

(1) Notwithstanding anything in its articles of incorporation or other instrument of incorporation or in its by laws or other rules, or in this Act, a company may, with the approval of the Board, establish and implement a plan in accordance with this Part.

(2) In this section and in sections 162 to 167

“company” means a company incorporated in Antigua and Barbuda that has a share capital and is registered under this Act to transact long-term insurance business, whether alone or in combination with any other class of insurance business;

“plan” means a plan for the conversion a company with a share capital into a mutual company by the purchase of its shares and their conversion into debentures.

#### **162. Application to establish plan of mutualisation**

An application for approval to establish and implement a plan shall be made in writing to the Superintendent.

#### **163. Appointment of an independent actuary**

(1) When the Superintendent receives an application made in accordance with section 162, he shall appoint an independent actuary to investigate the financial position of the company.

(2) The actuary appointed under subsection (1), shall on completion of his investigation, furnish the Superintendent with a report on his findings.

(3) In addition to the findings of the actuary, the report shall state

- (a) the price that should be offered for the shares of the company;
- (b) the terms and conditions of the debentures that should be offered in exchange for the shares; and
- (c) any other information that the Superintendent may require.

#### **164. Approval of application**

If after considering the report of the actuary appointed under section 163 and the recommendations of the Superintendent thereon the Board is satisfied that the paid-up capital of the company has ceased to be an important factor in safeguarding the interests of the policy-holders of the company, having regard to

- (a) the quality and amount of the assets of the company;
- (b) the surplus of the assets of the company relative to its liabilities;
- (c) the nature of the business carried on by the company; and
- (d) any other considerations that the Board or the Superintendent may consider relevant, the Board may approve the application referred to in section 163

#### **165. Submission of detailed plan**

When an application is approved by the Board, the Board of directors of the company shall prepare and submit to the Superintendent a detailed plan that must include

- (a) particulars relating to the financial state of the company;
- (b) a statement of any actual or contingent liability as determined by the actuary;
- (c) any changes that are proposed to be made in its articles of incorporation or by laws; and
- (d) any other information the Superintendent may require.

#### **166. Acceptance by shareholders and policy-holders**

(1) When a plan is approved by the Board

- (a) it shall be laid as a special resolution before the shareholders of the company at a special general meeting of the company duly called for considering the resolution, and there shall be recorded in the minutes of the meeting the number of votes cast in favour of and against confirmation of the resolution; and
- (b) the Board of directors shall send by post to each policy-holder of the company at his last known address
  - (i) a ballot paper; and
  - (ii) a circular approved by the Superintendent, inviting the policy holders to vote by post on the resolution referred to in paragraph (a) within the time specified in the circular.

(2) The resolution shall only be effective if it is approved by not less than fifty per centum of the votes cast by the shareholders at the special general meeting and by not less than fifty per centum of the votes cast by the policy-holders in accordance with the circular referred to in subparagraph (1)(b)(ii).

(3) If the resolution is effective the shareholders shall sell their shares to the company at a price approved by the Board.

**167. Recovery of expenses. Payment of security for cost incurred by the Superintendent.**

All expenses incurred by the Superintendent in connection with an application for approval to establish and implement a plan shall be defrayed by the company, and any sum due in respect of those expenses may be recovered from the company by the Superintendent summarily as a civil debt.  
Transfer and Amalgamation

**168. Application for a scheme of transfer**

(1) A company shall not transfer or amalgamate its insurance business, either in whole or in part, to or with the insurance business of any other company, except in pursuance of a scheme

- (a) prepared in accordance with this section and with sections 169 to 171; and
- (b) confirmed by the Superintendent.

(2) An application for the confirmation of a scheme shall be made to the Superintendent by or on behalf of any company engaged in the transfer or amalgamation, and an application with respect to any matter connected with a scheme or a proposed scheme may be made at any time before it is confirmed, by any person who, in the opinion of the Superintendent, is likely to be affected by the scheme or the proposed scheme.

(3) When an application is made under subsection (2) the Superintendent shall set a date not less than two months from the date of the application for the hearing of the application.

(4) At the hearing of the application

- (a) the company is entitled to appear and to be heard either through one of its officers or through a barrister-at-law;
- (b) the Superintendent may hear any other evidence that he considers necessary; and
- (c) any person who, in the opinion of the Superintendent, is likely to be affected by the scheme is entitled to be heard.

(5) A company that is aggrieved by the refusal of the Superintendent to confirm a scheme may appeal against the decision in the manner specified in section 220.

(6) In the case of a foreign company this section shall apply only to the transfer or amalgamation of insurance business relating to its local policies.

**169. Submission of details of scheme**

A scheme must set out the terms of the agreement or deed under which it is proposed to effect the transfer or amalgamation and shall contain any further provisions necessary to give effect to the transfer or amalgamation.

**170. Confirmation of a scheme of transfer**

(1) Before a scheme for the transfer or amalgamation of the insurance business of a company is confirmed by the Superintendent

- (a) certified copies of the assets and liabilities of the companies engaged in the transfer or amalgamation must be submitted to the Superintendent;
- (b) a copy of the scheme together with copies of the actuarial and other reports, if any, upon which the scheme was founded, must be submitted to the Superintendent;
- (c) copies of the scheme and of every report submitted to the Superintendent or summaries of the scheme and reports approved by the Superintendent shall, unless the Superintendent otherwise directs, be transmitted to every policy-holder affected by the scheme by the companies engaged in the transfer or amalgamation, at least fifteen days before the application for confirmation of the scheme is to be heard;
- (d) notice of the intention to make the application (the notice to contain the particulars that may be prescribed by the Superintendent) must be published in the Gazette and in the local newspapers approved by the Superintendent not less than one month after the copy of the scheme is submitted to the Superintendent.
- (e) the scheme shall be open for inspection by any policy-holder or shareholder affected by it, for a period of fifteen days after the publication of the notice, at the office of each company engaged in the transfer or amalgamation;
- (f) the Superintendent may cause a report on the scheme to be made by an independent actuary and shall cause a copy of the report to be sent to each of the companies engaged in the transfer or amalgamation; and
- (g) the Superintendent may give directions concerning
  - (i) the publication of advertisements of the scheme;

- (ii) the giving of notices to shareholders, policy-holders or creditors of the companies;
- (iii) the holding of meetings of any company affected,

and the directions shall be complied with by the person to whom they are given.

(2) When confirmed by the Superintendent, the scheme shall be binding on all persons and will have effect notwithstanding anything in the instruments constituting the company or in the articles of incorporation or in by laws of the company and the directors of any company affected by the scheme shall cause a copy of the scheme to be filed with the Registrar of Companies.

(3) All expenses incurred by the Superintendent in obtaining the report of any actuary on the scheme shall be defrayed by the companies engaged in the transfer or amalgamation, and any sum due in respect of those expenses may be recovered summarily as a civil debt by the Superintendent from the companies either jointly or severally.

#### **171. Return to be made on confirmation of scheme**

If the insurance business carried on by a company is transferred to or amalgamated with the insurance business of another company, the company to which the insurance business is transferred or the company carrying on the amalgamated insurance business shall, within one month after the transfer or the amalgamation, submit to the Superintendent

- (a) a certified copy of the agreement or deed under which the transfer or the amalgamation is effected; and
- (b) a statutory declaration made by the Chairman of the board of directors or by the principal representative of the company
  - (i) specifying every payment made or to be made to any person in respect of the transfer or amalgamation; and
  - (ii) stating that to the best of his knowledge and belief no other payment, other than those specified has been or is to be made in money, policies, bonds, valuable securities, property of any description or any other valuable consideration, by or with the knowledge of any parties to the transfer or amalgamation.

