



BERMUDA

INSURANCE ACT 1978

1978 : 39

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SCHEDULE

[preamble and words of enactment omitted]

PART I

Interpretation

- 1 (1) In this Act, unless the context otherwise requires—

“actuary” means a member in good standing of the Canadian Institute of Actuaries, the Casualty Actuarial Society (in the U.S), the Institute of Actuaries of Australia, the Institute and Faculty of Actuaries (for the UK), the Society of Actuaries (in the U.S); the American Academy of Actuaries; or a member in good standing of an actuarial body recognized by the Authority;

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“approved actuary” means an individual approved by the Authority under section 26(3);

“approved auditor” means an auditor approved by the Authority under section 16(3);

“association of underwriters” means an association of individual underwriters, organized according to the system known as Lloyd’s whereby each underwriting member of the association becomes liable for a separate and proportionate part of the sum secured by each policy subscribed to by that association; and, in relation to such an association as aforesaid, “recognized” means recognized by the Authority;

“auditor” means either—

- (a) a person entitled to practise as a public accountant in Bermuda; or
- (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or
- (c) a person recognized by the Authority as an auditor;

“Authority” means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

“available statutory capital and surplus” means an amount equal to the total statutory capital and surplus including any adjustments thereto made under section 6D or by or under Rules made under section 6A;

“available statutory economic capital and surplus” means an amount equal to the total statutory economic capital and surplus including any adjustments thereto made under section 6D or by or under Rules made under section 6A of this Act;

“bank” means an institution licensed as a bank under the Banks and Deposit Companies Act 1999;

“capital and solvency return” means such return relating to the insurer’s or insurance group’s risk management practices and to the information used by the insurer or insurance group to calculate its enhanced capital requirement as may be prescribed by or under Rules made under section 6A

“capital redemption contract” means a contract (which by its terms is expressed to be a capital redemption contract or a funding agreement) under which an insurer may—

- (a) receive and accumulate sums of money; and
- (b) pay a sum or sums of money or render money’s worth,
on dates and in amounts that are not based on life contingencies of any person;

“Class 1”, “Class 2”, “Class 3”, “Class 3A”, “Class IIGB”, “Class 3B”, “Class 4” , “Collateralized Insurer” and “Special Purpose Insurer” in relation to an insurer carrying on general business mean the class of the insurer’s registration under section 4;

“Class A”, “Class B”, “Class C”, “Class D” and “Class E” in relation to an insurer carrying on long-term business, mean the class of the insurer’s registration under section 4; ”

“Class IGB ” means an insurer carrying on general business in an innovative and experimental manner;

“Class ILT” means an insurer carrying on long-term business in an innovative and experimental manner;

“code of conduct” means a code of conduct issued by the Authority pursuant to section 2BA;

“Collateralized Insurer” means an insurer that carries on special purpose business, but is not a “Special Purpose Insurer”;

“the Court” means the Supreme Court;

“decision notice” means a notice prepared in accordance with section 44G;

“designated insurer” means an insurer designated by the Authority under section 27B(5) in respect of an insurance group;

“domestic business” means insurance business where, whether the contract of insurance is made in Bermuda or elsewhere, the subject-matter of the contract is either—

- (a) property that at the time of the making of the contract is in, or in transit to or from Bermuda; or
- (b) the life, safety, fidelity or insurable interest of an individual who at the time of the making of the contract is ordinarily resident in Bermuda; or
- (c) a risk of a company formed in Bermuda that is not an exempted company within the definition of that expression in section 127 of the Companies Act 1981 [*title 17 item 5*];

“eligible capital” means the available statutory capital and surplus of an insurer or an insurance group that qualifies for inclusion in any assessment of the insurer’s or insurance group’s minimum margin of solvency or enhanced capital requirement;

“enhanced capital requirement” means additional capital and surplus requirement imposed by or under Rules made under section 6A;

“excepted long-term business” means either—

- (a) credit life business, that is to say, the business of effecting and carrying out contracts of insurance against risks of loss to persons arising from the

nonpayment of debts due to such persons by reason of the death of debtors of theirs, being contracts that are—

- (i) not contracts of domestic business; and
 - (ii) expressed to be in effect for a period of five years or less; and
 - (iii) not either automatically renewable or convertible into contracts of insurance of any other kind or for any different period; and
 - (iv) of a kind which the Authority, upon application made to it by the insurer for the purpose, has given its prior approval in writing for the insurer to effect and carry out; or
- (b) employee group business, that is to say, the business of effecting and carrying out contracts of insurance on the lives of employees of the insurer or of an affiliate (within the definition of “affiliate” in regulation 2 of the Insurance Accounts Regulations 1980 and in accordance with the requirements of any insurance accounts rules) of the insurer, being contracts that are—
- (i) not contracts of domestic business; and
 - (ii) expressed to be in effect for a period of five years or less; and
 - (iii) not either automatically renewable or convertible into contracts of insurance of any other kind or for any different period; and
 - (iv) made on a group insurance basis; and
 - (v) of a kind which the Authority, upon application made to it by the insurer for the purpose, has given its prior approval in writing for the insurer to effect and carry out;

“financial year”, in relation to an insurer or insurance group, means the period not exceeding fifty-three weeks at the end of which the balance of the insurer’s or insurance group’s accounts is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then calendar year;

“functions” includes powers and duties;

“general business” means, subject to subsection (4), insurance business that is not special purpose business or long term business but includes the business of effecting and carrying out contracts of insurance against risks of the persons insured—

- (a) sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class, or
- (b) becoming incapacitated or dying in consequence of disease or disease of a specified class,

being contracts that are expressed to be in effect for a period of less than five years;

“group” means a group of companies—

- (a) that consist of a participating company, its subsidiaries and any entities in which the participating company or its subsidiaries hold a participation; or
- (b) that is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those companies;

“group actuary” means an individual approved by the Authority under section 27G(3);

“IA” means an insurance agent carrying on the business of an insurance agent in an innovative and experimental manner;

“IB” means an insurance broker carrying on the business of an insurance broker in an innovative and experimental manner;

“IM” means an insurance manager carrying on the business of an insurance manager in an innovative and experimental manner;

“IMP” means a person carrying on the business of an insurance marketplace provider in an innovative and experimental manner;

“incorporated segregated account” has the meaning given in section 2(1) of the Incorporated Segregated Accounts Companies Act 2019;

“incorporated segregated accounts company” has the meaning given in section 2(1) of the Incorporated Segregated Accounts Companies Act 2019;

“innovative insurance business” means an insurance business approved by the Authority to be carried on by a registered innovative insurer in an innovative and experimental manner;

“innovative insurer” means a Class IGB or Class ILT insurer;

“innovative intermediaries” means a reference to IAs, IBs, IMs and IMPs;

“insolvent” means, in relation to an insurer at any relevant date, that if proceedings had been taken for the winding up of the insurer the Court could, in accordance with sections 161 and 162 of the Companies Act 1981 [*title 17 item 5*], hold or have held that the insurer was at that date unable to pay its debts;

“inspector” means a person appointed as an inspector under section 30;

“insurance accounts rules” means prudential standard rules made by the Authority in accordance with section 6A(1)(f) of the Act;

“Insurance Advisory Committee” means the Insurance Advisory Committee mentioned in section 2C;

“insurance agent” means a person who with the authority of an insurer acts on its behalf in relation to any or all of the following matters, that is to say, the initiation and receipt of proposals, the issue of policies and the collection of premiums, being proposals, policies and premiums relating to insurance business;

“insurance broker” means a person who arranges or places insurance business with insurers on behalf of prospective or existing policy-holders;

“insurance business” means the business of effecting and carrying out contracts—

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or render money’s worth upon the happening of an event,

and includes re-insurance business;

“insurance group” means a group that conducts insurance business;

“insurance manager” means a person who, not being an employee of any insurer, holds himself out as a manager in relation to one or more insurers, whether or not the functions performed by him as such go beyond the keeping of insurance business accounts and records;

“insurance marketplace” means a platform, of any type, established for the purpose of buying, selling or trading contracts of insurance;

“insurance marketplace provider” means a person carrying on the business of an insurance marketplace;

“insurance salesman” means a person who otherwise than as an employee solicits applications for, or negotiates, insurance business on behalf of an insurer or an insurance broker or agent;

“insurer” means a person carrying on insurance business;

“long-term business” means, subject to subsection (4), insurance business of any of the following kinds, namely,—

- (a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;
- (b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated or dying in consequence of disease or disease of a specified class, but does not include excepted long-term business;
- (c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of

sums is to become payable to the persons insured in the future, not being contracts such as fall within either paragraph (a) or (b),

but does not include excepted long-term business or special purpose business;

“long-term insurer” *[Repealed by 2010 : 60 s. 2.]*

“loss reserve specialist” means a person approved by the Authority under section 8B(3) as an insurer’s loss reserve specialist;

“minimum criteria” means the minimum criteria for registration set out in the Schedule;

“minimum liquidity ratio” means the ratio prescribed by regulation 11 of the Insurance Returns and Solvency Regulations 1980 and in accordance with the requirements of any insurance accounts rules;

“minimum margin of solvency” in relation to a particular class of business means the prescribed minimum amount by which the value of the assets of the insurer must exceed the value of its liabilities;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;

“non-insurance business” means any business other than insurance business conducted by an insurer and includes—

- (a) carrying on investment business as defined under the Investment Business Act 2003, managing an investment fund as an operator as defined under the Investment Funds Act 2006, carrying on business as a fund administrator as defined under the Investment Funds Act 2006, carrying on banking business as defined under the Banks and Deposit Companies Act 1999;
- (b) underwriting debt or securities or otherwise engaging in investment banking;
- (c) engaging in commercial or industrial activities;
- (d) carrying on the business of management, sales or leasing of real property;

“non-resident insurance undertaking” means an insurer carrying on domestic business under a permit granted under section 3 of the Non-Resident Insurance Undertakings Act 1967;

“parent company” has the meaning given in section 1B;

“participating company” means a company that is a parent company, or a company that holds a participation in another company, or a company that is linked to a related company in such a manner as may be prescribed in Rules made by the Authority under section 6A;

“participation” means the holding, directly or indirectly, of 20% or more of the voting rights or capital of a company;

“prescribed” means prescribed by regulations or rules made by the Authority in accordance with section 6A and section 27F of the Act;

“prudential standards” means such standards of prudence as would, in the opinion of the Authority, ensure that the obligations of the insurer or insurance group in relation to the security of its policyholders are established at an appropriate level;

“to register” means to register under this Act;

“Register” means the Register for which provision is made in section 13(1);

“registered person” means a person registered under either section 4 or section 10;

“regulations” means regulations made under section 53;

“related company”, in relation to another company, means a subsidiary company of that other company, or a company in which the other company holds a participation, or a company that is linked to the other company in such a manner as may be prescribed in regulations;

“restricted special purpose business” means special purpose business conducted between a Special Purpose Insurer and specific insureds approved by the Authority;

“solvency margin” means—

- (a) in relation to an insurer carrying on general business, the margin prescribed by regulation 11 of the Insurance Returns and Solvency Regulations 1980 and the requirements under any insurance accounts rules;
- (b) in relation to an insurer carrying on long-term business, the margin prescribed by regulation 13 of the Insurance Returns and Solvency Regulations 1980 and the requirements under any insurance accounts rules;

“special purpose business” means insurance business under which an insurer fully collateralizes its liabilities to the persons insured through—

- (a) the proceeds of any one or more of the following—
 - (i) a debt issuance where the repayment rights of the providers of such debt are subordinated to the rights of the person insured; or
 - (ii) some other financing mechanism approved by the Authority;
- (b) cash; and
- (c) time deposits;

“Special Purpose Insurer” means an insurer that carries on special purpose business;

“statutory economic balance sheet” means the balance sheet required to be produced in accordance with the prudential standards made under section 6A of this Act; that are applicable to any Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer or insurance group;

“statutory financial return” means the return provided for in section 18;

“statutory financial statements” means the accounts provided for in section 15;

“subsidiary company” has the meaning given in section 1B, and “subsidiary” has a corresponding meaning;”;

“total statutory capital” in relation to an insurer or insurance group, means the total statutory capital of the insurer or insurance group as calculated in accordance with the Insurance Accounts Regulations 1980 and in accordance with the requirements of any insurance accounts rules;

“total statutory capital and surplus” in relation to an insurer or insurance group, means the total statutory capital and surplus of the insurer or insurance group as calculated in accordance with the Insurance Accounts Regulations 1980 and in accordance with the requirements of any insurance accounts rules;

“total statutory economic capital and surplus” means the total statutory economic capital and surplus of a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer or insurance group; calculated in accordance with prudential standards made under section 6A of this Act;

“unrestricted special purpose business” means special purpose business conducted by a Special Purpose Insurer with any insured;

“warning notice” means a notice prepared in accordance with section 44F.

(2) *[spent on repeal of the Companies (Winding Up) Act 1977]*

(3) In this Act—

- (a) any reference to carrying on business from within Bermuda includes reference to carrying on business outside Bermuda from a principal place of business within Bermuda;
- (b) unless the context otherwise requires, any reference to carrying on the business of effecting and carrying out contracts of any kind includes reference to carrying on one aspect, or some aspects, only of that business;
- (c) every company or body, being a company or body formed in Bermuda with power to carry on insurance business, shall, if carrying on insurance business anywhere, be deemed to be carrying on insurance business in or from within Bermuda for the purposes of section 3(1).

(4) The limitations upon the meaning of “general business” and “long-term business” as defined in subsection (1) shall, in relation to any insurer, not operate to disentitle that insurer—

- (a) if authorized to carry on general business, from carrying on long-term business; or
- (b) if authorized to carry on long-term business, from carrying on general business,

being—

- (aa) in the case set forth in paragraph (a), long-term business as to which the Authority has given a direction under section 56 on the ground that it is satisfied that that long-term business either is or will be only incidental to the insurer's general business, or is or will be of such a limited extent that the insurer ought not to be treated in all respects as a composite within the definition of "composite" in regulation 2 of the Insurance Accounts Regulations 1980 [title 17 item 49(a)]; or
- (bb) in the case set forth in paragraph (b), general business as to which the Authority has given a corresponding direction *mutatis mutandis*.

(5) In this Act, any reference to a "designated insurer" shall be construed as a reference to the designated insurer in relation to group supervision under this Act and in respect of the insurance group of which it is a member.

(6) For the purposes of this Act, a capital redemption contract or a funding agreement shall be deemed to be long-term business.

[NB References to "Minister" and "Registrar" replaced throughout Act by references to "Supervisor" by 2001:27 s.3 & Sch and s.4 effective 1 October 2001; references to "Supervisor" replaced throughout by references to "Authority", and consequential appropriate grammatical changes made, by 2001:33 s.5

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effective 1 January 2002. These amendments are not individually noted in each place in which they occur.]

[section 1 amended by 1995:20 effective 29 April 1995; in subsection (1), "bank" substituted by BR81/1999 effective 1 January 2000; "Registrar" deleted, "Supervisor" inserted, by 2001:27 s.5 effective 1 October 2001; "Supervisor" deleted, "Authority" inserted, by 2001:33 s.3 effective 1 January 2002; "approved auditor" inserted, and "loss reserve specialist" substituted, by 2004:29 s.3 effective 10 December 2004; "Insurance Advisory Committee" amended, "minimum criteria", "parent company", "registered person" and "subsidiary company" inserted, by 2006:28 s.3 effective 24 July 2006; "code of conduct" inserted by 2006:42 s.3 effective 29 December 2006; "Class 1", "Class 2", "Class 3", "Class 3A", "Class 3B", "Class 4" and "Special Purpose Insurer", "general business" and "longterm business" amended, "special purpose business" and "Special Purpose Insurer" inserted by 2008:34 s.3 effective 30 July 2008; "available statutory capital and surplus", "capital and solvency return", "enhanced capital requirement" and "prudential standards" inserted by 2008:34 s.3 effective 31 December 2008; "capital and solvency return", "financial year", "prudential standards", "total statutory capital", "total statutory capital and surplus" amended, "designated insurer", "group", "insurance group", "participating company", "participation", "related company", subsection 5 inserted by 2010 : 22 s. 3 effective 29 March 2010; subsection (1) "available statutory capital and surplus", "capital and solvency return", "enhanced capital requirement" amended, "Class A", "Class B", "Class C", "Class D" and "Class E", "eligible capital", and "minimum margin of solvency" inserted, and "long-term insurer" deleted by 2010 : 60 s. 2 effective 31 December 2010; Section 1 subsection (1) "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; Section 1 subsection (1) "insurance group" and "participating company" amended by 2011 : 44 s. 2 effective 31 December 2011; subsection (1) definitions "decision notice" and "warning notice" inserted by 2012 : 22 s. 2 effective 1 August 2012; Section 1 subsection (1) amended by 2012 : 36 s. 2 effective 1 January 2013; subsection (1) definitions "actuary", "general business", and "long-term business" amended and definitions "approved actuary", "group actuary", and "non-insurance business" inserted by 2012 : 36 s. 2 effective 1 January 2013; subsection (1) definitions "available statutory economic capital and surplus", "statutory economic balance sheet" and "total statutory economic capital and surplus" inserted by 2015 : 31 s. 2 effective 1 January 2016; subsection (1) definitions "excepted long-term business", "minimum liquidity ratio", "prescribed", "total statutory capital" and "total statutory capital and surplus" amended, "solvency margin" repealed and substituted and "capital redemption contract" and "insurance accounts rules" inserted and subsection (6) inserted by 2015 : 50 s. 2 effective 1 January 2016; subsection (1) definitions "Class IGB", "Class ILT", "IA", "IB", "IM", "innovative insurance business", "innovative insurer" and "innovative intermediaries" inserted by 2018 : 35 s. 2 effective 23 July 2018; subsection (1) definitions "restricted special purpose business" and "unrestricted special purpose business" inserted by 2018 : 68 s. 2 effective 31 December 2018; subsection (1) definitions "Class 1", "Class 2", "Class 3", "Class 3A", "Class 3B", "Class 4", "Special Purpose Insurer", "innovative intermediaries", "Class IGB", "Class ILT", "IA", "IB", "IM", "innovative insurance business", and "special purpose business" amended, and "Collateralized Insurer", "IMP", "insurance marketplace" and "insurance marketplace provider" inserted by 2019 : 33 s. 2 effective 5 August 2019; subsection (1) definitions "incorporated segregated account" and "incorporated segregated accounts company" inserted by 2020 : 48 s. 2 effective 11 December 2020]

Meaning of "director", "controller", "chief executive", "officer", "senior executive", "associate"

1A (1) In this Act, "director", "controller", "chief executive", "officer", "senior executive", and "associate" shall be construed in accordance with the provisions of this section.

(2) "Director", in relation to a registered person, includes any person who occupies the position of director, by whatever name called.

(3) "Controller", in relation to a registered person, means—

- (a) a managing director of the registered person or of another company of which it is a subsidiary company;
 - (b) a chief executive of the registered person or of another company of which it is a subsidiary;
 - (c) a person who satisfies the requirements of this paragraph; or
 - (d) a person in accordance with whose directions or instructions the directors of the registered person or of another company of which it is a subsidiary or persons who are controllers of the registered person by virtue of paragraph (c) (or any of them) are accustomed to act.
- (4) A person satisfies the requirements of subsection (3)(c) in relation to a registered person if, either alone or with any associate or associates—
- (a) he holds 10 per cent or more of the shares carrying rights to vote at any general meeting of the registered person or another company of which it is a subsidiary company;
 - (b) he is entitled to exercise, or control the exercise of 10 per cent or more of the voting power at any general meeting of the registered person or another company of which it is such a subsidiary; or
 - (c) he is able to exercise a significant influence over the management of the registered person or another company of which it is such a subsidiary by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,
the registered person or, as the case may be, the other company concerned.
- (5) A person who is a controller of a registered person by virtue of subsection (3)(c) is in this Act referred to as a “shareholder controller” of the registered person; and in this Act—
- (a) a “10 per cent shareholder controller” means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
 - (b) a “20 per cent shareholder controller” means a shareholder controller in whose case that percentage is 20 or more but less than 33;
 - (c) a “33 per cent shareholder controller” means a shareholder controller in whose case that percentage is 33 or more but less than 50;
 - (d) a “50 per cent shareholder controller” means a shareholder controller in whose case that percentage is 50 or more;

(6) In subsection (5), “the relevant paragraph” in relation to a shareholder controller means whichever of paragraphs (a) and (b) of subsection (4) gives the greater percentage in his case.

(7) “Chief executive”, in relation to a registered person, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the registered person.

(8) “Officer”, in relation to a registered person, includes a director, secretary, chief executive or senior executive of the registered person by whatever name called.

(9) “Senior executive”, in relation to a registered person, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the registered person—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the registered person.

(10) “Associate” in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a company, means—

- (a) if that person is an individual—
 - (i) the spouse, child, step-child or parent of that person;
 - (ii) the trustees of any settlement under which that person has a life interest in possession;
 - (iii) any company of which that person is a director;
 - (iv) any person who is an employee or partner of that person;
- (b) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary of that company ;
 - (iii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power at any general meeting in relation to it, that other person.

(11) For the purposes of subsection (10), “settlement” includes any disposition or arrangement under which property is held in trust.

[section 1A inserted by 2001:27 s.6 effective 1 October 2001; repealed by 2001:33 s.4 effective 1 January 2002; new section 1A inserted by 2006:28 s.4 effective 24 July 2006]

Meaning of parent and subsidiary company

1B (1) The expressions “parent company” and “subsidiary company” in this Act shall be construed as follows.

(2) A company is a parent company in relation to another company (a subsidiary company) if—

- (a) it has a majority of the shareholders’ or members’ voting rights in the other company;
- (b) it has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the other company and is at the same time a shareholder or member of that company;
- (c) it has the right to exercise a dominant influence over the other company of which it is a shareholder or member, pursuant to a contract entered into with that company or to a provision in that company’s memorandum or articles of association, where the law governing that company permits it to be party to such contracts or provisions; or
- (d) it is a shareholder or member of the other company, and—
 - (i) a majority of the members of the administrative, management or supervisory bodies of the other company have been appointed solely as a result of the exercise by it of its voting right as a shareholder or member of the other company, or
 - (ii) it controls alone, pursuant to an agreement with other shareholders or members of the other company, a majority of shareholders’ or members’ voting rights in that company.

(2A) A subsidiary company of a parent company includes any company that is a subsidiary of that subsidiary company and any company over which, in the opinion of the Authority, the parent company exercises a dominant influence.

(3) For the purposes of subsection (2) a company shall be treated as a member of another company—

- (a) if any of its subsidiary companies is a member of that company; or
- (b) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiary companies.

(4) In subsections (2)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares, to vote at general meetings of the company on all, or substantially all, matters.

(5) In subsection (2)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(6) A company shall be treated as having the right to appoint to a directorship if—

- (a) a person's appointment to it follows necessarily from his appointment as director of the company; or
- (b) the directorship is held by the company itself.

[section 1B inserted by 2006:28 s.4 effective 24 July 2006; subsection (2) amended, subsection (2A) inserted by 2010 : 22 s. 4 effective 29 March 2010]

PART IA
THE AUTHORITY

Functions and duties of the Authority

Functions of the Authority

2 (1) The Authority shall have the functions and powers conferred on it by this Act and the duty generally to supervise persons carrying on insurance business and persons carrying on business as insurance managers, brokers, agents or salesmen, for the purpose of protecting the interests of clients and potential clients of such persons.

(2) It shall also be the duty of the Authority to keep under review the operation of this Act and developments in the field of insurance which appear to it to be relevant to the performance of its functions, the exercise of its powers and the discharge of its duties.

(3) The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

[section 2 amended by 2001:27 s.3, 7 & Sch effective 1 October 2001; by 2001:33 effective 1 January 2002; repealed and replaced by 2006:28 s.5 effective 24 July 2006]

Authority's statement of principles

2A (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in interpreting the minimum criteria;
- (b) in exercising its powers to register or cancel the registration of a registered person;
- (c) in exercising its power to grant or impose conditions on a registered person;
- (d) in exercising its power to obtain information, reports and to require production of documents;
- (e) in exercising its powers to make adjustments to an insurer's enhanced capital requirement and available statutory capital and surplus under section 6D;
- (f) in exercising its powers under section 32 or 32A to issue directions to a registered person;

- (g) in exercising its discretion under section 27B to determine whether to be a group supervisor; and
- (h) in exercising its powers—
 - (i) under section 32D to impose a civil penalty;
 - (ii) under section 32F to censure publicly;
 - (iii) under section 32H to make a prohibition order; and
 - (iv) under section 44I to publish information about any matter to which a decision notice relates.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

[section 2A inserted by 2004:29 s.4 effective 10 December 2004; repealed and replaced by 2006:28 s.5 effective 24 July 2006; amended by 2008:34 s.4 effective 31 December 2008; subsection (1)(g) inserted by 2010 : 22 s. 5 effective 29 March 2010; subsection (1)(f) amended by 2010 : 60 s. 3 effective 31 December 2010; subsection (1)(f) and (1)(g) amended, and subsection (1)(h) inserted by 2012 : 22 s. 3 effective 1 August 2012]

Guidance

2B (1) The Authority may from time to time give guidance on the application of this Act and regulations made under it.

(2) The Authority may publish such guidance (which may be in the form of information and advice) in such manner as it thinks fit.

[section 2B inserted by 2006:28 s.5 effective 24 July 2006; subsection (1) substituted by 2006:42 s.4 effective 29 December 2006]

Codes of Conduct

2BA (1) The Authority may issue codes of conduct on the duties, requirements and standards to be complied with by registered persons and designated insurers, and the procedures (whether on client identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by such persons and designated insurers.

