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## CHAPTER 218

### THE INSURANCE ACT

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## INSURANCE

(1st July, 1969.)

1011967.  
1511968.  
911977.  
1611977.  
2111982.  
1811989.

1. This Act may be cited as the Insurance Act.

Short title.

2. The provisions of this Act shall not extend or apply

Application.

to—

(a) an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependants, commonly called a friendly society, which does not at any time after the date of commencement of this Act employ a person whose main remunerated occupation consists of inducing persons to become members of the association or of collecting from members of the association contributions or subscriptions towards the association's funds; or

(b) a person or a class of persons declared by the Cabinet by order in the *Gazette* to be exempt from the provisions of this Act; or

(c) a class of insurance business declared by the Cabinet by order in the *Gazette* to be exempt from the provisions of this Act.

Interpretation of terms.

**3.** (1) In this Act, unless inconsistent with the context—

"association of underwriters" means—

(a) underwriters at LLOYD'S; or

(b) an association of individual underwriters, organised in accordance with the system known as LLOYD'S, in which every underwriting member becomes liable for a stated part, limited or proportionate to the whole sum insured by a policy;

"chairman" in relation to an association of persons includes the individual presiding over the board of directors or other governing body of the association;

"contingent obligation dependent on human life" means—

(a) an obligation to pay to a particular person certain sums of money at specified intervals or a certain sum of money or to provide for a particular person a certain other benefit—

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- (i) on the occurrence of the death of a particular person or on the occurrence of the birth of a child to a particular person at any time or within a specified period; or
  - (ii) in the event of a particular person continuing to live throughout a specified period or specified periods; or
    - (b) an obligation assumed—
      - (i) until the occurrence of the death of a particular person; or
      - (ii) during a specified period or until the occurrence of the death of a particular person before the expiration of the period;

"continuous disability insurance" means the business of effecting contracts of insurance which by the terms thereof are to be of more than one year's duration, whereby sums are to become payable by the insurer in the event of the occurrence, within the duration of the contract, of fatal accident or of accident or sickness causing injury or disability;

"director" includes an individual occupying the position of director or alternate director of an association of persons or a member or alternate member of a committee of management or of any other governing body of an association of persons by whatever name he may be called;

"financial year" in relation to a person, means each period at the end of which the balance of the accounts of the person is struck, whether that period is a year or not;

"industrial assurance policy" means a policy whereby the insurer assumes, in return for a premium or the promise of a premium payable from time to time, at intervals not exceeding two months, a contingent obligation dependent on human life, not exceeding in amount the sum of four hundred dollars, if the insurer has expressly or tacitly undertaken to send a person from time to time to the

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owner of the policy or to his residence or place of work to collect the premiums;

“Insurance agent” means a person who, on behalf of an insurer, initiates insurance business or does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;

“insurance business”—

(a) means the business of assuming the obligations of an insurer in any class of insurance business whatsoever, whether defined in this section or not, which is not declared to be exempt from the provisions of this Act by order made in terms of paragraph (c) of section 2.

(b) includes reinsurance business;

“insurer” means a person carrying on insurance business otherwise than as a broker or an agent for brokers or as an insurance agent or an insurance sub-agent, who is not a person or a member of a class of persons declared to be exempt from the provisions of this Act by order made in terms of paragraph (b) of section 2;

“life assurance business” means the business of assuming the obligations of an insurer under life policies, industrial assurance policies or sinking fund policies;

“life assurance fund” means the fund to which the receipts of an insurer in respect of his life assurance business are carried;

“life assurer” means a registered insurer carrying on life assurance business;

“life policy” means a policy whereby the insurer assures, in return for the payment or the promise of the payment of a sum or sums of money or the promise of a periodical payment of a certain premium, a

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contingent obligation dependent on human life and includes any contract of insurance customarily regarded as a life assurance contract, but does not include an industrial assurance policy, a personal accident policy, a sinking fund policy or an insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy;

"local policy" means a policy issued in Antigua and Barbuda and includes a life policy issued outside Antigua and Barbuda and subsequently made payable in Antigua and Barbuda at the request of the owner which the owner has agreed in writing shall be treated as a local policy for the purposes of this Act, but does not include a life policy made payable, after the date of its issue, outside Antigua and Barbuda at the request of the owner which the owner has agreed in writing shall not be treated as a local policy for the purposes of this Act;

"Minister" means the Minister responsible for insurance;

"owner" in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

"personal accident policy" means a policy whereby the insurer assumes, in return for the payment of a sum or sums of money and otherwise than incidentally to an insurance effected by means of some other class of policy, an obligation to pay a certain sum or certain sums of money to, or provide any other benefit for, a particular person in the event of an accident or sickness causing the death or injury or disability of a particular person;

"policy" means a valid insurance contract, whatever the form in which the rights and obligations of the parties to the contract are expressed or created, and includes a sinking fund policy but does not include an insurance contract in which—

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(a) a person or a number of a class of persons declared to be exempt from the provisions of this Act by order made in terms of paragraph (b) of section 2 assumes the obligations of the insurer; or

(b) a person assumes the obligations of an insurer in a class of insurance business declared to be exempt from the provisions of this Act by order made in terms of paragraph (c) of section 2;

"principal officer" means the principal officer of a registered insurer appointed in terms of section 17;

"registered insurance agent" means an insurance agent registered in terms of Part V;

"registered insurer" means an insurer registered in terms of Part I;

"Registrar" means the Registrar of Insurance appointed in terms of section 4;

"sinking fund policy" not being life business, annuity business or industrial assurance business means a contract whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment or the promise of a payment from time to time of a certain sum of money by the other party to the contract;

"underwriting liabilities" in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the committee of the association and approved—

(a) in the case of an association constituted in Antigua and Barbuda, by the Registrar; and



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

(2) For the purposes of this Act, an association of underwriters shall be treated as an insurer.