### **PART VII**

#### **GENERAL INSURANCE**

##### **172. Application of this Part**

This section and sections 174 to 183 shall apply to all companies registered under this Act to carry on any class of general insurance business.



### **173. Actuary**

(1) A company carrying on general insurance business in the State shall appoint an actuary, as a member of its staff or as a consulting actuary, and notify the Superintendent in writing within fourteen days of making the appointment.

(2) The company may terminate the appointment of an actuary.

(3) The company shall, within three months of the termination of the appointment or resignation of an actuary, appoint another actuary.

(4) If the appointment of an actuary is terminated, the company shall

- (a) forthwith after the termination of the appointment, notify the Superintendent in writing of the termination; and
- (b) within fourteen days of appointing another actuary notify the Superintendent in writing of the appointment.

(5) No person may carry out the functions of an actuary unless the Superintendent is satisfied that he possesses the necessary qualifications to carry out these functions.

(6) An actuary who resigns or whose appointment is terminated shall submit to the directors of the company and the Superintendent a written statement of the circumstances and reasons why the actuary resigned or why, in the actuary's opinion, the appointment was terminated.

### **174. Misrepresentation**

A policy of general insurance shall not be avoided by reason only of any incorrect statement made in any proposal or other document on the faith of which the policy was issued or renewed by the company unless the statement

- (a) was fraudulently untrue; or
- (b) is material in relation to the risk of the company under the policy.

### **175. Reinsurance arrangements**

(1) A company registered to transact general insurance business in Antigua and Barbuda shall within thirty days of the commencement of each underwriting year, submit to the Superintendent, in respect of each class of insurance business to be transacted, the information regarding its reinsurance arrangements as may be prescribed.

(2) An insurer that contravenes subsection (1) commits an offence.

**176. Condition of average**

(1) Notwithstanding any condition in a policy, where the sum insured in a policy on a residential building or on its contents is not less than eighty-five per centum of the value of the property, the liability of the insurer in respect of loss of or damage to any part of the property insured is not reduced by reason only of any provision included in the policy requiring that the insured be his own insurer for the proportion by which the value of the risk exceeds the sum insured.

(2) In this section “residential building” means a building that is occupied or has been set apart for occupation as a private dwelling and includes residential apartments in a town house or condominium as well as outbuildings and other appurtenances to it.

(3) For the purpose of this section value shall mean

- (a) if the policy is on a reinstatement basis, the cost of reinstating the buildings or contents to their condition when new or the cost of replacement at the date of any loss or damage, which ever shall be the less; and
- (b) if the policy is on an indemnity basis, the cost of reinstatement calculated as in paragraph (a) above, less a reasonable provision for depreciation.

**177. Structured settlements**

(1) A court, in awarding judgment to a plaintiff in respect of a claim, liability for which is covered by a policy may, with the consent of both parties, instead of a lump sum, order specified payments with interest to be made at the intervals and over a period not exceeding three years as the court may specify.

(2) Nothing in subsection (1) operates to prevent an insurer and a person who has made a claim against an insurer from entering into a settlement agreement for the payment by the insurer of specified payments at specified intervals and over a specific period in satisfaction of the claim that has been made.

(3) Notwithstanding anything contained in the Income Tax Act, no tax is payable by the insured or the beneficiary in respect of payments made or, as the case may be, received pursuant to this section.

**178. Reserves for unexpired policies**

A company shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement of account, reserves computed to the satisfaction of the Superintendent.

**179. Reserves for outstanding claims**

A company shall, in addition to the reserves required to be included pursuant to section 178, provide

- (a) reserves for meeting outstanding claims; and
- (b) set aside reserves for catastrophic losses in a manner that may be prescribed.

**180. Methods for calculating reserves**

(1) A company shall furnish to the Superintendent details of the methods used in calculating the reserves to be provided under sections 178 and 179.

(2) The Superintendent may disallow any method used in calculating the reserves referred to in subsection (1) if he is satisfied that the method does not result in the provision of adequate reserves.

**181. Prohibition on payment of dividends**

No dividend may be paid by any company incorporated in Antigua and Barbuda

- (a) while its assets are less than the amount required for solvency by section 53; or
- (b) if the dividend would reduce its assets below the amount referred to in paragraph (a) or would impair its capital.

**182. Deficiency insolvency margin**

(1) If it appears to the Superintendent that the assets of any company fall below the amount required for solvency by section 53 the Superintendent, after giving the company not more than thirty days to be heard by him, may

- (a) forthwith cancel the registration of the company;
- (b) on any terms and conditions he considers necessary, specify a time not exceeding three months within which the company shall make good the deficiency; or
- (c) if the admissible assets of the company are less than its total liabilities, including the reserves referred to in sections 178 and 179 or if the company has contravened the requirements of section 181, cancel the registration of the company:

Provided that the Superintendent shall not cancel the registration of the company under this section without the approval of the Board.

(2) If a company fails to make good a deficiency within the time specified by the Superintendent pursuant to paragraph (1)(b), the Superintendent shall with the approval of the Board cancel the registration of the company.

**183. Appropriation of profits towards surplus**

(1) A company incorporated in Antigua and Barbuda shall at the end of each year appropriate towards surplus at least twenty-five per centum of its profits for that year until the surplus of the company equates with or exceeds the liability of the company in respect of outstanding unexpired policies required to be included in the annual statement in accordance with section 178.

(2) In this section “surplus” means the excess of assets over all the liabilities of the company, including its liability in respect of outstanding unexpired policies required to be included in the annual statement in accordance with section 178.

**PART VIII**

**PENSION FUND PLANS**

**184. Plans to be registered**

After one year from the date that this Act comes into effect, no person may operate a pension fund plan (in this Act referred to as “a plan”) in Antigua and Barbuda unless the plan is registered under this Part.

**185. Qualifications for registration**

(1) Subject to this Part, if a plan establishes a fund under trusts that are subject to the laws of Antigua and Barbuda, in connection with an undertaking or a combination of undertakings carried on wholly or partly in Antigua and Barbuda, and the main purpose of that fund is

- (a) the provision of superannuation allowances on retirement to persons employed in the undertaking or in the combination of undertakings in connection with which the fund is established;
- (b) the provision of pensions to the spouses of persons who are or have been so employed and of periodical allowances to or in respect of the children of those persons; or
- (c) the assurance of capital sums on the death of persons who were so employed,

the plan shall be qualified for registration under this Part if the rules of the plan comply with the requirements set out in Part I of the Fifth Schedule.

(2) If a plan establishing a fund for any of the purposes set out in paragraph (1)(a), (b) or (c) is in operation before the commencement of this Act that plan shall, subject to the directions as to the amendment of its rules that the Superintendent may give, be treated as qualified for registration under this Part although

- (a) the fund created under the plan is not established under trusts or under trusts that are subject to the laws of Antigua and Barbuda; or
- (b) the plan does not comply with the requirements set out in Part I of the Fifth Schedule.

(3) The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of a registered plan.