(2) Before issuing a code of conduct, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(3) Every registered person and designated insurer shall in the conduct of its business comply with the provisions of any code of conduct applicable to it issued by the Authority.

(4) A failure on the part of a registered person or designated insurer to comply with the provisions of such a code shall be taken into account by the Authority in determining

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whether the business is being conducted in a prudent manner as required by paragraph 4 of the minimum criteria.

[section 2BA inserted by 2006:42 s.5 effective 29 December 2006; section 2BA amended by 2010 : 22 s. 6 effective 29 March 2010]

Insurance Advisory Committee

2C (1) There shall continue to be a committee to be known as the Insurance Advisory Committee whose function shall be to advise the Authority on any matter relating to the development of the insurance industry in Bermuda which the Authority may refer to it.

(2) The Insurance Advisory Committee shall consist of such persons (not fewer than five in number) to be appointed by the Minister, as the Minister may think fit, but so that not fewer than three members of the Committee shall be persons appearing to the Minister to be knowledgeable about insurance business in Bermuda.

(3) The Minister shall appoint a person to be chairman of the Insurance Advisory Committee.

(4) The Insurance Advisory Committee may advise the Minister on any matter relating to the development and promotion of the insurance industry in Bermuda.

[section 2C inserted by 2006:28 s.5 effective 24 July 2006]

PART II REGISTRATION

Insurers to be registered

3 (1) Subject to this Act, and notwithstanding anything in any other Act, no person shall carry on insurance business in or from within Bermuda unless he is registered by the Authority as an insurer under section 4.

(1A) Subject to subsection (1), and notwithstanding anything in any other Act, where an incorporated segregated accounts company has established at least one incorporated segregated account that intends to carry on insurance business, then such incorporated segregated accounts company shall also be deemed as intending to carry on insurance business.

(2) Any person who contravenes subsections (1) and (1A) commits an offence.

[Section 3 amended by 2001 : 27 effective 1 October 2001; amended by 2001 : 33 effective 1 January 2002; Section 3 amended by 2020 : 48 s. 3 effective 11 December 2020]

Registration as insurer

4 (1) Subject to sections 4A to 7 and 12, on an application made to the Authority by a body corporate and on payment of the relevant fee provided for by section 14, the Authority may register that body—

- (a) as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer where it proposes to carry on general business;

- (b) as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on long-term business;
- (c) as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer and as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on both general business and long-term business;
- (d) as a Special Purpose Insurer to carry on restricted special purpose business or unrestricted special purpose business;
- (da) as a Collateralized Insurer where it proposes to carry on special purpose business but is not registrable as a Special Purpose Insurer; or
- (e) as an innovative insurer.

(2) Registration of a body corporate as an insurer shall be subject to its complying with the terms of its registration and with such other conditions as the Authority may impose; and different conditions may be imposed in respect of different insurers or categories of insurer.

(3) The Authority may at any time, whether or not on an application made by an insurer, add to, vary or delete any conditions imposed under subsection (2).

(4) Before the Authority exercises its power under subsection (3) in relation to an insurer, who has not made an application under that subsection, the Authority shall give notice to the insurer and shall take into account any written representations made by the insurer within such period as may be specified in the notice.

(5) *[Repealed]*

(6) On application made to the Authority for that purpose by an insurer, the Authority may—

- (a) register a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer as a different class of insurer carrying on general business;
- (b) register an insurer carrying on long-term business as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer where it proposes to carry on general business (either instead of, or in addition to, its registration as a Class A, Class B, Class C, Class D or Class E insurer); or
- (c) register an insurer carrying on general business as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on long-term business (either instead of, or in addition to, its registration as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer).

(7) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[section 4 substituted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; subsection (4) amended, and subsection (5) repealed, by 2004:29 s.5 effective 10 December 2004; subsection (1) and (6) amended by 2008:34 s.5 effective 30 July 2008; section 4 amended by 2010 : 60 s. 4 effective 31 December 2010; subsection (1) amended by 2018 : 35 s. 3 effective 23 July 2018; subsection (1)(d) amended by 2018 : 68 s. 3 effective 31 December 2018; subsections (1) and (6) amended by 2019 : 33 s. 3 effective 5 August 2019]

Determination of class of registration for general business

4A (1) Subject to subsection (2), the Authority shall determine whether a body corporate proposing to carry on general business shall be registered as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer in relation to its general business in accordance with sections 4B to 4E.

(2) But a body corporate may be registered as a particular class of insurer where it would not be so registrable under sections 4B to 4E if, after taking into account—

(a) the nature of the intended relationship between the body corporate and its intended policy-holders, the interests of those policy-holders and of the public generally, and

(b) the level of regulation which is applicable to the different classes of insurer,

the Authority considers it appropriate, whether or not on an application made to it for that purpose by the body corporate.

(3) The Authority shall not under any circumstances determine under subsection (2) that a body corporate shall be registered as a Class 4 insurer if it does not satisfy the requirement of section 4E(1)(a).

(4) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

(5) Subject to subsection (1), the Authority may also determine that an insurer may be registered to carry on run off insurance business.

(6) For the purposes of this section, an insurer carries on run off insurance business where it has been registered by the Authority to carry on general business, which involves acquiring portfolios of policyholder obligations or acquiring insurers that will not undertake new business.

[section 4A inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.6 effective 30 July 2008; Section 4A subsections (5) and (6) inserted by 2018 : 68 s. 4 effective 31 December 2018; subsection (1) amended by 2019 : 33 s. 4 effective 5 August 2019]

Class 1 insurer

4B A body corporate is registrable as a Class 1 insurer where that body corporate—

(a) is wholly owned by one person and intends to carry on insurance business consisting only of insuring the risks of that person; or

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- (b) is an affiliate of a group and intends to carry on insurance business consisting only of insuring the risks of any other affiliates of that group or of its own shareholders.

[section 4B inserted by 1995:20 effective 29 April 1995]

Class 2 insurer

4C (1) A body corporate is registrable as a Class 2 insurer where that body corporate is wholly owned by two or more unrelated persons and intends to carry on insurance business not less than 80% of the net premiums written in respect of which will be written for the purpose of—

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons; or
- (b) insuring risks which, in the opinion of the Authority, arise out of the business or operations of those persons or any affiliates of any of those persons.

(2) A body corporate is registrable as a Class 2 insurer where that body corporate would be registrable as a Class 1 insurer but for the fact that—

- (a) not all of the business which it intends to carry on, but at least 80% of the net premiums written, will consist of the business described in paragraph (a) or (b) of section 4B; or
- (b) it intends to carry on insurance business not less than 80% of the net premiums written in respect of which will, in the opinion of the Authority, arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person.

[section 4C inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Class 3 insurer

4D A body corporate is registrable as a Class 3 insurer where that body corporate is not registrable as a Class 1, Class 2, Class 3A, Class IIB, Collateralized Insurer, Class 3B, Class 4 insurer or Special Purpose Insurer.

[Section 4D inserted by 1995:20 effective 29 April 1995; amended by 2008:34 s. 7 effective 30 July 2008; amended by 2019 : 33 s. 5 effective 5 August 2019]

Class 3A insurer

4DA (1) This section applies to a body corporate that intends to carry on insurance business in circumstances where --

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions;

represent unrelated business.

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(2) A body corporate to which this section applies is registrable as a Class 3A insurer if its total net premiums written from unrelated business are less than \$50,000,000.

[section 4DA inserted by 2008:34 s.8 effective 30 July 2008]

Class 3B insurer

4DB (1) This section applies to a body corporate that intends to carry on insurance business in circumstances where --

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions;

represent unrelated business.

(2) A body corporate to which this section applies is registrable as a Class 3B insurer if its total net premiums written from unrelated business are \$50,000,000 or more.

[section 4DB inserted by 2008:34 s.8 effective 30 July 2008]

Class 4 insurer

4E (1) A body corporate is registrable as a Class 4 insurer where—

- (a) it has at the time of its application for registration, or will have before it carries on insurance business, a total statutory capital and surplus of not less than \$100,000,000; and
- (b) it intends to carry on insurance business including excess liability business or property catastrophe reinsurance business.

(2) Where a body corporate is registrable as a Class 4 insurer it shall not be so registered if it is also registrable as a Class 1 or Class 2 insurer.

[section 4E inserted by 1995:20 effective 29 April 1995]

Determination of class of registration for long-term business

4EA (1) Subject to subsection (2), the Authority shall determine whether a body corporate proposing to carry on long-term business shall be registered as a Class A, Class B, Class C, Class D or Class E insurer in relation to its long-term business in accordance with sections 4EB to 4EF.

(2) But a body corporate may be registered as a particular class of insurer where it would not be so registrable under sections 4EB to 4EF if, after taking into account—

- (a) the nature of the intended relationship between the body corporate and its intended policyholders, the interests of those policyholders and of the public generally; and
- (b) the level of regulation which is applicable to the different classes of insurers carrying on long-term business,

the Authority considers it appropriate, whether or not an application has been made to it for that purpose by the body corporate.

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(3) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[Section 4EA inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class A insurer

4EB A body corporate is registrable as a Class A insurer where that body corporate—

- (a) is wholly owned by one person and intends to carry on long-term business consisting only of insuring the risks of that person; or
- (b) is an affiliate of a group and intends to carry on long-term business consisting only of insuring the risks of any other affiliates of that group or of its own shareholders.

[Section 4EB inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class B insurer

4EC (1) A body corporate is registrable as a Class B insurer where that body corporate is wholly owned by two or more unrelated persons and intends to carry on long-term business not less than 80% of the premiums and other considerations written in respect of which will be written for the purpose of—

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons; or
- (b) insuring risks which, in the opinion of the Authority, arise out of the business or operations of those persons or any affiliates of any of those persons.

(2) A body corporate is registrable as a Class B insurer where that body corporate would be registrable as a Class A insurer but for the fact that—

- (a) not all of the business which it intends to carry on, but at least 80% of the premiums and other considerations written, will consist of the long-term business described in paragraph (a) or (b) of section 4EB; or
- (b) it intends to carry on long-term business not less than 80% of the premiums and other considerations written in respect of which will, in the opinion of the Authority, arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person.

(3) In this section, “premiums and other considerations” shall be interpreted in accordance with the provisions of paragraph 19 of Part III of Schedule IV to the Insurance Accounts Regulations 1980.

[Section 4EC inserted by 2010 : 60 s. 5 effective 31 December 2010]

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Class C insurer

4ED A body corporate is registrable as a Class C insurer where that body corporate has total assets of less than \$250 million and is not registrable as a Class A or Class B insurer.

[Section 4ED inserted by 2010 : 60 s. 5 effective 31 December 2010]

Class D insurer

4EE A body corporate is registrable as a Class D insurer where that body corporate has total assets of \$250 million or more, but less than \$500 million and is not registrable as a Class A, Class B or Class C insurer.

[Section 4EE inserted by 2010 : 60 s. 5 effective 31 December 2010; amended by 2012 : 36 s. 3 effective 1 January 2013]

Class E insurer

4EF A body corporate is registrable as a Class C, Class D or Class E insurer where that body corporate has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer.

[Section 4EF inserted by 2010 : 60 s. 5 effective 31 December 2010; amended by 2012 : 36 s. 4 effective 1 January 2013]

Class IGB

4EG A body corporate is registrable as a Class IGB insurer where that body corporate intends at the time of its application for registration, to carry on general business in an innovative and experimental manner.

[Section 4EG inserted by 2018 : 35 s. 4 effective 23 July 2018; Section 4EG amended by 2019 : 33 s. 6 effective 5 August 2019]

Class ILT

4EH A body corporate is registrable as a Class ILT insurer where that body corporate intends at the time of its application for registration, to carry on long-term business in an innovative and experimental manner.

[Section 4EH inserted by 2018 : 35 s. 4 effective 23 July 2018; Section 4EH amended by 2019 : 33 s. 7 effective 5 August 2019]

Class IIGB

4EI A body corporate is registrable as a Class IIGB insurer where that body corporate intends at the time of its application for registration to carry on general business in an innovative manner.

[Section 4EI inserted by 2019 : 33 s. 8 effective 5 August 2019]

Classes of insurer: interpretation

4F (1) In sections 4B to 4EH and this section—

“affiliate” means a body forming part of a group;

“excess liability business” means the business of effecting and carrying out contracts of insurance insuring the risk of the persons insured in the event that any such person incurs liabilities to third parties in excess of a stated sum;

“insure” includes reinsure;

“loss and loss expense provisions” means amounts calculated in relation to a body corporate by the application of the principles set out in—

- (a) the Insurance Accounts Regulations 1980 in relation to Class 1, Class 2, Class 3, Class A, Class B insurers and Special Purpose Insurers for the calculation of those amounts in relation to the insurer; and
- (b) any insurance accounts rules in relation to Class 3A, Class IIGB, Collateralized Insurers, Class 3B, Class 4, Class C, Class D and Class E insurers for the calculation of those amounts in relation to the insurer;

“net premiums written” means amounts calculated in relation to a body corporate by the application of the principles set out in—

- (a) the Insurance Accounts Regulations 1980 in relation to Class 1, Class 2, Class 3, Class A, Class B insurers and Special Purpose Insurers for the calculation of those amounts in relation to the insurer;
- (b) any insurance accounts rules in relation to Class 3A, Class IIGB, Collateralized Insurers, Class 3B, Class 4, Class C, Class D and Class E insurers for the calculation of those amounts in relation to the insurer;

“property catastrophe reinsurance business” means the business of effecting and carrying out contracts of reinsurance indemnifying (whether or not to a specified limit) an insurer as a result of an accumulation of losses arising from a single catastrophic event or series of events;

“segregated account” has the meaning given in section 2(1) of the Segregated Accounts Companies Act 2000;

“shareholder” includes a partner of a partnership and a member of any other body or association;

“total assets” in relation to Class C, Class D and Class E insurers means the total assets reported on an insurer’s balance sheet in the relevant year less the amount held in any segregated account of such insurer in respect of long term business;

“unrelated” means not forming part of the same group;

“unrelated business” means insurance business consisting of insuring risks of persons who are not shareholders in, or affiliates of, the insurer.

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(2) In determining for the purposes of sections 4B and 4C whether a body corporate is wholly owned by a person, the Authority may have regard to the beneficial as well as the legal ownership of the body corporate.

[section 4F inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; "loss and loss expense provisions" and "unrelated business" inserted by 2008:34 s.9 effective 30 July 2008; "group" repealed by 2010 : 22 s. 7 effective 29 March 2010; subsection (1) "segregated account" and "total assets" inserted by 2010 : 60 s. 6 effective 31 December 2010; subsection (1) amended by 2012 : 36 s. 5 effective 1 January 2013; subsection (1) definitions "loss and loss expense provisions" and "net premiums written" repealed and substituted by 2015 : 50 s. 3 effective 1 January 2016; section 4F subsection (1) amended by 2018 : 35 s. 5 effective 23 July 2018; subsection (1) definitions "loss and loss expense provisions" and "net premiums written" amended by 2019 : 33 s. 9 effective 5 August 2019]

Factors to be considered by Authority under section 4

5 (1) In considering whether to register a body as an insurer under section 4, the Authority, without prejudice to its power under section 12 to refuse registration, must be satisfied that—

- (a) the minimum criteria are fulfilled with respect to the body corporate;
- (b) the body has, or has available, adequate knowledge and expertise; and
- (c) the premises intended to be used in the business are adequate for the conduct of the business.

(2) In considering whether to register a body as a Special Purpose Insurer, the Authority shall, in addition to the matters set out in subsection (1), have regard to the following matters—

- (a) whether the insurer is solely insuring or reinsuring one or more risks or group of risks with one or more policyholders; and
- (b) the sophistication of the policyholders or the sophistication of the parties to a debt issuance or other funding mechanism.

(3) In considering whether to register a body as an innovative insurer, the Authority shall, in addition to the matters set out in subsection (1), have regard to the following matters—

- (a) whether the innovative insurer has satisfactorily demonstrated to the Authority that it is able to use new or different technological or innovative measures—
 - (i) to carry on the proposed innovative insurance business; or
 - (ii) to provide products or services; and
- (b) the sophistication of the policyholders, proposed policyholders and service providers of the innovative insurer.

(4) In considering the appropriate class of registration of an incorporated segregated accounts company, the Authority shall have regard to the following matters—

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- (a) the nature of the intended relationship between the incorporated segregated accounts company and any incorporated segregated account established by it to carry on insurance business; and
- (b) the nature of the insurance business to be carried on by the incorporated segregated accounts company and any incorporated segregated account established for such purpose.

[section 5 amended by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; and repealed and replaced by 2006:28 s.6 effective 24 July 2006; subsection (2) inserted by 2008:34 s.10 effective 30 July 2008; section 5 subsection (3) inserted by 2018 : 35 s. 6 effective 23 July 2018; Section 5 subsection (4) inserted by 2020 : 48 s. 4 effective 11 December 2020]

Further registration requirements

6 (1) The Authority shall not register a body corporate as a Class 1, Class 2, Class 3, Class 3A or Class IIGB insurer, Collateralized Insurer, Special Purpose Insurer, innovative insurer or Class A, Class B, Class C or Class D insurer under section 4 unless the Authority is satisfied that the body corporate meets the minimum margin of solvency.

(1A) Notwithstanding subsection (1), the Authority may register a body corporate as a Class A or Class B or Class ILT insurer if it is satisfied that the body corporate will meet its minimum margin of solvency on the date when the body corporate commences business as a Class A or Class B or Class ILT insurer.

(2) *[Repealed by 2010 : 60 s. 7.]*

(3) The amount of the liabilities of the long-term business of a body at any time shall, for the purposes of this section, be taken to be—

- (a) an amount equal to the total amount at that time standing to the credit of the fund or funds maintained by the body in respect of its long-term business; or
- (b) the amount of those liabilities at that time as determined in accordance with any applicable regulations,

whichever is the greater.

(4) The Authority shall not register a body corporate as a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or Class E insurer under section 4 unless it is satisfied that the amount of the available statutory capital and surplus of the body corporate on the date of registration meets—

- (a) its minimum margin of solvency; and
- (b) its enhanced capital requirement.

(5) Notwithstanding subsection (4), the Authority may register a body corporate as a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or Class E insurer if it is satisfied that the amount of the available statutory capital and surplus of the body corporate will meet the requirements of subsection (4)(a) and (b) on the date when

the body corporate commences business as a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or, as the case may be, a Class E insurer.

[section 6 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; section 6 amended by 2010 : 60 s. 7 effective 31 December 2010; section 6 subsections (4) and (5) amended by 2011 : 44 s. 3 effective 31 December 2011; section 6 subsections (1A), (4) and (5) amended by 2012 : 36 s. 6 effective 1 January 2013; section 6 subsection (5) amended by 2013 : 46 s. 2 effective 1 January 2014; section 6 subsections (1) and (1A) amended by 2018 : 35 s. 7 effective 23 July 2018; section 6 subsections (1), (4) and (5) amended by 2019 : 33 s. 10 effective 5 August 2019]

Prudential and technical standards

6A (1) The Authority may make Rules prescribing prudential or technical standards in relation to—

- (a) enhanced capital requirement;
 - (b) capital and solvency returns;
 - (c) insurance technical provisions;
 - (d) eligible capital;
 - (e) public disclosures;
 - (f) statutory financial returns;
 - (g) insurance manager, broker, agent or insurance marketplace provider reporting requirements; and
 - (h) innovative insurer and innovative intermediaries reporting requirements.
- (1A) Rules made by the Authority under subsection (1) must be complied with by—
- (a) insurance managers, brokers, agents or insurance marketplace providers;
 - (b) registered insurers;
 - (c) designated insurers;
 - (d) innovative insurers; and
 - (e) innovative intermediaries.

(2) The Authority may in such Rules prescribe standards that impose different requirements to be complied with—

- (a) by different classes of registered insurers or designated insurers;
- (aa) by different classes of innovative insurers;
- (b) in different situations; or
- (c) in respect of different activities.

(3) Rules may provide for the Authority to exercise powers and discretion in relation to prudential or technical standards, including power to approve, impose, modify or exclude specific prudential or technical standards in relation to the following—

- (a) a particular insurance manager, broker, agent or insurance marketplace provider, registered insurer, designated insurer, innovative insurer or innovative intermediaries; and
- (b) a specified class of registered insurers, designated insurer, innovative insurer or innovative intermediaries.

(3A) Prudential or technical standards applying to registered insurers may contain requirements which take into account, in the case of a registered insurer that is a member of an insurance group, any activity of another member of the insurance group.

(4) *[Repealed by 2012 : 22 s. 4]*

(5) Subject to subsection (6) Rules made under this section shall not come into operation until a period of not less than 180 days has elapsed from the date of publication of draft Rules pursuant to section 6B.

(6) Notwithstanding subsection (5), Rules made under this section may come into operation on such earlier date after it is made, as the Authority may determine, if the Authority considers that it is in the interests of policyholders for the Rules to come into operation at such time.

(7) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(8) The Schedules to the Rules made by the Authority under this section shall be published separately in the website of the Authority: www.bma.bm, and shall be available for inspection at the offices of the Authority.

[Section 6A inserted by 2008:34 s.11 effective 31 December 2008; Section 6A amended by 2010 : 22 s. 8 effective 29 March 2010; Section 6A subsection (1) amended by 2010 : 60 s. 8 effective 31 December 2010; Section 6A amended by 2010 : 60 s. 9 effective 31 December 2010; Section 6A subsection (4) repealed, and subsection (8) inserted by 2012 : 22 s. 4 effective 1 August 2012; Section 6A subsections (3) and (5) amended by 2012 : 36 s. 7 effective 1 January 2013; subsection (1) amended by 2015 : 31 s. 3 effective 13 July 2015; subsection (1) amended by 2015 : 50 s. 4 effective 1 January 2016; references to "Rule" changed to "Rules" under the authority of the Computerization and Revision of Laws Act 1989 s.11(n) on 24 March 2016; subsections (1) and (3) amended by 2016 : 35 s. 2 effective 21 July 2016; Section 6A amended by 2018 : 35 s. 8 effective 23 July 2018; Section 6A amended by 2018 : 68 s. 5 effective 31 December 2018; Section 6A amended by 2019 : 33 s. 11 effective 5 August 2019]

Consultation

6B (1) If the Authority proposes to make Rules under section 6A, it must publish a draft of the Rules in the way appearing to it to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by—

- (a) an explanation of the purpose of the proposed Rules; and
- (b) a notice that representation about the proposals may be made to the Authority within a specified time being not less than 28 days from the date of publication.

(3) Before making the proposed Rules the Authority must have regard to any representations made to it in accordance with subsection (2).

[section 6B inserted by 2008:34 s.11 effective 31 December 2008; Section 6B amended by 2010 : 60 s. 9 effective 31 December 2010]

Authority may exempt insurers, insurance managers and intermediaries from or modify prudential or technical standards

6C (1) The Authority may where it has made a determination or on the application of an insurer, insurance manager, broker, agent, insurance marketplace provider, designated insurer or innovative insurer, exempt the insurer, insurance manager, broker, agent, insurance marketplace provider, designated insurer or innovative insurer from the requirement to comply with any prudential or technical standard applicable to it by or under the Rules made under section 6A or modify any such prudential or technical standard applicable to it by or under the Rules made under section 6A.

(2) In granting an exemption or modification under this section the Authority may impose such conditions on the exemption or modification as it considers appropriate.

(3) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the obligations of the insurer towards its policyholders or the obligations of the designated insurer or insurance group of which the designated insurer is a member towards their policyholders.

(3A) The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale, and complexity of the business to be conducted by the insurance manager, broker, agent or insurance marketplace provider.

(4) The Authority may revoke an exemption or vary any modification granted under this section and shall serve notice on the insurer, insurance manager, broker, agent, insurance marketplace provider or designated insurer of its proposal to revoke its approval and the reason for its proposal.

(5) An insurer, insurance manager, broker, agent, insurance marketplace provider, designated insurer or innovative insurer served with a notice under subsection (4) may within a period of 28 days from the date of the notice make written representations to the Authority and where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.

(6) Where the Authority makes a determination or grants an application in relation to an exemption or modification under subsection (1) to a Class IIGB insurer or an insurance marketplace provider, it may take any action necessary or desirable to protect the public, policyholders, or potential policyholders of the insurer or the clients or potential clients of the insurance marketplace provider, where the Authority concludes that, due to the nature, scale, complexity and risk profile of the business conducted by the insurer or the insurance marketplace provider, such action is necessary.

(7) Before taking any action under subsection (6), the Authority shall serve a notice in writing on the Class IIGB insurer or insurance marketplace provider giving its reasons therefore.

(8) A Class IIGB insurer or an insurance marketplace provider served with a notice may, within a period of 28 days from the date of the notice, make written representations to the Authority.

(9) The Authority shall take such representations into account in deciding whether to take the proposed action, and shall notify the Class IIGB insurer or the insurance marketplace provider of its decision.

[Section 6C inserted by 2008:34 s.11 effective 31 December 2008; Section 6C amended by 2010 : 22 s. 9 effective 29 March 2010; Section 6C amended by 2010 : 60 s. 9 effective 31 December 2010; Section 6C amended by 2011 : 44 s. 4 effective 31 December 2011; Section 6C repealed and replaced by 2012 : 36 s. 8 effective 1 January 2013; subsections (1), (4) and (5) amended and subsection (3A) inserted by 2016 : 35 s. 3 effective 21 July 2016; Section 6C amended by 2018 : 35 s. 9 effective 23 July 2018; Section 6C amended by 2018 : 68 s. 6 effective 31 December 2018; Section 6C amended by 2019 : 33 s. 12 effective 5 August 2019]

Authority may adjust enhanced capital requirement, statutory capital and surplus, and insurance reserves

6D (1) Without prejudice to its powers under this Act to give directions, the Authority may in the circumstances mentioned in subsection (6) make such adjustments to an insurer's or insurance group's enhanced capital requirement, available statutory capital and surplus, total statutory capital and surplus, and available statutory economic capital and surplus as it considers appropriate, and such adjustments may require an increase in the amount of insurance reserves to the level of prudential standards prescribed under section 6A(1).