## PART I

### Registration and Cancellation of Registration of Insurers

**4.** The Governor-General shall appoint an officer, to be known as the Registrar of Insurance, for the purposes assigned to the Registrar under this Act and such other purposes as the Governor-General may determine.

**Appointment of Registrar.**

**5.** (1) Subject to the provisions of subsection (2) no person shall carry on insurance business in Antigua and Barbuda unless he is registered as an insurer in the class of insurance business carried on by him or is a member of an association of underwriters registered as an insurer in the class of insurance business carried on by him.

**Insurers to be registered.**

(2) Nothing in subsection (1) contained shall apply to—

(a) a person who carries on, on or after the coming into force of this Act, a class of insurance business in Antigua and Barbuda which he was lawfully carrying on in Antigua and Barbuda immediately before that date if—

- (i) within two months of that date, he or, as the case may be, the association of underwriters of which he is a member applies to the Registrar to be registered as an insurer in that class of insurance business; and
- (ii) within twelve months of that date, he or, as the case may be, the association of underwriters of which he is a member is so registered; or

(b) the carrying on by—

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- (i) a person whose registration as an insurer in a class of insurance business has been cancelled; or
  - (ii) a member of an association of underwriters, the registration of which as an insurer, in a class of insurance business has been cancelled;

in respect of business relating to policies in that class of insurance business which were issued by him before the date of the cancellation of his registration as an insurer in that class of insurance business or, as the case may be, before the date of the cancellation of the registration of the association as an insurer in that class of insurance business; but nothing in this paragraph shall authorise the renewal of a policy which was issued by an insurer before the date of the cancellation.

**Registration of insurers.**

**6.** (1) An application to be registered as an insurer in a class of business shall be made to the Registrar and a copy thereof sent to the Minister in the form prescribed and shall be accompanied by such documents as may be prescribed.

(2) Subject to the provisions of subsection (5) if the Registrar is satisfied that—

(a) an applicant for registration as an insurer is not disqualified in terms of section 14 from being registered as an insurer in the class of insurance business for which application for registration is made; and

(b) the class of insurance business for which application for registration is made is being conducted or, as the case may be, will be conducted by the applicant, or, in the case of an applicant who is an association of underwriters, by members of the association, in accordance with sound insurance principles,

he shall notify the Minister that it is his intention to grant the application unless he receives an order from him under subsection (5) within seven days of the date of the notification and if he receives no order from the Minister within such period of time or within such extended period of time as may be agreed between himself and the Minister he shall, upon payment of the fee payable pursuant to section 8 and the Schedule to this Act, register the applicant as an insurer

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in that class of insurance business and shall notify the applicant in writing accordingly.

(3) If the Registrar is satisfied that—

(a) an applicant for registration as an insurer is disqualified in terms of section 14 from being registered as an insurer in the class of insurance business for which application for registration is made; or

(b) the class of insurance business for which application for registration is made is not being conducted or, as the case may be, will not be conducted by the applicant or, in the case of an applicant who is an association of underwriters, by the members of the association, in accordance with sound insurance principles;

he shall notify the applicant in writing that he proposes to reject the application for registration and of his reasons for so doing.

(4) If an applicant for registration as an insurer who has been notified of the Registrar's proposal to reject his application fails to lodge with the Registrar a notice of his intention to refer his case for review by the Governor-General as in subsection (1) of section 10 is provided within the period mentioned in that subsection or, having lodged such a notice within that period, withdraws the notice before the Governor-General gives his decision in the case, the Registrar shall reject his application and notify the applicant in writing accordingly.

(5) Notwithstanding anything in the foregoing subsections of this section, if the Minister is of the opinion that it would be undesirable in the public interest that an application to be registered should be granted, he may by order direct the Registrar not to grant the application and he need not give any reason for so directing and the Registrar shall accordingly refuse to grant it or alternatively the Minister may direct the Registrar to cause the applicant to be registered subject to such restrictions and conditions (including the request that the applicant should deposit and keep deposited with the Accountant-General the sum of fifty thousand dollars or approved securities to the like amount

in respect of the applicant's business and approved by the Minister) as the Minister may specify in writing and the Registrar shall proceed accordingly.

**Deposit.**

**7.** An insurer shall not be registered until he satisfies the Registrar that he has deposited with the Accountant-General the sum of one hundred thousand dollars and such deposit shall be maintained and kept during the period the insurer is registered under this Act and shall bear interest at the rate of three per cent per annum.

**Registration fees  
— Insurers.**

**8.** (1) No person shall be registered as an insurer until he has paid to the Commissioner of Inland Revenue the fee specified in the Schedule to this Act in respect of the class or classes of insurance business for which registration is granted.

**Schedule.**

(2) During the month of January in every year after the year in which an insurer is registered, he shall pay to the Commissioner of Inland Revenue the annual fee specified in the Schedule to this Act in respect of the class or classes of insurance business for which he is registered.