### **186. Registration of plans**

(1) An application for the registration of a plan under this Part must be addressed to the Superintendent and

- (a) be on the form approved by the Superintendent;
- (b) be signed by the trustees of the plan;
- (c) specify the address at which communications concerning the plan will be received (in this Part referred to as the “address of the plan”); and
- (d) be accompanied by
  - (i) a copy of the trust deed and of the rules of the plan;
  - (ii) a copy of the actuarial report on which the plan is based;
  - (iii) a list of the names and addresses of the trustees of the plan;
  - (iv) in the case of an insured plan a copy of the policy of insurance related to benefits provided by the plan; and
  - (v) any other documents or further information that may be required by the Superintendent.

(2) When an application is made in accordance with this Part for the registration of a plan, the Superintendent must with the approval of the Board register the plan and the rules of the plan if he is satisfied that the plan is qualified for registration.

(3) Where

- (a) the trust deed or the rules, or both, of a plan registered under this Part (in this Part referred to as a “registered plan”) are amended; or
- (b) there is any change in the address of the plan or in the names or addresses of the trustees of the plan,

the trustees must, within twenty-one days of the amendment or the change, apply for the registration of the amendment or the change.

(4) An application for an amendment or for a change must be addressed to the Superintendent and must be

- (a) on the form approved by the Superintendent;
- (b) signed by one of the trustees of the plan; and
- (c) accompanied
  - (i) in the case of an amendment, by a copy of the amendment signed by one of the trustees; or
  - (ii) in the case of a change, by the particulars necessary for the correction of the records.

#### **187. Amendment not valid until registered**

(1) An amendment to the trust deed or rules, or both, of a registered plan shall not be valid unless the amendment is registered.

(2) Where an application for the registration of an amendment is made in accordance with section 186(4), the Superintendent shall after obtaining the approval of the Board register the amendment if he is satisfied that the trust deed or the rules, or both, as amended would not have disqualified the plan from registration under this Part.

#### **188. Certificate of registration**

(1) The Superintendent shall on registering any plan or any amendment to the trust deed or the rules, or both, of a registered plan under this Part, issue to the applicant a Certificate of Registration (in this Part referred to as a "Certificate").

(2) A document purporting to be a Certificate issued under subsection (1) and purporting to be signed by the Superintendent shall be received in evidence and be deemed to be so issued or signed without further proof unless the contrary is shown, and shall be conclusive evidence of the fact certified.

#### **189. Cancellation of registration of plan**

(1) The registration of a registered plan shall not be cancelled unless the plan has been wound-up.

(2) The trustees of a registered plan shall, within fourteen days of the completion of the winding-up of the plan, notify the Superintendent in writing that the winding-up has been completed.

(3) On receiving notice in writing that a registered plan has been wound-up, the Superintendent shall submit the case to the Board and the Board shall direct the Superintendent to cancel the registration of the plan if it is satisfied that

- (a) the plan has been wound-up; and
- (b) the assets of the plan have been applied in accordance with the rules of the plan.

#### **190. Fees payable**

The fees payable in respect of

- (a) the registration of a plan;
- (b) the registration of any amendment to the trust deed or the rules, or both, of the registered plan; and
- (c) the correction of the records occasioned by a change in the name or address of a trustee or a change in the address of a registered plan,

shall be as set out in Third Schedule.

#### **191. Additional powers of the Superintendent**

(1) The Superintendent may require any person who is an employer, an insurer, a trustee or an officer of a plan for the registration of the application that has been made under this Part, or of any registered plan to furnish either by statutory declaration or otherwise, any information or explanation that may be necessary for the proper exercise and performance of the powers and duties of the Superintendent under this Part.

(2) If the trustees of a registered plan commit a breach of trust by making an unauthorised investment or by violating any rule of the plan, where the rule is necessary for registration under this Part, the Superintendent shall have the same remedies in all respects for the breach of trust as if he were a person beneficially interested in the plan.

(3) The Superintendent or any person authorised by him in writing may at any reasonable time inspect or examine any books, records or other documents relating to a registered plan or any plan in respect of which an application for registration is made under this Part, or any securities or obligations that pension fund monies of a plan are invested.

#### **192. Penalties for default**

(1) A trustee of a registered plan commits an offence where in respect of that plan, there is default in complying with any of the requirements of this Part relating to

- (a) accounts and reports;
- (b) the making of applications for the registration of any amendment to the trust deed or to the rules, or both, of the plan or, the correction of the records in respect of a change in the address of the plan or in the names and addresses of the trustees of the plan; or
- (c) the giving of notice to the Superintendent or the winding-up of the plan.

(2) It is a defence to any proceedings instituted under subsection (1) against the trustees of a registered plan to prove that the default occurred without their consent or connivance and was not facilitated by any neglect on their part.

(3) A person who is lawfully required under this Part by the Superintendent to furnish any information or explanation that could with reasonable diligence be furnished by him makes default in complying with the requirement within fourteen days after written notice of the requirement has been delivered to him, commits an offence.

(4) A person who commits an offence under this Part is liable on summary conviction to a fine of five thousand dollars and in the case of a continuing offence to a further fine of one hundred dollars for every day the offence continues after conviction.

### **193. Submission of annual accounts**

- (1) The trustees of each plan registered under this Part must
  - (a) submit annually to the Superintendent a balance sheet and statement of accounts for each accounting year within six months of the expiration of that accounting year; and
  - (b) file with the Superintendent annually or at the periods and in the form set out in the Fifth Schedule any information or return relating to the plan.
- (2) The balance sheet and statement of accounts referred to in subsection (1) must
  - (a) before they are submitted to the Superintendent be audited by an auditor approved by him; and
  - (b) be prepared in accordance with the format set out in the Fifth Schedule

### **194. Actuarial investigation**

(1) The trustees of each registered plan shall appoint an actuary or a consulting actuary to make an investigation into the financial condition of the plan and to report on his findings.

(2) An investigation under subsection (1) shall be made every four years or at a shorter interval as specified by the Superintendent.



(3) A copy of the report of the actuary shall be furnished to the Superintendent.

(4) Subsections (1) and (3) shall not apply to a plan insured with an insurer, but the trustees of the plan must obtain from the insurer a certificate to the effect that the plan has been valued by an actuary.

(5) The certificate required by subsection (4) must be deposited by the trustees with the Superintendent.

### **195. Investment of assets of a plan**

#### Fourth Schedule

(1) The trustees of a registered plan may invest the assets of the plan only in the securities prescribed in the Fourth Schedule.

(2) No trustee may invest the assets of a pension fund in the equity, debentures or other evidence of indebtedness of the employer or any subsidiary or associate of the employer or of any company of which the employer is a subsidiary or an associate.

## **PART IX**

### **CONFIDENTIALITY**

#### **196. Provisions relating to confidentiality**

(1) No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee, principal representative or agent of any company or association of underwriters or as its auditor or actuary or receiver or Judicial Manager or as Superintendent or as any person acting under the direction of the Superintendent or as director of the Board, or as an employee or a member of the Board of the Commission, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a policy-holder, insured or customer of a company or association of underwriters except:

- (a) with the written authorisation of the policy-holder, insured or customer or of his heirs or legal personal representatives; or
- (b) for the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act; or
- (c) when lawfully required to make disclosure by any court of competent jurisdiction within Antigua and Barbuda; or
- (d) under the provisions of any law of Antigua and Barbuda or agreement among the participating Governments;

except that nothing herein shall prevent:

- (i) a company or association of underwriters from providing to a person, upon a legitimate business request, a general credit rating, a summary of which will be provided to the policy-holder, insured or customer upon request; or
- (ii) the Superintendent from
  - (a) sharing any information received or any report prepared by the Superintendent or by any person acting under the direction of the Superintendent in the performance of his duties under this Act, with any local or foreign authority responsible for the supervision or regulation of a company or association of underwriters, or for maintaining the integrity of the financial system; or
  - (b) providing access, to any officer of a foreign authority responsible for the supervision or regulation of a company or association of underwriters in order to assess the safety and soundness of a foreign company or association of underwriters;

on a reciprocal basis, and subject to an agreement of confidentiality and a Memorandum of Understanding between the Superintendent and such authorities.