(2) Before making any adjustments, the Authority shall serve notice on the insurer or designated insurer of its intention to make adjustments giving its reasons therefor.

(3) An insurer or designated insurer served with a notice under subsection (2) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to make the proposed adjustments.

(4) The Authority shall notify an insurer or designated insurer of any adjustments that it has made.

(5) An adjustment made by the Authority under subsection (1) shall not have effect until a period of not less than 90 days (or such longer period as the Authority may determine) has elapsed from the date of its notification to the insurer or designated insurer.

(6) The circumstances referred to in subsection (1) are such circumstances as would cause the Authority to—

(a) conclude that the risk profile of the insurer or insurance group deviates significantly from—

(i) the assumptions underlying the enhanced capital requirement applicable to it; or

- (ii) the insurer's or the insurance group's assessment of its risk management policies and practices in calculating the enhanced capital requirement applicable to it; or
- (b) conclude that the system of governance of the insurer or insurance group deviates significantly from the standards applicable to it, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to, and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate time-frame.

(7) The Authority may on the application of an insurer or designated insurer make adjustments to the insurer's or insurance group's enhanced capital requirement, available statutory capital and surplus, total statutory capital and surplus or available statutory economic capital and surplus, and any adjustment so made shall take effect on such date as the Authority may determine.

[section 6D inserted by 2008:34 s.11 effective 31 December 2008; Section 6D amended by 2010 : 22 s. 10 effective 29 March 2010; section heading deleted and substituted and subsection (1) amended by 2015 : 31 s. 4 effective 1 January 2016; section heading amended by the authority of the Computerization and Revision of Laws Act 1989, s. 11(i) and with the consent of the Bermuda Monetary Authority effective 2 November 2019; section 6D subsections (1) and (7) amended by 2019 : 51 s. 2 effective 31 December 2019]

Authority may adjust registration requirements of innovative insurers

6E (1) Without prejudice to its powers under this Act to give directions, the Authority may in the circumstances mentioned in subsection (5) make such adjustments to an innovative insurer's registration requirements as it considers appropriate.

(2) Before making any adjustments, the Authority shall serve notice on the innovative insurer of its intention to make adjustments giving its reasons therefor.

(3) An innovative insurer served with a notice under subsection (2) may, within a period of 14 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to make the proposed adjustments.

(4) The Authority shall notify the innovative insurer of the adjustments it has made.

(5) The circumstances referred to in subsection (1) are such circumstances as would cause the Authority to conclude that the requirements applicable to the innovative insurer, including but not limited to corporate governance, capital and risk management requirements, are inappropriate given the innovative insurer's risk profile.

[Section 6E inserted by 2018 : 35 s. 10 effective 23 July 2018]

Protection of public interest, policyholders of innovative insurers and clients of innovative intermediaries

6F (1) Without prejudice to its powers under this Act to give directions, the Authority may, where it has made a determination in that respect, take any action necessary or

desirable to protect the public, policyholders or proposed potential policyholders of innovative insurers or the clients or potential clients of innovative intermediaries.

(2) Before taking any such action under subsection (1), the Authority shall serve notice in writing on the innovative insurer or innovative intermediary, as the case may be, giving its reasons therefor.

(3) An innovative insurer or innovative intermediary served with a notice under subsection (2) may, within a period of 14 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to take the proposed action.”

[Section 6F inserted by 2018 : 35 s. 10 effective 23 July 2018]

Paid up share capital

7 (1) In relation to an insurer which has a share capital, the minimum amount paid up on the share capital where the insurer is registered—

- (a) as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Collateralized Insurer or Class 3B insurer is \$120,000;
- (b) *[Repealed by 2010 : 60 s. 10]*
- (c) *[Repealed by 2010 : 60 s. 10]*
- (d) as a Class 4 insurer is \$1,000,000;
- (e) *[Repealed by 2010 : 60 s. 10]*
- (f) as a Special Purpose Insurer is \$1;
- (g) as a Class A insurer is \$120,000;
- (h) as a Class B insurer is \$250,000;
- (i) as a class C, D and E insurer is \$250,000;
- (j) in two classes, is the aggregate amount of paid up share capital required for each class for which it is registered;
- (k) as an innovative insurer is \$120,000.

(2) Subject to subsection (3), the Authority shall not register under section 4 a body corporate which has a share capital unless it satisfies the requirements of subsection (1).

(3) The Authority may register a body corporate as a Class 4 insurer where it does not satisfy the requirement of subsection (1)(d) if it has at least \$120,000 paid up share

capital, but such body corporate shall not carry on insurance business until it satisfies the requirement of subsection (1)(d).

[section 7 substituted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.12 effective 30 July 2008; section 7 subsection (1) amended by 2010 : 60 s. 10 effective 31 December 2010 ; section 7 subsection (1)(i) amended by 2011 : 44 s. 5 effective 31 December 2011; section 7 subsection (3) repealed and replaced by 2012 : 36 s. 9 effective 1 January 2013; section 7 subsection (1) amended by 2018 : 35 s. 11 effective 23 July 2018; section 7 subsection (1)(a) amended by 2019 : 33 s. 13 effective 5 August 2019]

Principal office and principal representative

8 (1) Every insurer, insurance manager, broker, agent and insurance marketplace provider shall—

- (a) maintain a principal office in Bermuda; and
- (b) at the time of registration, give notice in writing to the Authority of the location of its principal office.

(1A) Every insurer shall appoint and maintain a principal representative in Bermuda who satisfies the requirements of subsection (1B).

(1B) The principal representative of an insurer shall be a person approved by the Authority as that insurer's principal representative.

(2) An insurer at the time of registration shall give notice in writing to the Authority—

- (a) *[repealed by 2018 : 68 s. 7]*
- (b) of the prescribed particulars of its principal representative, its insurance manager (if it has one), its approved auditor and any other prescribed person to be engaged or employed in, or in connection with, its business.

(3) If any information required by subsection (1) or subsection (2) to be notified to the Authority is altered, the insurer shall give in writing to the Authority particulars of the alteration within fourteen days after the alteration is made.

(3A) Without a reason acceptable to the Authority—

- (a) an insurer shall not terminate the appointment of its principal representative; and
- (b) a principal representative shall not cease to act as such,

unless it or he gives thirty days notice in writing to the Authority of the intention to do so.

(4) An insurer shall maintain in its principal office an accurate list of all its insurance agents in Bermuda and, if required in writing at any time by the Authority so to do, shall provide it with a copy of that list.

(5) *[Repealed by 2012 : 22 s. 23]*

(6) If a principal representative wilfully fails to give to the Authority notice which he is required by subsection (3A) to give, he commits an offence.

[section 8 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (3) amended by 2004:29 s.6 effective 10 December 2004; subsection (5) repealed by 2012 : 22 s. 23 effective 1 August 2012; section 8 amended by 2018 : 68 s. 7 effective 31 December 2018; section 8 subsection (1) amended by 2019 : 33 s. 14 effective 5 August 2019]

Principal representative to report certain events

8A (1) A principal representative shall forthwith notify the Authority, in such manner as it may direct,—

- (a) on his reaching a view that there is a likelihood of the insurer for which he acts becoming insolvent; or
- (b) on its coming to his knowledge, or his having reason to believe, that an event to which this section applies has occurred.

(1A) Within fourteen days of such notification, the principal representative shall furnish the Authority with a report in writing setting out all the particulars of the case that are available to him.

(2) As respects any principal representative, this section applies to the following events, being events in which the insurer for which he acts as principal representative is involved, that is to say—

- (a) failure by the insurer
 - (i) to comply substantially with a condition imposed upon the insurer by the Authority relating to a solvency margin or a liquidity or other ratio;
 - (ii) to comply in any respect with any other such condition not so relating;
- (b) an offence by the insurer against section 20(8) or section 21(5) or section 22(5);
- (c) failure by the insurer to comply with a modified provision, or with a condition, being a provision or condition specified in a direction given to the insurer by the Authority in the exercise of its powers under section 56 or section 57A;
- (d) involvement of the insurer in any criminal proceedings whether in Bermuda or abroad;
- (e) the insurer's ceasing to carry on insurance business in or from within Bermuda;
- (f) a significant loss that is reasonably likely to cause the insurer to be unable to comply with the enhanced capital requirement applicable to it;
- (g) in relation to an insurer, a material change within the meaning of section 30JA(1) and (2);

- (h) in relation to a Class 3A insurer, where the limit on unrelated business imposed by section 4DA (2) is exceeded;
- (i) in relation to a Class C insurer, where the limit on total assets of less than \$250 million imposed by section 4ED is exceeded;
- (j) in relation to a Class D insurer, where the limit on total assets of less than \$500 million imposed by section 4EE is exceeded.

(2a) Within 45 days of notifying the Authority of an event referred to in subsection (2)(f), the principal representative shall furnish the Authority with a capital and solvency return reflecting an enhanced capital requirement prepared using post-loss data;

(2b) Within 30 days of notifying the Authority of an event referred to in subsection (2)(g), the principal representative shall furnish the Authority with unaudited interim statutory financial statements in relation to such period as the Authority may require, together with a general business solvency certificate in respect of those statements.

(3) *[Repealed by 2012 : 22 s. 23]*

[section 8A amended by 1998:8 effective 23 March 1998; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1) substituted, and (1A) inserted, by 2004:29 s.7 effective 10 December 2004; subsection (2) amended by 2008:34 s.13(a) effective 31 December 2008; subsections (2a) and (2b) inserted by 2008:34 s.13(b) effective 30 July 2008; section 8A subsection (2)(g) deleted and substituted by 2010 : 60 s. 11 effective 31 December 2010; subsection (2) paragraph (h) amended and paragraphs (l) and (j) inserted by 2011 : 44 s. 6 effective 31 December 2011; subsection (3) repealed by 2012 : 22 s. 23 effective 1 August 2012]

Appointment of approved loss reserve specialist

8B (1) Every Class 2 and Class 3 insurer, and when directed by the Authority, a Class 1 and Class IGB insurer, shall appoint an individual as that insurer's loss reserve specialist approved by the Authority under subsection (3), who shall be a person qualified to assess the adequacy of insurance loss reserves in order to provide an opinion in accordance with the requirements of the Insurance Returns and Solvency Regulations 1980.

(1A) Every Class 3A insurer shall appoint an individual approved by the Authority under subsection (3) who is qualified as a loss reserve specialist, to provide an opinion in accordance with the requirements of Schedule XIV "Statutory Economic Balance Sheet" of the Insurance (Prudential Standards) (Class 3A Solvency Requirement) Rules 2011.

(1B) Every Class 3B and Class 4 insurer shall appoint an individual approved by the Authority under subsection (3) who is qualified as a loss reserve specialist, to provide an opinion in accordance with the requirements of Schedule XIV "Statutory Economic Balance Sheet" of the Insurance (Prudential Standards) (Class 4 and Class 3B Solvency Requirement) Rules 2008.

(1C) Every Class IIGB and Collateralized Insurer shall appoint an individual approved by the Authority under subsection (3) who is a qualified loss reserve specialist, to provide an opinion in accordance with the requirements of Rules made under section 6A.

(2) Before making any such appointment, an insurer shall submit particulars of such person to the Authority for approval.

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(3) The Authority, on being satisfied that a person is fit and proper to hold such an appointment, shall approve his appointment as that insurer's loss reserve specialist.

(4) Subject to subsection (5), the Authority may revoke an approval of a loss reserve specialist in respect of any insurer, if it is satisfied that he is no longer a fit and proper person to hold the appointment.

(5) The Authority shall not revoke its approval unless it has first notified the loss reserve specialist and the insurer of its intention to do so.

(6) *[Repealed by 2012 : 36 s. 10]*

[section 8B inserted by 2004:29 s.8 effective 10 December 2004; amended by 2008:34 s.14 effective 30 July 2008; section 8B amended by 2010 : 60 s. 12 effective 31 December 2010; section 8B subsection (6) repealed by 2012 : 36 s. 10 effective 1 January 2013; section 8B subsection (1) amended by 2015 : 31 s. 5 effective 1 January 2016; subsection (1) amended and subsections (1A) and (1B) inserted by 2015 : 50 s. 5 effective 1 January 2016; section 8B subsection (1) amended by 2018 : 35 s. 12 effective 23 July 2018; section 8B subsection (1) repealed and substituted by 2018 : 68 s. 8 effective 31 December 2018; section 8B subsection (1C) inserted by 2019 : 33 s. 15 effective 5 August 2019]

Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D and Class E insurer to maintain head office in Bermuda

8C (1) Every Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D and Class E insurer that satisfies the requirements of subsection (2) shall maintain its head office in Bermuda.

(2) The insurance business of the insurer must be directed and managed from Bermuda and, in determining whether the insurer complies with this requirement, the Authority shall consider, inter alia, the factors set out in subsection (3).

(3) The factors referred to in subsection (2) are—

- (a) where the underwriting, risk management and operational decision making of the insurer occurs;
- (b) whether the presence of senior executives who are responsible for, and involved in, the decision making related to the insurance business of the insurer are located in Bermuda;
- (c) where meetings of the board of directors of the insurer occur.

(4) Notwithstanding the considerations set out in subsection (3), the Authority may also have regard to the following matters—

- (a) the location where management of the insurer meets to effect policy decisions of the insurer;
- (b) the residence of the officers, insurance managers or employees of the insurer; and
- (c) the residence of one or more directors of the insurer in Bermuda.

(5) Subsection (1) shall not apply to a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or Class E insurer which has a permit under section 3

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of the Non-Resident Insurance Undertakings Act 1967 or a permit under section 134 of the Companies Act 1981.

[Section 8C inserted by 2015 : 31 s. 6 effective 1 January 2016; Section 8C amended by 2019 : 33 s. 16 effective 5 August 2019]

Insurance managers and intermediaries to be registered

9 (1) Subject to this Act, and notwithstanding anything in any other Act, no person shall in or from within Bermuda carry on business as an insurance manager, broker, agent, insurance marketplace provider or salesman unless he is registered for the purpose by the Authority under section 10.

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

[section 9 amended by 2001:27 effective 1 October 2001; amended by 2001 : 33 effective 1 January 2002; subsection (1) amended by 2006 : 28 s. 7 effective 24 July 2006; subsection (1) amended by 2019 : 33 s. 17 effective 5 August 2019]

The Authority may register insurance managers and intermediaries

10 (1) Subject to sections 11 and 12, the Authority may, on application being made to it for that purpose by any person, and on payment of the relevant fee provided for by section 14, register that person as an insurance manager, broker, agent, insurance marketplace provider or salesman, as the case may be, subject to that person complying with such conditions as the Authority may see fit to impose.

(2) Every application under subsection (1) for registration shall be made to the Authority and shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

[section 10 amended by 1995 : 20 effective 29 April 1995; amended by 2001 : 27 effective 1 October 2001; amended by 2001 : 33 effective 1 January 2002; subsection (1) amended by 2019 : 33 s. 18 effective 5 August 2019]

Factors to be considered by Authority under section 10

11 In considering whether to register a person as an insurance manager, broker, agent, insurance marketplace provider or salesman, as the case may be, under section 10, the Authority, without prejudice to its power under section 12 to refuse registration, must be satisfied that—

- (a) the minimum criteria are fulfilled with respect to the applicant; and
- (b) the person has knowledge of the insurance business adequate to enable him to act in the capacity in which he has applied for registration.

[section 11 amended by 1995 : 20 effective 29 April 1995; amended by 2001 : 27 effective 1 October 2001; amended by 2001 : 33 effective 1 January 2002; repealed and substituted by 2006 : 28 s. 8 effective 24 July 2006; amended by 2019 : 33 s. 19 effective 5 August 2019]

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Power of Authority in relation to registration

12 In deciding whether to register a person under section 4 or 10 the Authority shall act as it thinks fit in the public interest, and, if of opinion that it is not in the public interest that registration should be granted, it shall refuse to grant it.

[section 12 amended by 2001:27 s.3 & Sch effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

Registration

13 (1) Where the Authority determines to register any person under section 4 or 10, it shall cause the prescribed particulars relating to that person to be entered in a register to be maintained by it for the purpose (in this Act referred to as “the Register”).

(2) Subject to subsection (2A), a person’s registration shall remain in force until it is cancelled.

(2A) Registration of an innovative insurer or innovative intermediary—

- (a) shall be for such period as may be determined by the Authority; and
- (b) may be extended by the Authority for such additional period as the Authority deems appropriate—
 - (i) where the Authority so determines; or
 - (ii) on the application of the innovative insurer or innovative intermediary.

(2B) An application under subsection (2A)(b)(ii)—

- (a) shall be in such form as the Authority may determine; and
- (b) shall be accompanied by such information as the Authority may require.

(3) Where a person is registered as aforesaid, the Authority shall issue to him a certificate of registration, in which shall be specified—

- (a) the name and business address of the person registered;
- (b) the date of registration; and
- (c) any conditions imposed under section 4 or 10.

(4) A certificate issued under this section shall be accepted in all courts as prima facie evidence of the fact that the person named therein is registered, and of the particulars set forth in the certificate.

(5) A copy of every certificate of registration shall be kept by the Authority in its office and shall be open to inspection by the public.

[Section 13 amended by 2001 : 27 s. 4 and s. 8 effective 1 October 2001; Section 13 amended by 2001 : 33 s. 5 effective 1 January 2002; Section 13 subsection (2) amended and subsections (2A) and (2B) inserted by 2018 : 35 s. 13 effective 23 July 2018]

Fees

14 (1) Fees shall be prescribed under the Bermuda Monetary Authority Act 1969 in respect of—

- (a) the making of any application for registration under section 4(1) or 10;
- (ab) the making of any application under any of the following provisions—
 - (i) sections 4(3) and (6), 4A(2), 10(1), 13(2A)(b)(ii), 17(4), 17A(5), 18C(2), 31B(3), 31C and 56 of this Act;
 - (ii) regulation 11(4) of the Insurance Returns and Solvency Regulations 1980 for Class 1, Class 2, Class 3, Class A and Class B insurers and Special Purpose Insurers, and the requirements applicable under any insurance accounts rules for Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers;
 - (iii) the instructions for line 14 in Part I of Schedule III to the Insurance Accounts Regulations 1980 for Class 1, Class 2, Class 3, Class A and Class B insurers and Special Purpose Insurers, and the requirements applicable under any insurance accounts rules for Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers;
 - (iv) notification of new or increased shareholder control under s.30D; and
 - (v) application for cancellation of registration under s.41(1)(a);
- (b) the registration of any person;
- (c) the issue of any certificate;
- (d) the inspection of the Register;
- (e) the furnishing by the Authority of any document or copy;
- (f) application for approval of internal model made under the provisions of Rules made under section 6A;
- (g) application for approval to exempt or modify prudential or technical standard requirements applicable to an insurer, insurance manager, broker, agent or insurance marketplace provider in accordance with the provisions of section 6C(1);
- (h) application under section 6D (7) for an adjustment to an insurer's or insurance group's enhanced capital requirement or available statutory capital and surplus or available statutory economic capital and surplus, as the case may be;
- (i) application under section 1(1) in paragraph (a)(iv) of the definition of "excepted long-term business; and
- (j) an application to modify an opinion of a loss reserve specialist approved by the Authority under section 8B(1).

(2) In addition to the fees for which subsection (1) provides, there shall, subject to subsection (3), be payable by a registered insurer or insurance manager, broker, agent, insurance marketplace provider or salesman before the 31 March in every year following the year in which it or he was registered an annual fee of such amount as shall be prescribed under the Bermuda Monetary Authority Act 1969:

Provided that—

- (a) an annual fee shall not be payable by a registered insurer or insurance manager, broker, agent or insurance marketplace provider whose winding up is in progress in winding up proceedings in Bermuda, except where—
 - (i) the fee, being due for payment, was not paid; and
 - (ii) the time allowed by this subsection for its payment had expired, before those proceedings were commenced; and
- (b) if an annual fee that a registered insurer or insurance manager, broker, agent or insurance marketplace provider is excused by paragraph (a) of this proviso from paying has in fact been paid, the liquidator may recover it from the Authority.

(2A) Annual fees payable by all registered persons in accordance with this section shall apply to the twelve-month period ending on 31 December of that year.

(3) Where a registered person fails to pay a prescribed fee, as provided in subsection (1) or (2), it shall pay in addition to such fee a late penalty fee of an amount equal to ten per cent of the fee due for every month or part thereof during which the fee remains unpaid.

(3A) *[Repealed by 2012 : 22 s. 5]*

- (4) The registration fee payable by an insurer shall be remitted—
 - (a) by 25% where an insurer is registered after 31 March and before 30 June in any year;
 - (b) by 50% where an insurer is registered after 30 June and before 30 September in any year;
 - (c) by 75% where an insurer is registered after 30 September in any year.

(5) The Authority, if satisfied that payment of the annual fee in whole or in part is inappropriate after taking into account the diminution in the level of insurance business, may—

- (a) defer payment of all or part of the annual fee otherwise due, to such date in the future as it considers appropriate; or
- (b) remit all part or part of the annual fee otherwise due,

on such terms and conditions as it considers appropriate.

(6) The Authority, having regard to the nature and scale of operations of an insurer and the complexity of its business may direct that the annual fee that is otherwise due and payable by or under subsection (2) be reduced by such amount as the Authority considers appropriate in relation to that insurer.

(7) The Authority shall serve notice in writing on the insurer directing that the fee otherwise payable by or under subsection (2) be payable at the reduced rate specified in the direction and the year when it is to take effect.

(8) The Authority may at any time revoke a direction given under subsection (6), where it is satisfied that there has been a material change in the nature and scale of operations of an insurer or in the complexity of its business.

(9) The Authority shall serve notice in writing on the insurer concerned notifying it of its decision to revoke the direction given under subsection (6) and the year from which the full fee becomes payable.

(10) Subject to subsection (12) and in the case where subsections (5) and (6) do not apply, the Authority may, where it has made a determination—

- (a) exempt a registered person from the requirement to pay any fee under this section, as may be prescribed under the Bermuda Monetary Authority Act 1969; or
- (b) reduce any fee required to be paid by a registered person under this section by such amount as it considers appropriate, as may be prescribed under the Bermuda Monetary Authority Act 1969.

(11) In granting an exemption from, or reduction of, any fee payment under subsection (10), the Authority may impose any condition on such exemption or reduction, as it may determine appropriate.

(12) The Authority shall not grant an exemption from, or reduction of, any fee payment under subsection (10) unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the business carried on by the registered person.

(13) Where the Authority determines not to grant an exemption or reduction of any fee under subsection (12), it shall serve the registered person with a notice of its determination and the registered person may within a period of twenty-eight days from the date of the notice make written representations to the Authority, and where such

representations have been made the Authority shall take them into account in making its final determination.

[section 14 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsections (2) and (3) amended, and subsection (4) inserted, by 2002:29 s.3 effective 14 October 2002; subsections (1) and (2) amended, and (4) deleted, by 2002:39 s.7 & Sch effective 30 December 2002; subsections (1), (2), and (3) amended, and subsections (4) and (5) inserted by 2008:46 s.9 effective 1 January 2009; section 14 amended by 2010 : 60 s. 13 effective 31 December 2010; section 14 subsection (3) repealed and replaced by 2010 : 58 s. 2 effective 1 January 2011; section 14 subsections (6 -- 9) inserted by 2010 : 58 s. 3 effective 1 January 2011; section 14 subsections (4) and (5) repealed and substituted by 2011 : 44 s. 7 effective 31 December 2011; subsection (3A) repealed by 2012 : 22 s. 5 effective 1 August 2012; subsection (2) amended by 2012 : 36 s. 11 effective 1 January 2013; subsection (1) amended by 2015 : 31 s. 7 effective 13 July 2015; subsection (1) amended by 2015 : 50 s. 6 effective 1 January 2016; subsection (1) amended and subsection (2A) inserted by 2016 : 35 s. 4 effective 21 July 2016; Section 14 subsection (1)(ab) amended by 2018 : 35 s. 14 effective 23 July 2018; Section 14 amended by 2018 : 68 s. 9 effective 31 December 2018; Section 14 amended by 2019 : 33 s. 20 effective 5 August 2019]

PART III

REGULATION OF INSURERS GENERALLY

Statutory financial statements

15 (1) An insurer shall prepare accounts (in this Act referred to as “statutory financial statements”) in respect of its insurance business for each financial year.

(2) Statutory financial statements shall be in such form being a form calculated to enable comparison to be made between the insurer’s business for the financial year in respect of which the statements are prepared and the insurer’s business for the financial year immediately preceding that year as prescribed for specific classes of insurer, and shall contain such information, as may be prescribed.

(3) The information required to be included in statutory financial statements pursuant to subsection (2) shall be information calculated to fulfil (in addition to any other purposes for which regulations may be made) the following purposes—

- (a) to give as early warning as possible to any person examining the said statements (whether by way of notice of the observance or non-observance by the insurer of any margin of solvency, or in any other way) of any financial or operational difficulties into which the insurer’s business has fallen or might appear likely to fall;
- (b) to provide the basis on which the Authority or any other authority may in good time take action under this Act or any other statutory provision to exercise any statutory power available to it for the safeguarding of any element of the public interest involved in or affected by the insurer’s business.

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(4) The statutory financial statements of an insurer shall be audited annually by the insurer's approved auditor.