**Schedule.****Cancellation of  
registration.**

**9.** (1) The Registrar shall notify a registered insurer in writing that he proposes to cancel his registration as an insurer and of his reasons for so doing if at any time—

- (a) The Registrar is satisfied that—
  - (i) the registered insurer would, if he were an applicant for registration as an insurer, be disqualified in terms of section 14 from being registered as an insurer in the class of insurance business with respect to which he is registered; or
  - (ii) the class of insurance business with respect to which the insurer is registered is not being conducted by the registered insurer or, in the case of a registered insurer who is an association of underwriters, by a member of the association, in accordance with sound insurance principles; or
  - (iii) the registered insurer and additionally or alternatively, in the case of a registered insurer who

is an association of underwriters, a member of the association has or have, as the case may be, failed to comply with the provisions of this Act or of any insurance law of a country outside Antigua and Barbuda applying to the registered insurer or, as the case may be, the member of the association, which relates to the maintenance of a life insurance fund or the holding in trust of insurance premiums; or

(b) the registered insurer is convicted of an offence against section 49 and an appeal against the conviction is not brought or if brought, is abandoned or dismissed; or

(c) a judgment is obtained against the registered insurer or, in the case of a registered insurer who is an association of underwriters, a member of the association in any court in Antigua and Barbuda and remains unsatisfied for twenty-one days and an appeal from the judgment is not brought or if brought, is abandoned or dismissed; or

(d) the registered insurer has failed to pay the annual fee pursuant to subsection (2) of Section 8:

Provided that if the fee is paid not later than fourteen days after the date of the Registrar's notification of his intention to cancel the registration, such registration shall, subject to this Act, remain in force in respect of the class or classes of insurance business for which the fee is paid.

(2) If a registered insurer who has been notified of the Registrar's proposal to cancel his registration as an insurer fails to lodge with the Registrar a notice of his intention to refer his case for review by the Governor-General as in subsection (1) of section 10 is provided within the period mentioned in that subsection or, having lodged such a notice within that period, withdraws the notice before the Governor-General gives his decision in the case, the Registrar shall cancel his registration and notify the insurer in writing accordingly.

**10.** (1) A person who is aggrieved by the proposal of the Registrar to—

**Proposal of Registrar subject to review.**

(a) reject his application for registration as an insurer; or

(b) cancel his registration as an insurer;

may, within thirty days of the date of the notice informing him of the Registrar's proposal, lodge a notice with the Registrar of his intention to refer his case for review by the Governor-General.

(2) A notice of review lodged in terms of subsection (1) shall be in writing and shall specify in detail the grounds on which it is made.

(3) The Registrar shall transmit to the Governor-General a notice of review lodged with him in terms of subsection (1).

(4) The Governor-General shall determine whether an application for registration as an insurer shall be rejected or, as the case may be, the registration of an insurer shall be cancelled and the decision of the Governor-General shall be final and shall not be questioned in any Court of Law.

(5) The Registrar shall give notice in writing to a person who has referred a case for review under this section of the Governor-General's decision in the case.

(6) If in giving effect to the decision of the Governor-General in a case reviewed under this section the Registrar registers an applicant as an insurer or cancels the registration of an insurer, he shall notify the applicant or, as the case may be, the insurer in writing accordingly.

Cancellation of registration at the request of an insurer etc.

**11.** (1) The Registrar may, at the request of a registered insurer or his liquidator, trustee or judicial manager, cancel his registration in any or all of the classes of insurance business carried on by him in Antigua and Barbuda.

(2) The Registrar shall cancel the registration of an insurer in a class of insurance business if he is satisfied that the insurer has ceased to carry on that class of insurance business in Antigua and Barbuda.

**12.** The Registrar shall cause a notice of the registration of an insurer or the cancellation of the registration of an insurer to be published in the *Gazette*.

**Registration or cancellation to be published in the Gazette.**

**13.** (1) Notwithstanding the provisions of paragraph (a) of subsection (2) of section 5 a person referred to in that paragraph shall not, save as is provided in subsection (2) continue to carry on a class of insurance business in Antigua and Barbuda if he has been notified in writing in terms of subsection (4) of section 6 or subsection (5) of section 10 that his application for registration in that class of insurance business or, as the case may be, the application for registration in that class of insurance business of the association of underwriters of which he is a member has been rejected.

**No person to continue to carry on insurance business if application for registration rejected.**

(2) The provisions of paragraph (b) of subsection (2) of section 5 shall, *mutatis mutandis*, apply to a person referred to in subsection (1).

**14.** The Registrar shall not register as an insurer—

(a) an applicant other than a person referred to in paragraph (a) of subsection (2) of section 5 if the name under which the applicant desires to be registered is identical with the name of a person referred to in that paragraph or of a registered insurer or so nearly resembles the name of that person or registered insurer as to be likely to be mistaken for it unless that person or registered insurer is being or is to be wound up or dissolved or, as the case may be, has ceased to carry on insurance business in Antigua and Barbuda and consents to the registration of the applicant under the name in question; or

**Persons disqualified from being registered as insurers.**

(b) an applicant including an association of underwriters or a member of such association unless the applicant's margin of solvency is, in terms of section 15 sufficient for the purposes of the class or, as the case may be, classes of insurance business for which application for registration is made; or

(c) an applicant who is a corporate body with share capital, unless the applicant—

- (i) is lawfully constituted in accordance with the laws of the country in which the head office of the applicant is situate; and
- (ii) has a paid-up share capital of not less than two hundred thousand dollars or an equivalent sum in other currency; and
- (iii) is registered in Antigua and Barbuda as a company under the Companies Act.

Margin of solvency sufficient for the purposes of carrying on insurance business.