## **PART X**

### **CORPORATE GOVERNANCE**

#### **197. High Court may order meeting of shareholders on application by Superintendent**

(1) On the application of the Superintendent, the High Court may order a meeting of shareholders of a registered local company for any reason the High Court thinks fit to make the order.

(2) The directors of a registered local company shall establish an audit committee consisting of at least three directors to perform those duties that may be prescribed.

(3) A company shall, within thirty days after each annual meeting of the company, provide the Superintendent with a return showing

- (a) the name, residence and citizenship of each director holding office immediately following the meeting;
- (b) the mailing address of each director holding office immediately following the meeting;
- (c) the bodies corporate of which each director referred to in paragraph (a) is an officer or director and the firms of which each director is a member;

- (d) the names of the directors referred to in paragraph (a) who are officers or employees of the company or any affiliate of the company, and the positions they occupy;
- (e) the name of each committee of the company on which each director referred to in paragraph (a) serves;
- (f) the date of expiration of the term of each director referred to in paragraph (a); and
- (h) the name, address and date of appointment of the auditor of the company.

(4) Where

- (a) any information relating to a director or auditor of a company shown in the latest return made to the Superintendent under subsection (1), other than information referred to in paragraph 1(c), becomes inaccurate or incomplete,
- (b) a vacancy on the board of auditor of the company occurs or is filled by another person, or
- (c) a vacancy on the board of directors of the company occurs or is filled,

the company shall forthwith provide the Superintendent with such information as is required to maintain the return in a complete and accurate form.

**198. Director and officers of company to be fit and proper persons**

(1) Every person who is, or is likely to be a director, officer or manager of a registered local company, the principal representative of a registered foreign company or a person authorised under subsection 78(2), must be a fit and proper person to hold the particular position which he holds or is likely to hold

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to:

- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (b) the diligence with which that person is fulfilling or likely to fulfill the responsibilities of that position; and
- (c) whether the interests of policy-holders or potential policy-holders of the registered local company, registered foreign company or registered association of underwriters are, or are likely to be, in any way threatened by that person holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
- (c) engaged in any business practices appearing to the Superintendent to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on that person's method of conducting business;
- (d) an employment record which leads the Superintendent to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

**199. Persons declared unfit to hold office to quit immediately**

(1) Any person who is a director, officer or manager of a registered local company, a principal representative of a registered foreign company or a person authorised under subsection 78(2) shall cease to hold that position

- (a) upon notification by the Superintendent of a finding
  - (i) of that person's permanent incapacity or serious neglect of, or misconduct in, office; or
  - (ii) that the person is not a fit and proper person in accordance with the criteria specified in paragraphs (a) and (b) of subsection (3) of section 198; or
- (b) if that person
  - (i) is or was convicted of an offence under this Act;
  - (ii) has been declared bankrupt or is compounding with, or suspending payment to, that person's creditors; or
  - (iii) has been convicted in a court of law of any offence involving fraud, dishonesty, or violence.

(2) Any person who:

- (a) has been sentenced for an offence involving a term of imprisonment of or exceeding six months or in default of payment of a fine;

- (b) has been a director or manager of a company which has been wound-up by a court or has been placed in receivership;
- (c) has been a director or manager of, or directly or indirectly concerned in the management of a former registered company, the certificate of which has been revoked, unless such revocation was due to
  - (i) its amalgamation with another registered company; or
  - (ii) its voluntary winding up

shall not, without the express approval of the Board after consultation with the Superintendent, act or continue to act as a director or manager of, or be directly or indirectly concerned in any way in the management of any registered company.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and in the case of a continuing offence to a further penalty of five hundred dollars for each day on which the offence is continued after conviction thereof.

## **200. Superintendent may issue prudential guidelines**

The Superintendent may issue prudential guidelines in administering the provisions of this Act and, without limiting the generality of the foregoing, may issue guidelines respecting:

- (a) policies, practices and procedures for evaluating
  - (i) the quality of assets,
  - (ii) the adequacy of loan loss provisions, and
  - (iii) loan loss reserves;
- (b) a system of loan classification, provisioning and write-offs;
- (c) the method of valuation of collateral;
- (d) rules for non-accrual of income on non-performing or impaired assets;
- (e) the suspension and reversal of accrued interest;
- (f) policies, procedures and systems for identifying, monitoring and controlling country risk, transfer risk, market risk, liquidity risk, interest rate risk, operational risk; and such other risks as the Superintendent shall specify;

- (g) liquidity requirements and ratios;
- (h) treatment of assets and investments;
- (i) treatment of loans and other credit facilities;
- (j) related party transactions;
- (k) corporate governance;
- (l) auditors;
- (m) actuaries;
- (n) disclosure; and
- (o) anti-money laundering and combating the financing of terrorism matters.

**201. Restriction in holding shares in local company**

(1) Subject to subsection (7), except with the approval of the Superintendent, no person shall hold or acquire either directly or indirectly so much of the paid-up capital of a registered local company which would confer upon the person more than 20 per cent of the total voting rights of all the shareholders at a general meeting of the company

(2) Where the Superintendent determines that the interests of a group of two or more shareholders of a registered local company are connected or related, the total holdings of those shareholders shall be combined and deemed to be the holdings of a single shareholder.

(3) A registered local company must submit a report quarterly to the Superintendent on the names and addresses of any person who owns five per cent or more of the total voting rights of the company and where such a person is a nominee, the name and address of any beneficial owner for whom such a person holds the shares

(4) In the event that the Superintendent determines that a person is in violation of subsection (1), the Superintendent may issue an order to the person requiring the divestment of so much of the offending interest as is necessary to secure compliance with the provisions of subsection (1)

(5) A director of a local company who knows or ought reasonably to know of a transfer made in violation of subsection (1) and who fails to disclose it to the Superintendent commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months.

(6) Any person who knowingly acquires an interest in violation of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

(7) Subsection (1) shall not apply to the Government or to any person who at the commencement of this Act has acquired more than 20 per cent of the total voting rights of all the shareholders of the registered local company, but no such person shall without the consent of the Superintendent, acquire any additional shares which shall have the effect of increasing that person's percentage of the voting rights.

## **202. Periodic examination of companies and affiliates**

(1) The Superintendent shall examine or cause an examination to be made of each registered company and association of underwriters from time to time or whenever in his judgement such examination is necessary or expedient in order to determine that the company or association is in a sound financial condition and that the requirements of this Act have been complied with in the conduct of its business.

(2) For the purpose of determining the condition of a company and its compliance with this Act, the Board or the Superintendent may at any time examine or cause an examination to be made of any affiliate of the company in Antigua and Barbuda or abroad or any of its overseas offices to the same extent that an examination may be made of the company.

(3) The Superintendent may assess a company or association for the reasonable expenses of conducting an examination under subsections (1) and (2).