[section 15 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (4) inserted by 2004:29 s.9 effective 10 December 2004; subsection (2) amended by 2016 : 35 s. 5 effective 21 July 2016]

Declaration of compliance

15A (1) Every insurer shall at the time of filing its statutory financial statements under section 17, also deliver to the Authority a declaration in such form and with such content as the Authority may require, declaring whether or not the insurer has, with respect to the preceding financial year—

- (a) complied with all requirements of the minimum criteria applicable to it;
- (b) complied with the minimum margin of solvency as at its financial year end;
- (c) complied with applicable enhanced capital requirements as at its financial year end;
- (d) complied with applicable conditions, directions and restrictions imposed on, or approvals granted to, the insurer; and
- (e) complied with the minimum liquidity ratio for general business as at its financial year end.

(2) All declarations to be delivered under this section shall be signed by two directors of the insurer.

(3) Where an insurer delivers to the Authority a declaration under subsection (1), it shall at the time of such delivery, where it has failed to comply with requirements, give the Authority particulars of such failure in writing.

(4) The information required to be included in the declaration of compliance pursuant to subsection (1) shall provide for—

- (a) as early a warning as possible to be given to any person examining the declaration of compliance, relating to financial or operational difficulties into which an insurer's business has fallen or might appear to fall;
- (b) the basis on which the Authority or any other authority may in good time take action under this Act or any other statutory provision to exercise any statutory power available to it for the safeguarding of any element of public interest involved in or affected by an insurer's business.

(5) Where an insurer fails to comply with a duty imposed on it under subsection (1), it shall be liable to a civil penalty calculated in accordance with subsection (6).

(6) For each week or part of a week that an insurer fails to comply with a requirement imposed on it under subsection (1), it shall be liable to a civil penalty not exceeding—

- (a) \$500, in the case of a breach by a Class 1, Class 2, Class 3, Class A or Class B insurer;

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- (b) \$1,000, in the case of a breach by a Class 3A, Class IIGB, Collateralized Insurer, Special Purpose Insurer, Class C or Class D insurer; or
- (c) \$5,000 in the case of a breach by a Class 3B, Class 4 or Class E insurer.

[Section 15A inserted by 2015 : 2 s. 2 effective 31 December 2015; subsection (1) amended by 2016 : 35 s. 6 effective 21 July 2016; Section 15A subsection (6)(b) amended by 2019 : 33 s. 21 effective 5 August 2019]

Appointment and approval of auditors

16 (1) Every insurer shall appoint an auditor approved by the Authority under subsection (3), to audit its statutory financial statements.

(1A) A designated insurer shall ensure that the group of which it is a member appoints an auditor approved by the Authority under this section to audit the financial statements of the group.

(1B) Subsections (2) to (6) and (8) apply to a designated insurer and the auditor of the insurance group as they apply to an insurer and its auditor.

(2) Before making any such appointment, an insurer shall submit particulars of such person to the Authority for approval.

(3) The Authority, on being satisfied that a person is fit and proper to hold such an appointment, shall approve his appointment as that insurer's auditor.

(4) Subject to subsection (5), the Authority may revoke an approval of an auditor in respect of any insurer, if it is satisfied that he is no longer a fit and proper person to hold the appointment.

(5) The Authority shall not revoke its approval unless it has first notified the auditor and the insurer of its intention to do so.

(6) No person having an interest in any insurer otherwise than as an insured, and no officer, servant or agent of any insurer, shall be eligible for appointment as an approved auditor for that insurer; and any person appointed as an approved auditor to any insurer who subsequently acquires such interest or becomes an officer, servant or agent of that insurer shall cease to be an approved auditor.

(7) If an insurer fails to appoint an approved auditor as required by subsection (1), or at any time fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor for the insurer and shall fix the remuneration to be paid by that insurer, if not sooner agreed by the insurer and the auditor, within fourteen days.

(8) An insurer shall forthwith give written notice to the Authority if it—

- (a) proposes to remove an approved auditor before the expiration of his term of office; or

- (b) proposes to replace an approved auditor at the expiration of the term of his office with a different auditor.

[section 16 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; and repealed and replaced by 2004:29 s.10 effective 10 December 2004; section 16 subsection (1A) and (1B) inserted by 2010 : 60 s. 14 effective 31 December 2010]

Auditor to communicate certain matters to Authority

16A (1) An approved auditor of an insurer shall forthwith give written notice to the Authority if—

- (a) he resigns before the expiration of his term of office;
- (b) he becomes aware that he will be replaced as the approved auditor of the insurer;
- (c) he intends not to seek to be re-appointed;
- (d) he decides to include a material modification of his report on the insurer's statutory financial statements and in particular, a material qualification or a denial of his opinion, or the statement of an adverse opinion; or
- (e) he becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the insurer, of the Authority's functions under this Act.

(1A) For the purposes of subsection (1)(e), material significance for the discharge of the Authority's functions shall include, but is not limited to, the following—

- (a) identification of a material misstatement in the insurer's statutory financial statements resulting from fraud, error or illegal acts or the consequences of them;
- (b) conclusion that there is substantial doubt as to the ability of the insurer to continue as a going concern for a period of one year from the balance sheet date;
- (c) *[repealed]*
- (d) identification of adjustments to the insurer's statutory financial statements which individually or in aggregate, indicates to him that the previous year's audited annual financial statements, were materially misstated;
- (e) identification of a material weakness in internal control or material conflicts of interest during the conduct of normal audit procedures; or
- (f) unresolved disagreements with management pertaining to the application of GAAP or statutory reporting.

(2) Where a notice has been given pursuant to subsection (1)(d), the auditor shall as soon as practicable thereafter furnish the Authority with a copy of his report.

(3) No duty to which an auditor of an insurer may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(4) Subsection (3) applies to any matter of which an approved auditor of an insurer becomes aware in his capacity as auditor and which relates to the business or affairs of the insurer or any affiliate of that insurer.

(5) In this section “affiliate” has the meaning given in section 4F(1).

(6) This section applies to an approved auditor of an insurance group as it applies to an approved auditor of an insurer.

[section 16A inserted by 2004:29 s.11 effective 10 December 2004; section 16A amended by 2010 : 22 s. 11 effective 29 March 2010; section 16A subsection (6) inserted by 2010 : 60 s. 15 effective 31 December 2010; section 16A subsection (1) amended and subsection (1A) repealed and substituted by 2015 : 50 s. 7 effective 1 January 2016; subsections (1) and (1A) amended by 2016 : 35 s. 7 effective 21 July 2016]

Keeping and filing of statutory financial statements

17 (1) Every insurer shall have a copy of its statutory financial statements (together with the notes to those statements and the auditor’s report thereon) available at its principal office on or before its filing date, and shall produce them to the Authority if so directed by it on or before a date specified in the direction.

(2) Every insurer shall keep the statutory financial statements, notes and auditor’s report at its principal office for the period of five years beginning with its filing date.

(3) Every insurer shall file a copy of its statutory financial statements (together with the notes to those statements and the auditor’s report thereon) with the Authority on or before its filing date.

(4) In this section and sections 18 and 18A, “filing date” in relation to an insurer means—

- (a) in the case of a Class 1, Class 2 or Class 3 insurer (which is not also a Class C, Class D or Class E insurer), or a Class A or Class B insurer, six months after the end of the financial year to which the statements relate (or such longer period, not exceeding nine months, as the Authority may allow in the case of that insurer on an application made to it for that purpose); and
- (b) in the case of a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Special Purpose Insurer, innovative insurer, or Class 4 insurer or a Class C, Class D or Class E insurer, four months after the end of the financial year to which the statements relate (or such longer period, not exceeding

seven months, as the Authority may allow in the case of that insurer on an application made to it for that purpose).

[section 17 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (3) amended by 2004:29 s.12 effective 10 December 2004; subsection (3) and (4)(b) amended by 2008:34 s.15 effective 30 July 2008; section 17 subsection (4) amended by 2010 : 60 s. 16 effective 31 December 2010; Section 17 subsection (4) amended by 2013 : 46 s. 3 effective 1 January 2014; Section 17 subsection (4)(b) amended by 2018 : 35 s. 15 effective 23 July 2018; Section 17 subsection (4)(b) amended by 2019 : 33 s. 22 effective 5 August 2019]

Additional financial statements prepared in accordance with GAAP and declaration of compliance

17A (1) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall, in addition to preparing statutory financial statements under section 15, prepare financial statements as required by this section (“additional GAAP financial statements”) in respect of its insurance business for each financial year.

(2) Such financial statements shall be prepared in accordance with any one of the following standards or principles—

- (a) International Financial Reporting Standards (‘IFRS’);
- (b) generally accepted accounting principles (‘GAAP’) that apply in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAP as the Authority may recognise.

(2A) Notwithstanding subsection (1), a Class 3A, Class C or Class D insurer may, where appropriate, submit condensed general purpose financial statements prepared in accordance with any insurance accounts rules instead of additional GAAP financial statements.

(2B) Subsections (3) and (5) (as respects the appointment and approval of auditors and the filing of audited financial statements) shall apply mutatis mutandis in relation to condensed general purpose financial statements submitted by a Class 3A, Class C or Class D insurer in accordance with subsection (2A).

(3) Section 16 applies to the appointment and approval of an auditor of additional GAAP financial statements as it applies to an approved auditor.

(4) *[Repealed by 2016 : 35 s. 8]*

(5) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall file with the Authority a copy of the audited financial statements prepared under this section (together with the notes to those statements and the auditor’s report thereon) within a period of four months from the end of the financial year to which the financial statements relate or such longer period not exceeding seven months as the Authority may determine on the application of the insurer.

(6) The Authority shall cause to be published in such manner as it considers appropriate a copy of the declaration of compliance to be filed pursuant to section 15A and every audited financial statement filed with it under subsection (5) together with the notes to those statements and the auditor’s report.

(7) Except at the instance of—

- (a) the Class 3A, Class 3B, Class 4 or Class E insurer who engaged the auditor to perform the audit of the financial statements; or
- (b) any other person expressly authorised by the auditor to rely on their work;

no action shall lie against an auditor in respect of any financial statements filed with the Authority and made available for inspection or otherwise published pursuant to this section.

[Section 17A inserted by 2008:34 s.16 effective 31 December 2008; section 17A amended by 2010 : 60 s. 17 effective 31 December 2010; section 17A amended by 2011 : 44 s. 8 effective 31 December 2011; section 17A amended by 2015 : 2 s. 3 effective 27 February 2015; section 17A subsections (1) and (5) amended by 2012 : 36 s. 12 effective 1 January 2016; section 17A subsections (2A) and (2B) inserted by 2015 : 50 s. 8 effective 1 January 2016; subsection (2B) amended and subsection (4) repealed by 2016 : 35 s. 8 effective 21 July 2016]

Insurance manager, broker, agent and insurance marketplace provider to file statutory financial returns

17B Every insurance manager, broker, agent and insurance marketplace provider shall file a statutory financial return in the prescribed form, and different forms of return may be prescribed in the rules for insurance managers, brokers and agents.

[Section 17B inserted by 2018 : 68 s. 10 effective 31 December 2018; Section 17B amended by 2019 : 33 s. 23 effective 5 August 2019]

Insurer to make financial returns

18 (1) Every insurer shall at the time of filing its statutory financial statements under section 17, also file with the Authority a statutory financial return.

(2) A statutory financial return shall be in the prescribed form, and different forms of return may be prescribed for different categories of insurer.

[section 18 substituted by 1995:20 effective 29 April 1995; subsection (1) substituted by 2004:29 s.13 effective 10 December 2004]

Failure to file statutory statements or returns

18A (1) Where an insurer, insurance manager, broker, agent or insurance marketplace provider fails to comply—

- (a) with a duty imposed on it under section 17(1), 17(3), 17A(5), 17B or 18(1); or
- (b) with a requirement to file a capital and solvency return imposed by or under Rules made under section 6A;

it shall be liable to a civil penalty calculated in accordance with subsection (2).

(2) For each week or part of a week that an insurer, insurance manager, agent, insurance marketplace provider or broker fails to comply with a requirement imposed on it by subsection (1), it shall be liable to a civil penalty not exceeding—

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- (a) \$500, in the case of a breach by a Class 1, Class 2, Class 3, Class A, Class B insurer, insurance manager, broker, agent or insurance marketplace provider;
- (b) \$1,000, in the case of a breach by a Class 3A, Class IIGB, Collateralized Insurer, Special Purpose Insurer, innovative insurer, Class C, or Class D insurer; or
- (c) \$5,000, in the case of a breach by a Class 3B, Class 4 or Class E insurer,

and the civil penalty applicable to an insurer falling within more than one paragraph shall be the higher penalty.

(3) *[Repealed by 2012 : 22 s. 6]*

(4) *[Repealed by 2012 : 22 s. 6]*

(5) The Authority may appoint an inspector to investigate the affairs of an insurer, insurance manager, broker, agent or insurance marketplace provider under section 30, if the insurer, insurance manager, broker, agent or insurance marketplace provider where applicable fails within three months of its filing date to file—

- (a) statutory financial statements required by section 17(3);
- (b) additional GAAP financial statements required by section 17A(5);
- (c) statutory financial returns required by section 18; or
- (d) capital and solvency returns required by or under Rules made under section 6A.

[Section 18A inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; amended by 2008:34 s.17 (a) effective 30 July 2008; subsection (1) and (5) repealed and substituted by 2008:34 s.17 (b) effective 31 December 2008; section 18A amended by 2010 : 60 s. 18 effective 31 December 2010; subsection (5) amended by 2011 : 44 s. 9 effective 31 December 2011; subsection (1) amended, subsection (2) repealed and substituted, and subsections (3) and (4) repealed by 2012 : 22 s. 6 effective 1 August 2012; subsection (2) amended by 2013 : 46 s. 4 effective 1 January 2014; subsections (1), (2)(a) and (5) amended by 2016 : 35 s. 9 effective 21 July 2016; Section 18A subsection (2)(b) amended by 2018 : 35 s. 16 effective 23 July 2018; Section 18A amended by 2018 : 68 s. 11 effective 31 December 2018; Section 18A amended by 2019 : 33 s. 24 effective 5 August 2019]

Opinion of loss reserve specialist

18B (1) This section applies in relation to a Class 2 or Class 3 insurer.

(2) The statutory financial return required by section 18 shall include the opinion of a loss reserve specialist in respect of the insurer's loss and loss expense provisions—

- (a) annually, in the case of a Class 3 insurer; or
- (b) every third year, in the case of a Class 2 insurer, beginning with the return relating to the financial year following the insurer's registration as a Class 2 insurer.

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(3) The requirements of paragraph (f) of the instructions in Part II of Schedule III to the Insurance Accounts Regulations 1980 relating to line 17 of the statutory balance sheet shall not apply in relation to any financial year for which an insurer is required by this section to include the opinion of a loss reserve specialist in the statutory financial return.

[Section 18B inserted by 1995:20 effective 29 April 1995; amended by 2008:34 s.18 effective 30 July 2008; subsections (1) and (2) amended by 2015 : 31 s. 8 effective 1 January 2016]

Requirement to keep records in Bermuda

18C (1) The Authority may direct insurers to keep in Bermuda proper records of account with respect to—

- (a) all sums of money received and expended by the insurer and the matters in respect of which the receipt and expenditure takes place;
- (b) all premiums and claims relating to the insurer; and
- (c) the assets, liabilities and equity of the insurer;

and any such directions may make different provision in relation to Class 1, Class 2, Class 3, Class 3A, Class IIGB, Collateralized Insurers, Class 3B, Class 4, Special Purpose Insurers, innovative insurers, Class A, Class B, Class C, Class D and Class E insurers.

(2) Without prejudice to section 83 of the Companies Act 1981 (keeping of books of account), on an application made to it for that purpose, the Authority may direct that an insurer be exempt from such of the requirements of subsection (1) as may be specified in the direction.

[Section 18C inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; Section 18C subsection (1) amended by 2010 : 60 s. 19 effective 31 December 2010; Section 18C subsection (1) amended by 2018 : 35 s. 17 effective 23 July 2018; Section 18C subsection (1) amended by 2019 : 33 s. 25 effective 5 August 2019]

Prohibition of non-insurance business to be carried on by insurers

19 (1) Subject to subsection (2), no insurer shall engage in non-insurance business.

(2) An insurer may engage in non-insurance business only where such business is ancillary to the insurance business carried on by the insurer.

[Section 19 repealed and replaced by 2012 : 36 s. 13 effective 1 January 2013; Section 19 amended by 2018 : 49 s. 6 effective 1 January 2019]

Minister may require Bermuda investment

20 (1) The Minister acting on the advice of the Authority may by order made under this section require that every insurer, or every insurer of a class specified in the order, being a non-resident insurance undertaking, must maintain invested in Bermuda during the currency of the order approved assets of a value fixed in the order (in this section referred to as “investment asset value”).

(2) An order under this section may fix—

- (a) an investment asset value of not more than 60% of the value of the domestic liabilities of insurers, being liabilities outstanding on account of long-term business;
- (b) an investment asset value of not more than 40% of the premium income of insurers, being premium income arising on account of general business that is domestic business,

and such an order may either fix an investment asset value under paragraph (a) alone or paragraph (b) alone, or may fix investment asset values so as to be in force concurrently under both those paragraphs.

(3) Such an order as aforesaid may contain such transitional provision (including provision reducing temporarily a percentage otherwise fixed by the order) as the Minister may deem necessary to enable insurers affected by the order, or any class of such insurers, to re-organize investments held by them immediately before the coming into force of the order with a view to meeting the requirements of the order.

(4) Where an approved asset is a security on which a value was placed by the approved auditor in the course of the latest audit of the statutory financial statements of the insurer, that value shall, in any dispute as to the value of the security, be deemed conclusively to be the true value of the security.

(5) The Minister may include provision in such an order as aforesaid that for the purposes of the order domestic liabilities shall not include any part of such liabilities which is re-insured.

(6) For the purposes of this section—

- (a) (i) an “approved asset” is an asset approved by the Minister;
- (ii) “premium income”, in relation to an insurer, means the net amount, after deduction of any premiums paid by the insurer for re-insurance, of the premiums received by the insurer;
- (iii) a “domestic liability” is a liability arising in respect of domestic business; and
- (b) references to “premium income” and “domestic liabilities”, in relation to an insurer affected by an order, are respectively references to premium income and domestic liabilities as shown in the statutory financial statements of the insurer in respect of the financial year next preceding the date of the making of the order;
- (c) subject to any applicable regulations, in computing the amount of any liabilities all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(7) Any order made under this section shall be subject to the affirmative resolution procedure.

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(8) An insurer which at any time fails to comply with an order that is in force under this section and applies to it commits an offence.

[section 20 amended by 2001:27 s.9 effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

Maintenance of assets in Bermuda

21 (1) The Minister may by order made under this section require that every insurer, or every insurer of a class specified in the order, being a non-resident insurance undertaking, must maintain in Bermuda approved assets of the insurer of a value which at any time is equal to the whole or a specified proportion of the amount of its domestic liabilities.

(2) Such an order as aforesaid may contain provision that assets of a specified class or description shall or shall not be treated as assets maintained in Bermuda.

(3) Section 20(4), (5) and (as respects the interpretation or treatment of approved assets, liabilities and domestic liabilities) (6) shall apply mutatis mutandis in relation to an order made under this section as those subsections apply in relation to an order made under section 20.

(4) Any order made under this section shall be subject to the affirmative resolution procedure.

(5) An insurer which fails at any time to comply with an order that is in force under this section and applies to the insurer commits an offence.

Custody of assets

22 (1) The Authority may impose a requirement on any insurer affected by an order under section 21 that the whole or a specified proportion of the insurer's assets affected by such an order shall be held by a person approved by the Authority for the purposes of the requirement as trustee of the insurer.

(2) Assets of an insurer held by a person as trustee for an insurer shall be taken to be held by him in compliance with a requirement imposed under this section if, and only if they are assets in whose case the insurer has given him written notice that they are to be held by him in compliance with such a requirement, or they are assets into which assets in whose case the insurer has given him a written notice as aforesaid have, by any transaction or series of transactions, been transposed by him on the instructions of the insurer.

(3) No asset held by a person as trustee of an insurer in compliance with a requirement imposed under this section shall, so long as the requirement is in force, be released except with the consent of the Authority.

(4) If a mortgage or charge is created by an insurer at a time when there is in force a requirement imposed on the insurer by virtue of this section, being a mortgage or charge conferring a security on any assets which are held by a person as trustee of the insurer in compliance with the requirement, the mortgage or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the insurer.

(5) *[Repealed by 2012 : 22 s. 23]*

[section 22 amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; subsection (5) repealed by 2012 : 22 s. 23 effective 1 August 2012]

PART IV

INSURERS CARRYING ON LONG-TERM AND GENERAL BUSINESS

Insurers to which this Part applies

23 This Part shall apply to insurers carrying on long-term and general business.

[Section 23 amended by 2018 : 42 s. 3 effective 30 July 2018]

Insurer carrying on long-term and general business to maintain separate accounts

24 (1) An insurer carrying on both long-term business and general business shall keep its accounts in respect of its long-term business separate from any accounts kept in respect of any other business.

(2) The assets comprising line 15 of column A on Form 1SFS of Schedule 1 to the Insurance Accounts Rules 2016 or line 15 of Form 1A of Schedule 1 to the Insurance Accounts Regulations 1980, as applicable, shall be carried to, and form part of, a special fund with an appropriate name, in this Act referred to as a “general business fund”.

(3) The assets comprising line 15 of column C on Form 1SFS of Schedule 1 to the Insurance Accounts Rules 2016 or line 15 of Form 4 of Schedule 1 to the Insurance Accounts Regulations 1980, as applicable, shall be carried to, and form part of, a special fund with an appropriate name, in this Act referred to as a “long-term business fund”.

(4) No payment from the insurer’s long-term business fund shall be made directly or indirectly for any purpose other than a purpose of the insurer’s long-term business, notwithstanding any arrangement for its subsequent repayment out of receipts of business other than the long-term business, except in so far as such payment can be made out of any surplus certified by the insurer’s approved actuary to be available for distribution otherwise than to policy-holders.

(5) No payment from the insurer’s general business fund shall be made directly or indirectly for any purpose other than a purpose of the insurer’s general business, notwithstanding any arrangement for its subsequent repayment out of receipts of business other than the general business, except in so far as such payment can be made out of any surplus available for distribution otherwise than to policy-holders.

(5A) No insurer to which this section applies shall declare or pay a dividend to any person other than a policy-holder unless the value of the assets of its long-term business fund, as certified by the insurer’s approved actuary, exceeds the extent (as so certified) of the liabilities of the insurer’s long-term business; and the amount of any such dividend shall not exceed the aggregate of—

(a) that excess; and

- (b) any other funds properly available for the payment of dividend, being funds arising out of business of the insurer other than long-term business.

(5B) No insurer to which this section applies shall transfer assets from the long-term business fund to the general business fund unless immediately following such transfer the insurer shall continue to meet its enhanced capital requirements and minimum margin of solvency requirements with respect to its long-term business.

(5C) No insurer to which this section applies shall transfer assets from the general business fund to the long-term business fund unless immediately following such transfer the insurer shall continue to meet its enhanced capital requirements, minimum margin of solvency requirements and liquidity ratios with respect to its general business.

(6) This section shall not apply in relation to an insurer which, immediately before 1 January 1980—

- (a) either—
 - (i) was an exempted company within the definition in section 1 of the Exempted Companies Act 1950; or
 - (ii) had a permit under section 69 of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*] or under section 3 of the Non-Resident Insurance Undertakings Act 1967 [*title 5 item 17*]; and
- (b) was carrying on both long-term and general business in or from within Bermuda.

[Section 24 amended by 2018 : 42 s. 4 effective 30 July 2018]

Certification of dividends

24A No insurer carrying on long-term business shall declare or pay a dividend to any person other than a policyholder unless the value of the assets of such insurer, as certified by its approved actuary, exceeds its liabilities (as so certified) by the greater of its margin of solvency or, if applicable, its enhanced capital requirement and the amount of any such dividend shall not exceed that excess.

[Section 24A inserted by 2018 : 42 s. 5 effective 30 July 2018]

Transfer of long-term business

25 (1) Any scheme under which the whole or any part of the long-term business of any insurer to which this Part applies (in this section referred to as the “transferor”) is to be transferred to another insurer (in this section referred to as the “transferee”) shall be void unless it is made in accordance with this section and the Court has sanctioned the scheme thereunder.

(2) Either the transferor or the transferee may apply to the Court, by petition, for an order sanctioning the scheme, and the Court shall have power to make such an order subject to this section.

(3) The Court shall not entertain such a petition unless the petition is accompanied by a report on the scheme prepared by an approved actuary and the Court is

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satisfied that sufficient notice of the scheme has been served on each policy-holder affected and been published in the Gazette, and also that copies of the petition and the report have been served on the Authority.

- (4) On any petition under this section—
- (a) any person who alleges that he would be adversely affected by the carrying out of the scheme; and
 - (b) the Authority,

shall be entitled to be heard.

((5) and
(6)) *[subsections (5) and (6) deleted by 1985:1]*

(7) Subsections (1) to (4) shall not have effect in relation to the transfer of long-term business that is re-insurance business.

[section 25 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Appointment of approved actuary

26 (1) Every Class A, Class B and Class ILT, insurer shall appoint an individual approved by the Authority under subsection (3) as a person qualified to assess the adequacy of total long-term insurance reserves or long-term insurance technical provisions, as that insurer's approved actuary.