**15.** (1) An insurer carrying on insurance business both within and outside Antigua and Barbuda shall be treated as having a margin of solvency sufficient for the purposes of carrying on—

(a) any class of insurance business other than life assurance business, if the value of his assets in respect of the classes of insurance business carried on by him exceeds the amount of his liabilities in respect of the classes of insurance business carried on by him by—

- (i) \$200,000.00 or an equivalent sum in other currency; or
- (ii) one tenth of his premium income in his last preceding financial year;

whichever is the greater amount;

(b) life assurance business only, if his liabilities under unmaturred life, industrial assurance and sinking fund policies do not exceed the amount of his life assurance fund;

(c) any class of insurance business, including life assurance business, if—

- (i) in respect of his life assurance business, he has such a margin of solvency as is prescribed in paragraph (b); and
- (ii) the value of his assets in respect of all classes of insurance business carried on by him exceeds the amount of his life assurance fund together with all his liabilities other than his liabilities in respect of unmaturred life,



industrial assurance and sinking fund policies by—

- A. \$200,000.00 or an equivalent sum in other currency; or
- B. one-tenth of his premium income, other than life assurance premium income, in his last preceding financial year;

whichever is the greater amount

(2) In calculating the margin of solvency referred to in paragraph (a) and sub-paragraph (ii) of paragraph (c) of subsection (1)—

(a) all contingent and prospective liabilities of an insurer, but not liabilities in respect of share capital, shall be taken into account in assessing the amount of the liabilities of the insurer; and

(b) an insurer's premium income, other than life assurance premium income, in any financial year shall be assessed as the net amount, after deduction of any premiums paid by the insurer in respect of reinsurance of the premiums received by the insurer in his last preceding financial year in respect of all insurance business, other than life assurance business, carried on by him in the last preceding financial year.

## PART II

Provisions *Governing* the Carrying on of Insurance Business by Registered Insurers

**16.** The provisions of this Part shall apply to registered insurers. **Application of Part II.**

**17.** (1) A registered insurer shall maintain a principal office in Antigua and Barbuda and shall appoint a principal officer in Antigua and Barbuda. **Registered insurer to maintain principal office and appoint principal officer.**

(2) A registered insurer shall notify the Registrar in writing of the situation of his principal office and the name of his principal officer.

(3) If a registered insurer changes the situation of his principal office in Antigua and Barbuda or appoints a new

principal officer, he shall, within twenty-one days of the change or appointment, give notice thereof to the Registrar in writing.

(4) The principal officer shall be authorised to accept on behalf of the insurer service of processes and any notices required to be served on the insurer.

(5) For the purposes of this section a principal office may be a branch office or the office of an agent of the insurer.

Registered  
insurers to notify  
Registrar of  
certain changes  
and particulars.

**18.** A registered insurer shall, within six months of the end of each financial year, notify the Registrar in writing of any change which occurred in that year in any matter prescribed in relation to the insurer for the purposes of this section.

Accounts and  
balance sheets,  
etc. of registered  
insurers to be  
submitted to  
Registrar.

**19.** (1) A registered insurer shall, within six months of the end of each financial year, prepare and furnish to the Registrar in the appropriate forms prescribed—

(a) a certificate as to the solvency of the insurer, certified, in the case of a life assurer, by an actuary; and

(b) a balance sheet showing the financial position of the insurer's insurance business at the close of that year; and

(c) a profit and loss account in respect of insurance business carried on by the insurer in that year; and

(d) a revenue account in respect of life insurance business, if any, carried on by the insurer in that year; and

(e) a statement of life assurance business, other than business in connection with industrial assurance and sinking fund policies, if any, carried on by the insurer in Antigua and Barbuda in that year; and

(f) revenue accounts in respect of insurance business, other than life assurance business, if any, carried on by an insurer in that year; and

(g) such other documents and information relating to the accounts and balance sheet referred to in this subsection as may be prescribed.

(2) A registered insurer shall furnish to the Registrar with the documents referred to in subsection (1) a copy of any report on the affairs of the insurer submitted to the policy-owners or share-holders of the insurer in respect of the financial year to which those documents relate.

(3) If, in the opinion of the Registrar, an account or balance sheet furnished by a registered insurer in terms of subsection (1) is incorrect or is not prepared in accordance with the provisions of this Act, the Registrar may, by notice in writing, call upon the insurer to amend the account or balance sheet or to furnish a correct account or balance sheet or, as the case may be, an account or balance sheet prepared in accordance with the provisions of this Act.

(4) If a registered insurer fails to comply with a notice referred to in subsection (3) to the satisfaction of the Registrar, the Registrar may himself either amend the document in question, giving the insurer particulars of the amendments, or reject the document.

(5) An account or balance sheet amended by the Registrar or by a registered insurer in terms of this section shall be treated as having been submitted to the Registrar in its amended form.

(6) If the account or balance sheet of a registered insurer has been rejected by the Registrar in terms of subsection (4), the insurer shall be treated as having failed to comply with the provisions of subsection (1) in relation to that account or balance sheet unless and until he has furnished another account or balance sheet in accordance with the directions of the Registrar.

(7) A registered insurer liable under a local life, industrial assurance or sinking fund policy shall, at the request of the owner, furnish him free of charge with a copy of the revenue account, profit and loss account or balance sheet prepared by the insurer in terms of subsection (1) in respect of his last preceding financial year.

**20.** (1) The accounts of an insurer shall be audited annually by an auditor approved by the Registrar. The

**Audit of accounts  
of local insurers.**

auditor shall not be an employee, manager or director of the insurer.

(2) The auditor of an insurer shall satisfy himself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(3) The auditor of an insurer shall certify whether—

(a) he has obtained adequate information from the books and records of the insurer; and

(b) the accounts of the insurer accord with the information given to him by the insurer for the purposes of his audit; and

(c) the balance sheet and profit and loss account respectively of the insurer give a true and fair view of the insurer's financial position and profit and loss.

Publication of authorised capital, etc., of registered insurers.

**21.** A registered insurer shall not publish a statement or issue a document on which is printed a statement—

(a) of his authorised capital, unless the statement also sets forth the amount of his subscribed capital and of his paid-up capital; or

(b) of his subscribed capital, unless the statement also sets forth the amount of his paid-up capital.

### PART III

*Provisions Governing Associations of Underwriters which are Registered Insurers and the Carrying on of Insurance Business by their Members*

Application of Part III.

**22.** The provisions of this Part shall apply to associations of underwriters which are registered insurers and their members.

Premiums received by members of associations of underwriters to be held in trust.