(4) The Superintendent shall forward copies of balance sheets, statements and reports on the results of any examination to the Board and the company or association.

(5) The company or association shall produce for the inspection of any examiner appointed by the Superintendent at such time as the examiner specifies all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purpose of this Act.

(6) If any books, minutes, accounts, cash, securities, documents and vouchers are not provided or information is not supplied in accordance with subsection (5), the defaulting company or affiliate or both or association shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars and in the case of a continuing offence to a further penalty of one thousand dollars for each day on which the offence is continued after conviction thereof.

(7) If any information supplied or item produced is false in any material particular, the company or affiliate or both or association shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.

## **PART XI**

### **MISCELLANEOUS**

#### **203. Policy to be issued expeditiously**

(1) If a person has entered into a policy with an insurer, the insurer must forward to that person the relevant insurance policy documents within thirty days of the entering into a policy or at some other time as the Superintendent may consider reasonable.

(2) No registered insurer shall issue policy documents in Antigua and Barbuda that whatever its nature is printed or typed in a clearly legible letters approved by the Superintendent.

(3) An insurer who issues policy documents in Antigua and Barbuda contrary to subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

#### **204. Jurisdiction over local policies**

A policy issued in Antigua and Barbuda shall, notwithstanding any agreement to the contrary, be governed by the laws of Antigua and Barbuda and shall be subject to the jurisdiction of the courts of Antigua and Barbuda.

#### **205. Insurer to maintain register of policies**

(1) A company must keep at its principal office in Antigua and Barbuda a register of policies (in this Part referred to as “the register”).

(2) A local policy existing at the date of commencement of this Act shall as at that date be registered by the company in the register.

(3) A company shall specify its principal office in Antigua and Barbuda on every policy issued by it.

(4) A local policy issued after the commencement of this Act shall immediately after issue be registered by the company in the register.

(5) A policy may at the written request of the policy-holder and with the consent of the company, be transferred from a register outside Antigua and Barbuda to a register in Antigua and Barbuda, or from a register in Antigua and Barbuda, to a register outside of Antigua and Barbuda.

(6) All expenses incurred in connection with the transfer of a policy pursuant to subsection (5) shall be borne by the policy-holder.

#### **206. Policy not invalidated by breach of this Act**

A policy issued by any person whether before, or after the date of commencement of this Act shall not be invalid merely because that person contravened or failed to comply with any enactment in force applying to that policy.



### **207. Restriction on use of insurance terms**

(1) No person other than a registered insurer or a registered insurance intermediary shall have or use the word “insurance” or “assurance” or any derivative of the word in the name that the person carries on business.

(2) A registered insurer, insurance broker or insurance agent must not change the name that he is registered under without the prior written permission of the Superintendent.

### **208. Inspection of documents lodged with Superintendent**

(1) A person may, subject to the payment of any prescribed fee inspect or inspect and make a copy of, any prescribed returns and any audited statement furnished by a registered insurer to the Superintendent under this Act.

(2) The Superintendent shall upon payment to him of the prescribed fee furnish at the request of any person:

- (a) the name of the principal representative in Antigua and Barbuda of a registered foreign company,
- (b) the address of the principal office in Antigua and Barbuda of a registered foreign company notified to him in accordance with Part III and
- (c) in respect of an association of underwriters, the name and address of any person nominated pursuant to Part IV.

### **209. Annual licences**

#### **Schedule 3**

(1) An insurer must pay to the Accountant General a licence fee for the transaction of insurance business as set out in the Third Schedule.

(2) The licence fee must be paid at registration and subsequently in the month of January of every year for the continuance of the registration of the insurer and in the event of the licence fee for the continuance of the registration of an insurer being paid after the last day of January, a sum equal to five per centum of the licence fee for each month that the fee is unpaid after that date, shall be paid in addition to the relevant licence fee.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(4) If it appears to the Superintendent that an insurer has failed to comply with the requirements of sections 22, 29 and 38 the Superintendent may with the approval of the Board refuse the renewal.

#### **210. Publication of registrations, and cancellations**

(1) The Superintendent shall cause notice of registration or renewal of registration or the cancellation of registration of an insurer or of an insurance agent or of an insurance broker to be published in the Gazette.

(2) The Superintendent shall, from time to time, cause to be published in the Gazette up-to-date lists of companies, associations of underwriters and persons registered under Part III, Part IV or Part V, as the case may be.

#### **211. Misleading Advertisements**

(1) No advertisement must be used by a registered insurer or a registered insurance intermediary that, directly or by implication, has the capacity or tendency to mislead or deceive prospective policyholders with respect to an insurer's assets, corporate structure, financial standing or relative position in the insurance business or in any other material respect.

(2) In this section and in sections 212 and 213

“advertisement” includes every form of advertising whether by oral statement or in the form of a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs, cinematographic films, video tapes or by way of electronic broadcasting or by any other means.

#### **212. Approval required for notice offering shares for subscription**

(1) A person shall not publish in respect of any company or in respect of a company proposed to be formed after the commencement of this Act a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the company or proposed company, unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Superintendent.

(2) A person acting as promoter of a proposed company shall not accept any office of profit in the company or any payment or pecuniary advantage other than as provided in the prospectus, notice, circular, advertisement or other invitation.

#### **213. Publication of authorised and paid-up capital**

If any advertisement, notice or other document of a registered insurer contains a statement of the

amount of its authorised capital or of its issued capital, the publication shall also contain a statement of the amount of the capital that has been paid up.

#### **214. False documents**

If a person prepares or issues a document referred to in this Act that is false or misleading in any material respect, that person and every other person who took part in the preparation or issue of the document or who signed it commits an offence, unless it is proved that the offender, if an individual, or all the persons who acted on behalf of the offender, if he is not an individual, had no knowledge of the falsity or misleading character of the document when it was prepared or issued and had taken every reasonable precaution to ensure its accuracy.

#### **215. Translation of documents**

The Superintendent may require any person who furnishes him in accordance with this Act, any statement, certificate or other document whatsoever in a language other than the English language to provide a translation of that document in the English language at that person's expense.

#### **216. Minister may authorise exemptions**

The Minister, may on the advice of the Board by Order, published in the Gazette and on the terms determined by the Board, authorise the exemption from any provision of this Act of any person if the exemption is considered necessary.

#### **217. Regulations**

(1) The Minister, may on the recommendation of the Board, make Regulations for giving effect to this Act and, in particular, the Regulations may make provision in relation to all or any of the following:

- (a) prescribing the forms to be used in connection with any provision of this Act;
- (b) prescribing anything that is required or authorised to be prescribed by this Act;
- (c) amending or adding any Schedule to this Act;
- (d) prescribing rules governing reinsurance business;
- (e) prescribing rules for the investment of funds by insurers;
- (f) prescribing rules for the form, procedure and time limits for appeals;

- (g) prescribing rules for the valuation of assets;
- (h) prescribing rules for the writing-off of preliminary expenses and the deferring of acquisition costs in respect of new insurance business;
- (i) prescribing rules for the registration of persons as sales representatives, insurance agents, insurance adjusters or insurance brokers, the holding of an examination to qualify for registration and the exemption of a person from the examination;
- (j) prescribing rules governing the sale of universal life, annuity and variable life products;
- (k) prescribing fees for the holding of examinations for sales representatives, insurance agents and insurance brokers and insurance adjusters;
- (l) prescribing fees for the extension of the period prescribed for the performance of an act or thing under this Act;
- (m) generally for the effective implementation of this Act or of any international convention, treaty, agreement or prudential and ethical standards pertaining to the insurance business.
- (n) prescribing administrative penalties for failure to file on time returns, statements and other documents required to be filed under this Act or on the directions of the Superintendent or the Board

(2) The Board may, on application, extend the period prescribed under this Act for the performance of an act, or things as may seem necessary to the Board for the fulfilment of the Act.