(1A) Every Class C, Class D and Class E insurer shall appoint an individual approved by the Authority under subsection (3) who is qualified as an approved actuary to provide an opinion in accordance with the requirements of Schedule XIV "Statutory Economic Balance Sheet" of the Insurance (Prudential Standards) (Class C, Class D and Class E Solvency Requirement) Rules 2011.

(2) Before making any such appointment an insurer shall submit particulars of such person to the Authority for approval.

(3) The Authority, on being satisfied that a person is fit and proper to hold such an appointment shall approve the appointment as that insurer's approved actuary.

(4) Subject to subsection (5), the Authority may revoke an approval of an approved actuary in respect of any insurer, if it is satisfied that he is no longer a fit and proper person to hold the appointment.

(5) The Authority shall not revoke its approval unless it has first notified the approved actuary and the insurer of its intention to do so.

[section 26 amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; repealed and replaced by 2012 : 36 s. 14 effective 1 January 2013; subsection (1) amended by 2015 : 31 s. 9 effective 1 January 2016; subsection (1) amended and subsection (1A) inserted by 2015 : 50 s. 9 effective 1 January 2016; Section 26 subsection (1) amended by 2018 : 35 s. 18 effective 23 July 2018]

Actuarial certificates of long-term business liabilities

27 (1) Every Class A, Class B and Class ILT, insurer shall include in the insurer's statutory financial return called for by section 18 a certificate prepared by the insurer's approved actuary in the prescribed form as to the amount of the insurer's liabilities outstanding on account of its long-term business.

(1A) Every Class C, Class D and Class E insurer shall include in its statutory financial return a certificate prepared by an actuary approved by the Authority under section 26(1A), in the form prescribed under any insurance accounts rules made by the Authority as to the amount of such insurer's liabilities outstanding on account of its long-term business.

(2) Notwithstanding subsection (1) the Authority may in writing at any time direct an insurer to which this Part applies to cause to be produced to the Authority a valuation of the insurer's liabilities outstanding at the date specified in the direction on account of its long-term business, together with a certificate prepared by the insurer's approved actuary in the prescribed form relating thereto; and the insurer shall comply with any such direction.

[section 27 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; subsection (1) amended by 2015 : 31 s. 10 effective 1 January 2016; subsection (1A) inserted by 2015 : 50 s. 10 effective 1 January 2016; Section 27 subsection (1) amended by 2018 : 35 s. 19 effective 23 July 2018]

PART IVA

GROUP SUPERVISION

[Part iva inserted by 2010 : 22 s. 12 effective 29 March 2010]

Interpretation

27A In this Part, unless the context otherwise requires—

“college of supervisors” means a structure for cooperation and coordination among supervisors of competent authorities;

“competent authority” means a regulatory authority that is empowered by law to supervise insurers;

“equivalent jurisdiction” means a jurisdiction that has supervisory standards that the Authority determines to be equivalent to those established by or under this Act;

“group supervisor” in relation to an insurance group, means the Authority or, as the case may be, another competent authority that is the group supervisor for the insurance group.

[Section 27A inserted by 2010 : 22 s. 12 effective 29 March 2010; definition “competent authority” amended by 2013 : 33 s. 2 effective 9 October 2013]

Group Supervisor

27B (1) The Authority may, in respect of an insurance group, determine whether it is appropriate for it to be the group supervisor of that group.

(2) Before making such a determination the Authority shall take into account the matters set out in subsection (3).

(3) Those matters are—

- (a) whether the insurance group is headed by a specified insurer;
- (b) where the insurance group is not headed by a specified insurer, whether the insurance group is headed by a parent entity which is incorporated in Bermuda; and
- (c) where the insurance group is headed by a parent company which is not incorporated in Bermuda, whether the Authority is satisfied that—
 - (i) the insurance group is directed and managed from Bermuda; or
 - (ii) the insurer in the insurance group with the largest balance sheet total is a specified insurer.

(4) The Authority shall give notice in writing to the relevant designated insurer of its intention to make such a determination and shall take into account any written representation made by the designated insurer within such period as it may specify in the notice.

(5) If the Authority makes a determination under subsection (1) in respect of an insurance group, it shall designate a specified insurer that is a member of the insurance group to be the designated insurer in respect of that insurance group for the purposes of this Act.

(6) The Authority shall notify the designated insurer for an insurance group and other competent authorities in writing that it is the group supervisor for that insurance group.

(7) The Authority shall establish and maintain a register containing the following particulars in respect of every insurance group of which it is the group supervisor—

- (a) the name and address of the designated insurer for the insurance group;
- (b) the name and address of every entity that is a member of the insurance group falling within the scope of group supervision;
- (c) the name and address of the principal representative of the insurance group in Bermuda;
- (d) the name and address of other competent authorities supervising other entities that are members of the insurance group; and
- (e) the name and address of the insurance group auditors.

(8) The designated insurer for an insurance group shall immediately notify the Authority of any change of the particulars entered in the register in respect of that insurance group.

(9) For the purposes of this section, “specified insurer” means—

- (a) a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer; or
- (b) an insurer of another class of insurers designated by order of the Authority.

(10) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to orders made under subsection (9)(b).

(11) There shall be payable by a designated insurer such annual fee, as may be prescribed under the Bermuda Monetary Authority Act 1969, in respect of every insurance group registered under this section.

(11A) Sections 14(5), (6), (7), (8) and (9) shall apply mutatis mutandis in relation to the payment of an annual fee by a designated insurer under subsection (11) in respect of an insurance group.

(12) The first annual fee shall be payable within 30 days of the registration of the insurance group.

(13) The annual fee for the subsequent years shall be payable on or before 31 March in every year following the year in which the insurance group was registered.

(14) Where a designated insurer fails to pay a prescribed fee as provided under this section on behalf of an insurance group, it shall pay in addition to such fee a late penalty fee of an amount equal to ten percent of the fee due for every month or part thereof during which the fee remains unpaid.

(15) Annual fees payable by a designated insurer in accordance with this section shall apply for the period of the financial year.

(16) For the purposes of this section, “financial year” means the twelve months ending on 31 December of that year.

[Section 27B inserted by 2010 : 22 s. 12 effective 29 March 2010; Section 27B subsection (11 - 13) inserted by 2010 : 58 s. 4 effective 1 January 2011; Section 27B subsection (9)(a) amended by 2011 : 44 s. 10 effective 31 December 2011; Section 27B subsection (9)(a) amended by 2012 : 36 s. 15 effective 1 January 2013; Section 27B subsection (11A) inserted by 2015 : 31 s. 11 effective 1 January 2016; subsection (7) amended and subsections (14) - (16) inserted by 2016 : 35 s. 10 effective 21 July 2016]

Authority may exclude specified entities from group supervision

27C (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, exclude from group supervision any company that is a member of an insurance group if it is satisfied that—

- (a) the company is situated in a country or territory where there are legal impediments to cooperation and exchange of information;
- (b) the financial operations of the company have a negligible impact on insurance group operations; or

- (c) the inclusion of the company would be inappropriate with respect to the objectives of group supervision.

(2) The Authority shall notify the relevant designated insurer and competent authority in writing of any decision to exclude a company from the scope of group supervision.

[Section 27C inserted by 2010 : 22 s. 12 effective 29 March 2010]

Authority may include specified entities within group supervision

27CA (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, include within group supervision any company that is a member of the group but is not on the register maintained under section 27B(7) if it is satisfied that—

- (a) the financial operations of the company may have a material impact on the insurance group's operations; and
- (b) the inclusion of the company would be appropriate having regard to the objectives of group supervision.

(2) The Authority shall notify the relevant designated insurer and competent authority in writing of any decision to include a company within the scope of group supervision.

[Section 27CA inserted by 2010 : 60 s. 20 effective 31 December 2010]

Authority may withdraw as group supervisor

27D (1) The Authority may withdraw as group supervisor—

- (a) on its own initiative;
- (b) at the request of a competent authority from an equivalent jurisdiction; or
- (c) on the application of a designated insurer in respect of the insurance group of which it is a member.

(2) The Authority shall notify the relevant insurance group in writing of its intention to withdraw as group supervisor and shall take into account any written representation made by the insurance group within such period as it may specify in the notice.

(3) The Authority may withdraw as group supervisor if—

- (a) it considers that it would be appropriate to do so having regard to the structure of the insurance group and the relative importance of the insurance group's insurance business in different countries or territories;
- (b) it determines that there has been a material change in the structure or operations of the insurance group or an absence of cooperation by other competent authorities; or
- (c) for any other reason that prevents the Authority from effectively discharging its function as group supervisor for that insurance group.

(4) The Authority shall notify the designated insurer and the competent authority in writing of any decision made by it under this section.

[Section 27D inserted by 2010 : 22 s. 12 effective 29 March 2010]

Functions of Authority as group supervisor

27E The Authority as group supervisor shall have the following functions with regard to group supervision—

- (a) coordination of the gathering and dissemination of relevant or essential information for going concerns and emergency situations, including the dissemination of information which is of importance for the supervisory task of other competent authorities;
- (b) supervisory review and assessment of the financial situation of insurance groups;
- (c) assessment of compliance of insurance groups with the rules on solvency and of risk concentration and intra-group transactions as may be prescribed by or under this Act;
- (d) assessment of the system of governance of insurance groups, as may be prescribed by or under this Act, and whether the members of the administrative or management body of participating companies meet the requirements set out therein;
- (e) planning and coordination, through regular meetings held at least annually or by other appropriate means, of supervisory activities in going concerns as well as in emergency situations, in cooperation with the competent authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all companies that are part of insurance groups;
- (f) coordination of any enforcement action that may be taken against insurance groups or any of their members; and
- (g) planning and coordinating, as required, meetings of colleges of supervisors, to be chaired by the Authority where it acts as the group supervisor, to facilitate the exercise of the functions set out in paragraphs (a) to (f) of this section.

[Section 27E inserted by 2010 : 22 s. 12 effective 29 March 2010]

Authority to make Rules

27F (1) The Authority may for the purposes of group supervision make rules applying to designated insurers which take into account, in their case, any activity of the insurance group of which they are members or of other members of the insurance group.

(2) Without prejudice to the generality of subsection (1), such rules may make provision for—

- (a) the assessment of the financial situation of the insurance group;

- (b) the solvency position of the insurance group;
- (c) intra-group transactions and risk concentration;
- (d) the system of governance and risk management of the insurance group;
and
- (e) supervisory reporting and disclosures in respect of the insurance group.

(3) The Authority in such rules may in relation to group financial statements require that they be prepared in the English language and that the currency of any amount shown therein be converted to a currency specified by the Authority as at a specified date.

(4) Sections 6A (4), (5), (6) and (7) shall apply to Rules made under this section as they apply to Rules made under that section.

(5) Section 6B applies to proposals to make Rules under this section as it applies to proposals to make Rules under section 6A.

(6) Section 6C shall apply to provisions of any Rules made under this section as it applies to prudential standards prescribed by Rules made under section 6A.

[Section 27F inserted by 2010 : 22 s. 12 effective 29 March 2010; Section 27F amended by 2010 : 60 s. 21 effective 31 December 2010]

Appointment of an approved group actuary

27G (1) A designated insurer shall ensure that the insurance group of which it is a member appoints an individual approved by the Authority under subsection (3) who is qualified as a group actuary to provide an opinion on the insurance group's insurance technical provisions in accordance with the requirements of Schedule XIV "Group Statutory Economic Balance Sheet" of the Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Rules 2011.

(2) Before making such appointment a designated insurer shall submit particulars of such person to the Authority for approval.

(3) The Authority being satisfied that the person is a fit and proper to hold such appointment shall approve the appointment as that insurer's approved group actuary.

(4) Subject to subsection (5), the Authority may revoke the approval of an approved group actuary in respect of any insurance group if it is satisfied that he is no longer a fit and proper person to hold the appointment.

(5) The Authority shall not revoke its approval unless it has first notified the approved group actuary.

[Section 27G inserted by 2012 : 36 s. 16 effective 1 January 2013; subsection (1) amended by 2015 : 31 s. 12 effective 13 July 2015; subsection (1) amended by 2015 : 50 s. 11 effective 1 January 2016]

PART V

INSURANCE MANAGERS, BROKERS, AGENTS, INSURANCE MARKETPLACE PROVIDERS AND SALESMEN

Insurance managers, agents and insurance marketplace providers to maintain lists of insurers for which they act

28 (1) An insurance manager or agent shall maintain an accurate list of all insurers for which he acts as insurance manager or agent, and shall, if required in writing at any time by the Authority so to do, provide the Authority with a copy of that list.

(2) An insurance marketplace provider shall maintain an accurate list of all clients proposing to utilize the insurance marketplace provider to buy, sell or trade contracts of insurance, and shall, if required in writing at any time by the Authority to do so, provide the Authority with a copy of that list.

[Section 28 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002; Section 28 amended by 2018 : 68 s. 12 effective 31 December 2018; Section 28 amended by 2019 : 33 s. 27 effective 5 August 2019]

Insurance broker, agent, salesman or insurance marketplace provider deemed agent of insurer in certain cases

29 In relation to any contract of insurance to which an insurer is a party and in respect of which an insurance broker, agent, salesman or insurance marketplace provider having apparent authority to act for the insurer in that respect in fact receives a premium under the contract—

- (a) the broker, agent, salesman or insurance marketplace provider shall be deemed to be the agent of the insurer; and
- (b) the insurer shall be deemed to have received the premium,

notwithstanding anything to the contrary in the contract.

[Section 29 amended by 2019 : 33 s. 28 effective 5 August 2019]

PART VI

Power to obtain information and reports

29A (1) The Authority may by notice in writing served on a registered person or designated insurer—

- (a) require the registered person or designated insurer to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require with respect to matters that are likely to be material to the performance, in relation to the registered person or, as the case may be, the relevant insurance group, of its functions under this Act;

- (b) require the registered person or designated insurer to provide the Authority with a report, in such form as may be specified in the notice, by the registered person's or designated insurer's auditor or underwriter or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Authority has required or could require the registered person or designated insurer as the case may be, to provide information under paragraph (a).

(2) *[Repealed by 2012 : 22 s. 7]*

(3) *[Repealed by 2012 : 22 s. 7]*

(4) The person appointed by the registered person or the designated insurer, as the case may be, to make the report required under subsection (1)(b) shall immediately give written notice to the Authority of any fact or matter of which he becomes aware which indicates to him—

- (a) that any term or condition of registration of the registered person is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the registered person; and
- (b) that the matters are likely to be material to the performance, in relation to the registered person or, as the case may be, the designated insurer or the relevant insurance group, of the Authority's functions under this Act.

(5) In this section and in sections 29B and 29C, "relevant insurance group" means the insurance group of which the designated insurer referred to in those sections is a member.

[section 29A inserted by 2002:29 s.4 effective 14 October 2002; subsection (5) repealed by 2006:28 s.9 effective 24 July 2006; Section 29A repealed and replaced by 2010 : 22 s. 13 effective 29 March 2010; subsection (1)(b) repealed and substituted, subsections (2) and (3) repealed, and subsection 4 amended by 2012 : 22 s. 7 effective 1 August 2012]

Power to require production of documents

29B (1) The Authority may—

- (a) by notice in writing served on a registered person or designated insurer require such person to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the Authority, on producing evidence of his authority, to require any such registered person or designated insurer to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify;

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a registered

person or designated insurer, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a registered person or designated insurer or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that registered person or designated insurer or other person, or any other person who is a present or past director, other officer or principal representative of, the registered person or designated insurer in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the clients of a registered person or relevant insurance group to do so, it may also exercise the powers conferred by section 29A and this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that registered person or designated insurer;
- (b) a subsidiary company of a parent company of that registered person or designated insurer;
- (c) a parent company of a subsidiary company of that registered person or designated insurer; or
- (d) a company in the case of which a shareholder controller of that registered person or designated insurer, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of more than 50 per cent of the voting power at a general meeting.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege.

(7) *[Repealed by 2010 : 22 s. 14]*

[section 29B inserted by 2002:29 s.4 effective 14 October 2002; subsection (7) substituted by 2006:28 s.10 effective 24 July 2006; Section 29B amended by 2010 : 22 s. 14 effective 29 March 2010]

Communication with Authority

29C (1) No duty to which a person appointed to make a report under section 29A(1)(b) may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

(2) In relation to a person appointed to make a report under section 29A(1)(b) this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

- (a) relates to the business or affairs of the registered person or relevant insurance group in relation to which his report is made or any associated company of that registered person or insurance group;
- (b) if by virtue of section 29B(4) the report relates to an associated company of a registered person or designated insurer, to the business or affairs of that company.

(3) In this section “associated company”, in relation to a registered person, means any such company as is mentioned in section 29B(4).

[section 29C inserted by 2002:29 s.4 effective 14 October 2002; subsection (2) amended by 2010 : 22 s. 15 effective 29 March 2010; section 29C amended by 2012 : 22 s. 8 effective 1 August 2012]

Meaning of related company

29D *[Repealed by 2010 : 22 s. 16]*

[Section 29D repealed by 2010 : 22 s. 16 effective 29 March 2010]

29E *[section 29E inserted by 2002:29 s.4 effective 14 October 2002; and repealed by 2006:28 s.11 effective 24 July 2006]*

29F *[section 29F inserted by 2002:29 s.4 effective 14 October 2002; and repealed by 2006:28 s.11 effective 24 July 2006]*

POWERS

Investigations on behalf of the Authority

30 (1) If it appears to the Authority desirable to do so in the interests of policyholders or potential policyholders of an insurer or an insurance group, or in the interests of the clients of an insurance manager, broker, agent or insurance marketplace provider, the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the insurer’s or insurance group’s business or of the business of an insurance manager, broker, agent or insurance marketplace provider or any particular aspect of such businesses;
- (b) the ownership or control of the insurer, insurance group or insurance manager, broker, agent or insurance marketplace provider,

and the Authority shall give written notice of any such appointment to the person concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of a person who is or has at any relevant time been—

- (a) a member of the group of which the person under investigation is part; or
- (b) a partnership of which the person under investigation is a member.

(3) Where a person appointed under subsection (1) decides to investigate the business of any person referred to in subsection (2) he shall give that person written notice to that effect.

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor, accountant, barrister and attorney or insurance manager, broker, agent or insurance marketplace provider, as applicable, of an insurer or insurance group which is under investigation by virtue of subsection (1) or a person who is under investigation under subsection (2) or any person appointed to make a report in respect of a registered person or designated insurer under section 29A (1) (b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give,

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by an insurer which is being investigated by him under this section; but he shall not do so without prior notice in writing.

(6) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(7) Unless the Authority otherwise directs, the insurer, insurance group or insurance manager, broker, agent or insurance marketplace provider under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);

- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an insurer, insurance group or insurance manager, broker, agent or insurance marketplace provider which is under investigation or a person who is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5),

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

[section 30 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1) amended, and (4) and (5) inserted, by 2004:29 s.14 effective 10 December 2004; section 30 repealed and substituted by 2012 : 22 s. 9 effective 1 August 2012; subsections (1), (7) and (8) amended by 2016 : 35 s. 11 effective 21 July 2016; Section 30 amended by 2018 : 68 s. 13 effective 31 December 2018; Section 30 amended by 2019 : 33 s. 29 effective 5 August 2019]

Investigations of suspected contraventions

30A (1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 3 or 9;
- (b) a registered person or a designated insurer may have contravened a requirement imposed by or under this Act, regulations, rules or orders made thereunder;
- (c) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 32H (8).

(2) The power conferred by subsection (1)(b) may be exercised in relation to a former registered person but only in relation to—

- (a) business carried on at any time when the person was a registered person; or
- (b) the ownership or control of a former registered person at any time when such person was a registered person.

[Section 30A inserted by 2012 : 22 s. 11 effective 1 August 2012]

Power to require production of documents

30AA (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 30A ("the person under investigation") or any person connected with the person under investigation—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the investigation;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the enquiry as the Authority may require.

(1A) The Authority may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor, accountant, barrister and attorney or insurance manager, broker, agent or insurance marketplace provider, as applicable, of an insurer or insurance group which is under investigation by virtue of subsection (1) or any person appointed to make a report in respect of a registered person or designated insurer under section 29A (1) (b) —

- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
- (c) to take such actions as the Authority may direct in connection with the investigation,

and the Authority may take copies of or extracts from any documents produced to it under paragraph (a).

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing, if required, evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the

rights conferred by subsection (3) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for 6 months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

(6) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

(7) For the purposes of this section, a person is connected with the person under investigation if such person is or has at any relevant time been—

- (a) a member of the group of the person under investigation;
- (b) a controller of the person under investigation;
- (c) a partner of a partnership of which the person under investigation is a member.

[Section 30A inserted by 2006:28 s.12 effective 24 July 2006; section heading deleted and substituted, and section 30A renumbered as 30AA by 2012 : 22 s. 10 effective 1 August 2012; subsections (1A) and (7) inserted by 2012 : 22 s. 10 effective 1 August 2012; Section 30AA subsection (1A) amended by 2018 : 68 s. 14 effective 31 December 2018; Section 30AA subsection (1A) amended by 2019 : 33 s. 30 effective 5 August 2019]

Powers of entry

30B (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 30A and—

- (a) a person has failed to comply with a notice served on him under that section;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person referred to in subsection (1)
 - (a) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in

relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

- (c) to take copies of or extracts from any such documents; and
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 30A.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 30A, until the conclusion of those proceedings.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both;
- (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for two years or to both.

[section 30B inserted by 2006:28 s.12 effective 24 July 2006; amended by 2012 : 22 s. 12 effective 1 August 2012]

Obstruction of investigations

30C (1) A person who knows or suspects that an investigation is being or is likely to be carried out—

- (a) into a suspected contravention of section 3 or section 9; or
- (b) under sections 30 and 30A.

shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for two years or to both;

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- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for five years or to both.

[section 30C inserted by 2006:28 s.12 effective 24 July 2006; subsection (1)(b) amended by 2012 : 22 s. 13 effective 1 August 2012]

Notification of change of shareholder controller or officer of insurance manager, broker, agent or insurance marketplace provider

30CA (1) An insurance manager, broker, agent or insurance marketplace provider shall give written notice to the Authority of the fact of any person having become or ceased to be a shareholder controller or officer of the insurance manager, broker, agent or insurance marketplace provider.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the insurance manager, broker, agent or insurance marketplace provider becomes aware of the relevant facts.

(3) An insurance manager, broker, agent or insurance marketplace provider who fails to give notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that an insurance manager, broker, agent or insurance marketplace provider fails to comply with a requirement imposed under subsection (1), he shall be liable to a civil penalty not exceeding \$5,000.

[Section 30CA inserted by 2016 : 35 s. 12 effective 21 July 2016; Section 30CA amended by 2018 : 68 s. 15 effective 31 December 2018; Section 30CA amended by 2019 : 33 s. 31 effective 5 August 2019]

Notification by shareholder controllers of new or increased control – private companies

30D (1) This section applies to a shareholder or a prospective shareholder of an insurer whose shares or the shares of its parent company, if any, are not traded on any stock exchange.

(2) No person to whom this section applies shall become a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of the insurer unless—

- (a) he has served on the Authority a notice in writing stating that he intends to become such a controller of the insurer; and
- (b) either the Authority has, before the end of the period of forty-five days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the insurer, or that period has elapsed without the Authority having served him under section 30F with a written notice of objection to his becoming such a controller of the insurer.

(3) A notice under subsection (2)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

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(4) Where additional information or documents are required from any person by a notice under subsection (3) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (2)(b).

[section 30D inserted by 2006:28 s.12 effective 24 July 2006; section 30D amended by 2010 : 22 s. 17 effective 29 March 2010; section 30D repealed and replaced by 2010 : 60 s. 22 effective 31 December 2010]

Notification by shareholder controllers of new or increased control - public companies

30E (1) This section applies to a shareholder of an insurer whose shares or the shares of its parent company, if any, are traded on any stock exchange recognized by the Authority for this purpose.

(2) Not later than forty-five days after a person to whom this section applies becomes a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of the insurer, that person shall serve on the Authority a notice in writing stating that he has become such a controller.

[Section 30E repealed by 2010 : 22 s. 18 effective 29 March 2010; Section 30E inserted by 2010 : 60 s. 23 effective 31 December 2010]

Notification by shareholder controllers of disposal of shares in public and private companies

30EA (1) No person who is a shareholder controller in accordance with section 30D, shall reduce or dispose of his holding in a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or Class E insurer, where the proportion of the voting rights held by the shareholder controller in the insurer will reach or fall below 10 per cent, 20 per cent, 33 per cent or 50 per cent, as the case may be; unless that shareholder controller has served on the Authority a notice in writing stating that he intends to reduce or dispose of such holding.

(2) A person who is a shareholder controller in accordance with section 30E, shall serve on the Authority a notice in writing that he has reduced or disposed of his holding in a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or Class E insurer, where the proportion of the voting rights in the insurer held by him will have reached or has fallen below 10 per cent, 20 per cent, 33 per cent or 50 per cent as the case may be, not later than 45 days after such disposal.

[Section 30EA inserted by 2015 : 31 s. 13 effective 1 January 2016; Section 30EA amended by 2019 : 33 s. 32 effective 5 August 2019]

Objection to new or increased control

30F (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 30D unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the insurer;

- (b) that the interests of clients or potential clients of the insurer would not be threatened by that person becoming a controller of that description of the insurer; and
 - (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the insurer as a controller of the description in question the minimum criteria would continue to be fulfilled in the case of the insurer or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.
- (2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—
- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
 - (b) shall give particulars of the rights conferred by subsection (3).
- (3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.
- (4) A notice of objection under this section shall—
- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
 - (b) give particulars of the rights conferred by section 44A.
- (5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.
- (6) Where a person required to give a notice under section 30D in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.
- (7) The period mentioned in section 30D(2)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until twenty-eight days after the end of the period within which representations can be made under subsection (3).