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

**24.** (1) The accounts of a member of an association of underwriters constituted in Antigua and Barbuda shall be audited annually by an auditor approved by the Registrar. The auditor shall not be an employee, manager or director of the member.

**Audit of accounts of members of associations of underwriters constituted in Antigua and Barbuda.**

(2) The auditor of a member of an association of underwriters constituted in Antigua and Barbuda shall satisfy himself that the accounts of the member have been properly prepared in accordance with the books and records of the member.

(3) The auditor of a member of an association of underwriters constituted in Antigua and Barbuda shall certify to the committee of the association whether—

(a) he has obtained adequate information from the books and records of the member; and

(b) the accounts of the member accord with the information given to him by the member for the purposes of his audit; and

(c) the balance sheet and profit and loss account respectively of the member give a true and fair view of the member's financial position and profit or loss.

#### PART IV

##### *Special Provisions Governing the Carrying on of Life Assurance Business by Registered Insurers other than Associations of Underwriters*

**25.** The Provisions of this Part shall apply to life assurers who are not associations of underwriters.

**Application of Part IV.**

**26.** (1) A life assurer who carries on, in addition to his life assurance business, any other business whether insurance business or otherwise, shall keep a separate account of all receipts in respect of his life assurance business.

**Life assurers carrying on business other than life assurance business.**

(2) The receipts in respect of the business of a life assurer referred to in subsection (1) which are receipts in respect of his life assurance business shall be carried to and form part of the life assurance fund.

(3) The life assurance fund of a life assurer referred to in subsection (1) shall be as absolutely the security of the owners of the life, industrial assurance and sinking fund policies issued by the life assurer as though it belonged to a life assurer carrying on no other business than life assurance business. Payments from the life assurance fund of a life assurer referred to in subsection (1) shall not be made in pursuance of the contracts of the life assurer which would not be made if the business of the life assurer were only that of life assurance, and the life assurance fund shall not be applied directly or indirectly to any purposes other than those of life assurance.

(4) Nothing in this section contained shall preclude a life assurer referred to in subsection (1) from investing the life assurance fund in the same investments as any other fund.

**Periodical investigation to be made into financial position of life assurers.**

**27.** (1) A life assurer shall, not less than once in every five years, cause an investigation into his financial position, including a valuation of his liabilities, to be made by an actuary.

(2) A life assurer whose financial position is investigated in terms of this section, shall prepare and furnish to the Registrar in the appropriate forms prescribed, within six months of the date to which his accounts are made up for the purposes of the investigation, an abstract of the report of the actuary by whom the investigation was made and a statement of his assurance business at that date.

(3) The provisions of subsections (1) and (2) shall, subject to the provisions of subsection (4), apply at any time an investigation into the financial position of a life assurer is made with a view to a distribution of profits.

(4) A life assurer whose financial position is investigated with a view to a distribution of profits shall not be required to furnish to the Registrar a statement of his assurance business such as is referred to in subsection (2) more than once in every five years.

28. (1) No local insurer shall—

(a) amalgamate with one or more insurers if one or more or all of the insurers to be amalgamated are persons carrying on life assurance business; or

(b) transfer his life assurance business or a part of his life assurance business to or take transfer of the life assurance business or a part of the life assurance business of another insurer;

Amalgamations  
and transfers of  
life assurance  
business.

unless the amalgamation or, as the case may be, the transfer is sanctioned by the Governor-General in accordance with the provisions of this section.

(2) If it is intended to amalgamate two or more insurers carrying on life assurance business, one or more or all of whom are local insurers, or to transfer the life assurance business or a part of the life assurance business of one insurer to another insurer one or both of whom are local insurers, the directors of the insurers concerned may apply to the Governor-General to sanction the proposed amalgamation or, as the case may be, transfer.

(3) Before an application to the Court is made in terms of subsection (2)—

(a) notice of the intention to make the application shall be published in the *Gazette*; and

(b) a statement of the nature of the amalgamation or, as the case may be, transfer, together with—

(i) an abstract containing the material facts embodied in the agreement under which the amalgamation or transfer is proposed to be affected; and

(ii) copies of the actuarial reports upon which agreement referred to in sub-paragraph (i) is founded, including a report by an actuary;

shall be posted to the registered or last known address of each life, industrial assurance or sinking fund policy-owner in Antigua and Barbuda of each insurer and to the Registrar; and

(c) the agreement under which the amalgamation or, as the case may be, transfer is proposed to be effected shall be open for inspection by policy-owners and shareholders at the offices of the insurers in Antigua and Barbuda for a period of twenty-one days after the publication of the notice in the *Gazette*.

(4) The Court, after considering the application, and such representations as may be made by policy-owners and shareholders of the insurers concerned and by other persons whom the Court considers are entitled to be heard, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(5) The Court shall not sanction an amalgamation or, as the case may be, transfer if it appears to the Court that the life, industrial assurance and sinking fund policy-owners, representing one-fifth or more of the total amount insured by any of the insurers carrying on life assurance business concerned, dissent from the amalgamation or transfer.

(6) If an amalgamation or transfer has taken place in accordance with the provisions of this section, no life, industrial assurance or sinking fund policy-owners shall be regarded as having abandoned any claim which he would have had against the original insurer or to have accepted in place thereof the liability of another insurer, unless he or his agent has signed a written document abandoning that claim and accepting in place thereof the liability of that other insurer.

(7) In this section "Court" means a judge of the High Court sitting in Chambers.