### **218. No Liability**

No action lies against the Board or the Superintendent or any person acting under the direction of the Board or the Superintendent for anything done or omitted to be done in good faith in the administration or discharge of any powers, duties or functions that under this Act are intended or authorised to be executed or performed.

### **219. Superintendent may authorise extension of time**

If a provision of this Act requires anything to be done within a specified period of time and no provision is made for the extension of it, that period may in any particular case be extended by the Superintendent in writing.

## **220. Appeals**

(1) A person who is aggrieved by a decision of the Superintendent under this Act may appeal to the Board.

(2) A person who is aggrieved by a decision of the Board, including a cancellation of his registration, or a refusal to register or renew his registration as an insurer or as an insurance intermediary may within twenty-one days of the decision, appeal to the Tribunal established under this Act.

(3) Except with the permission of the Minister, the Tribunal shall determine an appeal within a period of one month from the date that the appeal is filed and in the event that the appellant fails to supply information as required by the Tribunal, the appeal shall be dismissed.

(4) Where the Minister extends the time within which the Tribunal shall terminate the appeal, any other made by the Superintendent or the Board shall be suspended.

(5) An appeal shall lie from a decision of the Tribunal to the Court of Appeal.

(6) Where an appeal to the Court of Appeal is pending an order made by the Superintendent or the Board shall be suspended until the final determination of the appeal.

(7) Notwithstanding subsection (5) if an appeal is made against the action of the Superintendent to intervene in the affairs of a company in accordance with section 49 the intervention must have effect notwithstanding the appeal.

## **221. Appeals tribunal**

(1) For the purpose of hearing appeals under this Act, there is established an Insurance Appeals Tribunal (in this Act referred to as “the Tribunal”) that consists of a Chairman who shall be a barrister, solicitor or an attorney-at-law of not less than ten years standing and two other members, one of whom shall be a representative of the insurance industry.

(2) The members of the Tribunal shall be appointed by the Minister and, subject to subsections (4), (5) and (6), will hold office for a period not exceeding three years as specified in the instrument of appointment, but shall be eligible for re-appointment.

(3) A member of the Tribunal other than the Chairman may at any time resign his office by instrument in writing addressed to the Chairman who shall cause it to be transmitted to the Minister.

(4) The Chairman of the Tribunal may at any time resign this office by instrument in writing addressed to the Minister.

(5) The Minister may at any time revoke the appointment of the Chairman or any other member of the Tribunal.

(6) At a meeting of the Tribunal, the Chairman and one other member shall constitute a quorum.

(7) The members of the Tribunal shall be paid such sitting allowance as the Minister may prescribe.

(8) The Minister shall appoint a suitable public officer to be Secretary to the Tribunal.

(9) Subject to this section, the Tribunal may regulate its own procedure.

(10) If a member of the Tribunal is for any reason temporarily unable to perform his duties under this Part, the Minister may appoint some other person to act as a temporary member of the Tribunal during the inability; save that if the member is the Chairman, the person appointed to act in his stead shall be a person who holds the same qualifications as is prescribed under subsection (1).

## **222. Offences**

(1) A person who contravenes

(a) a provision of this Act or a Regulation;

(b) a provision of any rules prescribed under this Act; or

(c) a direction or requirement given or made or a condition specified by the Superintendent

commits an offence, unless he proves that he did not knowingly commit an offence against this section, in the case of a default in complying with a provision, direction or requirement or condition, the offence shall be deemed to be continued so long as the default continues.

(2) If an offence against this Act is committed by a company and the offence is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any director, any officer, or an actuary or auditor of the company, he, as well as the company, shall be deemed to have committed the offence.

(3) If a document required by or under this Act to be signed by any person is false in any material particular to the knowledge of the person who signs it, that person commits an offence.

(4) For the purpose of this section, a certificate purporting to be signed by the Superintendent as to the date that the evidence came to his knowledge shall, in any summary proceedings, be conclusive evidence of that date.

(5) Any proceedings against a company for an offence against this Act shall be without prejudice to any proceedings for the judicial management, or the winding-up of the company or of any part of the business of the company that may be taken in respect of the matter constituting the offence.

### **223. Penalties**

All offences against this Act where no other penalty is prescribed is punishable, on summary conviction, in the case of a company, by a fine not exceeding twenty thousand dollars and in the case of an individual by a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

### **224. Married persons**

The Married Women's Property Act or any legislation in force relating to married persons' property, in so far as it creates a statutory trust of a life policy, has no effect in relation to sections 118 to 129 of this Act.

### **225. Repeal and savings Cap. 218 Cap220.**

(1) The Insurance Act and the Insurance Licence Act are repealed.

(2) Notwithstanding subsection (1) anything granted or done or any Regulations or Orders made under the Insurance Act, and in force immediately before the commencement of this Act shall continue in force as if made under this Act until amended, cancelled or revoked.

### **226. Commencement**

This Act shall come into force on such day as the Minister may, by notice published in the Gazette, appoint and different days may be appointed for different provisions of this Act.

## **FIRST SCHEDULE**

section 2

### **Classes of Insurance Business**

1. (1) "Ordinary long-term insurance business" means business of any of the following classes:
  - (a) the effecting and carrying out of contracts of insurance on human life or contracts to pay annuities on human life;
  - (b) the effecting and carrying out of contracts of insurance against the risks
    - (i) of death or personal injury of the persons insured resulting from an accident or from an accident of a specified class;
    - (ii) of the persons insured becoming incapacitated as a result of disease or of a disease of a special class,

if, in the absence of special circumstances specifically provided for in the contracts, they cannot be terminated before the expiration of five years from the date that they were entered into;

- (c) the effecting and carrying out of contracts of insurance other than contracts referred to in paragraph (b), whether effected by the issue of policies, bonds or endowment certificate or otherwise, under which in return for one or more premiums paid to the insurer, a sum or a series of sums becomes payable to the insured at a future date.

(2) If the principal object of a contract of insurance is to insure a person against risks of a kind that the business of effecting and carrying out contracts of insurance against the risks constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a company shall not for the purpose of this Act be treated as carrying on ordinary long-term insurance business by reason only of the incidental inclusion in the contract of a provision whereby the company assumes liability against the happening of personal accidents, whether fatal or not.

**2.** “Industrial life insurance business” means the business of effecting and carrying out insurance upon human life, premiums in respect of which are contracted to be paid at intervals of less than two months and are received by means of collectors.

**3.** (1) “Liability insurance business” means the business of effecting and carrying out contracts of insurance, against risks of the persons insured incurring liabilities to third parties, not being risks arising out of, or in connection with the use of motor vehicles or out of, or in connection with the use of vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft.

(2) If the principal object of a contract of insurance is to insure a person against risks of a kind that the business of effecting and carrying out contracts of insurance against the risks constitutes property insurance business, a company shall not for the purpose of this Act be treated as carrying on liability insurance business by reason only of the incidental inclusion in the contract of a provision whereby the company assumes liability against the risk of the person insured incurring liabilities to third parties.