[section 30F inserted by 2006:28 s.12 effective 24 July 2006]

Contraventions by controller

- 30G (1) Subject to subsection (2), any person who contravenes section 30D by—
- (a) failing to give the notice required by subsection (2)(a) of that section; or
 - (b) knowingly becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (2)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 30F(2);

shall be guilty of an offence.

(2) For the purposes of subsection 1(b), a person knowingly becomes a controller of any description if he knows of the acts or circumstances by virtue of which he became a controller of the relevant description.

(3) *[Repealed by 2010 : 22 s. 19]*

(4) A person who becomes a controller without knowing of the acts or circumstances by virtue of which he became a controller of the relevant description shall not be guilty of an offence unless he subsequently becomes aware of the fact that he has become such a controller and he fails to give the Authority written notice of the fact that he has become such a controller within thirty days of becoming aware of the fact.

- (5) Any person who—
- (a) before the end of the period mentioned in section 30D (2)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 30F(2);
 - (b) contravenes section 30D by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
 - (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him;

shall be guilty of an offence.

(5A) Any person who contravenes section 30E by failing to give the notice required by subsection (2) of that section shall be guilty of an offence.

(5B) Any person who contravenes section 30EA by failing to give the notice required by subsections (1) and (2) of that section shall be guilty of an offence.

(6) A person guilty of an offence under subsection (1), (5A) or (5B) shall be liable on summary conviction to a fine of \$25,000.

- (7) A person guilty of an offence under subsection (5) shall be liable—

- (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to an additional fine of \$500 for each day on which the offence has continued;
- (b) on conviction on indictment to a fine of \$100,000 or imprisonment for 2 years or to both.

[section 30G inserted by 2006:28 s.12 effective 24 July 2006; Section 30G subsection (3) repealed by 2010 : 22 s. 19 effective 29 March 2010; Section 30G amended by 2010 : 60 s. 24 effective 31 December 2010; Section 30G subsection (5B) inserted and subsection (6) amended by 2015 : 31 s. 14 effective 1 January 2016]

Objection to existing controller

30H (1) Where it appears to the Authority that a person who is a controller of any description of a registered person is not or is no longer a fit and proper person to be such a controller of the registered person it may serve him with a written notice of objection to his being such a controller of the registered person.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give particulars of the rights conferred by section 44A.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Any person who continues to be a controller of any description after being served under this section with a notice of objection to his being a controller of that description shall be guilty of an offence.

(7) A person guilty of an offence under subsection (6) shall be liable—

- (a) on summary conviction to a fine of \$25,000, and to an additional fine of \$500 for each day on which the offence has continued;

- (b) on conviction on indictment to a fine of \$100,000 or imprisonment for 2 years or to both.

[section 30H inserted by 2006:28 s.12 effective 24 July 2006]

Restriction on and sale of shares

30I (1) The powers conferred by this section shall be exercisable where a person—

- (a) has contravened section 30F by becoming a shareholder controller after being served with a notice of objection to his becoming a shareholder controller;
- (b) having become a shareholder controller in contravention of that section continues to be one after such a notice has been served on him; or
- (c) continues to be a shareholder controller after being served under section 30H with notice of objection to his being a shareholder controller.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation, no payment shall be made of any sums due from the registered person on the shares, whether in respect of capital or otherwise.

(3) The Court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 30F or 30H—

- (a) until the end of the period within which an appeal can be brought against the notice of objection;
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the Court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into Court for the benefit of the persons

beneficially interested in them; and any such person may apply to the Court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the registered person of which the person in question is a shareholder controller which are held by him or any associate of his and were not so held immediately before he became such a controller of the registered person; and
- (b) where the person in question became a shareholder controller as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that registered person.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the registered person or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

[Section 30I inserted by 2006:28 s.12 effective 24 July 2006; Section 30I amended by 2010 : 22 s. 20 effective 29 March 2010]

Notification by registered persons and designated insurers of change of controller and officer

30J (1) Subject to subsection (4), an insurer shall serve on the Authority a notice in writing of the fact that any person has become or ceased to be a controller of that insurer.

(2) Subject to subsection (4), an insurer and a designated insurer in respect of the parent company of the insurance group, shall serve on the Authority a notice in writing of the fact that any person has become or ceased to be an officer of that insurer or of the parent company of the group as the case may be.

(3) A notice under subsection (1) or (2) shall be served before the end of a period of forty-five days beginning with the day on which the insurer or designated insurer as the case may be, becomes aware of the relevant facts.

(4) A Class 1, Class 2 and Class 3 insurer, Special Purpose Insurer, Class A and Class B insurer shall, at the time of filing the annual financial statements under section 17, file with the Authority the following—

- (a) a list of every person who has become or has ceased to be a shareholder controller or director of the insurer; and
- (b) where no registered insurance manager has been appointed to manage the affairs of the insurer, a list of every person who has become or has ceased to be an officer of that insurer,

during the financial year to which the financial statements relate, specifying the dates when such person has become a shareholder controller, director or other officer and the dates when they have ceased to be such shareholder controller, director or other officer.

(5) Registered brokers, agents and insurance marketplace providers shall, on or before 31 March in each year, file with the Authority a list of every person who has become or has ceased to be an officer or shareholder controller of that person during the previous calendar year, specifying the dates when such person has become a shareholder controller or officer and the dates when such person has ceased to be such controller or officer.

(6) *[Repealed by 2012 : 22 s. 14]*

(7) For the purposes of this section, “officer”—

- (a) in relation to an insurer or the parent company of the insurance group, means a director, chief executive or senior executive performing duties of underwriting, actuarial, risk management, compliance, internal audit, finance or investment matters;
- (b) in relation to an insurance manager, broker or agent, means a director or chief executive;
- (c) in relation to an insurance marketplace provider, means a director, chief executive or senior executive performing the duties of compliance, information technology, information security and finance.

(8) *[Repealed by 2012 : 22 s. 14]*

[section 30J inserted by 2006:28 s.12 effective 24 July 2006; section 30J subsection (1) amended by 2010 : 22 s. 21 effective 29 March 2010; section 30J repealed and replaced by 2010 : 60 s. 25 effective 31 December 2010; subsections (6) and (8) repealed by 2012 : 22 s. 14 effective 1 August 2012; Section 30J subsection (8) repealed by 2012 : 22 s. 14 effective 1 August 2012; Section 30J subsection (4) amended by 2013 : 46 s. 5 effective 1 January 2014; subsection (5) amended by 2016 : 35 s. 13 effective 21 July 2016; Section 30J subsection (5) amended, and subsection (7) repealed and replaced by 2019 : 33 s. 33 effective 5 August 2019]

Material change: insurer or insurance group

30JA (1) For the purposes of section 30JB the following changes are material—

- (a) acquisition or transfer of insurance business being part of a scheme falling within, or any transaction relating to a scheme of arrangement under, section 25 of this Act or section 99 of the Companies Act 1981;
- (b) amalgamation with or acquisition of another firm;
- (c) *[Repealed by 2012 : 36 s. 17]*
- (d) engaging in unrelated business that is retail business;
- (e) acquisition of controlling interest in an undertaking that is engaged in non-insurance business which offers services and products to persons who are not affiliates of the insurer;
- (f) outsourcing all or substantially all of the functions of actuarial, risk management, compliance or internal audit;
- (g) outsourcing of all or a material part of an insurer’s underwriting activity;

- (h) transfer other than by way of reinsurance of all or substantially all of a line of business;
- (i) expansion into a material new line of business; and
- (j) the sale of an insurer;
- (k) outsourcing of an officer role.

(2) In subsection (1) (d)—

“unrelated business” has the meaning given in section 4F

“retail business” means the business of selling insurance products that are designed for and bought by an individual.

(3) in subsection (1)(e)—

“controlling interest” means holding 50% or more of the voting shares in an undertaking;

“officer” means in relation to an insurer, a chief executive or senior executive performing the duties of underwriting, actuarial, risk management, compliance, internal audit, finance or investment matters.

[Section 30JA inserted by 2010 : 60 s. 26 effective 31 December 2010; Section 30JA subsection (1)(c) repealed, subsections (1)(e) - (1)(i) and subsection (3) inserted by 2012 : 36 s. 17 effective 1 January 2013; Section 30JA amended by 2015 : 2 s. 4 effective 27 February 2015; Section 30JA subsections (1) and (3) amended by 2015 : 31 s. 15 effective 1 January 2016; Section 30JA heading amended by 2019 : 33 s. 34 effective 5 August 2019]

Notification of material change: insurer or insurance group

30JB (1) No insurer shall effect a material change within the meaning of section 30JA(1) unless the requirements of subsection (4) have been satisfied.

(2) A designated insurer shall notify the Authority of any material change within the meaning of section 30JA (1)(b), (c), (d), (e), (f), (g), (h) and (i), which is given effect by a member of the group, within 30 days of such material change taking effect.

(3) *[repealed]*

(4) The requirements referred to in subsection (1) are that—

- (a) the insurer has served on the Authority a notice in writing stating that the insurer intends to effect such a material change; and
- (b) either the Authority has, before the end of the period of thirty days beginning with the date of service of that notice, notified the insurer in writing that there is no objection to the insurer effecting the material change, or that period has elapsed without the Authority having served the insurer with a written notice of objection to the material change.

(5) A notice under subsection (4)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person,

by notice in writing require it to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(6) Where additional information or documents are required from any person by a notice under subsection (5), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (4)(b).

[Section 30JB inserted by 2010 : 60 s. 26 effective 31 December 2010; Section 30JB subsection (2) amended by 2012 : 36 s. 18 effective 1 January 2013; Section 30JB subsections (2) and (4) repealed and substituted and subsection (3) repealed by 2013 : 33 s. 3 effective 9 October 2013; Section 30JB subsection (4)(b) amended by 2015 : 2 s. 5 effective 27 February 2015; Section 30JB heading amended by 2019 : 33 s. 35 effective 5 August 2019]

Objection to material change: insurer or insurance group

30JC (1) The Authority shall serve a notice of objection under this section on a person who has given notice under section 30JB unless it is satisfied—

- (a) that the interests of policyholders and potential policyholders of the insurer would not in any manner be threatened by the material change; and
- (b) without prejudice to paragraph (a) that, having regard to the material change the requirements of this Act would continue to be complied with or, if any of those requirements are not complied with, that the insurer concerned is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 44A.

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(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information, which would be prejudicial to a third party.

[Section 30JC inserted by 2010 : 60 s. 26 effective 31 December 2010; Section 30JC subsection (1) amended by 2013 : 33 s. 4 effective 9 October 2013; Section 30JC heading amended by 2019 : 33 s. 36 effective 5 August 2019]

Contraventions by insurer

30JD *[Repealed by 2012 : 22 s. 23]*

[Section 30JD repealed by 2012 : 22 s. 23 effective 1 August 2012]

Insurance managers and intermediaries to notify the Authority of certain events

30JE (1) Every insurance manager, broker, agent or insurance marketplace provider that comes to the knowledge, or where it has reason to believe, that an event to which this section applies has occurred, shall forthwith notify the Authority in such manner as the Authority may direct.

(2) Within fourteen days of such notification, the insurance manager, broker, agent or insurance marketplace provider shall furnish the Authority with a report in writing setting out all the particulars of the case that are available to it.

(3) For the purposes of subsection (1), events to which this section applies are as follows—

- (a) failure by the insurance manager, broker, agent or insurance marketplace provider to comply with a condition imposed upon it by the Authority;
- (b) involvement of the insurance marketplace provider, or a shareholder controller or officer of the insurance marketplace provider, in any criminal proceedings whether in Bermuda or abroad;
- (c) a cyber reporting event.

(4) In this section, “cyber reporting event” means any act that results in the unauthorized access to, disruption, or misuse of the electronic systems or information stored on such systems of a registered person, including breach of security leading to the loss or unlawful destruction or unauthorized disclosure of or access to such systems or information, where—

- (a) a cyber reporting event has the likelihood of adversely impacting policyholders or clients;
- (b) an insurance manager, broker, agent or insurance marketplace provider has reached a view that there is a likelihood that loss of its system availability will have an adverse impact on policyholders or clients;
- (c) an insurance manager, broker, agent or insurance marketplace provider has reached a view that there is a likelihood that the integrity of its information or data has been compromised and may have an adverse impact on policyholders or clients;

- (d) the insurance manager, broker, agent or insurance marketplace provider has become aware that there is a likelihood that there has been unauthorized access to its information systems whereby such would have an adverse impact on policyholders or clients; or
 - (e) an event has occurred for which notice is required to be provided to a regulatory body or government agency.”.
- (5) A cyber reporting event under this section includes an event for which notice is required to be provided to a regulatory body or government agency relating to—
- (a) any act that results in the unauthorized access to, disruption, or misuse of the electronic systems or information stored on such systems of a registered person, including breach of security leading to the loss or unlawful destruction or unauthorized disclosure of or access to such systems or information; and
 - (b) where such act of cyber reporting event is likely to adversely impact policyholders or clients if the event results in—
 - (i) a loss of system availability of the insurance manager, broker, agent or insurance marketplace provider and as they may determine;
 - (ii) the compromise of the integrity of information or data held by the insurance manager, broker, agent or insurance marketplace provider and as they may determine;
 - (iii) the unauthorized access to information systems of the insurance manager, broker, agent or insurance marketplace provider and as they may determine.

[Section 30JE inserted by 2019 : 33 s. 37 effective 5 August 2019; Section 30JE repealed and replaced by 2020 : 41 s. 2 effective 5 August 2020]

Insurers to notify the Authority of cyber reporting events

30JEA (1) Every insurer shall, on coming to the knowledge, or where it has reason to believe, that a cyber reporting event has occurred, forthwith notify the Authority, in such manner as the Authority may direct.

(2) Within fourteen days of such notification, the insurer shall furnish the Authority with a report in writing setting out all the particulars of the cyber reporting event that are available to it.

(3) For the purposes of subsection (1), events to which this section applies are as follows—

- (a) failure by the insurer to comply with a condition imposed upon it by the Authority;
- (b) involvement of the insurer, or a shareholder controller or officer of the insurer, in any criminal proceedings whether in Bermuda or abroad;
- (c) a cyber reporting event.

(4) In this section, “cyber reporting event” means any act that results in the unauthorized access to, disruption, or misuse of the electronic systems or information stored on such systems of an insurer, including breach of security leading to the loss or unlawful destruction or unauthorized disclosure of or access to such systems or information, where—

- (a) a cyber reporting event has the likelihood of adversely impacting policyholders or clients;
- (b) an insurer has reached a view that there is a likelihood that loss of its system availability will have an adverse impact on its insurance business;
- (c) an insurer has reached a view that there is a likelihood that the integrity of its information or data has been compromised and may have an adverse impact on its insurance business;
- (d) an insurer has become aware that there is a likelihood that there has been unauthorized access to its information systems whereby such would have an adverse impact on its insurance business; or
- (e) an event has occurred for which a notice is required to be provided to a regulatory body or government agency.

[Section 30JEA inserted by 2020 : 41 s. 3 effective 5 August 2020]

Material change: insurance marketplace provider

30JF For the purposes of section 30JG, the following changes are material—

- (a) material changes to the most recent business plan of the insurance marketplace provider;
- (b) outsourcing of all or substantially all of the functions of compliance, information technology, and information security.

[Section 30JF inserted by 2019 : 33 s. 37 effective 5 August 2019]

Notification of material change: insurance marketplace provider

30JG (1) No insurance marketplace provider shall effect a material change within the meaning of section 30JF unless the requirements of subsection (2) have been satisfied.

- (2) The requirements referred to in subsection (1) are that—
 - (a) the insurance marketplace provider has served on the Authority a notice in writing stating that the it intends to effect such a material change;
 - (b) either the Authority has, before the end of the period of 30 days beginning with the date of service of that notice, notified the insurance marketplace provider in writing that there is no objection to the insurance marketplace provider effecting the material change, or that period has elapsed without the Authority having served the insurance marketplace provider with a written preliminary notice of objection to the material change.

(3) A notice under subsection (2)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require it to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (3), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (2)(b).

[Section 30JG inserted by 2019 : 33 s. 37 effective 5 August 2019]

Objection to material change: insurance marketplace provider

30JH (1) The Authority shall not serve a notice of objection under this section on an insurance marketplace provider which has given notice under section 30JG unless it is satisfied—

- (a) that the interests of clients of the insurance marketplace provider would not in any manner be threatened by the material change; and
- (b) without prejudice to paragraph (a) that, having regard to the material change the requirements of this Act would continue to be complied with or, if any of those requirements are not complied with, that the insurance marketplace provider concerned is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the insurance marketplace provider with a preliminary written notice stating that the Authority is considering service on that insurance marketplace provider a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) An insurance marketplace provider served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied.

(5) Subsections (2)(a) and (4) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information, which would be prejudicial to a third party.

[Section 30JH inserted by 2019 : 33 s. 37 effective 5 August 2019]

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31 *[section 31 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; and repealed by 2002:29 s.5 effective 14 October 2002]*

Failure to meet solvency requirements

31A (1) An insurer which at any time fails to meet its minimum margin of solvency shall after becoming aware of that failure or having reason to believe that such a failure has occurred immediately notify the Authority of such occurrence, and within 14 days of such notification furnish the Authority with a written report containing particulars—

- (a) of the circumstances leading to the failure, and
- (b) of a plan detailing the manner, specific actions to be taken and time frame in which the insurer intends to rectify the failure

and, notwithstanding anything to the contrary in any other enactment, shall not declare or pay any dividends until the failure is rectified.

(2) The Authority may require an insurer to modify the plan filed in accordance with subsection (1)(b) if it is satisfied that it is appropriate to do so in order for an insurer to satisfy its policyholder obligations.

[Section 31A inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; subsection (1) amended by 2008:34 s.19(a) effective 30 July 2008; subsection (2) repealed by 2008:34 s.19(b) effective 31 December 2008; subsection (1) amended by 2010 : 60 s. 27 effective 31 December 2010; subsection (1) amended by 2011 : 44 s. 11 effective 31 December 2011; subsection (1) amended, and subsection (2) inserted by 2012 : 36 s. 19 effective 1 January 2013]

Failure to comply with enhanced capital requirement

31AA (1) An insurer that fails to comply with the enhanced capital requirement applicable to it shall—

- (a) upon becoming aware of that failure, or of having reason to believe that such a failure has occurred, immediately notify the Authority in writing and within 14 days of such notification file with the Authority a written report containing particulars—
 - (i) of the circumstances leading to the failure; and
 - (ii) a plan detailing the manner, specific actions to be taken and time within which the insurer intends to rectify the failure; and
- (b) within 45 days of becoming aware of that failure, or of having reason to believe that such a failure has occurred, furnish the Authority with—
 - (i) unaudited statutory economic balance sheets and unaudited interim financial statements prepared in accordance with GAAP covering such period as the Authority may require;
 - (ii) the opinion of a loss reserve specialist in relation to line 19 of the statutory economic balance sheet where applicable;

- (iii) a general business solvency certificate in respect of those statements where applicable;
- (iv) a capital and solvency return reflecting an enhanced capital requirement prepared using post failure data where applicable;
- (v) a long-term business solvency certificate in respect of those statements where applicable; and
- (vi) the opinion of an approved actuary in relation to line 27C of the statutory economic balance sheet where applicable.

(2) Notwithstanding anything to the contrary in any other enactment, an insurer to whom subsection (1) applies shall not declare or pay any dividends until the failure is rectified.

(3) The Authority may require an insurer to modify the plan file in accordance with subsection (1)(a)(ii) if it is satisfied that it is appropriate to do so in order for an insurer to satisfy its policyholder obligations.

[section 31AA inserted by 2008:34 s.20 effective 31 December 2008; section 31AA subsection (1) amended, and subsection (3) inserted by 2012 : 36 s. 20 effective 1 January 2013; section 31AA subsection (1)(b) amended by 2015 : 31 s. 16 effective 1 January 2016]

Class 3A: exceeding net premiums written limitation

31AB Where a Class 3A insurer exceeds the net premiums written limitation imposed on that class by section 4DA(2), the insurer shall, notwithstanding such excess, be entitled to carry on insurance business in that class if—

- (a) its principal representative notifies the Authority of an event mentioned in section 8A(2)(h); and
- (b) the insurer makes application under section 56 for a direction that section 4DA(2) would continue to apply to it notwithstanding the excess; and
- (c) the Authority does not require the insurer to be classified as a Class 3B insurer.

[section 31AB inserted by 2008:34 s.21 effective 30 July 2008]

Class C: exceeding total assets limitation

31AC Where a Class C insurer exceeds its limit on total assets of less than \$250 million as imposed on that class by section 4ED, the insurer shall, notwithstanding such excess, be entitled to carry on insurance business in that class if—

- (a) its principal representative notifies the Authority of an event mentioned in section 8A(2)(i); and
- (b) the insurer makes application under section 56 for a direction that section 4ED would continue to apply to it notwithstanding the excess; and

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- (c) the Authority does not require the insurer to be classified as a Class D insurer.

[Section 31AC inserted by 2011 : 44 s. 13 effective 31 December 2011]

Class D: exceeding total assets limitation

31AD Where a Class D insurer exceeds its limit on total assets of less than \$500 million as imposed on that class by section 4EE, the insurer shall, notwithstanding such excess, be entitled to carry on insurance business in that class if—

- (a) its principal representative notifies the Authority of an event mentioned in section 8A(2)(j); and
- (b) the insurer makes application under section 56 for a direction that section 4EE would continue to apply to it notwithstanding the excess; and
- (c) the Authority does not require the insurer to be classified as a Class E insurer.

[Section 31AD inserted by 2011 : 44 s. 13 effective 31 December 2011]

Restrictions as to payment of dividends

31B (1) No Class 3A, Class IIGB, Class 3B, Class 4, Class C, Class D or Class E insurer shall in any financial year pay dividends which would exceed 25% of its total statutory capital and surplus, as shown on its statutory balance sheet in relation to the previous financial year, unless at least 7 days before payment of those dividends it files with the Authority an affidavit signed—

- (a) by at least two directors of the insurer (one of whom must be a director resident in Bermuda if the insurer has a director so resident), and
- (b) by the insurer's principal representative in Bermuda,

which states that in the opinion of those signing, declaration of those dividends has not caused the insurer to fail to meet its relevant margins.

(2) A copy of every affidavit filed under subsection (1) shall be kept by the Authority in its office and shall be open to inspection by the public.

(3) An insurer shall not declare or pay any dividends during any financial year if it would cause the insurer to fail to meet its relevant margins.

(4) An insurer which fails to meet its relevant margins on the last day of any financial year shall not, without the approval of the Authority, declare or pay any dividends during the next financial year.

(5) In this section and section 31C, "the relevant margins" means—

- (a) in relation to an insurer, its solvency margin, and

- (b) in relation to an insurer carrying on general business, its minimum liquidity ratio.

[section 31B inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; by 2008:34 s.22 effective 30 July 2008; subsection (1) amended by 2015 : 2 s. 6 effective 27 February 2015; subsection (1) amended by 2019 : 33 s. 38 effective 5 August 2019]

Restrictions as to reduction of capital

31C (1) A Class 3A, Class IIGB, Class 3B, Class C, Class D, Class E , Class 4 or innovative insurer, before reducing by 15% or more its total statutory capital, as set out in its previous year's financial statements, shall apply to the Authority for its approval.

- (2) An application by an insurer under subsection (1) shall consist of—

- (a) an affidavit signed—

- (i) by at least two directors of the insurer (one of whom must be a director resident in Bermuda if the insurer has a director so resident), and
- (ii) by the insurer's principal representative in Bermuda,

which states that in the opinion of those signing, the proposed reduction of capital will not cause the insurer to fail to meet its relevant margins; and

- (b) such other information as the Authority may require.

(3) A copy of every affidavit filed under subsection (1) relating to an application which the Authority has approved shall be kept by the Authority in its office and shall be open to inspection by the public.

(4) A Class 1, Class 2, Class 3, Class A or Class B insurer before reducing by 15% or more its total statutory capital, as set out in its previous year's financial statements, shall apply to the Authority for its approval and shall provide such information as it may require.

(5) A Collateralized Insurer must notify the Authority in writing within 30 days of reducing its total statutory capital by 15% or more as set out in its previous year's financial statements and shall provide such information as the Authority may require.

[Section 31C inserted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; amended by 2008:46 s.9 effective 1 January 2009; amended by 2010 : 60 s. 28 effective 31 December 2010; subsection (1) amended by 2011 : 44 s. 12 effective 31 December 2011; Section 31C subsection (1) amended by 2018 : 35 s. 20 effective 23 July 2018; Section 31C subsection (1) amended and subsection (5) inserted by 2019 : 33 s. 39 effective 5 August 2019]

Powers of intervention

32 (1) If it appears to the Authority that—

- (a) the business of a registered person which is an insurer is being so conducted that there is a significant risk of the registered person becoming insolvent;

- (aa) the business of a registered person which is an insurer is being so conducted that there is a significant risk that the insurer will be unable to meet its obligations to policyholders;
- (b) a registered person is in breach of a provision of this Act or of regulations or rules, or with a condition imposed on its registration;
- (c) the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of a registered person;
- (d) a person has become a controller of any description of a registered person which is an insurer in contravention of section 30D or has become or remains such a controller after being served with notice of objection pursuant to section 30F or 30H; or
- (e) a registered insurer is in breach of the enhanced capital requirement applicable to it

the Authority may give the registered person such directions as appear to it to be desirable for safeguarding the interests of clients and potential clients of the registered person, and, without prejudice to the generality of the foregoing, may in particular give any of the directions mentioned in subsection (2).