**Statement in case of amalgamation or transfer of business.**

**29.** Within three months after the date of the completion of an amalgamation or transfer referred to in section 28, the combined insurer or, as the case may be, the purchasing insurer shall deposit with the Registrar—

(a) certified copies of statements of the assets and liabilities of the insurers concerned in the amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and



(b) a certified copy of the agreement or deed under which the amalgamation or transfer was affected; and

(c) certified copies of the actuarial or other reports upon which the agreement or deed was founded; and

(d) a declaration under the hand of the chairman of each insurer and of the principal officer of each insurer that—

- (i) to the best of their knowledge and belief, every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and no other payments, except those set forth, have been made or are to be made, either in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the amalgamation or transfer; and
- (ii) due notice of the proposed amalgamation or transfer was given to the shareholders, if any, and policy-owners of each insurer concerned in compliance with the provisions of section 28.

## PART V

### *Registration and Cancellation of Registration of Insurance Agents*

**30.** (1) No person shall act as an agent for an insurer or an insurance broker unless that person is registered as an insurance agent or a broker's agent. **Insurance agents to be registered.**

(2) No insurance agent shall act as an agent for two or more insurers unless he is registered as an insurance agent for each such insurer and in respect of each such insurer there shall be a separate registration of the insurance agent.

(3) Nothing in subsections (1) and (2) contained shall apply to a person who acts as an insurance agent on or after the date of commencement of this Act, if—

(a) immediately before that date he was acting in Antigua and Barbuda as an insurance agent; and

(b) within six weeks of that date an application is made by an insurer for him to be registered as an insurance agent; and

(c) within three months of that date he is so registered.

Registration of  
insurance agents.

**31.** (1) An application for a person to be registered as an insurance agent shall be made by the insurer appointing the agent to the Registrar in the form prescribed and shall be accompanied by—

(a) a copy of the power of attorney or similar authorisation in which the insurer defines the powers of the agent acting on his behalf and the actions of the agent for which the insurer will hold himself responsible; and

(b) police record of the agent obtained from the various territories in which he has lived for a period of six months or more; and

(c) such other documents as may be required by the Registrar.

(2) The Registrar shall require to be produced before him the original of the power of attorney or similar authorisation referred to in paragraph (a) of subsection (1).

(3) The Registrar shall not register as an insurance agent any person who has in terms of any enactment in force in Her Majesty's dominions relating to insolvency or bankruptcy been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged or has, in terms of any enactment in force in Her Majesty's dominions relating thereto, made an assignment to or arrangement or composition with creditors which has not been rescinded or set aside.

(4) The Registrar may refuse to register as an insurance agent any person who has been convicted by any Court wheresoever situate of any offence involving dishonesty or has been convicted of an offence against section 49, an appeal against the conviction not having been brought or, if brought, having been abandoned or dismissed, and the Registrar shall

not so register such a person at any time during the five years immediately succeeding the conviction.

(5) The Registrar shall not register any person as an insurance agent for an insurer not registered as an insurer in terms of this Act.

(6) Unless the Registrar is satisfied that an application by an insurer for registration of a person as an insurance agent should be rejected under the provisions of any or all of subsections (3), (4) and (5), the Registrar shall upon payment of the fee payable pursuant to section 32 and the Schedule to this Act, register that person as an agent for that insurer and shall notify the applicant in writing accordingly.

(7) If the Registrar is satisfied that an application by an insurer for registration of a person as an insurance agent should be rejected under the provisions of any or all of subsections (3), (4) and (5), the Registrar shall notify the applicant in writing that he proposes to reject the application and of his reasons for doing so.

(8) If an applicant for the registration of an insurance agent who has been notified of the Registrar's proposal to reject his application fails to lodge with the Registrar a notice of his intention to refer his case for review, by the Governor-General as in subsection (1) of section 34 is provided within the period mentioned in that subsection or, having lodged such a notice within that period, withdraws the notice before the Governor-General makes his decision in the case, the Registrar shall reject his application and shall notify the applicant in writing accordingly.

**32.** (1) No person shall be registered as an insurance agent until he has paid to the Commissioner of Inland Revenue the fee specified in the Schedule to this Act for that purpose. Registration Fees  
Insurance Agents.  
Schedule.

(2) During the month of January in every year after the year in which an insurance agent is registered, he shall pay to the Commissioner of Inland Revenue the annual fee specified in the Schedule to this Act for that purpose. Schedule.

Cancellation of registration.

**33.** (1) If the Registrar is satisfied that a person registered as an insurance agent would, if an application were made for him to be registered as an insurance agent, not be registered having regard to any or all of the provisions of subsections (3) and (4) of section 31, the Registrar shall notify that person and each and every insurer for whom that person is registered as an insurance agent that he proposes to cancel all registrations of that person as an insurance agent.

(2) Where an insurance agent has failed to pay the annual fee pursuant to subsection (2) of section 32, the Registrar shall notify the insurer and the insurance agent concerned that he proposes to cancel the registration of that agent:

Provided that if the fee is paid not later than fourteen days after the date of the Registrar's notification of his intention to cancel the registration of the insurance agent, such registration shall, subject to this Act, remain in force.

(3) If at any time the registration of an insurer is cancelled the Registrar shall at the same time cancel the registrations as insurance agents for that insurer of all persons so registered.

(4) If a registered insurance agent and each insurer who has been notified of the Registrar's proposal to cancel any or all of the registrations of that insurance agent pursuant to subsections (1) and (3) fails to lodge with the Registrar a notice of his intention to refer the Registrar's proposal for review by the Governor-General as in subsection (1) of section 34 is provided within the period mentioned in that subsection or, having lodged such a notice within that period, withdraws the notice before the Governor-General makes his decision in the case, the Registrar shall cancel the registration or registrations as notified in his proposal and shall notify the insurance agent and the said insurers of this cancellation in writing accordingly.

Proposal of Registrar subject to review.