**4.** (1) “Marine, aviation and transport business” means the business of effecting and carrying out contracts of insurance

- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
- (b) upon goods, merchandise or property of any description on board vessels or aircraft;
- (c) upon the freight of, or any other interest in or relating to vessels or aircraft;
- (d) against damage arising out of, or in connection with, the use of vessels or aircraft, including third-party risks;



- (e) against risks incidental to the construction, repair or docking of vessels including third-party risks;
- (f) against loss of or damage to merchandise, baggage and other goods in transit (whether the transit is by sea, inland water, land or air, or partly one and partly another), including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance; or
- (g) against any other risks insurance against which is customarily undertaken in conjunction with, or as falls within this definition by virtue of any of sub-paragraphs (a) to (f).

(2) If the principal object of a contract of insurance is to insure a person against risks of a kind that the business of effecting and carrying out contracts of insurance against the risks constitutes insurance business of some other class, a company shall not for the purpose of this Act be treated as carrying on marine, aviation and transport insurance business by reason only of the incidental inclusion in the contract of a provision whereby the company assumes liability of a kind that by itself would constitute liability against any of the risks specified in paragraph 4(1)(a) to (g).

**5.** (1) “Motor vehicle insurance business” means the business of effecting and carrying out contracts of insurance against loss of, or damage to, or loss or damage arising out of or in connection with the use of motor vehicles, inclusive of third-party risks but exclusive of transit risks.

(2) For the purposes of this Act a company shall not be treated as carrying on motor vehicle insurance business by reason only of the fact that goods, merchandise or property upon which a contract of insurance is effected by it (being goods, merchandise or property on board of a vessel or an aircraft) consist of, or include motor vehicles.

**6.** (1) “Pecuniary loss insurance business” means the business of effecting and carrying out contracts of insurance against any of the following risks:

- (a) of loss to the persons insured arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of their debtors to pay their debts when due;
- (b) of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;
- (c) of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reductions of the scope of business so carried on;
- (d) of loss to the persons insured attributable to incurring unforeseen expenses; and
- (e) neither falling within any of the foregoing sub-paragraphs nor being of a kind that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.

(2) If the principal object of a contract of insurance is to insure a person against risks of a kind that the business of effecting and carrying out contracts of insurance against the risks constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a company shall not for the purpose of this Act be treated as carrying on pecuniary loss insurance business by reason only of the incidental inclusion in the contract of a provision whereby the company assumes liability against the risks specified in paragraph 6(c) and (d).

7. (1) “Personal accident insurance business” means the business of effecting and carrying out contracts of insurance against the risks of the persons insured

- (a) dying or sustaining injury as the result of an accident or of an accident of a specified class; or
- (b) becoming incapacitated as the result of a disease or a disease of a specified class, if the contracts do not fall within the classes of contracts specified in sub-paragraph (b) of the definition of “Ordinary long-term insurance business”.

(2) If the principal object of a contract of insurance is to insure a person against risks of a kind that the business of effecting and carrying out contracts of insurance against the risks constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a company shall not for the purpose of this Act be treated as carrying on personal accident insurance business by reason only of the incidental inclusion in the contract of a provision whereby the company assumes liability against the happening of personal accidents, whether fatal or not.

8. “Property insurance business” means the business of effecting and carrying out contracts of insurance against risks of loss or damage to property or against loss consequential upon the loss or damage, not being risks of a kind that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business or motor vehicle insurance business.

## **SECOND SCHEDULE**

section 22

### **Prescribed Securities for Deposits**

Deposits required for transacting insurance business may be in the following prescribed securities:

- (a) securities issued by the Government of Antigua and Barbuda;

- (b) securities issued by the Governments of the Commonwealth as approved by the Superintendent;
- (c) deposits with the Antigua and Barbuda Development Bank;
- (d) securities and stock issued by the Caribbean Development Bank;
- (e) securities and stock of the Eastern Caribbean Home Mortgage Bank.

**THIRD SCHEDULE**

sections 13(1), 88(1), 190, 209

**Registration and Licence Fees**

## 1. Application Fees for Registration

## (a) Local Insurers

Long term insurance business	\$5,000.00
General insurance business	\$5,000.00

## (b) Foreign Insurers

Long term insurance business	\$5,000.00
General insurance business	\$5,000.00

## 2. Annual registration fees

Insurance Broker	\$5,000.00
Insurance Adjuster	\$5,000.00
Insurance Agent	\$5,000.00
Sales Representative	\$ 500.00

## 3. Annual licence fees

## (a) Local insurer

Long term insurance business	\$5,000.00
General insurance business	\$5,000.00

## (b) Foreign insurer

Long term insurance business	\$10,000.00
General insurance business	\$10,000.00

## 4. (a) Registration of a pension fund plan \$ 2,000.00

## (b) Registration of an amendment/change of a pension fund plan \$ 50.00

## 5. Fees for reinstatement of registration

Insurance Agent	\$ 500.00
Insurance Broker	\$ 500.00
Insurance Adjuster	\$ 500.00
Sales Representative	\$ 500.00

## **FOURTH SCHEDULE**

### **SECTIONS 30 & 195**

#### **A. ASSETS IN WHICH THE POLICY HOLDER RESERVES MAY BE INVESTED**

A company in respect of its policy-holder reserves, and the trustees of a pension fund plan, may invest in assets of the following classes:

##### **1. Securities**

- (a) the bonds, debentures and other evidence of indebtedness of or guaranteed by the Government of
  - (i) Antigua and Barbuda; or
  - (ii) any other country approved by the Board.
- (b) the bonds, debentures and other evidence of indebtedness of a corporation incorporated in the State either
  - (i) is established by statute to administer on behalf of the State a utility in the State if its recurrent income is sufficient to meet its operation, maintenance and debt service charges; or
  - (ii) is fully secured by a statutory charge upon real estate or upon plant and equipment or other tangible assets of the corporation used in the transaction of its business.
- (c) the bonds, debentures or other securities of, or those guaranteed by the Caribbean Development Bank, or any other international financial institution approved by the Board.

##### **2. Ordinary and Preference Shares**

- (a) the fully-paid ordinary shares, bonds, debentures or other evidence of indebtedness of a company incorporated in the State or in any Commonwealth Caribbean State that during a period of the previous five years prior to the date of purchase, has either paid a dividend in each year upon its ordinary shares or had earnings in each year available for the payment of a dividend upon the shares of at least four per centum of the market value of those shares;
- (b) ordinary shares, preference shares, bonds or debentures of a company incorporated in

the State or in a Commonwealth Caribbean State and approved by the Board.

**3. Mortgages**

- (a) mortgages on real estate or leaseholds in the State if the amount of the loan does not exceed seventy-five per centum of the value of the real estate;
- (b) a company or the trustees of a pension fund plan may invest in a mortgage if the amount of the loan does not exceed ninety per centum but where the portion of the indebtedness in excess of seventy-five per centum is guaranteed by an agency of, or directly by the Government of Antigua and Barbuda, or by a company registered under this Act to carry on that class of insurance business.