(2) Those directions are—

- (a) not to effect further contracts of insurance, or any contract of insurance of a specified description;
- (b) to limit the aggregate of the premiums to be written by it during a specified period beginning not earlier than 28 days after the direction is given;
- (c) not to vary any contract of insurance in force when the direction is given, if the effect of the variation would be to increase the liabilities of the insurer;
- (d) not to make any investment of a specified class;
- (e) before the expiration of a specified period (or such longer period as the Authority may allow) to realise any existing investment of a specified class;
- (f) not to declare or pay any dividends or any other distributions, or to restrict the making of such payments to such extent as the Authority thinks fit;
- (g) not to enter into any specified transaction with any specified person or persons of a specified class;
- (h) to provide such written particulars relating to the financial circumstances of the insurer as the Authority thinks fit;
- (i) to obtain the opinion of a loss reserve specialist with respect to general business, or an actuarial opinion with respect to long-term business, and to submit it to the Authority within a specified time; and
- (j) to remove a controller or officer;

and in this subsection “specified” means specified in the direction.

(3) In addition, if it appears to the Authority that the business of an insurer is being so conducted that there is a significant risk of the insurer becoming insolvent it may, if it considers it appropriate, direct the insurer to maintain in, or transfer to and keep in the custody of, a specified bank, assets of the insurer of such value and description as are specified in the direction.

(4) Without restricting the generality of subsections (1) and (3), the Authority may in particular proceed under those subsections where—

- (a) an insurer has failed to meet a solvency margin or a minimum liquidity ratio which it is required by this Act or regulations to meet;
- (b) an event specified in regulation 7(3) of the Insurance Returns and Solvency Regulations 1980 occurs in relation to the audit of a Class 1, Class 2, Class 3, Class A, Class B insurer or Special Purpose Insurer and the approved auditor qualifies his report accordingly, expresses an adverse opinion or denies an opinion under regulation 7(2) of those Regulations;
- (ba) an event specified under any insurance accounts rules occurs in relation to the audit of a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Class 4, Class C, Class D or Class E insurer and the approved auditor qualifies his report accordingly, expresses an adverse opinion or denies an opinion in accordance with such rules;
- (c) the auditor's report submitted as part of an insurer's statutory financial return indicates that there is a significant doubt as to the insurer's ability to continue as a going concern;
- (d) an insurer fails to retain an auditor or principal representative, or fails to retain a loss reserve specialist or actuary where required to retain one under this Act, regulations or any insurance accounts rules;
- (e) the insurer's total statutory capital and surplus has diminished to an extent which the Authority considers unacceptable having regard to the particular circumstances of the insurer.

(5) The Authority shall not give a direction by virtue of subsection (1)(b) if the breach in question—

- (a) is being investigated by an inspector by virtue of section 18A(5), or
- (b) requires a report to be filed under section 31A,

until the Authority has considered a preliminary report of the inspector or (as the case may be) the report filed under section 31A.

(6) No assets kept in the custody of a bank pursuant to a direction under subsection (3) shall, so long as the direction is in force, be removed from the bank except with the prior consent of the Authority in writing.

(7) *[Repealed by 2012 : 22 s. 15]*

(8) The powers which the Authority may exercise under this section in certain circumstances in relation to a registered person do not restrict the exercise of any other

powers in relation to the same registered person on the basis of the same circumstances, nor do they restrict any other consequences provided for under any enactment in respect of that registered person on the basis of those circumstances.

(9) *[Repealed by 2012 : 22 s. 15]*

[Section 32 substituted by 1995:20 effective 29 April 1995; amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsections (1), (2), (7)-(9) amended by 2006:28 s.13 effective 24 July 2006; subsection (1) amended by 2008:34 s.23 effective 31 December 2008; subsections (7) and (9) repealed by 2012 : 22 s. 15 effective 1 August 2012; subsection (1) amended by 2015 : 2 s. 7 effective 27 February 2015; subsection (4) amended by 2015 : 50 s. 12 effective 1 January 2016; subsection (1) (b) amended by 2016 : 35 s. 14 effective 21 July 2016; Section 32 subsection (4)(ba) amended by 2019 : 33 s. 40 effective 5 August 2019]

Contraventions by designated insurer

32A (1) If it appears to the Authority that a designated insurer is in breach of any provision of this Act or regulations or rules applicable to it, the Authority may give the designated insurer such directions as appear to the Authority to be desirable to remedy the breach or for safeguarding the interests of policyholders and potential policyholders of the insurance group.

(2) Without prejudice to the generality of subsection (1) the Authority may, in particular, give any of the directions specified in paragraphs (a) to (h) and (j) of section 32(2).

[Section 32A inserted by 2010 : 60 s. 29 effective 31 December 2010; subsection (1) amended by 2016 : 35 s. 15 effective 21 July 2016]

Procedure for giving directions

32B (1) If the Authority proposes to issue directions under section 32 or 32A, it must give a warning notice to the registered person or, as the case may be, the designated insurer.

(2) If the Authority decides to give directions, it must give a decision notice to the registered person, or as the case may be, the designated insurer.

[Section 32B inserted by 2012 : 22 s. 16 effective 1 August 2012]

Directions in cases of urgency

32C (1) No warning notice need be given under section 32B in respect of the giving of a direction to a registered person, or as the case may be, a designated insurer in any case in which the Authority considers that the direction should be given as a matter of urgency.

(2) In any such case the Authority may by notice in writing to the person concerned give a direction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (4) and section 44A.

(4) Any person to whom a notice is given under this section of the giving of a direction may within the period of 14 days beginning with the day on which the notice was given make representations to the Authority.

(5) After giving a notice of direction under subsection (2) and taking into account any representations made in accordance with subsection (4) the Authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different direction or to vary the direction in a different manner.

(6) The Authority must within the period of 28 days beginning with the day on which the notice was given under subsection (2) or, where representations have been made under subsection (4), 28 days beginning with the day on which the representations have been received, give the person concerned a decision notice.

[Section 32C inserted by 2012 : 22 s. 16 effective 1 August 2012]

PART VIA DISCIPLINARY MEASURES

Power to impose civil penalties for breach of requirements

32D (1) Except as provided in sections 14(3) and 18A, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a penalty under subsection (1) where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(4) The power to impose a penalty under this section shall not apply to designated insurers, except where the power is exercised in relation to non-compliance with a direction given under section 30JB or 32A.

[Section 32D inserted by 2012 : 22 s. 16 effective 1 August 2012]

Civil penalties procedure

32E (1) If the Authority proposes to impose a civil penalty, it must give the person a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the person a decision notice.

[Section 32E inserted by 2012 : 22 s. 16 effective 1 August 2012]

Public censure

32F (1) If the Authority considers that a registered person has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the registered person.

(3) The power to publicly censure shall not apply to registered persons that are acting in the capacity as designated insurers.

[Section 32F inserted by 2012 : 22 s. 16 effective 1 August 2012]

Public censure procedure

32G (1) If the Authority proposes to publish a statement in respect of a registered person under section 32F, it shall give the registered person a warning notice.

(2) If the Authority decides to publish a statement under section 32F (whether or not in the terms proposed), it shall give the registered person a decision notice.

[Section 32G inserted by 2012 : 22 s. 16 effective 1 August 2012]

Prohibition Orders

Prohibition orders

32H (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is registered by the Authority under this Act ('a regulated person').

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria as the Authority may establish in a statement of principles.

(5) A registered person must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the order.

(7) The Authority must publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) In this section—

“regulated person” has the meaning given in subsection (1);

“regulated activity” means any activity that is carried on by way of business requiring registration or other authority by the Authority under any provision of this Act;

“specified” means specified in the prohibition order.

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—

(a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;

(b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both.

[Section 32H inserted by 2012 : 22 s. 16 effective 1 August 2012]

Prohibition orders: procedures

32I (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

[Section 32I inserted by 2012 : 22 s. 16 effective 1 August 2012]

Applications relating to prohibition orders: procedures

32J (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

[Section 32J inserted by 2012 : 22 s. 16 effective 1 August 2012]

Determination of applications for variation etc.

32K (1) The Authority may grant an application made under section 32J if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

(a) has obtained a qualification;

(b) has undergone, or is undergoing, training; or

(c) possesses a level of competence,

required in relation to persons performing functions of the kind to which the application relates.

[Section 32K inserted by 2012 : 22 s. 16 effective 1 August 2012]

Injunctions

Injunctions

32L (1) If, on the application of the Authority, the Court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Authority, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the Court may direct to remedy it.

(3) If, on the application of the Authority, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) “Relevant requirement” in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

[Section 32L inserted by 2012 : 22 s. 16 effective 1 August 2012]

PART VII
INSOLVENCY AND WINDING UP

Margin of solvency for general business

33 (1) An insurer, being a company that may be wound up under the Companies Act 1981, carrying on general business shall be deemed for the purposes of section 161 of the Companies Act 1981 (winding up of company by the court) to be unable to pay its debts if at any time the value of its assets does not exceed the amount of its liabilities and the provisions of this Act as to winding up shall have effect accordingly.

(2) For the purposes of this section in computing the amount of liabilities of an insurer, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(3) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsections (4) and (5), be determined in accordance with any applicable regulations making provision as to the taking into, or leaving out of, account of assets or liabilities for any purpose.

(4) In the case of an insurer which carries on long-term business as well as general business, the amount of the liabilities of its long-term business at any time shall, for the purposes of this section, be taken to be—

- (a) an amount equal to the total amount at that time standing to the credit of the insurer's long-term business fund; or
- (b) the amount of those liabilities at any time as determined in accordance with any applicable regulations,

whichever is the greater.

(5) Regulations may require that, in every statutory financial return prepared by an insurer carrying on general business, there shall be included a certificate as to solvency (to be called a "solvency certificate")—

- (a) in such form and signed by such persons as may be prescribed by the regulations; and
- (b) containing such a statement with respect to the assets and liabilities of the insurer as may be so prescribed,

and if any such insurer fails to comply with the regulations so made the value of its assets shall, in any proceedings under this section for the winding up of the insurer, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount required by subsection (1).

(6) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 36 or otherwise.

[section 33 amended by 1995:20 effective 29 April 1995]

Winding up of insurers under Companies Act 1981

34 The Court may order the winding up, in accordance with the Companies Act 1981, of an insurer, being a company which may be wound up under that Act, and that Act shall apply accordingly subject to the modification that the insurer may be ordered to be wound up on the petition of ten or more policyholders owning policies of an aggregate value of not less than \$50,000:

Provided that such a petition shall not be presented except by leave of the Court, and leave shall not be granted until a prima facie case has been established to the satisfaction of the Court and until security for costs for such amount as the Court may think reasonable has been given.

Winding up on petition of Authority

35 (1) The Authority may present a petition for the winding up, in accordance with the Companies Act 1981, of an insurer, being a company which may be wound up under that Act, on the ground—

- (a) that the insurer is unable to pay its debts within the meaning of sections 161 and 162 of the Companies Act 1981; or
- (b) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Act; or
- (c) that the insurer has failed to satisfy the obligation imposed upon it by section 15 as to the preparation of accounts or to produce or file statutory financial statements in accordance with section 17, and that the Authority is unable to ascertain its financial position.

(2) In any proceedings on a petition to wind up an insurer presented by the Authority under subsection (1), evidence that the insurer was insolvent—

- (a) at the close of the period to which the statutory financial statements last prepared under section 15 relate; or
- (b) at any date specified in a direction under section 27(2),

shall be evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

(3) If, in the case of an insurer, being a company which may be wound up under the Companies Act 1981, it appears to the Authority that it is expedient in the public interest that the insurer should be wound up, it may, unless the insurer is already being wound up by the Court, present a petition for it to be so wound up if the Court thinks it just and equitable for it to be so wound up.

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

[section 35 amended by 1995:20 effective 29 April 1995; by 2001:27 s.3, 10 & Sch effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002]

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Insurers carrying on long-term business

35A An insurer which carries on long-term business shall not be wound up voluntarily.

[Section 35A inserted by 2018 : 42 s. 6 effective 30 July 2018]

Winding up of insurers carrying on long-term and general business

36 (1) In a winding up of an insurer to which this section applies, the provisions of section 33 of the Employment Act 2000 and section 236 of the Companies Act 1981 shall not apply except as provided for in this section.

(2) Subject to rules made by virtue of section 40, subsections (4) to (8) shall apply in a winding up of composite insurers entitled to carry on long-term business and general business, other than those composite insurers under subsection (3).

(3) Subsections (4) to (8) shall not apply to a composite insurer—

- (a) that meets the requirements of section 24(6); or
- (b) where the long-term business of the composite insurer has been or is to be transferred as a going concern to another insurer in accordance with section 37.

(4) Where a winding up of a composite insurer under subsection (2) applies—

- (a) the assets of the long-term business fund must be applied in discharge of the following debts and in the following order of priority—
 - (i) Employment Act preferential debts attributable to its long-term business, to which the provisions of section 33 of the Employment Act 2000 shall apply mutatis mutandis so that references therein to—
 - (A) assets of a company are deemed to be references to such assets as are attributable to the long-term business of the insurer; and
 - (B) costs, charges and expenses of the winding up of a company are deemed to be references to such costs, charges and expenses as are attributable to the winding up of the long-term business of the insurer;
 - (ii) Companies Act preferential debts attributable to its long-term business, to which the provisions of section 236 of the Companies Act 1981 shall apply mutatis mutandis so that references therein to—
 - (A) assets, property, goods or effects of a company are deemed to be references to such assets, property, goods and effects as are attributable to the long-term business of the insurer; and
 - (B) costs and expenses of the winding up of a company are deemed to be references to such costs and expenses as are attributable to the winding up of the long-term business of the insurer;
 - (iii) insurance debts attributable to its long-term business which shall rank equally among themselves and be paid in full, unless the assets of the

long-term business fund of the insurer remaining after payment of the preferential debts attributable to its long-term business are insufficient to meet them, in which case they abate in equal proportions;

- (b) the assets of the general business fund must be applied in discharge of the following debts and in the following order of priority—
 - (i) Employment Act preferential debts attributable to its general business, to which the provisions of section 33 of the Employment Act 2000 shall apply mutatis mutandis so that references therein to—
 - (A) assets of a company are deemed to be references to such assets as are attributable to the general business of the insurer; and
 - (B) costs, charges and expenses of the winding up of a company are deemed to be references to such costs, charges and expenses as are attributable to the winding up of the general business of the insurer;
 - (ii) Companies Act preferential debts attributable to its general business to which the provisions of section 236 of the Companies Act 1981 shall apply mutatis mutandis so that references therein to—
 - (A) assets, property, goods or effects of a company are deemed to be references to such assets, property, goods and effects as are attributable to the general business of the insurer; and
 - (B) costs and expenses of the winding up of a company are deemed to be references to such costs and expenses as are attributable to the winding up of the general business of the insurer;
 - (iii) insurance debts attributable to its general business which shall rank equally among themselves and be paid in full, unless the assets of the general business fund of the insurer remaining after payment of the preferential debts attributable to its general business are insufficient to meet them, in which case they abate in equal proportions.

(5) Section 194 of the Companies Act 1981 and rule 140 of the Companies (Winding-Up) Rules 1982 shall apply separately to the long-term business assets and to the general business assets of a composite insurer.

(6) Where, under subsection (5), any fee, cost, charge or remuneration do not apply expressly to the long-term business assets or to the general business assets of a composite insurer, the liquidator may apportion any such fee, cost, charge or remuneration amongst those assets in such manner as he may determine.

(7) Where the value of the assets mentioned in paragraph (a) or paragraph (b) of subsection (4) exceeds the amount of the liabilities mentioned in that paragraph, so much of those assets as represents the excess must be applied in discharge of the following debts and in the following order of priority—

- (a) any preferential debts mentioned in subsection (4) the assets of which were deemed insufficient to meet liabilities shall rank equally among themselves

and be paid in full, unless the excess of such assets is insufficient to meet liabilities, in which case they abate in equal proportions;

- (b) any insurance debts mentioned in subsection (4) the assets of which were deemed insufficient to meet liabilities shall rank equally among themselves and be paid in full, unless the excess of such assets remaining after payment of such debts is insufficient to meet liabilities in which case they abate in equal proportions;
- (c) all other debts of the insurer, which shall rank equally among themselves and be paid in full, unless the excess of assets remaining after payment of the debts referred to in subsection (4) are insufficient to meet liabilities, in which case they abate in equal proportions.

(8) In relation to the assets falling within either paragraph (a) or (b) of subsection (4), the creditors mentioned in section 176(1) and (2) of the Companies Act 1981 shall be only those who are creditors in respect of liabilities falling within that paragraph; and any general meetings of creditors summoned for the purposes of that section shall accordingly be separate general meetings of the creditors in respect of the liabilities falling within each paragraph.

(9) Where under section 247(1) of the Companies Act 1981 (power of court to assess damages against delinquent officers) the Court orders any money or property to be repaid or restored to an insurer or any sum to be contributed to its assets, then, if and so far as the wrongful act which is the reason for the making of the order relates to assets belonging to an insurer's long-term business fund or general business fund (as the case may be), the Court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund, and this Act shall have effect accordingly.

(10) For the purposes of this section—

- (a) a liability shall be attributable to the long-term business if it is, or would be, recorded in column C on Form 1SFS of Schedule 1 to the Insurance Account Rules 2016 or Form 4 of Schedule 1 to the Insurance Accounts Regulations 1980, as applicable; and
- (b) a liability shall be attributable to general business if it is, or would be, recorded on column A of Form 1SFS of Schedule 1 to the Insurance Account Rules 2016 or Form 1A of Schedule 1 to the Insurance Accounts Regulations 1980, as applicable.

(11) For the purposes of this Part—

“Companies Act preferential debts” means the debts mentioned in section 236(1) (a), (b), (c), (d) and (e) of the Companies Act 1981;

“composite” has the meaning given in regulation 2 of the Insurance Accounts Regulations 1980;

“Employment Act preferential debts” means the debts mentioned in section 33(3) (a), (b) and (c) of the Employment Act 2000;

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“insurance contract” means any contract of insurance, capital redemption contract or a contract that has been recorded as insurance business in the financial statements of the insurer pursuant to the Insurance Accounts 1980 or the Insurance Account Rules 2016, as applicable;

“insurance debt” means a debt to which an insurer is or may become liable pursuant to an insurance contract, excluding debts owed to an insurer under an insurance contract where the insurer is the person insured;

“preferential debts” means Companies Act preferential debts and Employment Act preferential debts.”;

“section 24(6) composite” has the meaning given in regulation 2 of the Insurance Accounts Regulations 1980.

[Section 36 repealed and substituted by 2018 : 42 s. 7 effective 30 July 2018]

Winding up of insurers

36A (1) This section applies in the case of a winding up under the Companies Act 1981 of —

- (a) an insurer which was carrying on or entitled to carry on only long-term business;
- (b) an insurer which was carrying on or was entitled to carry on only general business;
- (c) a section 24(6) composite insurer; or
- (d) a composite insurer, where the long-term business of the composite insurer has been or is to be transferred as a going concern to another long-term insurer in accordance with section 37.

(2) Subject to subsection (3) and to rules made by virtue of section 40, and subject to the prior payment of Employment Act preferential debts and Companies Act preferential debts, the insurance debts of the insurer must be paid in priority to all other debts of the insurer.

(3) The insurance debts of an insurer shall rank equally among themselves and be paid in full unless the assets of the insurer are insufficient to meet them, in which case they abate in equal proportions.

[Section 36A inserted by 2018 : 42 s. 8 effective 30 July 2018]

Continuation of long-term business of insurer in liquidation

37 (1) This section shall have effect in relation to the winding up of an insurer, being an insurer carrying on long-term business.

(2) The liquidator shall, unless the Court otherwise orders, carry on the long-term business of the insurer with a view to its being transferred as a going concern to another insurer, whether an existing insurer or an insurer formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of

insurance in existence when the winding up order is made, but shall not effect any new contracts of insurance.

(3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to its long-term business require the appointment of a special manager of the insurer's long-term business, he may apply to the Court, and the Court may on such application appoint a special manager of that business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(4) Section 190(2) and (3) of the Companies Act 1981 (special manager to give security and receive remuneration) shall apply to a special manager appointed under subsection (3) of this section as they apply to a special manager appointed under that section.

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

(6) The Court may, on the application of a liquidator, a special manager appointed under subsection (3) or the Authority, appoint an independent actuary to investigate the long-term business of the insurer and to report to the liquidator, the special manager or the Authority, as the case may be, on the desirability or otherwise of that business being conducted and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

(7) Notwithstanding section 175(1) of the Companies Act 1981 (which requires the liquidator to obtain the sanction of the Court or committee of inspection for the bringing of legal proceedings in the name of and on behalf of the company) the liquidator may without any such sanction make an application in the name of and on behalf of the insurer under section 25.

[section 37 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Subsidiary insurers

38 (1) Where the insurance business or any part of the insurance business of an insurer has been transferred to an insurer under an arrangement in pursuance of which the first mentioned insurer (in this section called the subsidiary insurer) or the creditors thereof has or have claims against the insurer to which the transfer was made (in this section called the principal insurer), then, if the principal insurer is being wound up by or under the supervision of the Court, the Court shall, subject to this section, order the subsidiary insurer to be wound up in conjunction with the principal insurer, and may by the same or any subsequent order appoint the same person to be liquidator for the two insurers, and make provision for such other matters as may seem to the Court necessary, with a view to the insurers being wound up as if they were one insurer.

(2) The commencement of the winding up of the principal insurer shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary insurer.

(3) In adjusting the rights and liabilities of the members of the several insurers between themselves, the Court shall have regard to the constitution of the insurers, and to the arrangements entered into between the insurers, in the same manner as the Court would have regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single insurer, or as near thereto as circumstances admit.

(4) Where any insurer alleged to be subsidiary is not in process of being wound up at the same time as the principal insurer to which it is subsidiary, the Court shall not direct the subsidiary insurer to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the insurer against it being wound up, the Court is of the opinion that the insurer is subsidiary to the principal insurer, and that the winding up of the insurer in conjunction with the principal insurer is just and equitable.

(5) An application may be made in relation to the winding up of any subsidiary insurer in conjunction with a principal insurer by any creditor of, or person interested in, the principal insurer or the subsidiary insurer.

(6) Where an insurer stands in the relation of a principal insurer to one insurer, and the relation of a subsidiary insurer to some other insurer, or where there are several insurers standing in the relation of subsidiary insurers to one principal insurer, the Court may deal with any number of such insurers together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

Reduction of contracts as alternative to winding up

39 (1) In the case of an insurer which has been proved to be unable to pay its debts, the Court may, if it thinks fit, reduce the amount of the contracts of the insurer on such terms and subject to such conditions as the Court thinks just instead of making a winding up order.

Winding up rules

40 (1) The Minister acting on the advice of the Authority may make rules under this section for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up and generally for carrying into effect this Act in respect to the winding up of insurers.

(2) Without prejudice to the generality of subsection (1), rules made under this section may make provision for all or any of the following matters—

- (a) the identification of the assets and liabilities falling within either paragraph of section 36(2);
- (b) *[repealed by 2018 : 42 s. 9]*
- (c) the determination of the amount of liabilities of any description falling within either paragraph of section 36(2) for the purpose of establishing whether or not there is any such excess in respect of that paragraph as is mentioned in section 36(3);
- (d) the application of assets within subsection (2)(a) for meeting the liabilities within that paragraph;

- (e) the application of assets representing any such excess as is mentioned in section 36(3).

(3) Rules made under this section shall be subject to the negative resolution procedure.

[Section 40 amended by 2001 : 27 s.11 effective 1 October 2001; amended by 2001 : 33 s. 5 effective 1 January 2002; subsection (2)(b) repealed by 2018 : 42 s. 9 effective 30 July 2018]

PART VIII

CANCELLATION OF REGISTRATION

Cancellation of registration of insurers

41 (1) The Authority may, subject to this Part, by order cancel the registration of an insurer—

- (a) at the request of the insurer; or
- (b) upon any one or more of the following grounds—
 - (i) that false, misleading or inaccurate information has been supplied by the insurer or on its behalf for the purpose of any provision of this Act or the regulations;
 - (ii) that two years have elapsed since the registration of the insurer, and the insurer has not commenced to carry on business;
 - (iii) that the insurer has ceased to carry on business;
 - (iv) that the insurer has persistently failed to pay fees due under section 14;
 - (v) that the insurer has not complied with a condition attached to its registration or with a requirement made of it under this Act, the regulations or any insurance accounts rules;
 - (vi) that the insurer has been convicted of an offence against a provision of this Act or the regulations;
 - (vii) that, in the opinion of the Authority, the insurer has not been carrying on business in accordance with sound insurance principles;
 - (viii) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the insurer.

(2) If the Authority proposes to cancel the registration of an insurer under subsection (1)(b) it must give the insurer a warning notice.

(3) If the Authority decides to cancel the registration of an insurer under subsection (1)(b) it must give the insurer a decision notice.

(4) In this section “to carry on business” means to carry on insurance business in or from within Bermuda.