**34.** (1) An insurer who is aggrieved by the proposal of the Registrar to reject his application for the registration of a person as an insurance agent or to cancel such registration and an insurance agent who is aggrieved by the proposal

of the Registrar to cancel in accordance with subsection (1) of section 33 any or all of his registrations as an insurance agent may, within thirty days of the date of the notice informing him of the Registrar's proposal, lodge a notice with the Registrar of his intention to refer his case for review by the Governor-General.

(2) In relation to the notice of review and the review referred to in subsection (1), the provisions of subsections (2), (3), (4), (5) and (6) of section 10 shall apply *mutatis mutandis*.

**35.** (1) If at any time an insurer terminates his appointment of a person to act as an insurance agent for him, he shall at the same time notify the Registrar in writing of the name of the person whose appointment he has terminated.

Cancellation of registration as an insurance agent when his appointment as an insurer is as cancelled.

(2) The Registrar shall cancel the registration of a person as an insurance agent for an insurer if that insurer terminates the appointment of that person to act as an insurance agent for him.

**36.** The Registrar shall cause the registration of a person as an insurance agent or the cancellation of the registration of an insurance agent to be published in the *Gazette*.

Registration or cancellation to be published in the *Gazette*.

**37.** (1) No person shall act as an insurance sub-agent for a registered insurance agent unless that person has received from a registered insurance agent a letter of appointment or similar authorisation in which that agent defines the powers of the sub-agent acting on his behalf and the actions of the sub-agent for which that agent will hold himself responsible.

Appointment of sub-agents.

(2) An insurance sub-agent shall on demand by the Registrar or by any person authorised by the Registrar in that behalf produce to the Registrar or to any such person the sub-agent's letter of appointment or similar authorisation referred to in subsection (1).

## PART VI

*Powers and Duties of the Governor-General, The Registrar and an Inspector appointed in terms of this Part*

Registrar may  
classify insurance  
business.

**38.** (1) At the request of an insurer the Registrar may, subject to the provisions of subsection (2) and to such conditions and limitations as the Registrar may fix, determine that any insurance business of any particular class which the insurer carried on or intends to carry on shall be treated for the purposes of this Act, as insurance business of another class.

(2) The Registrar shall not accede to a request referred to in subsection (1) unless he has satisfied himself that his determination will not be detrimental to the interest of any person and will not defeat the objects and purposes of this Act.

Registrar may  
demand  
information from  
insurers.

**39.** The Registrar may, for the purposes of carrying out the provisions of this Act, demand from a registered insurer or an applicant for registration as an insurer any document or information relating to any matter connected with his business or transactions, whether insurance business or transactions or otherwise.

Registrar may  
alter or adapt  
prescribed forms.

**40.** On the application of or with the consent of a registered insurer or an applicant for registration as an insurer, the Registrar may alter any prescribed form for the purpose of adapting the form to meet the circumstances of the registered insurer or applicant.

Registrar may  
require  
information to be  
supplied in the  
English language.

**41.** The Registrar may require any person who furnishes to the Registrar, in terms of this Act, any statement, certificate or other document whatsoever in a language other than the English language to provide a translation of that document in the English language at that person's expense.

Investigation of  
the affairs of an  
insurer.

**42.** (1) If—

(a) an insurer, having failed to furnish the Registrar with any documents or information required by or under a provision of this Act, within the period specified, has not furnished that document or information within a period of thirty days, commencing on the date upon

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which the Registrar reminded him in writing of his failure; or

(b) an insurer, having furnished incorrect or incomplete information to the Registrar has not furnished correct or complete information within a period of thirty days, commencing on the date upon which the Registrar called upon him in writing to correct or complete the information; or

(c) an insurer has not within a period of thirty days commencing on the date upon which the Registrar demanded from him in writing any document or information which the Registrar was entitled, in terms of this Act, to demand from him, furnished that document or information to the satisfaction of the Registrar; or

(d) any document or information furnished by any insurer to the Registrar shows that the insurer has failed to comply with the provisions of this Act; or

(e) the auditor or actuary of an insurer has informed the insurer of an irregularity that requires correction and the insurer has not corrected that irregularity within a period of thirty days, commencing on the date upon which the Registrar called upon him in writing to correct the irregularity; or

(f) the Registrar is in possession of information which, in his opinion, calls for an investigation into the affairs of an insurer and the insurer has failed to furnish within a period of thirty days commencing on the date the Registrar called upon him in writing to do so, a satisfactory explanation of any matter which forms ground for the Registrar's opinion;

the Registrar and, additionally or alternatively, an inspector who shall be appointed by the Governor-General for the purpose, may investigate the affairs or any part of the affairs of the insurer.

(2) No investigation shall be made into the affairs of an insurer in terms of subsection (1) without the approval of the Governor-General.

(3) For the purposes of making an investigation as in subsection (1) is provided, the Registrar and additionally or alternatively, as the case may be, an inspector appointed in terms of that subsection, shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act, and the provisions of that Act shall *mutatis mutandis* apply in relation to an investigation made in terms of this section and to any person summoned to give evidence at that investigation.

(4) On the completion of an investigation made in terms of this section, the Registrar and, additionally or alternatively, as the case may be, an inspector appointed in terms of subsection (1) shall furnish to the Governor-General a report of the investigation and to the insurer whose affairs are investigated a summary of the conclusions arrived at as a result of the investigation.

(5) The Governor-General may recover from an insurer whose affairs are investigated in terms of this section all expenses necessarily incurred in connection with the investigation.

Power of registrar to petition for winding up on ground of insolvency.

**43.** (1) A petition for the winding up of a company carrying on insurance business on the ground that it is insolvent within the meaning of the Companies Act may, with the leave of the Court, be presented by the Registrar.

(2) Subject to the provisions of section 2 a company carrying on insurance business shall be deemed, for the purposes of the Companies Act, to be insolvent if the value of its assets does not exceed the amount of its liabilities by at least the relevant margin of solvency prescribed under section 15.