**4. Real Estate**

- (a) real estate or leaseholds in the State for the production of income if
  - (i) the lease is made to or guaranteed by the Government of Antigua and Barbuda and provides for a net revenue sufficient to yield a reasonable interest return and to repay the amount invested over a period not exceeding thirty years;
  - (ii) the real estate or leasehold has produced over the previous three years revenue sufficient to yield a reasonable interest return and to repay the amount invested for a period of the economic life time of the investment not exceeding forty years;
- (b) real estate in the State required by the company for its use or occupation or reasonably required for the natural expansion of its business;
- (c) real estate in the State acquired by foreclosure of a mortgage on real estate where the mortgage qualifies as an investment under this Act.

**5. Deposit Certificates**

Deposits for fixed terms in

- (a) any bank in the State;
- (b) any financial institution licensed under the Banking Act; or
- (c) any other financial institution approved by the Board.

**6. Unit Trusts, Units in mutual funds and unit trusts approved by the Superintendent**

**B. LIMITATIONS ON THE INVESTMENT OF POLICY-HOLDER RESERVES**

For the purpose of the investment of policy-holder reserves and of pension fund plans the following limitations shall apply:

(a) Real Estate

- (i) the total amount of investment in real estate shall not exceed twenty per centum of a long term insurance fund or a pension fund plan;
- (ii) the Superintendent may permit an investment in real estate to be included as part of a general insurance fund but this authority should not exceed twenty per centum of a fund;
- (iii) in the case of pension fund plans the Superintendent may, on the recommendation of an actuary permit investment in real estate to exceed twenty per centum of the fund.

(b) Mortgages

No single mortgage included as an asset of a fund shall exceed 10 per centum of the total assets of the insurer.

(c) Bonds and Debentures

An insurer shall not invest in bonds and debentures on which payment of principal or interest is in default.

(d) Ordinary Shares

- (i) An insurer shall not invest more than thirty per centum of a fund in ordinary shares;
- (ii) An insurer shall not purchase more than thirty per centum of the ordinary shares in a corporation where those shares are to be included in an insurance fund.

(e) Purchase of Life Insurance Company

A long term insurer shall not purchase the shares of a company carrying on long term business if that investment is to be included in its insurance fund.

**FIFTH SCHEDULE**

section 185 (1)

**Part I**

**Requirements as to the Trust Deed and Rules of Registered**

**Pension and Provident Fund Plans**

The trust deed and rules of a plan qualified for registration under this Act shall make provision for the following matters:

- (a) the whole of the objects for which the plan is established;
- (b) the appointment and removal of trustees;
- (c) the vesting in the trustees of all property belonging to the plan;
- (d) the investment in the names of the trustees of all capital monies belonging to the plan and for authorising the investments, if any, in addition to those authorised by law, that the trustees may invest the monies; but the rules of a plan may provide for the deposit of the monies with a bank;
- (e) the making of contributions to the plan by the employers of persons employed in the undertaking or combination of undertakings in connection with which the plan is established;
- (f) the contributions payable to and the rates of benefits payable from the fund or the method of calculating benefits so payable;
- (g) the conditions on which persons may become and may cease to be contributors to and entitled to benefits from the fund;
- (h) the protection of the vested rights of contributors to the plan;
- (i) the preparation of all statements of accounts, balance-sheets and reports required by this Act to be prepared;
- (j) the supply (on demand) to every person having any rights in the plan, being a person who is or has been employed in the undertaking in connection with which the plan is estab-



lished, of a copy of the rules of the plan and of all amendments to the plan, and of the latest statements of accounts, balance-sheet and actuarial report prepared in accordance with the requirements of this Act;

- (k) the circumstances in which the plan may be wound up and in the event of a winding-up, the application of any surplus in the fund and the use of the plan to purchase immediate annuities for contingent pensioners;
- (l) the method by which the rules may be amended.

**ART II - FORMS**

**FORM A**

Revenue Account for the period ..... to .....

**Pension Fund Plan**

Revenue	\$	Expenditure	\$
1. Amount of the Fund at the beginning of the period.		1. Superannuation Benefits	
2. Contributions by employees.		(a) pension to retired employees	
3. Contributions by employers.		(b) widows' pensions	
4. Any additional contribution by employer to meet deficiency or back service liabilities.		(c) orphans' pensions	
5. Interest dividend and rents.		(d) retirement gratuities.	
6. Other income (to be specified).		2. Death grants.	
		3. Return of contribution on withdrawal.	
		4. Other expenditures (to the specified).	
		5. Amount of the Fund at the end of the period.*	

**FORM B**

(Not to be completed for an insured pension fund plan)

Balance Sheet as at.....20.....

For.....**Pension Fund Plan**

<b>Liabilities</b>	<b>\$</b>	<b>Assets</b>	<b>\$</b>
Amount of fund as at		Government Bonds and Debentures*	
Pensions due but not yet paid		Other Bonds and Debentures*	
Other benefits (to be specified) due but not yet paid		Ordinary and Preference shares*	
		Mortgages*	
		Real Estate	
		Deposit Certificates	
		Other Assets (specify)	

\*Details to be specified in a Schedule.

**III**

**ACTUARIAL VALUATION REPORT**

1. The first part of the report shall contain statistics as at the valuation date in respect of the following:

(a) Changes in the membership of the fund during the inter-valuation period as well as the membership of the fund on the valuation date as follows:

Age Group	Number of Members at Beginning of period	Number of New Members	Number of Cessations of Membership				Number of Members at the end of the period
			Transfer on or deferred pensions	Withdrawal	Death	Retirement	
Under 25 ... ..							
25 - 30 ... ..							
30 - 35 ... ..							
35 - 40 ... ..							
40 - 45 ... ..							
50 - 55 ... ..							
55 - 60 ... ..							
60 - 65 ... ..							
<b>TOTAL</b>							

(b) Changes in the number of pensioners of the fund during the inter-valuation period as follows:

Number Group	Age	Number of pensioners at beginning of period		Number of pensioners who dies during period		Number of pensioners on pension during period		No of pensioners ceasing to receive pension for other cause		Number of pensioners at end of period	
		Ill Health	Age	Ill Health	Age	Ill Health	Age	Ill Health	Age	Ill Health	Age
Under 35 ... ..											
35 - 45 ... ..											
45 - 55 ... ..											
55 - 65 ... ..											
65 - 75 ... ..											
75 and over ...											

2. The second part of the report must contain the following information:

- (a) general observations regarding mortality, withdrawal and retirement from service and progression of salary during inter-valuation period and general observations on any other factors entering into the valuation;
- (b) a description of the mortality and all other rates used (specimen rates to be shown in an appendix to the report);
- (c) average rates of interest realised by the assets of the fund whether invested or not during each year and the inter-valuation period;
- (d) the rate of interest assumed in the calculations for purpose of the valuation;
- (e) a statement indicating
  - (i) whether and how it has been secured that the estimated net liability in respect of any employer is not negative;
  - (ii) the amount of and the reason for any special reserves that have been set up.

3. The final part of the report must contain information about the results of the valuation, an analysis of the surplus or deficiency shown and a recommendation as to how much of the surplus can be regarded as disposable, or, if a deficiency, the manner in which the deficiency can be liquidated.

4. The report must close with any further observations the actuary may wish to offer on the valuation.

Passed by the House of Representatives on  
this 2nd day of October, 2007.

Passed by the Senate on this 9th day of  
November, 2007

**Chanlah Codrington,**  
*Speaker.*

**Mackenzie Frank,**  
*President.*

**Yvonne Henry,**  
*Clerk to the House of Representatives.*

**Yvonne Henry,**  
*Clerk to the Senate.*