[section 41 amended by 2001:27 s.3, 4 & Sch effective 1 October 2001; by 2001:33 s.5 and 7 effective 1 January 2002; subsection (1)(b)(viii) inserted, and subsections (2) and (3) amended, by 2006:28 s.14 effective 24 July 2006; subsections (2) and (3) repealed and substituted by 2012 : 22 s. 17 effective 1 August 2012; subsection (1)(b)(v) amended by 2015 : 50 s. 13 effective 1 January 2016]

Cancellation of registration of insurance managers, agents, brokers, salesmen and insurance marketplace providers

42 (1) The Authority may, subject to this Part, by order cancel the registration of an insurance manager, broker, agent, salesman or insurance marketplace provider—

- (a) at the request of the manager, broker, agent, salesman or insurance marketplace provider in question; or
- (b) upon any one or more of the following grounds—
 - (i) that false, misleading or inaccurate information has been supplied by him on his behalf for the purposes of any provision of this Act or the regulations;
 - (ii) that two years have elapsed since his registration, and he has not commenced to carry on business;
 - (iii) that he has ceased to carry on business;
 - (iv) that he has persistently failed to pay fees due under section 14;
 - (v) that he has not complied with a condition attached to his registration or with a requirement made of him under this Act or the regulations;
 - (vi) that he has been convicted of an offence against a provision of this Act or the regulations;
 - (vii) that he has been convicted by a court (whether in Bermuda or elsewhere) of an offence involving fraud or dishonesty;
 - (viii) that, in the opinion of the Authority, he has not been carrying on business in accordance with sound insurance principles;
 - (ix) that any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of any such persons.

(2) The provisions of subsections (2) and (3) of section 41 shall apply in relation to the cancellation under this section of a registration as those provisions apply in relation to a cancellation under that section.

(3) In this section, “to carry on business” means to carry on business in or from within Bermuda as an insurance manager, broker, agent, salesman or insurance marketplace provider, as the case may be.

[section 42 amended by 2001 : 27 s. 3, 4 & Sch effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; subsection (1)(b)(ix) inserted, and subsection (3) substituted by 2006 : 28 s. 15 effective 24 July 2006; section 42 amended by 2019 : 33 s. 41 effective 5 August 2019]

43 *[section 43 amended by 2001:27 s.3,4 & Sch effective 1 October 2001; by 2001:33 s.5 effective 1 January 2002; and repealed by 2006:28 s.16 effective 24 July 2006]*

Cancellation of registration to be gazetted

44 The Authority shall publish in the Gazette notice of any cancellation of a registration under this Act.

[section 44 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

PART VIIIA APPEAL TRIBUNALS

Rights of appeal

44A (1) Subject to subsection (1A) and where applicable, a registered person which is aggrieved by a decision of the Authority—

- (a) cancelling its registration under section 41 or 42;
- (b) giving a direction under sections 32, 32A or 32C;
- (ba) imposing a civil penalty under section 32D;
- (bb) publishing a statement in respect of it pursuant to section 32F (public censure); or
- (c) making an adjustment to an insurer’s enhanced capital requirement, available statutory capital and surplus, total statutory capital and surplus, and available statutory economic capital and surplus made under section 6D;

may appeal against the decision to a tribunal constituted in accordance with section 44B.

(1A) This Part does not apply to—

- (a) an innovative insurer registered under section 4(1)(e); or
- (b) an innovative intermediary.

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that it appears to the Authority that the criterion in paragraph 1 of the minimum criteria is not or has not been fulfilled in the case of any person; or

- (b) the Authority directs the removal of a person as a controller or officer of a registered person under section 32 (2)(j);

the controller or officer to whom the ground relates or in respect of whom the direction is made may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the direction for his removal.

(3) Any person on whom notice of objection is served under section 30F or 30H or 30JC may appeal to a tribunal constituted as aforesaid against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 30G(1), (4) or (5).

(3A) Any person in respect of whom a prohibition order has been made under section 32H may appeal to the tribunal.

(3B) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order may appeal to the tribunal.

(4) The tribunal may suspend the operation of the decision appealed against pending the determination of an appeal in respect of the decision.

(5) The cancellation of a registered person's registration pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; or
(b) if such an appeal is brought, until it is determined or withdrawn.

[Section 44A inserted by 2006:28 s.17 effective 24 July 2006; subsection (1) amended by 2008:34 s.24 effective 31 December 2008; subsection (3) amended by 2010 : 22 s. 22 effective 29 March 2010; subsection (3) amended by 2010 : 60 s. 30 effective 31 December 2010; subsection (1) amended by 2011 : 44 s. 14 effective 31 December 2011; section 44A amended by 2012 : 22 s. 18 effective 1 August 2012; Section 44A amended by 2018 : 35 s. 21 effective 23 July 2018; Section 44A subsection (1)(c) amended by 2019 : 51 s. 3 effective 31 December 2019]

Constitution of tribunal

44B (1) A tribunal shall consist of a chairman, or, in his absence, a deputy chairman, and two other members.

(2) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(3) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(4) The Minister shall appoint a panel of not less than nine persons with experience of insurance business to serve as members of appeal tribunals.

(5) There shall be paid to the members of the tribunal such remuneration and such allowances as the Minister may determine, after consultation with the Minister of Finance when another Minister has been appointed to administer this Act.

[section 44B inserted by 2006:28 s.17 effective 24 July 2006; Section 44B subsection (5) inserted by 2017 : 38 s. 6 effective 30 October 2017]

Determination of appeals

44C (1) Where an appeal is brought under the provisions of this Act the chairman or as the case may be the deputy chairman shall nominate two other members from the panel of members, who together with him shall constitute the tribunal which shall determine the appeal.

(2) On an appeal under section 44A the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(3) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that where the decision was to cancel a registration the tribunal may direct the Authority to impose conditions or issue directions instead.

(4) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

[section 44C inserted by 2006:28 s.17 effective 24 July 2006; subsection (2) amended by 2016 : 33 s. 2 effective 1 January 2017]

Costs, procedure and evidence

44D (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by a registered person and by a person who is to be a controller or officer of a registered person, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;

- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
- (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
- (i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both;
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.

[section 44D inserted by 2006:28 s.17 effective 24 July 2006]

Further appeals on a point of law

44E (1) A registered person or other person who has appealed to a tribunal may appeal to the Court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of the Court of Appeal.

[section 44E inserted by 2006:28 s.17 effective 24 July 2006]

PART VIIIIB
NOTICES

Warning notices

44F (1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice given under section 32B must specify the proposed terms of the direction.

(5) A warning notice about a proposal to publish a statement under section 32F must set out the terms of the statement.

(6) A warning notice given under section 32I must set out the terms of the prohibition.

[Section 44F inserted by 2012 : 22 s. 19 effective 1 August 2012]

Decision notices

44G (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the appeal tribunal under section 44A.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 44F was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 44H.

(3) A decision notice about the giving of a direction under sections 32, 32A, or 32C must set out the terms of the direction;

(4) A decision notice about the imposition of a civil penalty under section 32D must state the date or dates of payment.

- (5) A decision notice about public censure under section 32F must—
- (a) set out the terms of the statement;
 - (b) give details of the manner in which, and the date on which, the statement will be published.
- (6) A decision notice about a prohibition order made under section 32H (2) must—
- (a) name the individual to whom the prohibition order applies;
 - (b) set out the terms of the order; and
 - (c) be given to the individual named in the order.
- (7) A decision notice shall state the day on which it is to take effect.
- (8) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (9) The Authority may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.
- (10) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice under subsection (8).

[Section 44G inserted by 2012 : 22 s. 19 effective 1 August 2012]

Conclusion of actions

Notices of discontinuance

44H (1) Subject to section 44G(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

[Section 44H inserted by 2012 : 22 s. 19 effective 1 August 2012]

Publication

Publication

44I (1) Subject to sections 32F, 32H, and 44, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

- (2) The Authority must not publish a decision notice under subsection (1)—
- (a) before notifying the person concerned; and

- (b) pending an appeal under section 44A.

[Section 44I inserted by 2012 : 22 s. 19 effective 1 August 2012]

PART IX
SUPPLEMENTARY

Prohibition of loans to directors, etc

45 (1) Subject to subsection (2), an insurer which carries on domestic business shall not, directly or indirectly, without the previous consent of the Authority in writing—

- (a) make any loan to any director or officer of the insurer, or to the spouse or child of any such director or officer; or
 - (b) guarantee, or provide any security in connection with, a loan by any other person to a person referred to in paragraph (a).
- (2) Nothing in subsection (1) shall operate to prohibit the making of a loan—
- (a) to a person referred to in subsection (1)(a) where the amount of the loan is within the surrender value of a life policy issued to him by the insurer; or
 - (b) secured by a first mortgage, where the amount of the loan does not exceed three quarters of the market value of the property mortgaged.

- (3) An insurer which contravenes this section commits an offence.

[section 45 amended by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (1)(a) amended by 2004:29 s.15 effective 10 December 2004]

Effect on business transactions of infringement of Act

46 No business transaction shall be void or voidable by reason only that at the relevant time any party to the transaction is in breach of any provision of this Act.

Acting on behalf of unregistered insurer

47 (1) Subject to subsection (2), any person who solicits another person, or causes him to enter into, or make application to enter into, a contract of domestic business with a person who is not a registered insurer commits an offence.

- (2) Subsection (1) shall not apply in relation to—
- (a) any contract arranged by any person authorized in that behalf by the Authority in accordance with any conditions imposed by the Authority; or
 - (b) any contract of re-insurance.

[section 47 amended by 2001:27 effective 1 October 2001; and by 2001:33 effective 1 January 2002]

Personal liability of intermediaries in certain cases

48 (1) Any insurance broker, agent or insurance marketplace provider who arranges a policy of domestic business with a person who is not a registered insurer shall be personally liable on the policy as if he were the insurer.

(2) For the purposes of subsection (1) a member of a recognized association of underwriters shall be deemed to be a registered insurer.

[Section 48 subsection (1) amended by 2019 : 33 s. 42 effective 5 August 2019]

Control of advertisements

49 An insurer or an insurance broker, agent or insurance marketplace provider shall not publish any advertisement which misleads, or directly or by implication is likely to mislead or deceive, any prospective policy-holder with respect to an insurer's assets or financial standing, or in any other material respect.

[Section 49 amended by 2019 : 33 s. 43 effective 5 August 2019]

Issue of false documents etc

50 (1) Any person who, for any purposes of this Act, issues any document which is false or misleading in a material respect, and any person who takes part in the preparation or issue of such a document, or who signs such a document, commits an offence unless he proves—

- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document and took every reasonable precaution to ensure its accuracy; and
- (b) in any other case, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

PART X

MISCELLANEOUS

Notices

51 (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his principal place of business; or
- (c) by sending it to him at that address by facsimile or other similar means which produces a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served—

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- (a) by delivering it to the company's principal place of business or registered office in Bermuda; or
- (b) by sending it by registered post addressed to the company's principal place of business.

[section 51 amended by 2001:27 effective 1 October 2001; amended by 2001:33 effective 1 January 2002; section 51 repealed and substituted by 2012 : 22 s. 20 effective 1 August 2012]

Powers exercisable to assist foreign regulatory authorities

51A *[Repealed]*

[section 51A inserted by 2001:27 s.12 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; repealed by 2008:3 s. 10(2) effective 25 March 2008]

Service of notice on Authority

51AA (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by facsimile or other similar means which produces a document containing the text of the communication.

[Section 51AA inserted by 2012 : 22 s. 20 effective 1 August 2012]

51B *[Repealed]*

[section 51B inserted by 2001:27 s.12 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; repealed by 2008:3 s. 10(2) effective 25 March 2008]

51C *[Repealed]*

[section 51C inserted by 2001:27 s.12 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; repealed by 2008:3 s. 10(2) effective 25 March 2008]

51D *[Repealed]*

[section 51D inserted by 2001:27 s.12 effective 1 October 2001; repealed by 2008:3 s. 10(2) effective 25 March 2008]

Restriction on disclosure of information

Restricted information

52 (1) Except as provided by sections 52A, 52B and 52C—

- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
- (b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

[section 52 repealed and replaced by 2001:27 s.13 effective 1 October 2001]

Disclosure for facilitating the discharge of functions of the Authority

52A (1) Section 52 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge its functions under this Act.

(2) Without prejudice to the generality of subsection (1), section 52 does not preclude the disclosure of information by the Authority to the auditor of the registered person if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge its functions or would otherwise be in the interests of the policy-holders.

[section 52A inserted by 2001:27 s.13 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002]

Disclosure for facilitating the discharge of functions by other authorities

52B (1) Section 52 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting the Minister or other authority to discharge his regulatory functions.

(2) Section 52 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosure to an authority other than the foreign regulatory authority which has requested the information pursuant to section 30A of the Bermuda Monetary Authority Act 1969 ("the 1969 Act"), of information obtained pursuant to the exercise of powers under section 30B of the 1969 Act unless the Authority has taken into account the matters specified in section 30A (5) of that Act.

(4) Subsection (2) does not apply in relation to disclosure to an authority unless the Authority is satisfied that the authority is subject to restriction on further disclosure at least equivalent to those imposed by sections 52, 52A and this section.

- (5) Section 52 does not preclude the disclosure of information—
- (a) for the purpose of enabling or assisting an inspector appointed under section 30 to carry out an investigation;
 - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
 - (c) in connection with any other proceedings arising out of this Act.

(6) Section 52 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 30 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by that section is exercisable.

(7) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purpose mentioned in this section.

[section 52B inserted by 2001:27 s.13 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; amended by 2008:3 s. 10(2) effective 25 March 2008]

Information supplied to the Authority by relevant overseas authority

52C (1) Section 52 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 52 or—

- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or
- (b) with a view to the institution of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

(3) In this section—

“relevant functions” in relation to the Authority means its functions under this Act;

“relevant supervisory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

[section 52C inserted by 2001:27 s.13 effective 1 October 2001; amended by 2001:33 s.5 effective 1 January 2002; subsection (2) amended by 2002:29 s.6 effective 14 October 2002]

Regulations by Minister

53 (1) The Minister acting on the advice of the Authority may make regulations—

- (a) dividing insurance business into classes for the purposes of any provision of this Act;
- (b) exempting any class of insurance business from any provision of this Act;

- (c) exempting any person or class of persons from any provision of this Act;
- (d) determining the value of assets or the amount of liabilities for the purposes of any provision of this Act;
- (e) without prejudice to paragraph (d), providing that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent;
- (f) prescribing the information to be contained in any statement or report required by any provision of this Act to be provided, and the manner of presentation of such information;
- (g) prescribing the information to be contained in any register under this Act which is to be made available for inspection by members of the public;
- (h) prescribing the number of copies and the manner of certification of any document required to be furnished under any provision of this Act;
- (i) prescribing anything permitted or required by this Act to be prescribed or that is not otherwise prescribed in the rules for prudential standards made by the Authority in accordance with section 6A;
- (j) creating offences and prescribing penalties (including imprisonment) for breach of such offences.

(2) Regulations prescribing the information to be contained in any statutory financial statement or any statutory financial return may provide for enabling the information to be given in a note on, or a statement or report annexed to, the statement or return; or may require there to be given in such a note, statement or report as aforesaid such information in addition to that given in the statement or return as may be prescribed.

(3) Regulations may, as respects such matters stated in any statutory financial statement or any statutory financial return or in statements or reports annexed thereto as may be prescribed, require there to be given by such persons as may be prescribed and to be annexed to the statutory financial statement or statutory financial return certificates of such matters as may be prescribed.

(4) If a form is prescribed for any statutory financial statement or as that in which information authorized or required to be given in a statement or report annexed to any statutory financial statement is to be given, or for a certificate to be so annexed, the statutory financial statement shall be prepared, the information shall be given or, as the case may be, the certificate shall be framed, in that form.

(4A) Regulations prescribing the information to be contained in any statutory financial statement or statutory financial return may apply retroactively for a period of up to 90 days before their coming into operation.

(5) In this section "Act" includes any regulations.

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(6) Regulations made under this section shall be subject to the affirmative resolution procedure.

[section 53 amended by 2001:27 s.14 effective 1 October 2001; and by 2001:33 s.5 effective 1 January 2002; section 53 subsection (4A) inserted by 2010 : 11 s. 2 effective 25 March 2010; section 53 subsection (1)(i) amended by 2015 : 50 s. 14 effective 1 January 2016]

Specific offences

54 (1) Any person who fails to comply with any duty or prohibition imposed upon him by any provision to which this section applies commits an offence.

(2) This section applies to sections 16, 16A, 17(2), 24(4), 27(2), 28, 29A, 29B, 30(2), 31A, 31AA, 31B, 31C, 43(5) and 49.

[section 54 subsection (2) substituted by 2004:29 s.16 effective 10 December 2004; amended by 2008:34 s.25 effective 31 December 2008; Section 54 subsection (2) amended by 2010 : 22 s. 23 effective 29 March 2010]

General provisions relating to offences

55 (1) Any person committing an offence against this Act or any regulation for which no penalty is specifically provided may be proceeded against either summarily or on indictment:

Punishment on summary conviction: imprisonment for 12 months or a fine of \$50,000 or both such imprisonment and fine.

Punishment on conviction on indictment: imprisonment for 3 years or a fine of \$150,000 or both such imprisonment and fine.

(2) Where an offence committed against this Act or any regulation by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

[section 55 amended by 1995:20 effective 29 April 1995; subsection (1) amended by 2012 : 22 s. 21 effective 1 August 2012]

Civil debt and civil penalties

55A (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 32D in relation to the same matters.

(2) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.

[Section 55A inserted by 2012 : 22 s. 22 effective 1 August 2012]

The Authority may modify certain provisions

56 (1) The Authority may, on the application, or with the consent, of any insurer, direct that all or any of the provisions to which this section applies shall not apply to that insurer or shall apply to it subject to such modifications as may be specified in the direction.

(2) A direction under this section may be subject to conditions.

(3) A direction under this section may be made with retroactive effect.

(4) A direction under this section may be revoked at any time by the Authority; and the Authority may also vary any such direction at any time, provided the variation has been applied for, or is consented to, by the insurer affected by the variation.

(5) The provisions to which this section applies are—

(a) the limitations upon the carrying on of general business or, as the case may be, long-term business specified in section 1(4);

(b) the provisions of sections 4 to 4F, 6, 15 to 18, 18B, 27 and 33; and

(c) the provisions of any regulations—

(i) relating to the limitations referred to in paragraph (a); or

(ii) made for the purposes of any of the provisions specified in paragraph (b).

(6) A direction given under this section is not a statutory instrument having legislative effect.

[section 56 amended by 1995:20 effective 29 April 1995; by 2001:27 effective 1 October 2001; by 2001:33 effective 1 January 2002; subsection (5)(b) amended by 2002:29 s.7 effective 14 October 2002; section heading and subsection 5(b) amended by 2015 : 2 s. 8 effective 27 February 2015]

Application

57 (1) Insurance business of any of the following kinds—

(a) insurance business carried on by a friendly society registered under the Friendly Societies Act 1868 or by a trade union registered under the Trade Union and Labour Relations (Consolidation) Act 2021, being business in which risks of members of the friendly society or trade union, as the case may be, are insured;

(b) insurance business carried on by the Health Insurance Committee pursuant to the Health Insurance Act 1970;

(c) the health insurance scheme conducted pursuant to the Government Employees (Health Insurance) Act 1986;

(d) housing loan insurance carried on by the Bermuda Housing Corporation under the Bermuda Housing Loan Insurance Act 1984,

shall be deemed not to be insurance business within the meaning of this Act.

(2) Apart from—

- (a) section 48; and
- (b) any provision dealt with in subsection (3) of this section,

nothing in this Act or any regulation shall apply in relation to any member of a recognized association of underwriters.

- (3) In relation to a member of a recognized association of underwriters—
 - (a) section 3 shall not apply in relation to any member of a recognized association of underwriters who is registered in accordance with paragraph (b) below and carries on his business in accordance with the requirements of that paragraph and with any conditions attached to his registration;
 - (b) sections 9 to 14 and any regulations made for the purposes of those sections shall apply in relation to a member of a recognized association of underwriters as respects the carrying on of insurance business by him in or from within Bermuda as those provisions apply in relation to an insurance manager, broker, agent or salesman acting as such;
 - (c) sections 42 to 44 shall apply in relation to a member of a recognized association of underwriters in the same manner as those sections apply in relation to an insurance manager, broker, agent or salesman;
 - (d) section 54 shall apply as respects the proviso to section 43(5);
 - (e) section 55 shall apply;
 - (f) section 1 shall apply to the extent necessary for the interpretation of any other section that applies.

[section 57 subsection (1)(b) substituted by 2006:28 s.18 effective 24 July 2006; subsection (1)(b) amended by 2009:49 s.14 effective 15 December 2009; Section 57 subsection (1) amended by 2021 : 7 s. 100 & Sch. 8 effective 1 June 2021]

Designated investment contracts

57A (1) For the purposes of this section—

“contract” includes investment or security, and any reference to “parties” in relation to an investment or security shall be taken to be a reference to its issuers and investors; and

“designated investment contract” means—

- (a) any contract (including, but not limited to, any option contract, futures contract, swap contract, derivative contract, contract for differences or security) the purpose of which is to secure a profit or avoid a loss—
 - (i) by reference to fluctuations in the value or price of property of any description, or in an index, or other factor, specified for that purpose in the contract, or
 - (ii) based on the happening of a particular event specified for that purpose in the contract; and

- (b) in relation to which the Authority has given a direction under subsection (2).

(2) The Authority may direct in writing that a contract falling within paragraph (a) of the definition of designated investment contract in subsection (1), which was submitted to him in draft together with—

- (a) the fee of \$1000, or such other fee as may be prescribed under the Bermuda Monetary Authority Act 1969, and
- (b) such other documents as the Authority may require,

is a designated investment contract for the purposes of this section.

(3) A direction under this section—

- (a) may be made with retroactive effect;
- (b) may be subject to conditions which may be varied at any time, provided—
 - (i) that the variation has been applied for, or is consented to by the parties to the contract in question; and
 - (ii) that those parties undertake to notify such other persons as the Authority considers may be affected by the variation;
- (c) is not a statutory instrument having legislative effect.

(4) Being a party to a designated investment contract shall not constitute carrying on insurance business, and a designated investment contract shall not constitute a contract of insurance, for any purposes.

(5) For the avoidance of doubt, a designated investment contract shall not constitute a bet for the purposes of the Betting Act 1975.

(6) The Minister may by order amend the definition of designated investment contract in subsection (1), if, after consulting the Authority, he considers it necessary to do so; and any such order shall be subject to the negative resolution procedure.

[section 57A inserted by 1998:8 effective 23 March 1998; subsection (6) amended by 2001:27 s.15 effective 1 October 2001; subsection (6) amended by 2001:33 s.5 effective 1 January 2002; subsection (2)(a) amended by 2002:39 s.7 & Sch effective 30 December 2002]

Transitional

58 *[omitted]*

Amendment of Act No. 43 of 1971

59 *[omitted]*

Commencement

60 *[omitted]*

SCHEDULE

(sections 5, 11)

MINIMUM CRITERIA FOR REGISTRATION

1 (1) Every person who is, or is to be, a controller or officer of a registered person is a fit and proper person to perform functions in relation to any activity carried on by the registered person.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of clients or potential clients of the registered person are, or are likely to be, in any way threatened by his 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 he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be 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 discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has 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 judgement.

CORPORATE GOVERNANCE

1A Insurers shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the insurer.

BUSINESS TO BE DIRECTED BY AT LEAST TWO INDIVIDUALS

2 If a body corporate, at least two individuals shall effectively direct the business of the registered person.

COMPOSITION OF BOARD OF DIRECTORS

3 If a body corporate, the directors shall include such number (if any) of directors without executive responsibility for the management of its business as the registered person considers appropriate having regard to the circumstances of the registered person and the nature and scale of its operations; subject to the power of the Authority to review and require the addition of non-executive directors as it may deem appropriate.

BUSINESS TO BE CONDUCTED IN PRUDENT MANNER

4 (1) The registered person conducts, or, in the case of a registered person which is not yet carrying on business, will conduct its business in a prudent manner.

(2) In determining whether a registered person is conducting its business in a prudent manner, the Authority shall take into account any failure by the registered person to comply with the provisions of—

- (a) this Act;
- (b) any other law, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- (c) the code of conduct; and
- (d) international sanctions in force in Bermuda.

(2A) A registered person that is an insurer shall not be regarded as conducting its business in a prudent manner unless it maintains, or as the case may be, will maintain sufficient capital to enable it to meet its insurance obligations given the size, business mix, complexity and risk-profile of its business.

(2B) An insurance manager, broker, agent or insurance marketplace provider shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain sufficient indemnity insurance cover to enable him to meet his business obligations given the nature, scale and complexity of his business.

(3) A registered person shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(4) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the registered person to be prudently managed and the registered person to comply with the duties imposed on it by or under this Act or other provision of law; and in determining whether those systems are adequate the Authority shall have regard to the nature and scale of its operations and the functions and responsibilities in respect of them of any such directors of the registered person as are mentioned in paragraph 3.

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(5) Subparagraphs (2) to (4) are without prejudice to the generality of subparagraph (1).

CONSOLIDATED SUPERVISION

5 The position of the registered person within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

INTEGRITY AND SKILL

6 The business of the registered person is or, in the case of a registered person which is not yet carrying on business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

[Schedule inserted by 2006:28 s.19 effective 24 July 2006; para 4(2) amended by 2006:42 s.6 effective 29 December 2006; para 4(2A) inserted by 2008:34 s.26 effective 31 December 2008; para 1(1) and 4(2) amended by 2012 : 22 s. 23 effective 1 August 2012; para (1A) inserted and para 3 amended by 2015 : 2 s. 9 effective 27 February 2015; para 4(2B) inserted by 2016 : 35 s. 16 effective 21 July 2016; para 4(2B) amended by 2018 : 68 s. 16 effective 31 December 2018; paragraph 4(2B) amended by 2019 : 33 s. 44 effective 5 August 2019]

[Assent Date: 7 July 1978]

[This Act was brought into operation on 1 January 1980]

[Amended by:

1995 : 20
1998 : 8
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2001 : 27
2001 : 33
2002 : 29
2002 : 39
2004 : 29
2006 : 28
2006 : 42
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