## PART VII

### *Miscellaneous*

Restriction on use of word insurance.

**44.** After expiry of one year from the commencement of this Act—

(a) no person or body of persons, whether incorporated or unincorporated, other than a company authorised to carry on insurance business in accordance



with the provisions of this Act, shall have or use, or continue to have or use the word "insurance", or "assurance", or any derivative thereof, in the name under which such person or body of persons is carrying on business; and

(b) no company so authorised shall, without the written authorisation of the Governor-General, carry on insurance business unless it has and uses as part of its name the word "insurance" or "assurance" or a derivative thereof.

**45.** (1) Process in any legal proceedings against a registered insurer, who is not an association of underwriters, may be served at the principal office of the insurer in Antigua and Barbuda. **Service of process against registered insurers.**

(2) If the principal office in Antigua and Barbuda of a registered insurer, who is not an association of underwriters, has ceased to exist, process in any legal proceedings against the insurer may be served at the office of the Registrar.

(3) Service of process upon the Registrar, in accordance with the provisions of subsection (2) shall be deemed to be service upon the insurer.

**46.** The owner of a local policy shall, notwithstanding any contrary provision in the policy or in any agreement relating to the policy, be entitled to enforce his rights under the policy against the insurer liable under the policy in any competent court in Antigua and Barbuda. **Action by policy owners against insurers.**

**47.** (1) A person may, on payment to the Registrar of the appropriate prescribed fee— **Inspection of documents etc.**

(a) inspect; or

(b) inspect and make a copy of

any document furnished to the Registrar in terms of sections 6, 19, or 27.

(2) The Registrar shall, without charge, furnish at the request of any person the names of the principal officer in Antigua and Barbuda of a registered insurer and the address

of the principal office in Antigua and Barbuda of a registered insurer.

Documents  
furnished to the  
Registrar in  
terms of this Act,  
to be signed and  
accompanied by  
copies.

**48.** An insurer shall be regarded as having failed to comply with a provision of this Act requiring an insurer to furnish documents or copies of documents to the Registrar, unless—

(a) in the case of a document prepared by the insurer which is not in a form prescribed—

(i) the document is signed—

A. by the chairman and one other director of the insurer or, by such other person or persons having control over the business of the insurer as the Registrar may specify; and

B. if the insurer is not an association of underwriters, by the principal officer of the insurer; and

C. by such persons other than the persons referred to in subparagraphs A and B as are required by a provision of this Act to sign or certify the document; and

(ii) the document is accompanied by two copies; and

(b) in the case of a document prepared by the insurer which is in a form prescribed—

(i) the document is signed by the persons specified in the form or by such other person or persons having control over the business of the insurer as the Registrar may specify; and

(ii) the document is accompanied by two copies; and

(c) in the case of an original document other than a document referred to in paragraph (a) or (b), the document is accompanied by two copies; and

(d) in the case of a copy of a document, the copy is accompanied by two other copies one of which is certi-

fied as correct by the insurer or by an officer of the insurer.

**49.** (1) If a person issues a document referred to in this Act which is false in any material respect, that person and every other person who took part in the preparation or issue of the document or who signed it shall be guilty of an offence, unless it is proved that the accused (if an individual) or all the persons who acted on behalf of the accused (if the accused is not an individual) had no knowledge of the falsity of the document when it was issued. **False statement etc.**

(2) A person guilty of an offence specified in subsection (1) shall be liable, if the offender is an individual, to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment or, if the offender is not an individual, to a fine not exceeding three thousand dollars.

**50.** A person who contravenes a provision of this Act or fails or neglects to comply with a provision of this Act with which it is his duty to comply shall be guilty of an offence and, if no penalty is specially provided for that contravention or default, shall be liable, if the offender is an individual, to a fine not exceeding three thousand dollars or to imprisonment for a period not exceeding six months without the option of a fine or, if the offender is not an individual, to a fine not exceeding five thousand dollars. **General offences and penalties.**

**51.** (1) The Governor-General may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act. **Regulations.**

(2) In regulations made in terms of subsection (1), the Governor-General may make different provision for different classes of insurers and for different classes of insurance business.

**52.** Any reference in any enactment in force in Antigua and Barbuda relating to companies to a company carrying on insurance business in terms of any other enactment or to an insurance company registered or licensed in **References to insurance companies in other enactments.**

terms of any other enactment shall be read and construed as a reference or, if the context so requires, as including a reference to a company carrying on insurance business in terms of this Act.

Policy not invalid owing to failure to comply with law.

**53.** A policy issued by any person, whether before, on or after the date of this Act, shall not be invalid merely because that person contravened or failed to comply with the provisions of any enactment in force applying to that policy.

Transitional Provisions.

2111982.

**54.** Where an insurer or an insurance agent is registered under this Act at the date when the Revenue (Miscellaneous Provisions) Act, 1982 (in this section called "the Act of 1982") came into operation, all fees payable by him in respect of the year 1982 pursuant to sections 8 and 32 and the Schedule to this Act shall be paid not later than twenty-eight days after the date when the Act of 1982 came into operation.

*SCHEDULE*

(SECTIONS 8 AND 32)

1. Fee to be paid on registration of an insurer in respect of—
  - (a) life insurance business \$5000.00
  - (b) non-life assurance business \$5000.00
  - (c) both life and non-life assurance business \$5000.00
2. Annual fee to be paid by an insurer for continued registration in respect of—
  - (a) life assurance business \$5000.00
  - (b) non-life assurance business \$5000.00
  - (c) both life and non-life assurance business \$5000.00
3. Fee to be paid on registration of an insurance agent \$500.00
4. Annual fee to be paid for continued registration of an insurance agent \$500.00